

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3743 of 2016
and
C.M.P.No.19058 of 2016

R.Janardanan

... Petitioner

vs.

1. Shanthilal M.Jain
2. Yudhishater Khatri
Prop.of M/s.Megha Textile
Chennai-1.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 17.08.2016 passed by the learned VII Judge, Court of Small Causes, Chennai [Rent Control Appellate Authority] in M.P.No.754 of 2014 in RCA No.369 of 2014.

For Petitioner : Mr.L.Om Magesh
For Respondents : Ms.C.Rekha Kumari for R1

ORDER

The landlord in the rent control proceedings, who had filed an eviction petition, is the revision petitioner. The revision is directed against the order permitting the first respondent/tenant to mark a

copy of the receipt dated 01.02.2002 as an additional documentary evidence.

2. The brief facts of the case is as follows:

The revision petitioner herein filed RCOP No.704 of 2011 before the Rent Controller seeking eviction of the first respondent under Section 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and that the same was allowed vide order dated 03.04.2014. As against which, RCA No.369 of 2014 was filed by the tenant before the Rent Control Appellate Authority. Pending RCA, M.P.No.754 of 2014 was also filed for receiving the receipt dated 01.02.2002, as an additional documentary evidence. The said petition was allowed by the Rent Control Appellate Authority. It is admitted by the first respondent/tenant that during the pendency of the RCOP, he produced the Xerox copy of the receipt dated 01.02.2002 and since it was objected to be marked by the revision petitioner/landlord, the Rent Controller refused to entertain the same. Now, this is a second attempt by the tenant to mark the receipt in the appeal proceedings. Though it was objected to by the revision petitioner/landlord, that the very document is fabricated, the learned Rent Control Appellate Authority had allowed the same, which is now under challenge by the

petitioner/landlord in this revision.

3. Heard both sides.

4. The revision is filed challenging the interlocutory application filed in Rent Control Appellate Proceedings and it has to be seen whether any order passed by the Rent Control Appellate Authority in an interlocutory stage is appealable and whether the secondary evidence can be permitted to be marked in a summary procedure like Rent Control Proceedings?

5. In the present case, the photo copy of the receipt, allegedly executed by the father of the landlord giving consent for sub-letting is now sought to be marked. Even though the first attempt of the tenant in marking the said document before the Rent Controller failed, he has now marked the same at the appeal stage.

6. Normally a certified copy of the document can be produced as secondary evidence. But in the present case a photo copy of the receipt is being produced by the tenant. The tenant also has not averred, why the original was not produced. It is the admitted case of the tenant that he was given the original copy by the father of the

landlord, however, he has misplaced the same. Therefore, he is marking the photocopy of the document. The tenant/first respondent, cannot be allowed to take advantage of his own wrong.

7. Section 63 of the Indian Evidence Act, 1872 specifically lays down what can be termed as secondary evidence and Section 65 of the Act lays down the situation in which secondary evidence can be filed. A photo copy is not admissible in evidence as it is specifically barred under Section 63 of the Indian Evidence Act, 1872.

8. The learned Rent Control Appellate Authority without considering the above factors, have permitted the first respondent/tenant to mark the xerox copy of the document. The said order, if allowed to stand would cause hardship to the revision petitioner/landlord.

9. Considering the facts and circumstances of the case, the impugned order dated 17.08.2016 passed by the learned VII Judge, Court of Small Causes, Chennai [Rent Control Appellate Authority] in M.P.No.754 of 2014 in RCA No.369 of 2014 is set aside, as it would affect the rights and liabilities of the revision petitioner/landlord and this civil revision petition is **allowed**. However, there shall be no

order as to costs. Consequently, the connected miscellaneous petition is closed.

10.01.2017

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Index: Yes/No

Internet: yes

To

The VII Judge, Court of Small Causes, Chennai

[Rent Control Appellate Authority]

PUSHPA SATHYANARAYANA.J

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