

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.02.2017

Pronounced on: 06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2736 of 2013 and
M.P.No.1 of 2013 and
Caveat No.3374 of 2013**

S.A.Malick Mohammed and Sons
Rep. By Mr.Naina Mohammed,
Managing Partner
1-A, First Street, Perambur High Road,
Perambur (Jamalle),
Chennai 600 012.

.. Petitioner

vs.

1.Mr.P.K. Abdul Hamed
Rep. by power agent Mrs.Shamshed Hameed

2.Shamshed Hameed

..Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980), against the Judgment and Decree passed in R.C.A.No.1317 of 2004, dated 25.06.2013 passed by VII Judge, Small Causes Court, Chennai and confirming the order and

decree in R.C.O.P.No.615 of 1999 dated 27.09.2004 passed by XIV Judge, Small Causes Court, Chennai and pray to set aside the same by allowing the Civil Revision Petition.

For Petitioner : Mr.C.Umashankar

For Respondents : Mrs.Sriranjani

JUDGEMENT

Aggrieved against the order of eviction passed by the Rent Controller and affirmed by the Appellate authority, the tenant had preferred the above Civil Revision Petition.

2.Shorn of unnecessary details, the facts required for disposal of the revision are as follows:

The landlords/respondents preferred a petition for eviction of the tenant/appellant from the asbestos shed with the land appurtenant thereto admeasuring about 3 grounds and 1 Sq ft., alleging wilful default in payment of monthly rent of Rs.2,300/- for the period commencing from November,1992 to February, 1999. The petitioner contested the same alleging, among other things, that the shed was put up by his father A.Malick Mohammed ; that there is no relationship of landlord and tenant between the parties to the proceedings; that

the petition is not maintainable as his father alone was the tenant; that there is no liability to pay rent for the shed put up by his father and which belongs to him after his father's death on 04.07.1994.

3.The learned Rent Controller after a careful consideration of the oral and documentary evidence adduced by both sides and the law bearing on the subject held that the petition is maintainable; that the rent controller has got jurisdiction over the issue and that as admitted by the tenant himself the rent for the period commencing from November, 1992 to February, 1999 had not been paid. Upon these findings the Rent Controller held that that revision petitioner committed wilful default and ordered eviction. The findings of the Rent Controller were affirmed by the Appellate Authority in RCA.No.1317 of 2004, dated 25.06.2013.

4.The revision petitioner mainly urged that the power of attorney given in favour of the second respondent by the first respondent had not been produced before the Rent Controller and as such the proceedings are not maintainable and that the shed having been put up by his father A.Malick Mohammed there is no relationship of landlord and tenant between the parties to the proceedings and that

the Rent Controller has got no jurisdiction more so when land alone was given on rent. He further contended that pursuant to orders passed in M.P.No.337 of 2000 and in C.R.P.No.354 of 2004 he had paid all the arrears and that he cannot be held to have committed wilful default in payment of rents.

5.Per Contra the Counsel for Respondent invited the attention of this Court to the various findings of the Rent Controller and the Appellate Authority and argued that the concurrent findings of the authorities under the Rent Control Act, purely based on facts, admission and evidence cannot be interfered with. She relied on the judgement of this Court in C.R.P.(NPD)No.178 of 2006 dated 19.01.2009 (K.Karupiah v. B.Kubendran), which is a similar case as the case on hand.

6.The Rent Controller had clearly held on admission of the revision petitioner that the monthly rent of Rs.2,300/- for the period commencing from November,1992 to February, 1999 had not been paid by the tenant and also recorded the fact that the tenant failed to pay the land lords all the arrears on the first hearing date and only pursuant to orders passed in M.P.No.337 of 2000 by the Rent

Controller and by this Court in C.R.P.No.354 of 2004 the arrears up to March, 2004 were paid.

7.Firstly, this Court is unable to countenance the plea of the petitioner that he had not committed wilful default since at one stage the petitioner says that he could not pay the monthly rents as he was not aware of the address of the landlord and then changes his stand that he did not pay the rents to the person available in a house situate in the very same street, though the 2nd respondent was very much available in that house. He also admitted that he neither attempted to send the rents by Money order nor did he initiate any proceedings under Section 8 of the Tamilnadu (Buildings Lease and Rent Control) Act. His conduct in not attempting to pay or deposit all the arrears until orders were passed in these proceedings as stated above and failure to do so as and when the RCOP was filed coupled with his categorical admission in this regard as above only leads to an inescapable conclusion that the tenant had committed wilful default in payment of monthly rents, even though he pleaded that he has not pay rent to a shed constructed by his father. Supine indifference to pay the monthly rent on the part of the tenant is clearly made out and the judgement relied on by the Counsel for respondents in 1994 (1) MLJ

page 510 (Parimelalagan v. Santhalingam) is to the point and applies in all force to the case on hand.

8. Secondly though the petitioner contended that the shed was constructed by his father on the land taken on lease by his father in 1988, he did not attempt to prove his plea in that regard by producing any rent deed or agreement. On the other hand the documentary evidence provided and proved before the trial court is to the effect that even before 1988 the shed was assessed to property tax by the Corporation of Chennai. Hence the absence of landlord-tenant relationship does not at all arise in this case.

9. The dispute relating to jurisdiction of the Rent Controller also does not arise for determination in this case for the very same reason.

10. The point raised as to the non-impleadment of all the legal heirs of A. Malick Mohammed, who according to the petitioner is the tenant also fades insignificant since the petitioner categorically admits that he was doing business along with his father and he continues to do the business even after his father's death. Further in the long Cause title of the RCOP it is mentioned only as "Naina Mohammed, Son of

A.Malick Mohammed carrying on business at ...,” and as such the petitioner is not prejudiced in any manner by the description given in the long cause title.

11.Both the Rent Controller and the Appellate Authority had extensively discussed all the facts and the evidence as well the law on the subject in their fair orders to confirm their findings as stated above.

12.The power of this Court under Section 25 of the Tamilnadu (Buildings Lease and Rent Control) Act can be is to satisfy itself as to the regularity of the proceedings or the correctness, legality or propriety of any decision or order passed and as such it is one of superintendence and parental in nature as held in 2010 (6) CTC page 43 in the case of D.Varadarajulu v. K.Narasimman. As observed in AIR 2003 SC Page 2993 (P.M.Punnose v. K.M.Munneerudin), AIR 2000 SC Page 2192 (K.M.Abdul Razjak v. Damodaran) and in 2007 (2) MLJ Page 955 (Suresh Kumar Kothari v. Dr.T.Ramachandran) this Court is not expected to act as an Appellate Court by re-appraising or re-assessing the evidence afresh and come to different findings contrary to the findings recorded by the courts below, unless those findings are

perverse and contrary to facts, evidence and law.

13. Further the Apex Court as well this Court in several judgements had reiterated the legal position that concurrent findings of fact cannot be interfered with in exercise of power under Section 25 of the Act. In 2007 (1) MLJ Page 239 (The President, Communist party (rightist) and Vivasayee sangam, Samayanallur v. Mohammed Rahamatul Ansari) it has been held that when the authorities have concurrently rendered findings based on evidence and such findings are reasonable and legally acceptable, this Court cannot interfere in revisional jurisdiction. In this case also the rent controller as well as appellate authority have on facts and based on evidence rendered findings which are reasonable and legally acceptable. I had already held that the points agitated by the revision petitioner could not be countenanced, more so upon his own admissions regarding failure to pay the monthly rents as contended by the landlords.

14. In the result, all the findings of the rent controller as well as the appellate authority in R.C.O.P.No.615 of 1999 and R.C.A.No.1317 of 2004 respectively are confirmed and the above revision fails and is accordingly liable to be dismissed.

15.I am inclined to grant only two months time to the tenant to put the landlord in vacant possession, considering the vexations nature of contest put up by the petitioner/tenant throughout the pendency of these proceedings and his attitude in raising all sorts of pleas to escape the order of eviction, subject to his filing an undertaking affidavit within a week from this date to the effect that he will put the landlord in vacant possession of the petition premises on or before the expiry of the said two months period. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.06.2017

Note:Issue order copy on 25.07.2017

Index:Yes

Speaking Order

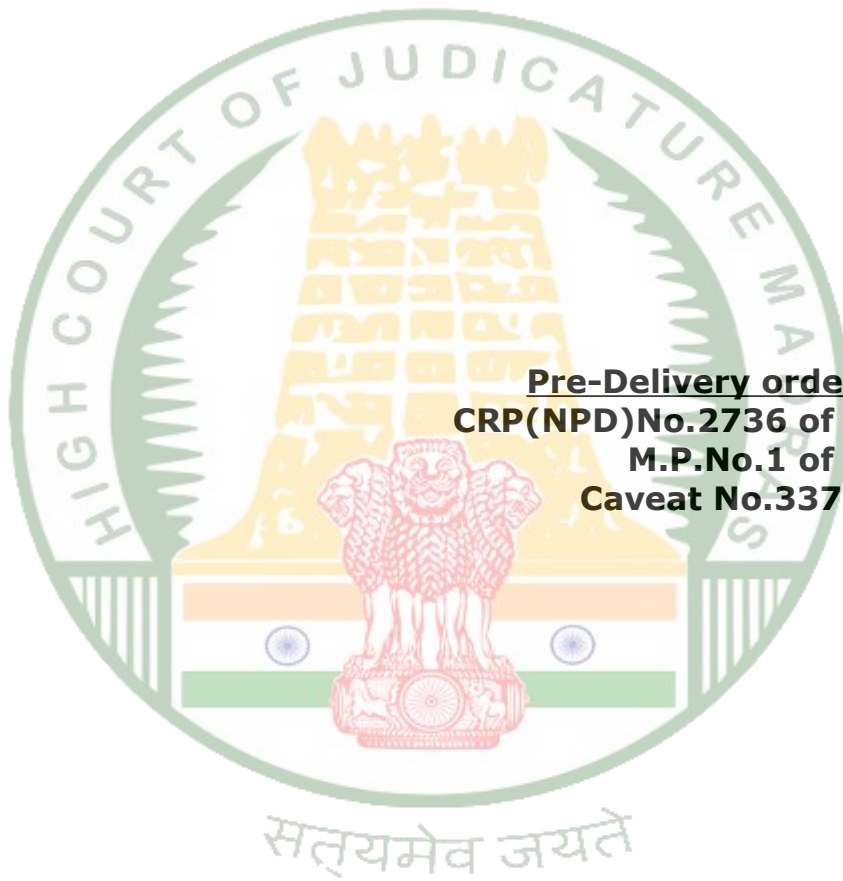
vs

To

- 1.The VII Judge, Small Causes Court,
Chennai.
- 2.The XIV Judge, Small Causes Court,
Chennai.

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2736 of 2013 and
M.P.No.1 of 2013 and
Caveat No.3374 of 2013

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06.06.2017

C.R.P.No.2736 of 2013**M.V.MURALIDARAN, J.**

Today, the matter is listed under the caption "for being mentioned" at the instance of learned counsel for petitioner.

2. Heard learned counsel for the petitioner and learned counsel appearing for the respondents.

3. It is represented by the learned counsel for the petitioner that the matter has already been dismissed by this Court on 06.06.2017, by setting aside the order passed in R.C.O.P.No.615 of 1999, dated 27.09.2004, on the file of the XIV Judge, Small Causes Court, Chennai, on condition that the petitioner/tenant throughout the pendency of these proceedings and his attitude in raising all sorts of pleas to escape the order of eviction, subject to his filing an undertaking within a week from this date to the effect that he will put the landlord in vacant possession of the petition premises on or before the expiry of the said two months period.

4. The learned counsel for the petitioner sought further time for a period of one year and undertakes to put the landlord in vacant

possession of the petition premises on or before the expiry of the one year from today. The respondent has strongly objected to the same.

5. Considering the submissions made, this Court directs that the paragraph No.15 of the order dated 06.06.2017 passed in CRP(NPD)No.2736 of 2013 and the order is modified with the following order:

"I am inclined to grant only six months time to the tenant from today and put the landlord in vacant possession till the expiry of six months, subject to his filing an undertaking affidavit within a week from this date to the effect that he will put the landlord in vacant possession of the petition premises on or before the expiry of the said six months period. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

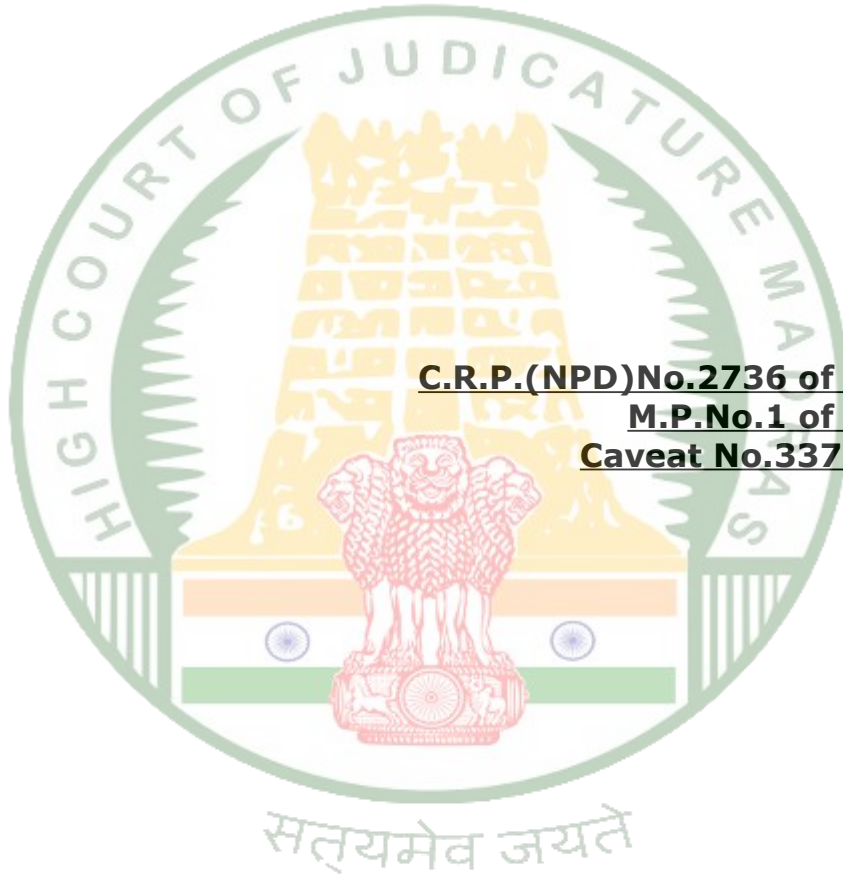
6. Registry is directed to carry out necessary corrections and issue fresh order copy.

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M.V.MURALIDARAN, J.

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C.R.P.(NPD)No.2736 of 2013 and
M.P.No.1 of 2013 and
Caveat No.3374 of 2013

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07.06.2017

C.R.P(NPD).No.2736 of 2013

M.V.MURALIDARAN, J.

The case is listed today under the caption "for clarification".

2. This Court by order dated 07.06.2017 granted six months time to vacate the possession of the petition premises .

3. The learned counsel appearing for the petitioner filed undertaking affidavit before this Court stating that since the petitioner is dealing in resale of wooden boulders, rafters, doors and windows which are inside the petition premises and there are lot of outstanding to be collected and also to be paid hence, time may be granted till 05.12.2017 to vacate the petition premises.

4. The learned counsel appearing for the respondent submitted that he has no objection from vacating the premises on 05.12.2017, but the petitioner shall pay the rent from 07.06.2017 till 05.12.2017.

M.V.MURALIDARAN, J.

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5. Considering submission on either side, the petitioner is directed to vacate the premises on or before 05.12.2017 and he shall pay the rent from 07.06.2012 to 05.12.2017, without any default.

6. Registry is directed to carryout necessary corrections and issue fresh order copy.

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30.06.2017

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C.R.P.No.2736 of 2013