

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 21.07.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRP(NPD)No.2664 of 2012**

Parimala .. Petitioner

Vs.

A.Zakaria ..Respondent

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, against the Judgment and Decree dated 25.10.2010 made in RCA.No.26 of 2009, on the file of the Rent Control Appellate Court -cum-Principal Sub-Judge, Coimbatore, in confirming the order and decree dated 11.09.2009 made in RCOP.No.69 of 2007 on the file of the District Munsif-cum-Rent Controller, Coimbatore.

For Petitioner : Mr.K.V.Sundararajan

For Respondent : Mr.R.Singaravelan, Senior Counsel
for M/s.M.Srividhya**ORDER**

The Petitioner has filed the instant Civil Revision Petition Under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act to set aside the Judgment and decree dated 01.02.2011 made in RCA.No.26 of 2009 on the file of Rent Control Appellant Court cum Principal Sub Judge, Coimbatore in confirming the order and decree dated 11.09.2007 made in RCOP.No.6 of 2007 on the file of the District Munsif cum Rent Controller, Coimbatore and consequently allow the petition in RCOP.No.69 of 2007 on the file of District Munsif cum Rent Controller, Coimbatore.

2.The unsuccessful Landlady before the authorities below is the Revision petitioner in this CRP. The petitioner herein originally filed an Eviction petition against the respondent herein on the grounds of Willful default, Public Nuisance and Own Use and Occupation under Sections 10(2)(i), 10(2)(v) and 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 respectively.

3.It is the case of the petitioner that the respondent herein was inducted as a Tenant on 01.02.2004 for a period of 11 months. The petition mentioned premise is a Non-residential House. The respondent paid an advance of amount of Rs.60,000/- and agreed to pay monthly

rent of Rs.5000/-. The petition premise was used as Fish shop by the respondent. After the adornment of Tenancy, the petitioner was routine in making entries in a note maintained by the respondent, acknowledging payment of the monthly rent. From the entries in the said note, it could be ascertained that the respondent was irregular in paying monthly rents. Further the request of the respondent to extend the Tenancy was rejected by the petitioner. The reasons behind the petitioner's refusal to extend the Tenancy were that the respondent causes Nuisance to the nearby house owners and the petitioner in this regard also received complaints from nearby house owners. Hence the respondent was asked to vacate and handover the petition premises to the petitioner. The respondent is in arrear of monthly rent from Jan 2006 to July 2006 to the tune of Rs.35000, despite the demand made by the petitioner to pay the arrears of rent, the respondent failed to pay the same and hence the petitioner caused a Legal Notice to the respondent on 09.01.2007 requiring him to vacate the petition premise.

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4.It is the further case of the petitioner that the petition premise is necessary for her occupation as she is intended to run a Hotel Business, which was carried out earlier. The respondent herein in reply

to the Legal Notice of petitioner sent a reply notice dated 21.07.2007 with false and untenable allegations. Hence the Revision petitioner filed the above eviction petition in RCOP.No.69 of 2007 before the Learned Rent controller cum principal District Munsif Court at Coimbatore on the grounds of willful, default, Nuisance and owners occupation.

5.The Respondent herein resisted the above Eviction proceeding contending that as much the quantum of Rs.5000/- as monthly rent figured by the petitioner, there is no quarrel over the same. However in so far as the nature and tenure of the inducement of Tenancy it is disputed to the effect that there was no such rental agreement as projected in the petition. In actual the respondent after availing petitioner's permission has made certain alterations and amenities in petition premises and for that he has spent considerable amount. It is not correct to state that the respondent had not paid the rents regularly. The respondent has paid the rent for the month of July 2006 by way of money order in the 1st week of August 2006. Further the story of the petitioner that petition premises is required for own use and occupation is not bonafide. Hence the respondent prayed to dismiss the above RCOP.

6.The Petitioner/land lady to substantiate her claim marked Exs.P-1 to Ex.P-7. The Respondent/Tenant to substantiate her claim marked Exs.R-1 to Ex.R-7. After full-fledged trial, the learned Rent Controller, on appraisal of the available records put forth by either side, dismissed the petition filed by the land lady, by a judgment dated 11.09.2007. As against the same, the Petitioner/land lady filed an appeal before the learned Rent Control Appellant Court cum Principal Sub Judge, Coimbatore in R.C.A.No.26 of 2009 and the same was also dismissed on 01.02.2011. As against the order passed in R.C.A.No.26 of 2009 dated 01.02.2011, this Civil Revision Petition is filed by the petitioner / landlady.

7.Further the Revision petitioner made reliance upon a decision of this Court reported in 1997 2 LW 607 in the matter of *Thirunavukkarasu Vs. Vasantha Ammal* holding that

"14. In this case, at the time when the Eviction Petition was filed, the landlady's son had to complete only six months more to finish his MBBS course. Immediately thereafter he becomes a qualified Medical Practitioner. To insist that the landlady should file the petition only after

her son becomes a Doctor, would mean to say that till the building is obtained delivery of after the long legal process, the landlady's son should not start a clinic and serve the humanity., The landlady wanted her son to be provided with a shelter so that his life would be secure. It is her bona fide intention that her dependent son should be provided with the building in question. The need has already arisen, and the tenant cannot insist that the landlady should wait till her son finishes the M.B.B.S. Course, and thereafter file a petition for eviction and prove bona fide . If that be the case, by the time the building is obtained, the need will cease to exist."

8.By placing reliance upon the above decision it is contended by the Learned Counsel for the petitioner that a tenant cannot insist a Landlord to wait for a future eventuality to hand over the petition premise.

9.It is seen from the records that before the Learned Rent Controller, the Rent Control Original Petition in R.C.O.P.No.69 of 2007, was filed under Sections 10(2)(i), 10(2)(v) and 10(3)(a)(iii) of the

Tamil Nadu Building (Lease and Rent Control) Act, 1960 to evict the Respondent on the ground of Willful Default, Public Nuisance and Own Use and Occupation. It is the specific case of the Petitioner/Landlady before the Learned Rent Controller that the Respondent/Tenant is a willful defaulter having failed to pay monthly rent from January 2006 to July 2006. In spite of Legal Notice, the rent was not tendered and hence the Petitioner/Landlady was constrained to file the aforesaid petition for eviction.

10. The case of the respondent is found to be that Ex-P1, Rental agreement was merely executed for the purpose of a Loan formality and in actual the respondent was inducted much before the date mentioned in EX-P1. At this juncture, this Court is able to see that the Revision petitioner/Landlady has admitted the case of the Respondent/Tenant that he entered into Rental Agreement in (Ex-P1) with the respondent on 01.02.2004 only for the purpose of availing loan from the Bank. It is equally important to note that from Ex-P2 dated at 29.01.2004, the License fee receipt issued by the corporation, Chennai clearly reveal that the respondent herein became tenant under the revision petitioner prior to 01.02.2004.

11. More so, it is seen that the Revision petitioner was not in habit of issuing rental receipts to the respondent. It is further witnessed from the records that R.W.2, the Head Constable of R.S. Puram Police Station was examined and through him Ex-R7 complaint was marked. In the said complaint dated 15.04.2006, absolutely there is no recital about the non-payment of rent by the respondent. Further there is no whisper in Ex-R7 that the rent was adjusted from the advance amount.

12. It is pertinent to note that if at all the tenant was in arrears of rent from January 2006 to July 2006 to the tune of Rs.35,000/- the Landlady would not have received the rent paid by the tenant through money order for the month of July 2006. That apart as rightly held by the learned rent Controller, the revision petitioner has not filed application U/S.11 (4) of the Act for arrears of rent as alleged by her.

13. From the discussions made above by the authorities below it is ascertainable that the respondent/tenant has not committed any willful default in payment of rent.

14. The said finding of fact recorded by the authorities below

need not be testified by exercising the Revisional powers. At this juncture, it is to be borne in mind by this Court to the Decision of the Hon'ble Apex Court reported in **2016 (2) CTC 292 in the matter of Kasthuri Radhakrishnan & Others -Vs- M. Chinniyan & Another**, wherein it is held that

"So far as the issue pertaining to exercise of Revisional Jurisdiction of the High Court while hearing Revision Petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the constitutional Bench of this Court in Hindustan Petroleum Corporation Limited -Vs- Dilbahar Sing, 20014 (3) MWN (Civil) 334 (SC) : 2014 (9) SCC 78. Justice R.M.Lodha, the then Hon'ble Chief Justice speaking for the Bench held in para 43 thus: We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate Court/first appellate authority because on reappreciation of the evidence, its view is different from the Court/authority below. The consideration or examination of the evidence by the High Court in

revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to

reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

15.This finds much force in the contention of the Learned Counsel for the respondent that the revision petitioner having rented out the petition premises to the respondent herein knowing fully that he is going to conduct business of selling Fish.

16.As regards, the allegation of nuisance, as rightly held by the authorities below the land lady has not produced any document to prove that there is a complaint before the Sanitary Inspector of Chennai Corporation that the respondent is causing health hazard and nuisance to general public. To prove the same, neither the neighboring Shopkeepers nor any general public's evidence was let in. Therefore the rejection of eviction on the ground of public Nuisance by the

authorities below is confirmed.

17.Lastly, this Court has to see whether the landlady has made out any case for eviction on the ground of own use and occupation. This Court has considered the arguments advanced on the side of the Learned Counsel for the revision petitioner that the petition premise is required for the petitioner's Daughter to do their family Hotel business which was carried earlier. However, the revision petitioner admits that her Daughter is working in Airtel Mobile Phone Company. Further in Ex-P7 Police complaint the petitioner has not stated that the respondent should be evicted as she require the petition premises for doing Hotel business. Hence the arguments advanced by the petitioner cannot be countenanced. Therefore both the authorities below have come to the conclusion that claim of the revision petitioner for eviction on the ground of own use and occupation is not bonafide.

18.At this juncture it would be relevant to note here that from the facts recorded above with regard to own occupation, it is needless to say that petitioner's daughter is an Employee in a private concern and provided that she is not a student as in the case stated above and that their intention to set up a business, this Court finds that the above

decision referred by the Revision petitioner in the matter of Thirunavukkarasu –Vs- Vasantha Ammal is inapplicable to the case on hand.

19.As per the above Judgment of the Hon'ble Apex Court, the revisional jurisdiction of the High Court is very limited. This Court is bound to follow the dictum laid down by the Hon'ble Supreme Court and the finding of fact recorded by the authorities below is according to law and does not suffer from any error of law and it is not open to this Court to correct, unless if the finding of facts recorded by the authority below, is perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of evidence is grossly erroneous.

20.In view of the discussion made above and in the light of the Judgment referred above, this Court has not find any ground for ordering eviction and the dismissal of the eviction petition by both the authorities below does not suffer from any material irregularities and the same is liable to be confirmed, accordingly confirmed.

21.In the result, this civil revision petition is dismissed, by

confirming the order passed in RCA.No.26 of 2009, dated 25.10.2010, on the file of the learned Rent Control Appellate Court-cum-Principal Sub-Judge, Coimbatore and RCOP.No.69 of 2007, dated 11.09.2009, on the file of the learned District Munsif-cum-Rent Controller, Coimbatore. No costs.

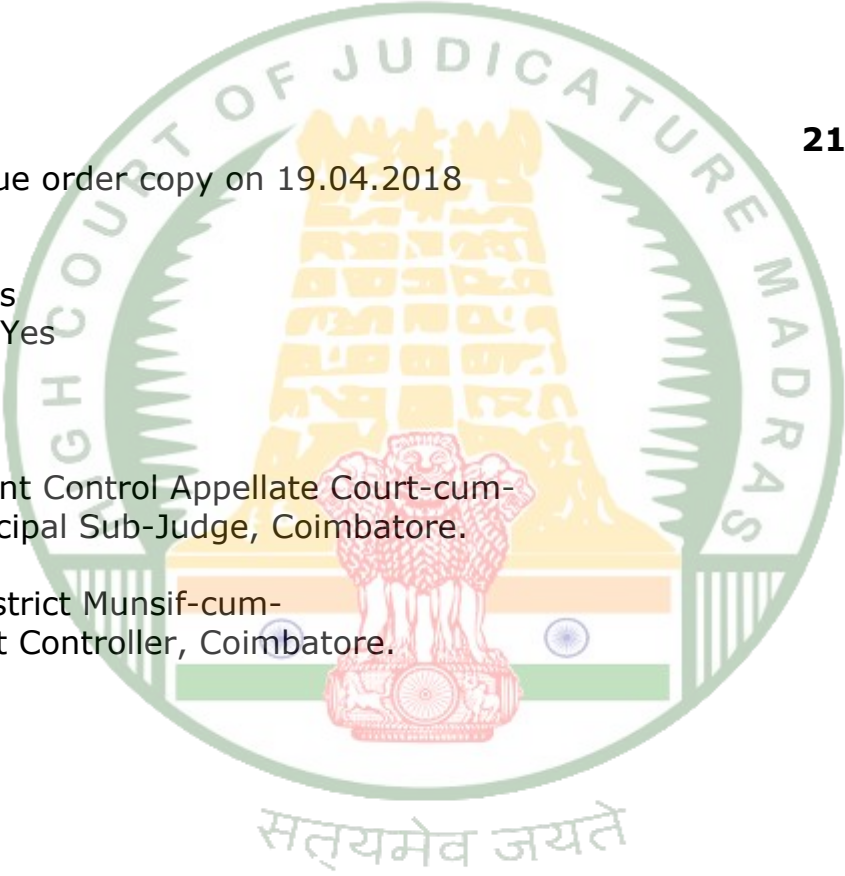
21.07.2017

Note:Issue order copy on 19.04.2018
vs

Index:Yes
Internet:Yes

To

- 1.The Rent Control Appellate Court-cum-Principal Sub-Judge, Coimbatore.
- 2.The District Munsif-cum-Rent Controller, Coimbatore.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.2664 of 2012**

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