

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP (NPD) No.465 of 2006

1.Bhupendra C.Shah

2.Jayashree B.Shah

... Petitioners/Landlords

Vs.

1.Rupal M.Shah

2.Manish B.Shah

... Respondents/Tenants

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act 18 of 1960 and As Amended by Act 23 of 1973 and Act I of 1980, against the order and decreetal order passed in R.C.A.No.451 of 2002 dated 22.11.2005, on the file of the VIII Judge, Court of Small Causes at Chennai, Reversing the order and decreetal order made in RCOP.No.1455 of 1999 dated 17.06.2002, on the file of the XV Judge, Court of Small Causes at Chennai.

For Petitioners : Mr.A.Balasingh Ramanujam

For Respondents : Mr.R.Yashod Vardhan,
Senior Counsel
Mr.P.Solomon Francis

सत्यमेव जयते
O R D E R

This civil revision petition is filed by the landlords against the tenant. The brief fact stated in this revision petition is that, the revision petitioners are the absolute owners of the petition premises bearing D.No.174, Thambu Chetty Street, Madras. The above premise was leased out to the first respondent herein for non-residential purpose on a monthly rent of Rs.4,000/-. The first respondent herein, who took lease of the petitioner premises which is in ground floor, has sublet the same to the 2nd respondent herein. The second respondent is an unauthorized sub-tenant. The first respondent herein is a chronic defaulter in payment of monthly rent and she has not paid rents for the months of November 1998 to June 1999 at the

rate of Rs.4000/- per month, excluding electricity charges. The 1st respondent has sent a sum of Rs 16,000/- which was adjusted towards rent for the months of July 1999 to October 1999. Even thereafter the 1st respondent is still rent due to the revision petitioners from November 1998 to June 1999. Despite several remainder by the revision petitioners, the 1st respondent failed to pay the arrears of rent and thereby has committed an act of willful default in payment of rent.

2.The further case of the revision petitioners is that the sublet by the 1st respondent herein to the 2nd respondent without the written consent of the petitioners herein, therefore the respondents are liable to be evicted on that ground also.

3.Apart from the above two grounds, one another ground raised by the revision petitioners is that the petition premise is required for own use and occupation, such that the 2nd petitioner is running a business under a name and style of Shah Bearing company at No.185, Thambu Chetty street in a rental building along with her son and they are finding it difficult to carry on business in the rental building. The 2nd petitioner's son got married and therefore she felt that she cannot any longer hold responsibility and shift the burden on the shoulders of her son. Hence the 2nd petitioner required her portion bonafidely from the 1st respondent herein for the use and occupation of her son's business. The requirement for her son's business is very genuine and bonafide. Therefore the revision petitioners filed eviction petition in R.C.O.P.No.1455 of 1999 against the respondents herein under section 10(2)(i), 10(2)(ii) and 10(3)(a)(iii) of the Tamilnadu Buildings (Lease and Rent) Control Act.

4.The respondents herein resisted the eviction petition by filing counter statement and contended that the petitioners and respondents are close relatives i.e the 1st respondent is the daughter and the 2nd respondent is the son-in-law of the petitioners. The respondents had admitted the tenancy and the monthly rent of Rs 4,000/-. According to them, they paid an advance amount of Rs 1,00,000/-. The question of sub tenancy does not arise, when the 2nd respondent is none other than the husband of the 1st respondent. It is not correct to say that the rent had not been paid from the month of November 1998 to June 1999. The petitioners has suffered a raid by IT officials and in view of the same the petitioners requested the respondents to make payment of Rs 3,000/- in cash and Rs.1,000/- by cheque and accordingly the respondents have been paying rent for quite some time. Even assuming the respondents are in arrears in payment of rent and the same can be adjusted from the huge advance amount

of Rs.1,00,000/. Thereafter as the relationship between petitioners and the respondents have got strained, the respondents paid the rent by way of cheque. Therefore the eviction sought for by the revision petitioners on the ground of Willful default is unsustainable.

5.Further contention of the respondents that the petition premises is required for own use and occupation under section 10 (3)(iii) is a bogus and unsustainable in law. The idea of the petitioners in filing such a claim is to evict the respondents is by way of crook or hook. There is no reason assigned by the landlords for handing over vacant possession under Section 10(3) (a)(iii). Further the son of the petitioner herein is well settled and in fact he is doing his own business. Therefore there is no bonafide requirement on the part of the revision petitioners on the ground of own use and occupation.

6.On the side of revision petitioners, the first petitioner has given evidence as P.W.1 and exhibits P1 to P41 were marked, whereas on the respondent side there is neither oral nor documentary evidence adduced. After keen contest, eviction was ordered on the ground of own use and occupation and the eviction sought for on the ground of willful default and sublet was rejected by the learned Rent Controller by an order and decree dated 17.06.2002. Aggrieved over the same, the tenants/respondents herein filed R.C.A.No.45 of 2002 before the VIII Judge, Small Causes Court, Chennai. The Learned Rent Controller Appellate Authority, was pleased to allow the RCA filed by the tenant by an order and decree dated 23.11.2005, thereby set aside the order of eviction, ordered by the Learned Rent Controller. Aggrieved over the same, the landlords preferred present civil revision petition.

7.I heard Mr.A.Balasingh Ramanujam, learned counsel appearing for the revision petitioners and Mr.P.Solomon Francis, learned counsel appearing for the respondents.

8.The petitioners herein seeking eviction of the respondents herein mainly on two grounds, according to the revision petitioners, the first respondent herein was chronic default in payment of rent from November 1998 to June 1999. The same is willful and the respondent is liable to be evicted on the ground of willful default under section 10(2)(1) of the Tamilnadu Buildings (Lease and Rent) Control Act. At this juncture, it is noticeable that the revision petitioners' claim in respect of Willful default is negated by the Learned Rent Controller and the revision petitioners herein have not filed any appeal with regard to the rejection of their claim relating to willful default. Therefore this court is not inclined to touch the issue relating to willful default.

9.The next ground for seeking eviction of the respondents herein is that the petition premises is required for own use and occupation of the revision petitioners' son for the purpose of carrying on business. The respondents herein have not chosen to adduce any evidence and have not filed any document to rebut the evidence of the revision petitioners. From the oral and documentary evidence vide Ex-P41 adduced on revision petitioners'; it is revealed that the 2nd petitioner and her son are carrying on business in a rental building.

10.The respondents herein admitted that the 2nd petitioner's son is doing business and further the respondents have not denied that they are not doing business in a rental building.

11.As for as owners occupation is concerned, the fact remains that the 2nd petitioner and her son is running a business in the name and style of Shah Bearing Company and the same was also accepted by the respondent herein. However, the Learned Rent Control Appellate Authority without proper application of facts and evidence held that the requirements of the Landlords are not bonafide. The following factors has to be considered while ordering eviction on the ground of own use and occupation namely

- a) the building is non residential in character
- b) the Landlord should be carrying on business on date of application for eviction
- c) the Landlord should not be occupying any building of his own
- d) claim should be bonafide

12.The above said principle was enunciated by this court vide its decision dated 27.08.2010 in the matter of The Regional Manager, Tamilnadu Handloom Weavers Co op Society Ltd -Vs- V.Natarajan reported in 2010(6) CTC 454. This Court held as follows:

"17.Admittedly, the building is a non-residential building. Therefore, the first ingredient stated above is satisfied.

18.It is not in dispute that the Respondent was doing brass-ware business along with his father and brother and therefore, he has got good experience in that business. Though, it has been stated that the Landlord should be carrying on business on the date of Application, this Court has interpreted the same and held that to satisfy the 2nd requirement, the business need not be carried on, before filing of the Eviction Petition and the lower Court relied upon the judgment

reported in Tamil Nadu Wakf Board, rep. by its Secretary, K.T. Fakir Ahmed v. S. Syed Inam Saheb and another, 1983 (96) LW 128 at page 130 and Thiru Chelliah Pandithan v. Tmt. Anthoniammal and two others, 1985 (98) LW 666. Hence, from the above judgments, it is made clear that it is not necessary for the Landlord to carry on business for filing Eviction Application under Section 10(3)(a)(iii) and it is sufficient if he has the bona fide intention to start the business.

19.Regarding the 3rd criteria, it has been stated supra that the possession of upstairs portion cannot be equated to occupation and no proof has been adduced by the tenants that the Landlord is occupying any other building of his own.

20.Regarding 4th criteria, as stated above, both the Courts below concurrently held that the claim of the Landlord is bona fide and a perusal of the evidence would also make it clear that the requirement of the Landlord is bona fide and it was not an attempt to evict the tenants. Hence, the four essential ingredients, as per Section 10(3)(a)(iii) are satisfied by the Landlord and the Landlord is entitled to order of eviction."

13.In the present case on hand, the petition premises is a non residential building, at the time of filing the eviction petition the second petitioner herein and her son are doing business and they are not occupying any other building of their own. Therefore this court is of the considered opinion that the petitioners' requirement for own use and occupation is bonafide.

14.In yet another decision regarding own use and occupation this court in its judgment reported in 2014 (1) CTC 361 Sironmani v. C.D.Anna Sholly wherein in para 8 has held as follows:

"As regards the term 'carrying on business' is concerned, the Appellate Authority relied on the decision of this Court reported in (Sivanraj vs. Essakkimuthu) 1999 2 CTC 215 wherein it was held that it does not mean actual carrying on business. It is sufficient if the landlord take some steps for the purpose of carrying on business. This proposition of law was reiterated by this Court in another decision of this Court reported in Jagatrakshagan (deceased) and others vs. N. Futaree Bai and others 2000 (3) Law Weekly 195 wherein it was held that "carrying on business" does not necessarily mean all steps required for carrying on business to be taken. It will be sufficient if even one step is taken and proved".

15.By applying the ratio laid down in the above judgment, even the landlords need not carry on business on the date of filling eviction petition on the ground of own use and occupation and it is suffice that the landlord takes even a single step for starting business, is entitled for eviction of the tenant therein. In the present case as held above, the land lords already carrying on business and they are in a better footage. Hence the revision petitioners are entitled for eviction on the ground of own use and Occupation. It is needless to say that a tenant at any cost can never dictate a landlord to conduct a business according to the whims and fancies of the tenant.

16.However, without appreciation of the above legal principles and the facts, the Learned Rent Control Appellate authority, besides that the respondents failed to substantiate their case by adducing any contra evidence, has erred in allowing the Rent Control Appeal filed by the respondents herein, by holding that the land lords have not produced any document to show that there is a joint business carried out by the revision petitioners' son and the 2nd petitioner and the same is liable to be set aside.

17.In view of the above discussions and in the light of the decisions referred above, I hold that the revision petitioners is entitled to succeed this Civil Revision Petition on the ground of own use and occupation.

18.In the result:

a) the Civil Revision Petition is allowed by setting aside the order passed in R.C.A.No.451 of 2002 dated 22.11.2005, on the file of the VIII Judge, Court of Small Causes at Chennai, confirming the order and decree made in R.C.O.P.No.1495 of 1999 dated 17.06.2002, on the file of the XV Judge, Court of Small Causes, Chennai;

b) three months time granted to the respondents/tenant for vacating the petition premises. There is no order as to cost.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Rent Control Appellate Authority,
VIII Judge,
Court of Small Causes, Chennai.
2. The Rent Controller,
XV Judge,
Court of Small Causes, Chennai.

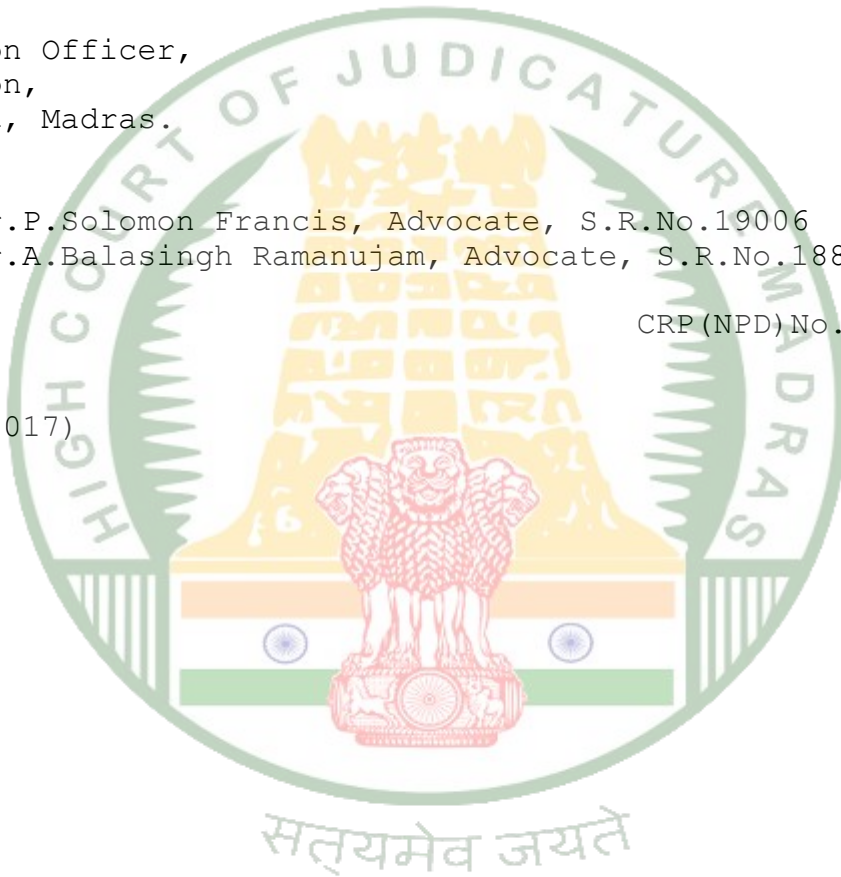
Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Solomon Francis, Advocate, S.R.No.19006
+1cc to Mr.A.Balasingh Ramanujam, Advocate, S.R.No.18889

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