

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3236 of 2012

V.Sathyamoorthy ... petitioner
versus

T.V.Malliah (deceased)

1.Mayura Malliah
2.Dr.Praveen ... respondents

PRAYER: Revision filed against the order dated 13.07.2012 in R.C.A.No.1395 of 2003 on the file of VII Court of Small Causes (Rent Control Appellate Authority) confirming the order and decretal order dated 18.09.2003 in RCOP No.1764 of 2002 on the file of the X Court of Small Causes (Rent Controller), Chennai.

For petitioner :: Ms.AL.Ganthimathi

For respondents :: Mr.P.K.Sivasubramaniam

ORDER

The first respondent initiated proceedings against the petitioner in R.C.O.P.No.1764 of 2002 for eviction on the ground of ceased to occupy, subletting and change of user. The petitioner opposed the application by filing counter. The rent controller allowed the application on all the three grounds raised by the first respondent. The petitioner filed first appeal in RCA No.1395 of 2003 before the Court of Small Causes, Chennai. The

Appellate Court without dealing with the merits of the matter, by way of a very brief order, dismissed the appeal. Feeling aggrieved, the tenant is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The first respondent filed eviction petition in RCP No.1764 of 2002 on three grounds. During the currency of the rent control proceedings, the first respondent died and respondents 2 and 3 were brought on record, being the legal representatives.

4. The Trial Court directed eviction of the petitioner on all the three grounds. The said order was put in issue before the First Appellate Authority. Since it was a first appeal, the Appellate Authority was expected to consider the entire matter and arrive at an independent finding. The order passed by the Appellate Authority does not contain any reason, muchless justifiable reason, to arrive at a conclusion that the petitioner is liable to be evicted on the ground of sub letting, ceased to occupy and change of user.

5. The appellate authority referred to a report filed by the Advocate Commissioner in a connected suit and observed that it is made out from the report that the petitioner closed the optical business and started separate

business. The appellate authority made a reference to the photographs exhibited and Ex.P-5 and P-6 to arrive at a conclusion that the tenant is guilty of separating the premises, subletting and conversion.

6. There is no dispute that the High Court exercising revisional jurisdiction under the Rent Control Act is not expected to re-appreciate the materials considered by the Rent Controller and the Appellate Authority for the purpose of arriving at a different conclusion. However, that does not mean that this Court is not empowered to interfere with the order, in case the Appellate Authority failed to consider the material evidence on record. In the subject case, there was no appreciation by the Appellate Authority with respect to the contentions taken by the petitioner. I am therefore of the view that the matter requires fresh consideration by the appellate Authority.

7. In the result, the judgment dated 13 July 2012 in R.C.A.No.1395 of 2003 is set aside. The First Appeal in RCA No.1395 of 2003 is restored to file. The learned Appellate Authority is directed to consider the appeal on merits and render a judgment taking into account the contentions taken by the parties. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

K.K.SASIDHARAN, J.

(tar)

8. The civil revision petition is allowed as indicated above. No costs.
Consequently, M.P.No.1 of 2012 is closed.

04.04.2017

Index:Yes/no
tar

To

1. The VII Court of Small Causes

(Rent Control Appellate Authority), Chennai.

2. The X Court of Small Causes (Rent Controller), Chennai.

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