

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) No.677 of 2004  
and  
CMP.No.5370 of 2004

D.Chellasamy

.. Petitioner/Tenant

vs

P.R.Sundaram

.. Respondent/Land Lord

Revision filed under Section 25 of the Tami Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decretal order dated 29.01.2004 made in R.C.A.No.146 of 1999 on the file of the Rent Control Appellate Authority/VII Court of Small Causes, Chennai reversing the fair and decretal order dated 14.12.1998 made in R.C.O.P.No.2276 of 1996 on the file of the Rent Controller/XIV Assistant Small Causes Court, Chennai.

For Petitioner : Mr.M.Venkatachalapathy  
Senior Counsel  
for M/s.M.Sriram

For Respondent : Ms.V.Srimathi

ORDER

सत्यमेव जयते

This Civil Revision Petition is directed against the judgment dated 29.01.2004 made in R.C.A.No.146 of 1999 on the file of the Rent Control Appellate Authority/VII Court of Small Causes, Chennai, reversing the fair and decretal order dated 14.12.1998 made in R.C.O.P.No.2276 of 1996 on the file of the Rent Controller/XIV Assistant Small Causes Court, Chennai.

2. The petitioner is the tenant and the respondent is the landlord.

3. The landlord has filed R.C.O.P.No.2276 of 1996 under Section 10(3)(a)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, hereinafter referred to as "the said Act" alleging that he is the owner of the premises bearing Door No.7, Kalvivaru street, Mylapore, Chennai-4 and the said premises was let out to the tenant on a monthly rent of Rs.2,500/- exclusive of electricity for residential purpose from 16.7.1992. The tenant has not paid any advance, as the tenancy was for a short period because the landlord was about to retire from his employment. Only on the undertaking given by the tenant agreeing to vacate the premises on demand by the landlord, the same was let out to the tenant. After retirement, when the landlord demanded the premises for bona fide requirement of his own and his family occupation, the tenant refused to vacate the premises. Therefore, the landlord addressed a letter dated 10.4.1996 to the tenant stating that he had already retired from service and is residing in a rental premises in Kochi, where he was lastly employed. Despite receipt of the letter, the tenant failed to vacate the premises. The landlord had no other house except the premises let out to the tenant and therefore, the requirement of the landlord is bona fide. Hence, the landlord filed the Original Petition.

4. Admitting the tenancy, the tenant filed counter stating that the rent is only Rs.2,000/- and Rs.500/- was paid for the use of telephone in the premises, which is in the name of the landlord. It is stated that the tenant took the petition premises only on the promise that he will not be asked to vacate for 20 years. The landlord's representative informed the tenant that the landlord will not require the premises even if the landlord decides to settle down in Chennai. There is no merit in landlord's claim and it is not bona fide at all. It is further stated in the counter that in order to extract more rent, the landlord has filed the petition. In fact, the tenant incurred a sum of Rs.55,000/- for repairing and redoing the premises. When the tenant demanded the said amount through the representative of the landlord, the landlord sent the letter dated 10.04.1996.

5. According to the tenant, fearing illegal dispossession, he had filed O.S.No.12536 of 1996 on the file of the learned VII Assistant Judge, City Civil Court, Chennai and in the said suit an order of interim injunction was granted on 16.8.1996. Thereafter, only the landlord filed R.C.O.P. on 22.8.1996 and none of the ingredients required under Section 10(3)(a)(i) of the said Act exist in the present case. Hence, prayed for dismissal of the R.C.O.P.

6. In order to prove his case, the landlord examined himself as P.W.1 and marked Exs.P1 to P6. The tenant examined himself as R.W.1 and marked Exs.R1 to R5.

7. Upon consideration of oral and documentary evidence, the learned Rent Controller dismissed the R.C.O.P. filed by the landlord. Aggrieved by the same, the landlord preferred R.C.A.No.146 of 1999. The learned Rent Control Appellate Authority, by the impugned judgment dated 29.1.2004, allowed the appeal preferred by the landlord and directed the tenant to evict from the premises within two months. Aggrieved by the judgment of the learned Rent Control Appellate Authority, the tenant has preferred the present Civil Revision Petition.

8. I heard Mr.M.Venkatachalapathy, learned Senior Counsel for Mr.M.Sriram, learned counsel for the petitioner/tenant and Mrs.V.Srimathi, learned counsel for the respondent/landlord.

9. Assailing the impugned judgment of the learned Rent Control Appellate Authority, the learned Senior Counsel for the tenant submitted that the Rent Control Appellate Authority failed to consider the fact that the landlord's requirement is not bona fide and only to get the enhanced rent, the eviction petition was filed which was admitted by the landlord in his evidence. He would submit that the Rent Control Appellate Authority failed to consider the fact that the eviction petition is not maintainable under Section 10(3)(a)(i) of the said Act since the landlord is in occupation of the one of the room in the premises and eviction petition ought to have been filed under Section 10(3)(C) of the said Act.

10. The learned Senior Counsel further submitted that the Rent Control Appellate Authority failed to consider the evidence of the landlord which clearly proves the intention of the landlord is only to get more rent and the landlord is not intended to occupy the premises erred in reversing the well considered order of the Rent Controller and further erred in ordering eviction.

11. The learned Senior Counsel then submitted that the Rent Control Appellate Authority failed to consider that the tenant was given undertaking by the landlord that he will not be evicted for 20 years and only on that undertaking the tenant spent a sum of Rs.55,000/- to repair and redo the premises and after repairing, the landlord filed the eviction petition contrary to the undertaking to let out for more rent ought not to have ordered eviction

and prayed for setting aside the judgment of the learned Rent Control Appellate Authority.

12. Per contra, reiterating the findings of the learned Rent Control Appellate Authority, the learned counsel for the landlord submitted that the requirement of the landlord is bona fide and that the tenant has failed to adhere the undertaking given by him. She would submit that in order to drag on the proceedings and to give much hardship to the landlord who is aged person, the tenant has filed the present revision. The learned counsel further submitted that after analysing the oral and documentary evidence, the Rent Control Appellate Authority rightly set aside the order of the Rent Controller and ordered eviction of the tenant from the premises. Since the judgment of the Rent Control Appellate Authority is well considered, the learned counsel prayed for dismissal of the Civil Revision Petition.

13. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

14. Admittedly, in the present case, the landlord has shown prima facie case seeking eviction of the tenant for his own occupation. The landlord is a retired Military officer. The landlord established that the premises in question was let out to the tenant on an undertaking and assurance to vacate the premises on demand by the landlord at the time of his retirement. It is not the case of the tenant that the landlord owns any other house for his own occupation.

15. According to the learned Senior Counsel for the tenant, the eviction petition filed by the landlord is not maintainable under Section 10(3)(a)(i) of the said Act as the landlord is in occupation of one of the rooms in the premises and the eviction petition ought to have been filed under Section 10(3)(C) of the said Act cannot be countenanced for the reason that there was no pleading by the tenant before the Rent Controller or Rent Control Appellate Authority.

16. Further, the contention of the tenant spending Rs.55,000/- towards repair of the premises cannot be believed in the absence of valid proof. Ex.R2 produced by the tenant shows that he had incurred a sum of Rs.8,186/-. Further, as rightly held by the learned Rent Control Appellate Authority when the tenant spent amount for repairs, he has to obtain consent from the landlord or his representative and he cannot spend on his own accord and

claim the same from the landlord. Hence, in the absence of consent from the landlord, the learned Rent Control Appellate Authority was right in disbelieving the version of the tenant that he had spent Rs.55,000/- for repair of the premises in question.

17. Considering the oral and documentary evidence adduced by the landlord, the learned Rent Control Appellate Authority rightly found that the landlord needs the premises bona fide for his own use and occupation. However, considering the fact that the tenant is in occupation of the premises in question for more than 20 years, it would be appropriate to order continuation of tenancy by the tenant till 31.12.2017 and for that the tenant has to file necessary affidavit before this Court within a period of one week from today. Further, by ordering continuation of tenancy by the tenant till 31.12.2017, no prejudice would be caused to the landlord. Therefore, in the interest of justice, this Court is inclined to pass the above order.

18. The Civil Revision Petition is allowed in terms aforesaid. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS iii)  
//True Copy//  
Sub Assistant Registrar

vs

To

1.The Rent Control Appellate Authority,  
VII Court of Small Causes, Chennai.

2.The Rent Controller,  
XIV Judge, Court of Small Causes,  
Chennai.

3. The section officer,  
VR Section, High court, Madras

+1cc to M/s.M.Sriram , Advocate SR.No. 12739

+1cc to Mr. V.Raghavachari, Advocate SR.No. 12212

C.R.P. (NPD) No.677 of 2004  
and

CMP.No.5370 of 2004

A.SK(14/02/2019)