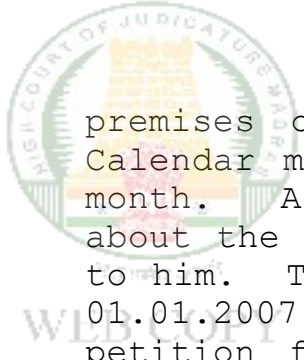
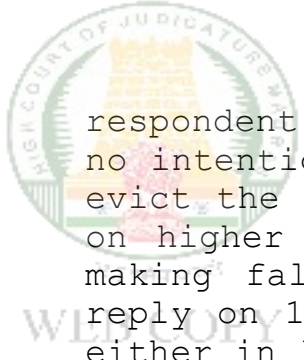




premises on a monthly rent of Rs.1,000/- according to English Calendar month and the rent is payable on or before 5th of every month. After purchase, the respondent informed the petitioner about the purchase and called upon the petitioner to pay the rent to him. The petitioner failed to pay the rent from 01.05.2005 to 01.01.2007 i.e., for 20 months and the respondent filed separate petition for eviction under Section 10(2)(1) of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960.

4.The petition premises is 100 years old and has developed cracks and lost its stability and is in dilapidated condition and may collapse at any time. The respondent requires the portion under petitioner's occupation for demolition and reconstruction. The respondent has given undertaking to demolish the building within one month from the date the petitioner surrenders possession and reconstruct within three months thereafter. The respondent has sufficient means to demolish and reconstruct. The petitioner is not paying the rent and also is not vacating the premises. The respondent issued a notice, dated 27.12.2006. The petitioner sent a reply with false averments. Hence, the respondent filed R.C.O.P.No.54 of 2007.

5.The petitioner filed statement of objection and stated that he became tenant under the erstwhile owner for non-residential purpose on a monthly rent of Rs.1,000/- and paid Rs.50,000/- as advance. The petitioner was regularly paying the rent. Due to misunderstanding between the previous owner and the petitioner, the previous owner tried to evict the petitioner by force. Therefore, the petitioner filed O.S.No.555 of 2001 on the file of the Principal District Munsif Court, Madurai and filed I.A.No.503 of 2001 for temporary injunction against the erstwhile owner. In view of the said suit, the erstwhile owner refused to receive rent. The petitioner deposited the rent in the account of the owner in Indian Bank from 03.07.2001 to 27.10.2002 through Demand Draft and the owner withdrew the said amount. From November 2002, the Bank refused to receive the rent. The petitioner sent the rent by money order, which was refused by the owner. The petitioner filed R.C.O.P.No.356 of 2002 to deposit the rent. The petitioner came to know of the purchase by the respondent. When he tendered rent to the respondent, he refused to receive the rent. The petitioner made the respondent as party in the R.C.O.P. for permission to deposit the rent and the said R.C.O.P. is pending. The petitioner has given a sum of Rs.50,000/- as advance to the erstwhile owner and the petitioner is always ready and willing for the respondent to retain one month rent as advance and adjust the balance amount towards arrears of rent. The petitioner has not admitted any willful default in payment of rent. The building is not 100 years old and it is not in a dilapidated condition. The building is 40 years old and is in good condition. The respondent has not taken any steps to demolish and reconstruct and has no funds to demolish and reconstruct a new building. The



respondent has not got approval from Madurai Corporation and has no intention to demolish the building and his only intention is to evict the petitioner and let out the building to some third party on higher rent. The respondent sent a notice dated 27.12.2006, making false and untenable allegations. The petitioner sent a reply on 10.01.2007. Therefore, the petition is not maintainable either in law or on facts.

6. Before the learned Rent Controller, the respondent examined his Power Agent as P.W.1 and Engineer was examined as P.W.2 and marked 15 documents as Exs.A.1 to A.15. The petitioner examined himself as D.W.1 and did not mark any document. The Commissioner's report, plan and the Engineer's report and plan were marked as Exs.C.1 to C.3.

7. The learned Rent Controller considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the parties, allowed R.C.O.P.No.54 of 2007 ordering eviction of the petitioner and granted two months time to vacate the petition premises.

8. Against the said order dated 28.08.2012, the petitioner filed R.C.A.No.39 of 2012. In the said appeal, the petitioner filed I.A.No.121 of 2015 to receive certified copy of the sale deed, dated 27.04.2005 as additional evidence; I.A.No.185 of 2015 to raise additional grounds in appeal and I.A.No.186 of 2015 to raise additional pleadings by receiving the additional statement of objections in R.C.O.P.No.54 of 2007.

9. The respondent filed I.A.No.221 of 2015 seeking an order to receive certified copy of rectification deed, dated 15.05.2005, bearing Document No.1571/2015. The learned Rent Control Appellate Authority allowed all the applications. The petitioner filed statement of objections, additional grounds and certified copy of the sale deed, dated 27.04.2005. The respondent filed certified copy of the rectification deed, dated 15.05.2015. The certified copy of the sale deed, dated 27.04.2005 and partition deed filed by the petitioner were marked as Exs.B.1 and B.2. The rectification deed, dated 15.05.2015 was marked as Ex.A.16.

10. The learned Rent Control Appellate Authority after considering the pleadings, oral and documentary evidence and the order of learned Rent Control and arguments of the learned counsel for the parties, dismissed the appeal, confirming the order of the learned Rent Controller.

11. Against the said order, dated 04.04.2016, the present Civil Revision Petition is filed.

<https://hcservices.courts.gov.in/hcservices> 12. The learned counsel for the petitioner contended that;

(i) the learned Rent Control Appellate Authority failed to follow the procedure contemplated under Order XLI Rules 27 to

29 C.P.C. After permitting the parties to adduce evidence, ought to have recorded evidence or ought to have directed the learned Rent Controller to take evidence specifying the points, to which the evidence to be recorded and sent the same to the learned Rent Control Appellate Authority; and

(ii) the learned Rent Control Appellate Authority committed an error of law by failing to follow the procedure contemplated under Order XLI Rules 27 to 29 C.P.C. and hence, the Civil Revision Petition is to be allowed.

12.1. In support of the said contentions, the learned counsel for the petitioner relied on the following judgments:

(i) AIR 2005 SC 996 [Adil Jamshed Frenchman (D) by LR's. Vs. Sardar Dastur School Trust and others], wherein at paragraph 7, it has been held as follows:

"7. Clause (b) of sub-section (1) of Section 107 of the Code empowers an appellate court to take additional evidence. Rule 27 of Order 41 provides for the grounds on the availability of which alone, the parties to an appeal may be allowed to produce additional evidence."

(ii) 2015 (6) MLJ 89 [Selvaraj Vs. Ravichandran and others], wherein at paragraph 9, it has been held as follows:

"9. In a decision reported in (2013) 7 MLJ 471 (Jayamoorthy and others Vs. Palani and others), this Court has held as follows:-

"15. As per the above said rule, the additional evidence can be taken either by the appellate court itself or the appellate court can direct the lower court from which appeal has come or any other court subordinate to it to take evidence and transmit the same to the appellate court for being considered in the appeal. In either case, the appellate court has to indicate in its order allowing the application under Order XLI Rule 27, the points on which the additional evidence is to be adduced. A reading of the paragraph extracted from the judgment of the lower appellate court will show that the learned lower appellate judge, either in ignorance of the said provision or in utter disregard for the same, has omitted to follow the procedure. Therefore, this court does have no hesitation in coming to the conclusion that the learned lower appellate judge has committed an error in not following the procedure contemplated under Order 41 Rule 27 and Rule 28 CPC in dealing with an application seeking permission to adduce additional evidence in the appellate stage. This court also holds that the learned lower appellate judge has committed a grave error in law in simply marking the documents produced by the first respondent herein (appellant before the lower



appellate court) giving them exhibit numbers and referring them in the judgment of the lower appellate court. It is obvious that the admissibility, genuineness and reliability of the documents produced along with the application filed under Order 41 Rule 27 were challenged by the opposite parties. That being so, the learned lower appellate judge should not have chosen to simply mark the documents as exhibits on the side of the plaintiff and proceed with the disposal of the appeal. The procedure for taking additional evidence in the appellate stage has not been followed. Hence this court answers both the substantial questions of law in favour of the appellants.""

(iii) Civil Appeal No.27 of 2017, dated 02.01.2017 [Alamelu Ammal and another Vs. S.Rani and others], wherein the relevant portion reads as follows:

"From the aforesaid, it transpires that the High court has not questioned the order passed by the First Appellate Court in allowing the application of the Appellants under Order XLI Rule 28 of the Code of Civil Procedure, 1908. It means that insofar as exercise of the discretion by the First Appellate Court on this aspect was concerned, no fault was found there with and though the High Court rightly held that once the Application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 was allowed, the procedure contemplated under Order XLI Rule 28 of the Code of Civil Procedure, 1908 should have been followed by the First Appellate Court and the document in question, which was Exhibit-A10, should have been proved in accordance with law. This was not done and the First Appellate Court simply acted upon the said Exhibit-A10 and on that basis passed the decree in favour of the appellants. However, thereafter the manner in which the High court proceeded is also blemished to some extent. The High Court has set aside the decree passed by the First Appellate Court simply because the Procedure contemplated under Order XLI Rule 28 of the Code of Civil Procedure, 1908 was not followed. In a situation like this more appropriate course of action for the High Court was to remit the case to the First Appellate Court with a direction to follow the procedure as contemplated under Order XLI Rule 28 of the Code of Civil Procedure, 1908 and thereafter decide the first appeal which was filed by the appellants herein."

12.2.The learned counsel for the petitioner further contended that;

<https://hcservices.ecourts.gov.in/hcservices/> building is in a sound condition and it is not in a dilapidated condition with cracks and it is not correct to state that the building may fall at any time; and



(ii) the evidence given by the Power of Attorney cannot be taken into account to decide the issue in R.C.O.P. and R.C.A., as the respondent failed to depose before the learned Rent Controller.

12.3. In support of the said contentions, the learned counsel for the petitioner relied on the following judgments:

(i) AIR 2005 SC 439 [Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. and others], wherein at paragraph 13, it has been held as follows:

"13. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

(ii) 2006 (3) LW 713 [Chellammal Vs. Krishnaveni Ammal], wherein at paragraph 10, it has been held as follows:

"10. Apart from that it is the power of attorney who as P.W.1 has deposed before the Rent Controller on behalf of the landlady. In my view it is not proper and not legally sustainable too. The power of attorney can depose in the place of principal in respect of the acts done by him only in exercise of powers granted by the instrument. The power of attorney cannot depose for principal in respect of matters of which only the principal can have personal knowledge and in respect of which principal is liable to be cross-examined. If the principal is unable to appear in court, commission for recording her evidence may have to be issued. P.W.1, the power of attorney in his cross-examination pleaded ignorance about Exs.P2, P3 and P5 and he is also not competent to talk about these exhibits."

12.4. The learned counsel for the petitioner also contended that the intention of the respondent for demolition and reconstruction is not *bona fide* and relied on the judgment reported in 1996 (6) SCC 475 [Vijay Singh and others Vs. Vijayalakshmi Ammal], wherein at paragraph 10, it has been held as

"10. On reading Section 14(1)(b) along with Section 16 it can be said that for eviction of a tenant on the ground



of demolition for the building for erecting a new building the building need not be dilapidated or dangerous for human habitation. It that was the requirement there is no occasion to put a condition to demolish within a specified time, and to erect a new building on the same site. Sub-section (1) of Section 16 contemplates that permission has been granted by the Rent Controller under Section 14(1)(b) for demolition of the building, but if such demolition is not carried out in terms of the order and undertaking, then Rent Controller can order the landlord to put the tenant in possession of the building on the original terms and conditions. If the building is dangerous and dilapidated requiring immediate demolition for safety, then there is no question of Rent Controller directing landlord to put the tenant in possession of such building on the original terms and conditions, on account of the failure of the landlord to commence the demolition within the period prescribed. Similarly, there was no occasion to link the demolition of such building with erection of new building and then to give the landlord freedom from the restrictive provisions of the Act for a period of five years from the date on which the construction of such new building is completed and notified to the local authorities concerned. In this background, it has to be held that neither of the extreme position taken by the local authorities concerned. In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. Permission under Section 14 (1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the same time it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission under Section 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bonafide or not. For recording a finding that requirement for demolition was bonafide, the Rent Controller has to take into account :

(1)

bonafide intention of the landlord for from the sole object only to get rid of the tenants; (2) the age and condition of the building ; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed under Section 14(1)(b). No court can fix any limit in respect of the age and condition of the building. That factor has to be taken



into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller."

13. Per contra, the learned counsel for the respondent contended that;

(i) the respondent has proved that the building is in a dilapidated condition and is liable to be demolished and to be reconstructed. The petitioner has not let in any contra evidence to disprove the contention of the respondent. In any event, even if the building is not in a dilapidated condition, the landlord can demolish the building and put up a new building to enhance the income from the property; and

(ii) the respondent has made out all arrangements to demolish the present superstructure and put up a new building. The respondent has sufficient means to demolish the building and put up a new superstructure. The intention of the respondent is *bona fide*.

14. In support of his contentions, the learned counsel for the respondent relied on the following judgments:

(i) 2015 (8) MLJ 341 [J.Kubendran and others Vs. D.Rajappa], wherein at paragraph 50, it has been held as follows:

"50. Keeping in view of the above facts, it is thus made clear that the age and the condition of the building may be one of the components of bona fides, but that alone is not the material ground. The non examination of expert with regard to the age and condition of the building is also immaterial. Based on the evidences available on record, this Court finds that the requirement of the respondent/landlord for demolition and reconstruction of the building is bona fide and hence, this Court does not find any reason for interfering with the judgment of the learned Rent Control Appellate Authority holding that the revision petitioners/tenants are liable to be evicted under Section 14(1)(b) of the Act."

(ii) 1995 (2) LW 14 [A.N.Srinivasa Thevar Vs. Sundarambal alias Prema], wherein at paragraph 20, it has been held as follows:

"20. In the light of the aforesaid facts, there are enough pleadings and evidence on record to test the bona fide requirements of landlady/respondent under Section 14(1)(B) of the Act. The Rent Control cases being in the nature of summary proceedings, the very strict test of pleadings as required in regular civil cases need not be applied. In the decision reported in Ruth Margaret Gonsalves v. K.T.H. Press by its Proprietor, Kumar 100 L.W. 258, it has been laid down by the then Hon'ble Chief Justice Chandurkar, as follows:



"Pleadings in such matters cannot be construed with the strictness with which pleadings in civil suits are construed.""

(iii) 1995 (1) LW 632 [A.Lakshmanan and others Vs. Kanniammal @ Pattammal], wherein at paragraphs 6 and 10, it has been held as follows:

"6. at the time of argument alleged certain motives to the landlady, I am of the view, that in an eviction petition filed on the ground of demolition and reconstruction, motive for demolition and reconstruction is wholly irrelevant. It is in evidence that the building in question was put up more than thirty years ago and that the same is not in a sound condition and therefore, the landlady requires the building for demolition and reconstruction. Though a plea was raised on behalf of the tenants that there is a motive for the landlady to evict the tenants and to lease out the building to others for a higher rent, such a plea has not been substantiated by any acceptable evidence.

10. Likewise, it is well established in this case that the means of the landlady to carry out the work of demolition and reconstruction is a relevant factor to be taken note of by this Court and consider while testing her bona fides. As observed in the decision reported in Rukmani Ammal v. Izuddeen [1983 (I) MLJ 186 = 96 L.W. 145], this does not necessarily mean that the landlady should jingle the coins before the Controller to establish this factor."

(iv) 1997 (2) LW 287 [S.Saraswathiammal (Deceased) and two others Vs. R.S.Mallikarjun Raja and two others], wherein at paragraphs 5 and 6, it has been held as follows:

"5. To maintain the petition under Section 14 (1) (b) of the Act, the landlady should satisfy three conditions, namely, (1) bona fide intention of the landlady, far from the sole object only to get rid of the tenants; (2) the age and condition of the building; and (3) the financial position of the landlady to demolish and erect a new building. It is well settled that the building need not be in a dilapidated condition or in a dangerous state of affairs for ordering a petition under Section 14 (1) (b) of the Act. In this case, the landlady has proved that she is having sufficient money to construct the building and she has filed necessary plan to show that she is going to construct the building in the demolished portion so as to enable the sons to divide the properties.

On the plea of pleading and evidence, the petitioners did not let in any evidence regarding the condition of the building or to prove that the intention of the landlady to demolish



and reconstruct the premises in question is a mala fide one and only for the purpose of evicting him.

6. Bona fides have to be assessed with reference to the facts and circumstances of each particular case. In this case, the landlady has given an undertaking that she will demolish the building and commence the construction of building within a particular period. If she fails to do so, the tenant can seek restitution under the Act."

15.I have considered the submissions of the learned counsel appearing for the parties and carefully perused the judgments relied on by them and the materials available on record.

16.The learned counsel for the petitioner contended that;

(i) the learned Rent Control Appellate Authority did not follow the procedure contemplated under Order XLI Rules 27 to 29 C.P.C.;

(ii) the Power of Attorney is not competent to depose on behalf of the respondent/landlord; and

(iii) the intention of the landlord is not *bona fide*.

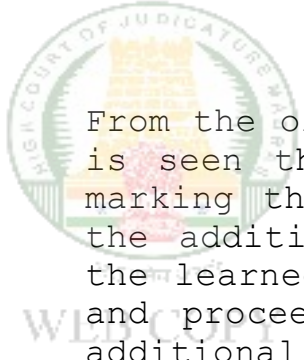
17.The learned counsel for the respondent contended that the respondent has proved the requirement of the building for demolition and reconstruction and his intention is *bona fide*.

18.From the consideration of the materials on record, the Civil Revision Petition can be disposed of by considering the issue whether the learned Rent Control Appellate Authority failed to follow the procedure contemplated under Order XLI Rules 27(1) (b), 28 and 29 C.P.C. and if so, whether the order of the learned Rent Control Appellate Authority is vitiated and liable to be set aside.

19.Before the learned Rent Control Appellate Authority, the petitioner filed three applications to file additional statement of objections, to raise additional grounds in appeal and to mark the sale deed, by which, the respondent purchased the property. According to the petitioner, the respondent has not purchased the petition premises. The description of the property in the sale deed is different from the petition premises.

20.Per contra, the learned counsel for the respondent contended that the mistake crept in in the sale deed was rectified by the deed of rectification and filed Interlocutory Application to file and mark rectification deed. The learned Rent Control Appellate Authority allowed all the four applications and marked the sale deed as Ex.B.1, partition deed as Ex.B.2 and rectification deed as Ex.A.16.

<https://hcservices.courts.gov.in/hcservices> 21. From the order of the learned Rent Control Appellate Authority, it is seen that no evidence was let in to prove the documents and also with regard to relevancy of the documents.



From the order of the learned Rent Control Appellate Authority, it is seen that the petitioner did not give consent or object for marking the documents. If the parties do not object to marking the additional documents and give consent for marking the same, the learned Rent Control Appellate Authority must record the same and proceed to consider the appeal on merits and consider the additional evidence. Otherwise, the learned Rent Control Appellate Authority has to follow the procedure as contemplated under Order XLI Rules 27(1)(b), 28 and 29 C.P.C., which reads as follows:

"Order XLI - Appeals from Original Decrees.

27. Production of additional evidence in Appellate Court- (1) (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

28. Mode of taking additional evidence- Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded- Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified."

22.A reading of the above Rules clearly show that when the learned Rent Control Appellate Authority permits the additional documents, he may either take evidence or direct the Trial Court or any other subordinate Court to take evidence and send the same to him. If the learned Rent Control Appellate Authority directs the subordinate Courts to record evidence, must specify the points to which, evidence is to be recorded and after receiving the evidence, consider the appeal on merits and pass orders in accordance with law. This procedure is contemplated in order to give an opportunity to the party, who produces the document to prove the same and also to give an opportunity to the other side to prove that the document sought to be marked has no relevancy to decide the issue in the proceedings.

23. From the judgments relied on by the learned counsel for the petitioner, it is clear that if the learned Rent Control Appellate Authority fails to give an opportunity to prove the document and



relevancy to the person producing the said document and opportunity to opposite party to disprove the document, the order of the learned Rent Control Appellate Authority is vitiated and is liable to be set aside. In view of the well settled judicial pronouncements, the order of the learned Rent Control Appellate Authority is set aside and the matter is remanded to the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority shall give an opportunity to both the petitioner and the respondent to let in oral evidence, if so desired, with regard to additional documents permitted to be filed. The learned Rent Control Appellate Authority shall consider all the contentions of the petitioner and the respondent afresh and pass orders on merits and in accordance with law.

24. In view of the order of remand, the other points raised by the learned counsel for the petitioner and the respondent are not decided and it is left open to the parties to raise the same before the learned Rent Control Appellate Authority.

25. In the result, the order and decreetal order dated 04.04.2016, passed in R.C.A.No.39 of 2012, by the learned Rent Control Appellate Authority (Principal Subordinate Judge), Madurai, confirming the order and decreetal order dated 28.08.2012, passed in R.C.O.P.No.54 of 2007, by the learned Rent Controller (Principal District Munsif), Madurai Town, is set aside and the matter is remanded to the learned Rent Control Appellate Authority, for fresh disposal on merits and in accordance with law after following the procedure contemplated under Order XLI Rules 27(1)(b), 28 and 29 C.P.C. The Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed. The learned Rent Control Appellate Authority is directed to dispose of R.C.A.No.39 of 2012 as expeditiously as possible, in any event, not later than 30.06.2017.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge,

The Rent Control Appellate Authority , Madurai.

2. The Principal District Munsif, The Rent Controller

Madurai Town.

+One cc to Mr.V.Sitharanjandas, Advocate, SR.No.11270

+One cc to Mr.D.Malaichamy, Advocate, SR.No.12033

smn2

RL/5C/12P/JC/3.4.2017

C.R.P. (MD) No.2546 of 2016 (PD)