

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.04.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(PD)No.1512 of 2018
and
C.M.P.No.8076 of 2018**

1.N.N.Gafoor
2.Muneem

.. Petitioners

R.Srikumaran

Vs.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 01.02.2018 made in M.P.No.549 of 2017 in R.C.O.P.No.195 of 2017 on the file of the XIV Small Causes Court, Chennai.

For Petitioners :M/s.S.Thankasivan

For Respondents :Ms.K.Subhashini
for Chennai Law Associates

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ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the order passed by the trial Court in M.P.No.549 of 2017 in R.C.O.P.No.195 of 2017 on the file of the XIV Small Causes Court, Chennai.

2. The brief facts are as follows;

The respondent is the owner of the entire premises in which the petition premises is situated and he is in possession of the entire building except the petition premises and he has given an undertaking that upon evicting the petitioners, he will not induct any other tenant for higher rent. During pendency of the eviction petition, he noticed that provision of law was to be changed as per Section 10(3) instead of 10(3) (c) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. Therefore, he filed an interlocutory application in M.P.No.549 of 2017 before the Rent Controller under Order VI Rule 17 of CPC for amending the provision of law mentioned in the eviction petition. The learned Rent Controller after enquiry allowed the M.P.No.549 of 2017.

3. Feeling, aggrieved by the order passed by the learned Rent Controller, the present revision petitioners have preferred the revision on the ground that the learned Rent Controller while allowing the application has not given any reason.

4. The learned counsel appearing for the petitioner submits that the impugned order is hit by the mandatory provision of Order VI Rule 17 of C.P.C. Further by introducing the proposed amendment, the respondent is endeavoring to obliterate the admissions made by him in the trial, which is not permissible under law. The reasons stated by the learned Rent Controller for allowing M.P.No.549 of 2017 is contrary to the mandatory provisions of Order VI Rule 17 of C.P.C. and the same cannot be countenanced. Therefore, the impugned order is liable to be set aside.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. It is not in dispute that the respondent is the owner of the building and he filed RCOP for eviction of the petitioner for his own use and occupation. The respondent is trying to project his case even without amending any of the averments of the petition except the provision of law. Mere analysing the provision of law will not change the nature and character of the eviction petition and no prejudice would be caused to the petitioners. Now, the RCOP is posted for further evidence of the respondent. While allowing the amendment application, the learned Rent Controller has safeguarded the interest of the petitioners herein.

7. The learned counsel for the respondent has contended that the amendment will not substantially change the nature and character of the eviction petition. The element of requiring the petition premises for occupation of the petitioner would be present even if the provision of the law is amended. Therefore, no merit in the revision petition and the same is liable to be dismissed. However, since the respondent filed the application to amend the provision of law after examined him as witness and when the matter was posted for further evidence of the respondent. Even though there is no prejudice but it causes some inconvenience to the revision petitioners, therefore they have to be adequately compensated with

some terms of cost.

8. For the above said reasons, this Court while confirming the order passed by the learned Rent Controller, directs the respondent to pay a sum of Rs.10,000/- as cost to the revision petitioners on or before 05.06.2018 and directed to produce cost paid memo before the Rent Controller.

9. The Civil Revision Petition is disposed of accordingly. Consequently connected miscellaneous petition is closed. After producing cost paid memo the Rent Controller is directed to proceed the RCOP in accordance with law after giving opportunity to the parties.

25.04.2018

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To
The XIV Small Causes Court,
Chennai.

Note: Issue order copy on 31/05/2018.

P.VELMURUGAN, J.
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