

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.250 of 2014
& M.P.Nos.1 of 2015 and 1 of 2014

Sathya Moorthy Gupta (deceased)
Prop. M/S.Sandhya Restaurant

1.Mani Prakash Gupta
2.Gyan Prakash Gupta

.. Petitioners

Vs.

M.R.Ganesh Kumar

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18/1960 as amended by Act 23/1973 and Act 1 of 1980, against the judgment and decree dated 05.11.2013 made in R.C.A.No.296 of 2007 on the file of the VII Judge (Rent Control Appellate Authority) Small Causes Court, Chennai, by reversing the fair and decretal order dated 16.04.2004 made in R.C.O.P.No.980 of 2002 on the file of the X Judge (Rent Controller), Small Causes Court, Chennai.

For Petitioners : Mr.K.P.Ashok

For Respondent : Mr.Singaravelan
Senior Counsel for
Mr.K.Chandra Mohan

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 05.11.2013 made in R.C.A.No.296 of 2007 on the file of the VII Judge (Rent Control Appellate Authority) Small Causes Court, Chennai, by reversing the fair and decretal order dated 16.04.2004 made in R.C.O.P.No.980 of 2002 on the file of the X Judge (Rent Controller), Small Causes Court, Chennai.

2. The deceased petitioner namely, Sathya Moorthy Gupta is tenant and respondent is landlord. The said Sathya Moorthy Gupta died and the petitioners 1 and 2, who are the legal heirs of the deceased petitioner, were brought on record. The respondent filed R.C.O.P.No.980 of 2002 on the file of the X Small Causes Court, Chennai, against the petitioners for eviction on the ground of additional accommodation. According to the respondent, the deceased petitioner is tenant under the respondent in the ground floor portion on a monthly rent of Rs.2,185/-. The respondent is carrying on business publishing and selling education books. The

respondent is having his office in the fourth floor of the petition premises and also occupying rear side portion in the ground floor. Due to lack of accommodation, the respondent is giving the printing work outside and incurred heavy loss in his business profits. The respondent is finding it difficult to instal the printing machine to extend his business. The customers are finding it difficult to come to fourth floor by climbing staircase. The respondent is in need of petition premises for additional accommodation. The petition premises is facing road side and it will be convenient for the respondent to display the books. The petition premises is very convenient for the business of the respondent and his requirement for the same for additional accommodation is bonafide. If the petitioners do not vacate the petition premises, the respondent will be put to hardship and no prejudice would be caused to the petitioners, as suitable accommodation would be available to the petitioners in the same locality.

3. The petitioners filed counter statement and denied all the averments made by the respondent and submitted that requirement of the respondent for additional accommodation is not bonafide. The intention of the respondent is only to get enhancement of rent from

the petitioners. When the petitioners refused to pay the enhanced rent, the respondent filed the R.C.O.P. Earlier, the respondent and his father filed R.C.O.P.Nos.2787 of 1986 and 1159 of 1998 on the very same ground, but they did not pursue the same. There is vacant space available in the ground floor and the respondent can utilise the same. Whenever the portion of the petition building becomes vacant, the respondent lets out the same to the third parties. Recently, the respondent let out one portion in the ground floor to M/S.M.M.Watch Company. The portion under occupation of the petitioners is not convenient for the business of the respondent. The petitioners are running a restaurant in the petition premises for a long time and it will be difficult for the petitioners to get accommodation for running restaurant in the same locality. If they are evicted, it will be put to hardship and the hardship which may be caused to the petitioners will outweigh the advantage that may accrue to the respondent.

4. Before the learned Rent Controller, the respondent examined himself as P.W.1 and marked 10 documents as Exs.P1 to P10 and on behalf of the petitioners, two witnesses were examined as R.W.1 and R.W.2 and marked 15 documents as Exs.R1 to R15.

5. The learned Rent Controller considering the pleadings and oral and documentary evidence, dismissed R.C.O.P. Against the same, the respondent filed R.C.A.No.296 of 2007 on the file of the VII Small Causes Court, Chennai. The learned Appellate Authority independently considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, allowed the appeal ordering eviction and granting two months time for vacating and handing over the premises to the respondent.

6. Against the said judgment and decree dated 05.11.2013 made in R.C.A.No.296 of 2007 on the file of the VII Small Causes Court, Chennai, reversing the order of the learned Rent Controller dated 16.04.2004 made in R.C.O.P.No.980 of 2002 on the file of the X Small Causes Court, Chennai, the present Civil Revision Petition is filed by the petitioners/tenants.

7. The learned counsel for the petitioners reiterated the averments made in the counter statement filed in the R.C.O.P. and the contentions raised in the grounds of revision.

8. The learned Senior Counsel for the respondent also reiterated the very same averments made in the petition in R.C.O.P. and the contentions raised in R.C.A.

9. Heard the learned counsel for the petitioners as well as the learned Senior Counsel appearing for the respondent and perused the materials available on record.

10. The point for consideration in the present Civil Revision Petition is whether the requirement of the respondent for additional accommodation is bonafide and advantage to the respondent on eviction of the petitioners is more than the hardship caused to the petitioners.

11. The contention of the petitioners that earlier the respondent and his father filed R.C.O.Ps. for eviction of the respondent on the very same ground and did not pursue the same and therefore, the present Civil Revision Petition is maintainable, is without merits. It is an admitted fact that the respondent is carrying on business publishing and selling of the education books. The respondent is having his office in the fourth floor and in the ground

floor of the very same building, where the petition premises is situate. The respondent has produced document to show that he is publishing and selling education books and his office is situate in the same building. It is also an admitted fact that the petition premises is in ground floor facing the road. The respondent is in need of the said building to instal the machineries for printing education books and display the same on the petition premises.

12. The petitioners have stated that number of portions become vacant in the same building and the respondent let outs the same to the third parties. From the materials available on record, it is seen that all those portions are situate in the first floor and above. The petitioners have not alleged and proved that portion in the ground floor is not sufficient to instal the printing machines to carry on the business of the respondent and number of portions become vacant in the ground floor and the respondent let out the same to the third parties. The only averment made by the petitioners is that there is a vacant space available in the ground floor and respondent can utilise the same for his business. It is pertinent to note that the portion occupied by the petitioners is facing the road and has sufficient space for installing the printing

machine and display the books meant for sale. The learned Rent Controller failed to appreciate this fact and erred in dismissing the petition on the ground that respondent let out a portion in the ground floor to M/S.M.M. Watch Company.

13. From the judgment of the learned Appellate Authority, it is seen that the portion let out to M/S.M.M. Watch Company is under the stair case and by no stretch of imagination, it can be held that in that space, printing machine can be installed. The petitioners contend that respondent can utilise the open space. The said contention is without merits. The respondent requires petition premises for installing printing machine and display the books published by him. To utilise the open space, the respondent has to put up infra structure spending time and money. Further, it is not for the tenant to dictate terms as to which premises will be suitable or not for the business of the landlord. The learned Rent Controller failed to appreciate the fact that the petitioners are tenants and they can find alternate accommodation for rent in the same locality, whereas, the respondent is seeking additional accommodation in the building owned by him. The learned Appellate Authority has appreciated these facts in proper perspective and allowed the R.C.A.

The learned Appellate Authority on appreciation of pleadings and evidence, especially the admission of the second petitioner as R.W.1, has held that requirement of respondent for additional accommodation is bonafide. The learned Appellate Authority, also considered the fact that the petitioners are tenants and they can find alternate accommodation for rent in the same locality without any hardship. There is no perversity or arbitrariness in the findings of the facts of the learned Appellate Authority warranting interference by this Court.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.01.2018

Index : Yes/No

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To

1.VII Judge, Small Causes Court, Chennai.

2.X Judge, Small Causes Court, Chennai.

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V.M.VELUMANI, J.

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