

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.2935 OF 2017
AND C.R.P.(PD) NO.2948 OF 2017
AND CMP NOS.13878 AND 13944 OF 2017

S.Babu

... Petitioner
in both CRPs'

Vs.

1.Syed Meeran Mohammed Hussainy
2.G.Selvaraj

... Respondent nos.1&2
in both CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair order and decretal order dated 23.03.2017 passed in M.P.No.427 of 2016 in RCOP No.1868 of 2013 and M.P.No.426 of 2016 in RCOP No.1618 of 2013 respectively, by the learned XVI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.S.S.Swaminathan

For Respondents : Mr.S.Sathiaseelan

COMMON ORDER

The proposed respondent is the revision petitioner. The first respondent is the landlord and he filed a petition for fixation of fair rent in RCOP No.1618 of 2013 against the deceased second respondent and RCOP No.1868 of 2013 for eviction on the grounds of wilful default. In the above petitions, counter came to be filed by the respondent therein / second respondent herein that there is no jural relationship between the petitioner and the respondent in view of eviction in the year 2010 and induction of the revision petitioner as a tenant by the landlord. Thereafter, the revision petitioner filed a petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for deposit of rent in RCOP No.239 of 2014. Thereafter, the first respondent / landlord has filed a petition for eviction against the revision petitioner and the second respondent on the grounds of subletting. All these matters were taken up together for joint trial and the same are pending.

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2. It is relevant to mention here that the revision petitioner and the second respondent are son and father. During the pendency of the above mentioned rent control proceedings, the second respondent /

father died. Pursuant to which, the first respondent / landlord preferred a petition to bring the legal representative on record. The Rent Controller has allowed the petition and aggrieved over the order passed by the Rent Controller, the revision petitioner is before this Court.

3. Admittedly, the petition premises is non residential in nature. Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, reads as under:

"8. 'tenant' means any person by whom or whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who -

(i) in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant, and

(ii) in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the

*tenant and continues to carry on such business thereafter;
and*

a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, can stand or slaughterhouse or of rents for shops has been formed out or leased by a Municipal Council or a Panchayat Union Council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai."

4. It is the contention of the revision petitioner that he was not carrying on business in the petition premises as a son of the second respondent, but in an independent capacity as a tenant under the first respondent / landlord. According to him, he was put in possession by the first respondent / landlord in the year 2011 and paid rental advance of Rs.24,000/- at a monthly rent of Rs.2,000/- and additional advance amount by way of cheque which was encashed by the first respondent / landlord and has been paying rentals up to 2012 by way of cheques from his bank account. Therefore, he could not be construed as a legal

representative of the tenant as per Section 2(8)(ii) of the Act. The Rent Controller has not at all discussed the issue in view of statutory provision, rather allowed the application in the interest of justice. The orders, therefore are sought to be set aside.

5. Per contra, it is the contention of the respondent that the revision petitioner was in continuous possession as tenant for the purpose of carrying on business and since he is associated with his father's business, he has to be impleaded as his legal representative. In fact, he was impleaded as the legal representative in CRP (PD) No.1007 of 2016 dated 01.12.2016 and therefore contrary stand cannot be taken by the petitioner and is borne by the order of this Court. Hence, the revision petitions are liable to be dismissed.

6. I have considered the submissions made on either side and perused the materials on record.

7. It is seen from RCOP Nos.1618 of 2013 and 1868 of 2013 that originally a business was started by the second respondent / father in

the name and style of M/s.Rajeswari Engineering Works and he has also started another business at a different address in the name and style of M/s.Sai Ram Engineering Works. The tenant is now carrying on the business in the name and style of M/s.Rakesh Engineering Works. Curiously, in the year 2014, the revision petitioner filed a petition for deposit of rent claiming himself as a tenant. Following this, the landlord filed a petition for eviction in the year 2015 on the grounds of subletting. It is pertinent to note that in the eviction petition filed in RCOP No.1938 of 2015, the revision petitioner was shown as a sub tenant. After all these things, on 19.10.2016, petition to bring the revision petitioner as legal representative, came to be filed.

8. As per Section 2(8)(ii) the material ingredient is that the legal representative who had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant and continues to carry on such business thereafter, but does not include a person placed in occupation of a building by its tenant.

9. If that be so, the first respondent had filed a petition for eviction in RCOP No.1938 of 2015 recognizing the revision petitioner as sub tenant and not a person who had been in continuous association with the tenant for the purpose of carrying on the business. Secondly, the averments made as early as in the year 2013, petitions filed for fixation of fair rent and eviction on the grounds of wilful default shows that two different businesses at two different addresses were carried on by the revision petitioner's father. But the counter of the father categorically avers that he was evicted from the petition premises in the year 2010 itself and the revision petitioner who was inimical to the second respondent, was inducted by the landlord.

10. In such circumstances, it cannot be said that the revision petitioner had been in continuous association with the second respondent's father in his business till his death and continuing the business thereafter. On the other hand, the material goes to show that he was carrying on business in his independent capacity and was recognised as a sub tenant by the landlord himself.

11. As discussed above, as per Section 2(8)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in respect of non-residential building, neither the son or daughter nor any other legal representative to be treated as a tenant automatically, but the essential ingredient is that they should have been in continuous association with the tenant in carrying on their business, till his death and thereafter. This point was not discussed by the Rent Controller, on the other hand, he was impleaded only on the ground that the revision petitioner has admitted himself as the son of the second respondent.

12. The finding of the Rent Controller is without applying the provision of law. The orders of the Rent Controller are not in conformity with the requirements of Section 2(8)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in so far as it is concerned with non-residential building. Therefore, the orders dated 23.03.2017 passed in M.P.No.427 of 2016 in RCOP No.1868 of 2013 and M.P.No.426 of 2016 in RCOP No.1618 of 2013 respectively, by the learned XVI Judge, Small Causes Court, Chennai, are set aside.

13. In the result, both the Civil Revision Petitions are allowed.

No costs. Consequently, connected civil miscellaneous petitions are closed.

10 . 01 . 2018

Index : Yes/No
Internet : Yes/No
Note : *Issue order copy on 12.01.2018*
TK

To

The XVI Judge
Small Causes Court
Chennai.



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M.GOVINDARAJ, J.

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AND C.R.P.(PD) NO.2948 OF 2017

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