

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.R.P.(PD)Nos.4271 and 4272 of 2014**
and M.P.No.1 of 2014

<i>Orders Reserved on</i>	<i>Orders pronounced on</i>
19.03.2018	13.06.2018

R.Marimuthu

.. Petitioner in
both C.R.Ps.

Vs.

1.Selvaraj
2.S.Suganthi.. Respondents in
both C.R.Ps.

Prayer: Civil Revision Petitions are filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 28.08.2014 made in R.C.A.Nos.422 and 421 of 2014 on the file of the IX Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 09.07.2014 made in M.P.Nos.277 and 276 of 2014 in R.C.O.P.No.590 of 2009 on the file of the XI Small Causes Court (Rent Controller), Chennai.

For Petitioner : Mr.P.V.Arul Phazam Nee
For Respondents : M/S.Shah and Shah for
Mr.P.Dhananjayan

COMMON ORDER

The Civil Revision Petitions are filed against the judgment and decree dated 28.08.2014 made in R.C.A.Nos.422 and 421 of 2014 on the file of the IX Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 09.07.2014 made in M.P.Nos.277 and 276 of 2014 in R.C.O.P.No.590 of 2009 on the file of the XI Small Causes Court (Rent Controller), Chennai.

2.The parties and issues involved in both the Civil Revision Petitions are one and the same and therefore, these two revision petitions are disposed of by this common order. These two Civil Revision Petitions are heard together along with C.R.P.(NPD)Nos.1966 and 1967 of 2013 filed by the respondents herein challenging the common judgment and decree dated 02.03.2013 passed in allowing both R.C.A.Nos.650 and 651 of 2011 by dismissing R.C.O.P.No.825 of 2009. Today, orders are pronounced in all the four Civil Revision Petitions by two separate orders.

3.The petitioner in both the Civil Revision Petitions is first respondent in R.C.O.P.No.590 of 2009. The respondents filed the said R.C.O.P. for fixation of fair rent. After conclusion of trial, when the R.C.O.P. is posted for orders, the respondents filed M.P.Nos.276 and 277 of 2014 for reopening R.C.O.P.No.590 of 2009 to adduce further evidence on their behalf and for further arguments. The respondents filed affidavit in support of the above two petitions narrating the averments mentioned in R.C.O.P.No.590 of 2009 filed for fixation of fair rent as well as R.C.O.P.No.825 of 2009 filed for eviction of the petitioner and his three brothers. According to the respondents, during the time of arguments, the learned counsel for the petitioners contended that notice was given only to Sakthivel, brother of the petitioner instead of petitioner and therefore, R.C.O.P.No.590 of 2009 for fixation of fair rent is not maintainable. The respondents further stated in the affidavit that the petitioner has suppressed the material facts mentioned in R.C.O.P.No.825 of 2009 especially Exs.R4 and R5 marked on behalf of the petitioner as well as the evidence given by the petitioner and his brother Sakthivel in R.C.O.P.No.825 of 2009. These materials are necessary in deciding the fair rent to be fixed for the petition premises.

4.The petitioner has contested the said two M.Ps. on the ground that these are the third set of petitions filed by the respondents for reopening and letting in further evidence. According to the petitioner, the present petitions have been filed by the respondents only to fill in lacuna and to drag on the proceedings. The two petitions are filed, when the R.C.O.P.No.590 of 2009 was reserved for orders and therefore, both the petitions are not maintainable. All the averments made in the affidavit are contrary to the document, which was marked as Ex.R5 with the consent of the respondents during arguments. The respondents had all the documents, which are now sought to be marked, available with them from the year 2011 onwards and they have not given any reason for marking the same earlier.

5.The learned Rent Controller considering the averments made in the affidavit, counter affidavit and materials available on record, allowed both the petitions on payment of cost on the ground that fair rent can be fixed only for the buildings, only when the landlord-tenant relationship exists, the petitioner has not specifically denied his tenancy in the counter statement and noted that Ex.R5

was marked in the main R.C.O.P. with the consent of respondents at the stage of arguments by the learned counsel for the petitioner.

6. Against the said order dated 09.07.2014 made in M.P.Nos.276 and 277 of 2014, the petitioner filed two R.C.A.Nos.421 and 422 of 2014 on the file of the IX Small Causes Court (Rent Control Appellate Authority), Chennai.

7. The learned Appellate Authority considering all the materials available on record and order of the learned Rent Controller, dismissed both the appeals holding that the order of the learned Rent Controller is only procedural and he did not finally decide the rights of the parties and it is not appealable order as per Section 23(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

8. Against the said common judgment and decree dated 28.08.2014 made in R.C.A.Nos.421 and 422 of 2014, confirming the fair and decretal order dated 09.07.2014 made in M.P.Nos.276 and 277 of 2014, the petitioner has come out with the present two C.R.P.Nos.4272 and 4271 of 2014.

9. The learned counsel for the petitioner contended that the Courts below failed to see that the respondents have filed the petitions only to fill in lacunae and to drag on the proceedings. The Appellate Authority did not consider any of the grounds raised by the petitioner in the appeals. The Appellate Authority failed to see that the respondents have come out with entirely new case contrary to the pleadings. The Appellate Authority is not correct in holding that the rights of the petitioner are not affected and order of the Rent Controller is not an appealable order. The Appellate Authority failed to see that by allowing the petitions for reopen and recall, the rights of the petitioner in final adjudication of the main R.C.O.P.No.590 of 2009 will be affected. The Appellate Authority has erred in following the old decision without referring to the latest decision referred to by the petitioner. The Appellate Court relied on the decision without referring to the facts of the case and laws laid down for its conclusion. The Court has no power to pass order to reopen and recall witness, when main R.C.O.P. was reserved for orders. The learned counsel for the petitioner in support of his contentions, relied on the following judgments:

(i) **2013 (1) MWN Civil 573 (Bagai Constructions, through its Proprietor, Lalit Bagai v. Gupta Building Material**

Store);

(ii) **Order dated 16.12.2013 made in C.R.P.(PD)Nos.3868 to 3870 of 2009 (Suman Kumar Shiyal v. K.Gopi Chand Shiyal);**

10.Per contra, the learned counsel for the respondents contended that as per the Order XVIII Rules 17 and 17A and Section 151 C.P.C., the Court has power to reopen and recall the case and permit the party to let in additional evidence at any stage of the proceedings. In the present case, after conclusion of trial and after conclusion of arguments on behalf of the respondents, during arguments on behalf of the petitioner, Ex.R5 was marked. In such circumstances, the respondents are entitled to have an opportunity to rebut the said evidence. The Courts below have considered all the materials and decisions relied on by the parties, had allowed the petitions and dismissed the appeals. In support of his contentions, the learned counsel for the respondents relied on the following decisions:

(i) **2007-3.L.W. 332 (S.Parasamal and others v. G.Ramamurthy);**

(ii) **2011 (11) SCC 275 (K.K.Velusamy v. N.Palanisamy);**

(iii) **1980 (4) SCC 259 (M/S.Sri Raja Lakshmi Dyeing Works and others v. Rangaswamy Chettiar);**

11.Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

12.The points for consideration in both the Civil Revision Petitions are whether the learned Rent Controller is right in allowing the petitions for reopening and recalling, when the order was reserved in main R.C.O.P. and whether the learned Appellate Authority is right in dismissing the appeals filed by the petitioner.

13.The respondents have filed R.C.O.P.No.590 of 2009 for fixation of fair rent. After contest, order was reserved in the said R.C.O.P. At that stage, the respondents have filed two petitions in M.P.Nos.276 and 277 of 2014 for reopening and recalling P.W.1 for further evidence and for further arguments. The said petitions were resisted by the petitioner on the ground that after order is reserved in the main R.C.O.P., the same cannot be reopened and respondents are not entitled to let in further evidence through P.W.1. The petitions were filed only to fill in lacuna and to drag on the

proceedings and these petitions are third set of petitions for the very same relief. These objections were rightly rejected by the Courts below for the simple reason that the petitioner himself has marked Ex.R5 after conclusion of trial and after arguments on behalf of the respondents. When additional document is marked after conclusion of trial, after arguments by the learned counsel for the respondents and during the arguments on behalf of the petitioner, the respondents must be given an opportunity to rebut the said evidence.

14.As per the Order XVIII Rules 17 and 17A and Section 151 C.P.C., the Court has power to reopen and recall witness and permit the party to let in additional evidence. The said power is discretionary power and the said discretionary power must be exercised sparingly and judicially. There is no straight jacket formula for the Court to allow or reject such application. The Court has to consider the facts of each case and decide whether to allow or reject such application. In the present case, the petitioner has marked Ex.R5 after conclusion of trial and after arguments advanced by the learned counsel for the respondents. In such circumstances, the learned Rent Controller has exercised his judicial

discretion in the proper manner and allowed both the petitions giving an opportunity to the respondents to rebut such evidence. The learned Rent Controller taking into consideration that the respondents have filed similar applications earlier, allowed both the petitions on condition that the respondents must pay a sum of Rs.1,000/- in M.P.No.276 of 2014 to the petitioner herein. There is no error in the said order. The learned Appellate Authority has also considered all the materials on record, judgments relied on by the parties and dismissed the appeals by giving cogent and valid reason. In the facts and circumstances of the case, judgments relied on by the learned counsel for the petitioner do not advance his case. On the other hand, the judgments relied on by the learned counsel for the respondents especially, the decision of this Court reported in **2007-3.L.W. 332 (S.Parasamal and others v. G.Ramamurthy)** is squarely applicable to the facts of the present case.

15.In the result, both the Civil Revision Petitions are dismissed. The learned counsel for the petitioner submitted that the petitions are filed only to drag on the proceedings. In view of such submission, the learned Rent Controller is directed to dispose of

R.C.O.P.No.590 of 2009 as expeditiously as possible in any event not later than two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

13.06.2018

Index : Yes/No
Speaking/Non speaking order:Yes/No

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To

1.IX Small Causes Court
(Rent Control Appellate Authority), Chennai.

2.XI Small Causes Court (Rent Controller), Chennai.



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V.M.VELUMANI,J.

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Pre-delivery order in
C.R.P.(PD)Nos.4271 and 4272 of 2014
and M.P.No.1 of 2014

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