

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

The HONOURABLE **MS. JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.1824 of 2015  
and M.P.No.1 of 2015  
and C.M.P.No.3261 of 2016

1.S.I.Idiculla (died)  
2.Daisy Idiculla

.. Petitioners

(2<sup>nd</sup> petitioner brought on record as legal heir of the deceased sole petitioner viz., S.I.Idiculla vide Court order dated 26.02.2018 made in C.M.P.Nos.1550 and 3652 of 2018 in C.R.P.No.1824 of 2015)

Vs.

1.J.Rajeswari  
2.B.Ezhil Arasi

.. Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 06.02.2015 made in R.C.A.No.352 of 2011 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, partly confirming the fair and decretal order dated 21.09.2010 made in R.C.O.P.No.1261 of 2009 on the file of the X Small Causes Court, (Rent Controller), Chennai.

For Petitioners : Mr.V.Jayaprakash for  
M/S.JP and AP Associates

For Respondents : Mr.M.Balachander

**ORDER**

The Civil Revision Petition is filed against the judgment and decree dated 06.02.2015 made in R.C.A.No.352 of 2011 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, partly confirming the fair and decretal order dated 21.09.2010 made in R.C.O.P.No.1261 of 2009 on the file of the X Small Causes Court, (Rent Controller), Chennai.

2.The first petitioner is tenant and respondents are the landladies. The respondents/landladies filed R.C.O.P.No.1261 of 2009 on the file of the X Small Causes Court, Chennai, for eviction of the first petitioner on the grounds of owners' occupation, sub-letting and Act of waste. According to the respondents, the first petitioner has sublet the petition premises to one Vijayan and Marimuthu for running a pan shop and tea stall respectively. First respondent's husband was a retired conductor in the Metropolitan Transport Corporation and second

respondent's daughter is handicapped and they want to start a business by purchasing a xerox machine and having shop of xeroxing.

3.The first petitioner filed counter statement and denied all the averments made in the petition and contended that the respondents refused to receive the rent and first petitioner issued notice dated 27.02.2009 to the respondents. Thereafter, the first petitioner filed O.S.No.2099 of 2009 for injunction not to evict the first petitioner from the petition premises except by due process of law. The first petitioner has not sublet the petition premises to the respondents 2 and 3 in R.C.O.P., who are only his employees. First respondent's husband retired eight years before filing of R.C.O.P. and the respondents have not stated the arrangements they have made to start a business in the petition premises and the requirement of the petition premises by the respondents is not bonafide. The first petitioner has paid a sum of Rs.2,00,000/- as advance to the respondents and Rs.10,00,000/- as pagadi to one Pushkaran and prayed for dismissal of R.C.O.P.

4.Before the learned Rent Controller, second respondent examined herself as P.W.1 and marked nine documents as Exs.P1 to P9. First petitioner examined himself as R.W.1 and marked one document as Ex.R1.

5.The learned Rent Controller considering the pleadings, oral and documentary evidence, dismissed R.C.O.P. on all the three grounds. Against the said order of dismissal dated 21.09.2010 made in R.C.O.P.No.1261 of 2009 on the file of X Small Causes Court, Chennai, the respondents filed R.C.A.No.352 of 2011 on the file of VIII Small Causes Court, Chennai. During pendency of the said appeal, the respondents have filed M.P.No.979 of 2013 for permitting the respondents to file lease agreement dated 07.11.2013 and mark the same as Ex.P10. The first petitioner did not file any counter in the said M.P. The said M.P. was ordered and lease agreement was marked as Ex.P10.

6.The learned Appellate Authority independently considering the pleadings, oral and documentary evidence and Ex.P10/lease agreement dated 07.11.2013, ordered eviction of the first petitioner on the ground of subletting and owners' occupation and dismissed the appeal on the ground of Act of waste.

7.Against the said judgment and decree dated 06.02.2015 made in R.C.A.No.352 of 2011 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, the first petitioner has filed the present

Civil Revision Petition. Pending Civil Revision Petition, first petitioner died and second petitioner was brought on record as legal heir of the deceased first petitioner.

8.The learned counsel for the petitioners contended that the learned Appellate Authority is not correct in reversing the well considered findings of the learned Rent Controller. The respondents have not given any reason with regard to the requirement of the building for their own use and occupation. They have not marked Ex.P10/lease agreement dated 07.11.2013 before the learned Rent Controller and even in the reply notice dated 17.03.2009, they have not stated that either they require the building for their own occupation or the first petitioner has damaged the petition premises. The respondents have received a sum of Rs.2,00,000/- as advance and Rs.10,00,000/- as pagadi. The respondents have also filed another R.C.O.P.No.430 of 2015 on the file of XV Small Causes Court, Chennai, for eviction of the first petitioner and the same is pending.

9.Per contra, the learned counsel for the respondents submitted that the respondents have produced Ex.P10/lease agreement dated 07.11.2013 entered into between the first petitioner and one Srikumar

to show that the first petitioner has sublet the petition premises. The learned Appellate Authority has given valid reason for holding that the respondents required petition premises to start a new business and prayed for dismissal of the Civil Revision Petition.

10. Heard the learned counsel of the petitioners as well as the respondents and perused the materials available on record.

11. The respondents filed R.C.O.P. for eviction of the first petitioner on three grounds viz., owners' occupation, subletting and Act of waste. So far as Act of waste is concerned, both the Courts below had dismissed the R.C.O.P. and held that the first petitioner has not committed any Act of waste. The respondents have not filed any revision challenging the said findings.

12. As far as subletting is concerned, the respondents did not mark any document to substantiate their claim before the learned Rent Controller. The respondents filed M.P.No.979 of 2013 before the learned Appellate Authority to permit them to mark the lease agreement dated 07.11.2013 as Ex.P10. The first petitioner did not file any counter in the said M.P. The said petition was ordered and the

lease agreement dated 07.11.2013 was marked as Ex.P10. The learned Appellate Authority took note of the fact that the first petitioner has sublet the petition premises to one Srikumar on a monthly rent of Rs.650/- and received advance amount of Rs.2,00,000/- and that the first petitioner has not denied Ex.P10 or its contents, held that the first petitioner has sublet the petition premises and ordered eviction on the ground of subletting.

13.As far as owners' occupation is concerned, the objection of the first petitioner is that the first respondent's husband retired eight years before filing of the RCOP and they did not state in the reply statement that they require the petition premises for their own business. These contentions are without merits. The landlady can seek a non-residential building for her own use, if she is not in possession of any other non-residential building of her own. In the present case, it is not the case of the first petitioner that the respondents were in occupation of other non-residential building of their own or the requirement of landlady is not bonafide. The learned Appellate Authority has considered all the aspects in proper perspective and ordered eviction on the ground of owners' occupation.

14.The learned Appellate Authority is the final Court to decide the facts. The revisional Court can interfere with the said finding of fact, only if the said finding is arbitrary and arrived at without properly appreciating the materials on record or arrived at without there being any material for such finding. In the present case, the learned Appellate Authority has properly appreciated all the materials on record and ordered eviction of the petitioners, by giving cogent and valid reasons. There is no illegality or irregularity in the order impugned in this revision warranting interference by this Court.

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

16.03.2018

Index:Yes/No

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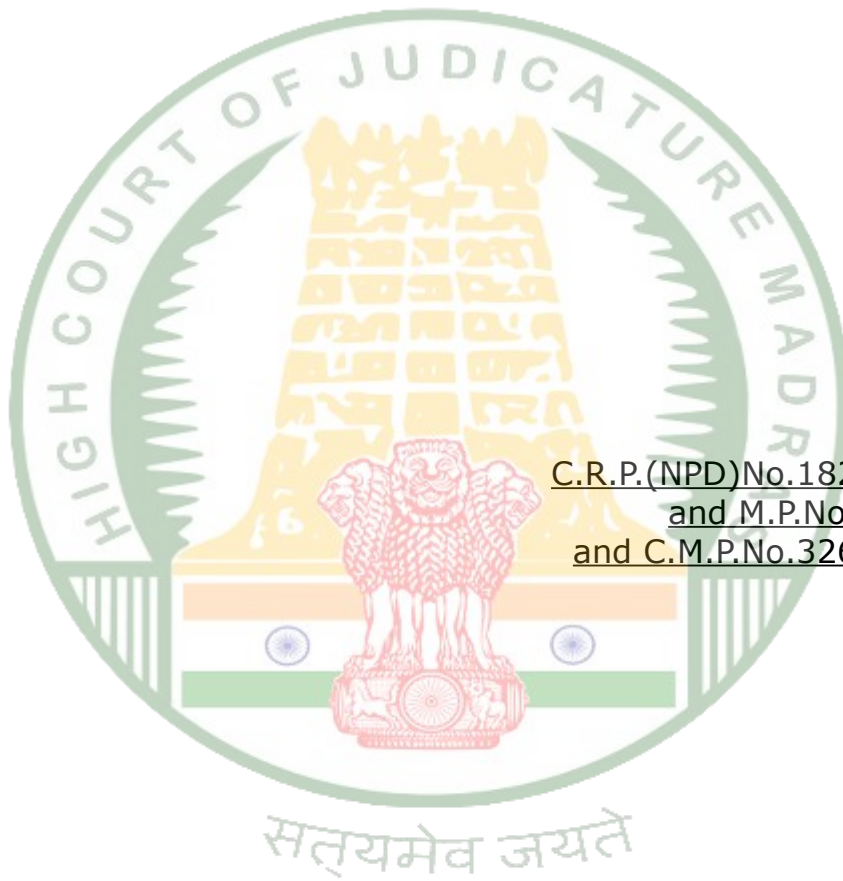
To

1.VIII Small Causes Court, Chennai.

2.X Small Causes Court, Chennai.

**V.M.VELUMANI,J.**

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