

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (NPD) Nos.3277 of 2015 & 1938 of 2016
and M.P.Nos.1 & 2 of 2015

N.Mahendran ... Petitioner in both CRPs

Vs

V.P.Thangavel (Deceased)

1.T.Jayakani
2.T.Jayakumar
3.T.Jayamurugan
4.T.Balaganesh
5.T.Jayasankar

...

Respondents in both CRPs

Prayer in CRP (NPD) No.3277 of 2015: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the order and decreetal order dated 02.02.2013 in RCA No.345 of 2003 on the file of the learned VII Small Causes Court and Rent Control Appellate Authority at Chennai dismissing the said Appeal thereby confirming the order and decreetal order dated 24.02.2003 in RCOP No.1436 of 2000 on the file of the learned X Small Causes Court and Rent Controller at Chennai.

Prayer in CRP (NPD) No.1938 of 2016 : Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the order and decreetal order dated 02.02.2013 in M.P.732 of 2010 in RCA No.345 of 2003 on the file of the learned VII Small Causes Court and Rent Control Appellate Authority at Chennai.

In both CRPs

For petitioner : Mr.R.Swaminathan

For Respondents : Mr.Babu for
Mr.A.M.Packianathan Easter

COMMON ORDER

CRP (NPD) No.3277 of 2015 is filed against the order and decreetal order dated 02.02.2013 in RCA No.345 of 2003 on the file of the learned VII Small Causes Court and Rent Control Appellate Authority at Chennai dismissing the said Appeal thereby confirming the order and decreetal order dated 24.02.2003 in RCOP No.1436 of 2000 on the file of the learned X Small Causes Court and Rent Controller at Chennai.

2. CRP (NPD) No.1938 of 2016 is filed against the order and decretal order dated 02.02.2013 in M.P.732 of 2010 in RCA No.345 of 2003 on the file of the learned VII Small Causes Court and Rent Control Appellate Authority at Chennai.

3. The parties and issues involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

4. The petitioner is the tenant and the respondent is the landlord in RCOP No.1436 of 2000 on the file of X Small Causes Court, Chennai. The respondent filed the above said RCOP against the respondent for eviction on the ground of wilful default, owner's occupation and act of waste. According to the respondent, originally the petitioner was inducted as a tenant in the petition premises of the respondent on a monthly rent of Rs.700/- and subsequently it was enhanced to Rs.2,900/- per month from January 2000. According to the respondent, the petitioner did not pay the rent @ Rs.2,900/- but paid only Rs.2,100/- and thereby committed wilful default. Further, without the knowledge of the respondent, the petitioner made alterations in the building which was let out to him

and caused much damages to the building. The respondent has four sons and all of them are unemployed. One of his son is carrying on roasting and grinding of coffee seeds in a rented premises at No.25, Arya Gowdar Road, West Mambalam, Chennai. Hence, the respondent requires the petition premises under the occupation of the petitioner for utilising the same for the business of his son. The petitioner did not own any building in the city except the petition premises. In the above circumstances, respondent issued notice on 29.05.2000 by registered post to the petitioner. The petitioner sent reply on 06.06.2000 denying all the allegations . The respondent sent re-joinder on 30.06.2000 and filed RCOP No.1436 of 2000 for eviction of the petitioner on the ground of wilful default, owner's occupation and act of waste.

5. The petitioner filed counter statement and denied that the monthly rent is Rs.2,900/- and stated that monthly rent is only Rs.2,100/- and he did not agree for the rent @ Rs.2,900/-. According to the petitioner, the respondent received the rent for the months of January & February 2000 @ Rs.2,100/- but subsequently, he refused to receive the monthly rent from the petitioner. The petitioner did not damage and did not cause any act of waste, as alleged by the respondent. As far as owner's occupation is

concerned, at the time of filing of the RCOP, some of the portion of the petition premises were vacant and the son of the respondent could have occupied any one of the vacant portion for his business. Only with ulterior motive, the respondent has filed the eviction petition on the ground of owner's occupation. The petitioner has established his business in the petition premises. If he is evicted, he will be put to heavy loss and prayed for dismissal of the petition.

6. Before the Rent Controller, the sons of the respondent were examined as PWs1 & 2 and nine documents were marked as Exs.P1 to P9. The respondent examined himself as RW1 and marked three documents as Ex.R1 to R3. The learned Rent Controller, considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the parties, rejected the contention of the respondent with regard to wilful default and act of waste. As far as owner's occupation is concerned, the learned Rent Controller, considering Exs.P6 to P9 held that the respondent has proved that his son is carrying on business in a rented premises and requirement of the respondent for own use of the petition premises is bonafide and ordered eviction of the petitioner on the ground of owner's occupation, by granting two months time to the petitioner to vacate and handover the possession of the petition premises to

the respondent.

7. Against the said order dated 24.02.2003 made in RCOP No.1436 of 2000, the petitioner filed RCA No.345 of 2003 on the file of VII Court of Small Causes, Chennai. Pending RCA, the respondent died and the respondents 1 to 5 were brought on record as his legalheirs. In the meantime, the petitioner filed M.P No.732 of 2010 seeking permission to file additional document, i.e. Order copy in RCOP No.1437 of 2000 filed by the deceased V.P.Thangavel against the father of the petitioner. The learned Appellate Authority, considering the fact that order in RCOP No.1437 of 2000 was passed on 05.02.2003, before the order was passed in the present RCOP, i.e. on 24.02.2003 and the said order was available to him and the petitioner could have filed the same before the Rent Controller earlier, dismissed I.A.No.732 of 2010. The learned Appellate Authority, considering the materials on record and order of the learned Rent Controller, dismissed the RCA confirming the order of the learned Rent Controller.

8. Against the said judgment dated 02.02.2013 made in RCA No.345 of 2003 confirming the order and decretal order dated 24.02.2003 made in RCOP No.1436, CRP (NPD) No.3277 of 2015 is

filed by the petitioner. Against the order dated 02.02.2013 made in M.P.732 of 2010 in RCA No.345 of 2003, CRP (NPD) No.1938 of 2015 is filed by the petitioner.

9. The learned counsel for the petitioner contended that the learned Judge erred in dismissing the appeal on the ground the petition in MP No.732 of 2010 in RCA No.345 of 2003 that the petitioner could have file the said document in RCOP itself, before the learned Rent Controller. The learned Appellate Authority failed to see that the said order in RCOP No.1437 of 2000 was not available when RCOP No.1436 of 2000 was pending. The said document is necessary to decide the issue in the RCOP and RCA.

9(a) As far as owner's occupation is concerned, one of the sons of the respondent is carrying on business in the same premises and when some of the portion of the petition premises became vacant and the respondent did not occupy the same for his business or for business of his another son. On the other hand, he has let out the same to the third parties. This clearly shows the intention of the respondents is not bonafide and prayed for allowing both the Civil Revision Petitions.

10. Per contra, the learned counsel for the respondents contended that the order in RCOP No.1437 of 2000 has no relevance to decide the issue in the present RCOP No.1436 of 2000. The petitioner has not given any reason for marking the said document. The petitioner has not stated as to when he received the order copy in the said RCOP and not explained the delay in filing the same. As far as owner's occupation is concerned, the respondent has produced and marked documents as Exs.P6 to P9 to show that the one of the son of deceased respondent is carrying on business in a rented premises at No.57, Arya Gowdar Road, West Mambalam, Chennai. The portion which became vacant was in the first floor of the petition premises which is not convenient for the business of the son of the deceased respondent. It is not for the tenant to dictate the terms to the respondent/landlord to which portion he must occupy. Petition premises is in ground floor and it is more suitable and convenient for the business of the son of the deceased respondent.

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

12. The only point for consideration in this Civil Revision Petition is ***whether the requirement of the petition premises by the respondent/landlord for his son's business is bonafide or not.***

13. The respondent has filed RCOP No.1436 of 2000 for eviction of the petitioner on the ground of wilful default, owner's occupation and act of waste. Two grounds, i.e. Wilful default and act of waste were rejected by the learned Rent Controller and the respondent did not challenge the said order. The respondent has sought for the petition premises for his son's business which he is presently carrying on in a rented premises at No.57, Arya Gowdar Road, West Mambalam, Chennai. The two sons of the deceased respondent gave evidence as PWs1 & 2 and deposed about the fact that the deceased respondent's son is carrying on business in a rent premises and marked Exs.P6 to P9 substantiating the said claim. The petitioner has not produced any contra evidence that one of the sons of the respondent is not carrying on business in a rented premises. The contention of the petitioner is that when certain portion of the petition premises became vacant, the deceased respondent did not occupy the same for his son's business but let

out the same to third parties. This contention is without merits. On evidence, it is proved that portion which became vacant is in the first floor and it is not convenient for the business carried on by the son of the deceased respondent.

14. It is pertinent to note that it is well settled that it is for the landlord to choose the premises for his occupation and it is for him to decide which building would be suitable for him either for residential or for non-residential purpose. The tenant has no right to dictate the terms to the landlord to choose some of the building or portion of the building for the occupation of the landlord. The courts below have properly appreciated the evidence let in by the parties and Exs.P6 to P9 and held that the requirement of the landlord is bonafide. This Conclusion is arrived at by appreciating the evidence of the parties. 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 courts below have properly appreciated all the materials on record and ordered eviction of the petitioner, by giving cogent and valid reasons.

15. As far as M.P.No.732 of 2010 in RCA No.345 of 2003 is concerned, the learned Appellate Authority has dismissed the petition holding that each case must be decided on the facts of the particular case and the petitioner has not given any reason for the delay in filing the said document. There is no error in the judgment and order of the courts below warranting interference by this Court.

16. In the result, both the Civil Revision Petitions are dismissed confirming the judgment and decretal order dated 02.02.2013 made in RCA No.345 of 2003 and M.P.No.732 of 2010. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.03.2018

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Index : Yes/No
Speaking/Nonspeaking order

To

1.The VII Judge,
Court of Small Causes,
Chennai.

2. The X Judge,
Court of Small Causes,
Chennai.

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V.M.VELUMANI, J.

rgr



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