

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.1484 of 2007 and
M.P.No.1 of 2007

Othayoth Rameshan

.. Petitioner

vs

1.Shylaja
2.Ranjit
3.Rajitha

.. Respondents

Revision is filed under Article 227 of Constitution of India against the order passed in R.C.A.No.3 of 2004 dated 13.3.2007 on the file of the Additional District Judge, Puducherry.

For Petitioner : Mr.P.R.Dhilipkumar
for M/s.R.Syed Mustafa

For Respondents : M/s.G.Sumitra

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ORDER

This revision is directed against the order of the Rent Control Appellate Authority, Puducherry in R.C.A.No.3 of 2004, dated 13.03.2007, reversing the fair and decretal order of the Rent Controller, Mahe, in H.R.C.O.P.No.9 of 2001, dated 28.08.2003. The

petitioner is the respondent and the respondents are petitioners in H.R.C.O.P.No.9 of 2001.

2. For the sake of convenience, the petitioner is referred to as "*tenant*" and the respondents are referred to as "*landlords*" hereinafter.

3. The landlords have filed H.R.O.P.No.9 of 2001 under Sections 10(2)(1) and 10(3)(a)(iii) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 (hereinafter referred to as "*the said Act*") alleging that the petition schedule building (hereinafter referred to as "*the demised building*") was let out to the tenant for a monthly rent of Rs.725/- for a period of 11 months by the husband of the first respondent and father of respondents 2 and 3 late Uthaman under a lease deed dated 15.02.1992. According to the landlords, the tenant paid rent up to April 2000. The husband of the first respondent died on 04.07.2000.

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4. The case of the landlords is that the tenant committed default in payment of rent from May 2000. Despite landlords repeated demand, the tenant neglected to pay the rent. It is stated that after the demise of Uthaman, the respondents are struggling to meet the daily needs. In order to augment the income, the third respondent

has proposed to start a telephone booth in the demised building and she had also applied to the Telecom authorities, Kannur. In addition to STD booth, the respondents also intended to start a small stationery business in the demised building to meet their livelihood. According to the landlords, other than the demised building, no other suitable building is available to them for doing the proposed business.

5. On 22.01.2001, the landlords issued a legal notice calling upon the tenant to hand over vacant possession with arrears of rent. Despite receipt of the notice, the tenant has not responded. The tenant was in arrears of payment of rent. Hence, the landlords have filed the petition for eviction on the ground of arrears of rent and bona fide need.

6. While admitting the renting of the demised building by Uthaman, husband of the first respondent, the tenant filed a counter stating that there is no bona fide in the petition. It is stated that the tenant was paying rent regularly up to and inclusive of 14.06.2000. The allegation that the tenant had paid rent only up to April 2000 is false. It is stated that the second respondent was working in Bombay. When the tenant tendered rent to the wife of Uthaman, she refused to accept the same. Therefore, the tenant has proposed to send rents through money order and the money order sent by the tenant was also

refused by the first respondent/landlord.

7. According to the tenant, the deceased Uthaman and his wife used to purchase stationery items and other things from the tenant and on completion of every 30 days and on 15th day of every English calendar month, Uthaman and his wife used to verify the accounts and receive balance amount of the monthly rent and issue rent receipts. The monthly rent became due and payable as arrears only because the wife of Uthaman refused to receive the same when directly tendered and/or through money orders. It is also stated that the wife of Uthaman sought to enhance the monthly rent to Rs.1500/- from the month of January 2000, at the time when Uthaman was alive, to which the tenant has not agreed. After the demise of Uthaman, the first respondent demanded to execute a fresh Kachit in favour of her by enhancing the monthly rent at the rate of Rs.1500/- per month. Therefore, the tenant was forced to send money orders. There is no wilful default in payment of monthly rent.

8. It is further stated by the tenant that the allegation that the second respondent proposed to start a telephone booth in the demised building is false and the landlords do not intend to start STD booth and/or stationery business in the demised building. With an ulterior motives and mala fide intention to evict the tenant, the petition

has been filed. The third respondent got married and she was residing separately and she need not require the building. If the third respondent required the demised building for her own occupation, she should have occupied the other building recently let out to third party.

9. The tenant has filed H.R.C.O.P.No.4 of 2001 under Section 8(5) of the said Act permitting him to deposit arrears of rent of the demised building and also to continue to deposit the future rents before the Court.

10. Before the Rent Controller, both petitions (H.R.C.O.P.Nos.9 of 2001 and 4 of 2001) were taken up together and disposed of by a common order dated 28.08.2003. Before the Rent Controller, the landlords have produced 13 documents and the tenant has produced 6 documents. Two documents were marked as Court exhibits. On the side of landlords, 4 witnesses were examined and on the side of tenant, the tenant alone was examined.

11. Upon consideration of the oral and documentary evidence, the Rent Controller, dismissed H.R.C.O.P.No.4 of 2011 filed by the tenant and while dismissing H.R.C.O.P.No.4 of 2001, the Rent Controller directed the tenant to pay the rent to the landlords directly.

The Rent Controller has also dismissed H.R.C.O.P.No.9 of 2001 filed by

the landlords observing that they are not entitled to an order of eviction as prayed for in the petition.

12. Aggrieved by the order in H.R.C.O.P.No.9 of 2001, the landlords have preferred R.C.A.No.3 of 2004 before the learned II Additional District Judge, Pondicherry.

13. Upon consideration of the rival submissions, the Rent Control Appellate Authority, allowed the appeal by setting aside the order of the Rent Controller in H.R.C.O.P.No.9 of 2001 and directed the tenant to vacate the demised building within two months from the date of the order. Aggrieved by the same, the tenant has preferred this Civil Revision Petition.

14. I heard Mr.P.R.Dhilipkumar for M/s.R.Syed Mustafa learned counsel for the tenant and M/s.G.Sumitra, learned counsel for the landlords. Perused the materials available on record.

15. The learned counsel appearing for the tenant submitted that the Rent Control Appellate Authority while reversing the order of the Rent Controller has not given reasoning for allowing the appeal. He submitted that the Rent Control Appellate Authority erred in deciding that there was a wilful default in payment of rent and the

Rent Control Appellate Authority failed to note the compliance of Section 8(5) of the said Act by the tenant.

16. The learned counsel for the tenant argued that the Rent Control Appellate Authority failed to appreciate the money order coupons sent by the tenant and it had also failed to consider Ex.B6 by which the tenant had sought for the Bank Account number to deposit the rent.

17. He further argued that the Rent Control Appellate Authority failed to consider the fact that the wife of Uthaman, who claims the demised building for bona fide requirement pleads ignorance of the fact of any application made for telephone connection and admits as to non-filing of documents substantiating the means for starting a stationery business.

18. Per contra, the learned counsel appearing for the landlords submitted that the rents sent by the tenant through money orders would show that he had committed default in payment of rents and according to the learned counsel, money orders were sent long after the death of Uthaman. She submitted that the landlords have established that the demised building is required bona fide to start telephone booth and the same was proved by documentary evidence.

Therefore, the Rent Control Appellate Authority was right in ordering vacation of the demised building by the tenant.

19. The point that arises for consideration is whether the Rent Control Appellate Authority was right in allowing the appeal in R.C.A.No.3 of 2004 preferred by the landlords.

20. The relationship between landlords and tenant is not in dispute. A reading of pleadings would show that originally the demised building was rented to the tenant by the husband of the first respondent viz., Uthaman on a monthly rent of Rs.725/- for a period of 11 months. The husband of the first respondent died on 04.07.2000 and the same has not been disputed by the tenant.

21. According to the landlords, the tenant paid rents up to April 2000 and thereafter committed default in payment of rents. The same has been disputed by the tenant stating that the tenant was regularly paying rents and he has paid rent up to June, 2000.

22. According to the tenant, both Uthaman and his wife used to purchase stationery items and other things from the tenant and on completion of 30 days and on the 15th day of every English calendar month, they used to verify the accounts and adjust the amounts to be

paid by them from the monthly rent. To substantiate the said plea, the tenant has not produced any evidence.

23. The point advanced by the tenant is that after the death of Uthaman, his wife demanded to execute a fresh Kachit in favour of her by enhancing the monthly rent to Rs.1,500/- per month and since the tenant refused to agree, the first respondent was refusing to receive the rent. It is for the reason, it is stated that rents were sent through money order. Therefore, there is no wilful default committed by the tenant.

24. From the averments and the evidence adduced on both sides, it is seen that the tenant was in arrears of rent for the period of two months before the death of Uthaman. Exs.B4, B8, B10 and B11- money order coupons were produced by the tenant before the Rent Controller to establish that when the landlords refused to receive the rents, he sent the rent through money orders. The money orders said have been sent by the tenant were only after the demise of Uthaman.

25. The Rent Controller held that the deceased Uthaman used to purchase articles from the tenant on credit basis. At the time of receiving the monthly rent by Uthaman and his wife, the amount due by them used to be deducted from the rent. Finding that the deceased

Uthaman and tenant have no regular practice in receiving the rent, the Rent Controller held that the tenant has not committed wilful default in payment of rent.

26. Prior to the demise of Uthaman, the tenant used to deduct the amount due for the purchase of articles from the rent and he used to pay the balance amount to Uthaman. While Uthaman was alive, he has not demanded the tenant to vacate and handover possession of the demised building. As stated supra, it is the case of landlords that after the demise of Uthaman, the tenant committed default in payment of rent. It is also the say of the landlords that after the demise of Uthaman, they struggled for their livelihood and for their survival, the landlords intend to start business in the demised building and hence, the requirement of the demised building was bona fide.

27. In its order, the Rent Control Appellate Authority observed that Uthaman was bedridden prior to his death. In her evidence P.W.1 stated that the tenant was not paying the rent regularly. When the tenant was approached by Ranjit (second respondent herein) along with his neighbour Ajayabalan and Manoj to pay rent, he refused to pay the rent and promised to vacate the premises.

28. It is to be noted that both the Rent Controller and the Rent Control Appellate Authority observed that the rent was only the income for the landlords. The learned counsel appearing for the landlords submitted that the Rent Controller though dismissed the petition filed by the tenant under Section 8(5) of the said Act, directed the tenant to pay rent to the landlords directly.

29. As against the finding in H.R.C.O.P.No.4 of 2001, the tenant has not filed any appeal. On the other hand, the landlords have established before the Rent Controller that the tenant had committed default in payment of rent for two months and that the tenant has committed default in payment of rents after July 2000. The Rent Control Appellate Authority held that the money orders were sent only in December 2001 and the delay in sending the rent was not properly explained by the tenant. This Court is of the view that the aforesaid finding of the Rent Control Appellate Authority is based on material documents and also upon analysis of the evidence adduced on both sides.

30. As far as the ground of bona fide requirement of the demised building is concerned, the landlords alleged the demised building was required for the purpose of self-employment by way of starting STD booth and stationery business. It is pleaded by the

landlords that they have submitted application before the Telecom Commercial Officer, Thalacherry for starting STD both in the demised building and the Telecom Commercial Officer, Thalacherry issued acknowledgement for the receipt of the application on 01.02.2001 (Ex.A6). Though the said allegation was denied by the tenant, to rebut the same, he has not filed any documents.

31. In her evidence, P.W.1 stated that after the death of her husband there is no income for their livelihood and, therefore, they proposed to start a small stationery business in addition to STD booth in the demised building. She had also deposed that except the demised building, no other suitable building was available for them to start the business. In her evidence, P.W.1 stated that her daughter Rejitha, who was unemployed, wanted to run the business in the demised building.

32. The learned counsel for the tenant submitted that the landlords 2 and 3 are owning another building for rent and the same could be used as business premises, which was leased out to one Majeeth. In order to establish that the landlords are owning other buildings, the tenant has not filed any documents, but for making a bald allegation.

33. As rightly observed by the Rent Control Appellate Authority, it is not for the tenant to dictate the terms to the landlord as to which building the landlord should occupy for business. In the case on hand, the landlords have stated that for their livelihood they want to start business in the name of the unemployed daughter as well as the wife of Uthaman. From the oral evidence adduced on the side of the landlords, I find that the landlords have established that they intend to start STD booth in the demised building, for which, the landlords have filed application before the Telecom Commercial Officer, Thalacherry.

34. When a landlord asserts that he/she requires the building for his/her own occupation, the Rent Controller shall not proceed on the presumption that the requirement was not bona fide. When other conditions of the clause are satisfied and when the landlord shows a *prima facie* case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide.

35. In the counter filed before the Rent Controller, the tenant stated that the requirement pleaded in the petition was with an ulterior motive and with malice aforethought to evict the tenant and to let out the building to a third party for higher rent.

36. At this juncture, it is pertinent to refer to the decision in ***S.V. Janardanam and another v. D.Kivraj Sowkar and others***, reported in **2002 (2) LW 611**, wherein it has been held as under:

"14. It is now well settled that when an application is filed under Section 10(3)(a)(i) and 10(3)(a)(iii) and the requirements of the provisions are satisfied, it is not for the tenant to say that the property is suitable or not suitable to the petitioners' requirement. Further when the landlord who owns the property filed an application under Sections 10(3)(a)(i) and 10(3)(a)(iii), the authorities under the Rent Control Act have to draw a presumption in favour of the bona fide requirement of the landlord. When such being the legal position and particularly when the requirement of the Section has clearly been made out in the petition, which has been corroborated by the oral testimony of P.Ws.1 and 2 and also further innocuously admitted in the evidence of R.W.1 to the effect that the petitioners are doing their business in a rented premises along with their father for the past ten to fifteen years, and they are having experience in doing business and they have purchased the property, they are not owning any other property of either nature, I am of the considered view that the requirement is only a bona fide requirement. The word "mala fide" is not a meaningless jargon. It has its own connotations. The mala fide intention has to be gathered from the entire reading of the petition as well as the evidence adduced in support of the case of petitioners. If so gathered as stated above, it has to

be concluded that the requirement of the petitioners is bona fide."

37. The landlords have filed the petition under Section 10(3)(a)(iii) of the said Act and the requirement of the provisions are satisfied by the landlords. The tenant has no right to say that the demised building was not suitable for their business. As stated supra, in my firm view, the requirement of the landlords is bona fide.

38. It is seen that on 27.04.2007, this Court granted interim stay in M.P.No.1 of 2007 on condition that the tenant shall deposit a sum of Rs.1500/- to the credit of R.C.O.P.No.9 of 2001 on the file of the learned Rent Controller, Mahe, within a period of six weeks, failing compliance, the order of stay was directed to be vacated. The tenant has failed to produce any record to show that the conditional order of this Court dated 27.04.2007 was complied with. The landlords have also not produced any materials to show that the conditional order was not complied with by the tenant.

39. For the reasons stated supra, I am of the view that the prayer of the landlords is genuine and based on bona fide requirement. The reasoning given by the Rent Control Appellate Authority reversing the order of the Rent Controller is based on oral and documentary

evidence. There is no illegality or perversity in the order of the Rent Control Appellate Authority. There is no valid ground to interfere with the order of the Rent Control Appellate Authority and the Civil Revision Petition is liable to be dismissed.

40. The Civil Revision Petition is dismissed. No costs. The tenant is directed to vacate the demised building and hand over possession of the same within a period of three months from the date of receipt of a copy of this order. Consequently, M.P.No.1 of 2007 is closed.

09.07.2018

Note: Issue order copy on 16.07.2018

vs

Index : Yes

Internet : Yes

Speaking order

To

1. The Rent Control Appellate Authority,
(II Additional District Judge),
Pondicherry.

2. The Rent Controller,
(Sub-Judge),
Mahe.

M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
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and
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