

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.609 of 2015

1.K.V.Rajan

2.R.K.Yeshoda

.. Petitioners

Vs.

1.The President

Mahe Consumers Co-operative Stores Ltd.,
No.P.129, Mahe.

2.Mahe Consumers Co-operative Stores Ltd.,

No.P.129, Mahe, Rep. By Administratrix,
Deputy Director of Agriculture, Mahe P.O., Mahe.

3.The Secretary,

Mahe Consumer, Co-operative Stores Lt.,
No.129, Nahe, P.O.Mahe.

.. Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act 1969, against the judgment and decree dated 30.07.2014 made in R.C.A.No.2 of 2012 on the file of the II Additional District Judge, Pondicherry, setting aside the fair and decreetal order dated 05.08.2011, made in H.R.C.O.P.No.6 of 2009 on the file of the learned Court of Rent Controller, Mahe.

For Petitioners : Mr.Manoj Sreevalsan

For Respondents : Mr.J.Kumaran
Government Advocate (P)

ORDER

This Civil Revision Petition is filed against the judgment and decree dated 30.07.2014 made in R.C.A.No.2 of 2012 on the file of the II Additional District Judge, Pondicherry, setting aside the fair and decretal dated 05.08.2011, made in H.R.C.O.P.No.6 of 2009 on the file of the learned Court of Rent Controller, Mahe.

2.The petitioners are landlords and respondents are tenants. The petitioners filed H.R.C.O.P.No.6 of 2009 on the file of the Court of Rent Controller, Mahe, against the respondents for eviction on the ground of wilful default and owners' occupation. According to the petitioners, the respondents paid rent up to February 2009 and thereafter, failed to pay the rent. The first respondent is Ex-service man. He wants to start a Bakery and Stationery business in the petition premises. The petitioners are not occupying any other non-residential building of their own. The petitioners issued notice dated 21.04.2009 to the respondents. The respondents sent reply with false averments. In the circumstances, the petitioners have come

out with the present H.R.C.O.P for the relief of eviction of the respondents.

3.The respondents filed counter statement and denied various averments made by the petitioners. According to the respondents, they tendered rent to the petitioners. The petitioners refused to receive and also refused to furnish the bank details and therefore, the respondents could not pay the rent. The petitioners are owning another room adjacent to the petition premises and they have let it out to another tenant. Petition premises under occupation of the respondents is not suitable for the business of the petitioners and prayed for dismissal of the H.R.C.O.P.

4.Before the learned Rent Controller, the first petitioner examined himself as P.W.1 and marked 6 documents as Exs.P1 to P6. On behalf of the respondents, one Mr.P.Venugopal was examined as R.W.1 and marked 7 documents as Exs.R1 to R7.

5.The learned Rent Controller, considering the pleadings oral and documentary evidence, ordered eviction on both the grounds.

6.The respondents filed R.C.A.No.2 of 2012 on the file of the II Additional District Court, Puducherry.

7.The learned Appellate Authority independently considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, by the judgment dated 30.07.2014, allowed the appeal, setting aside the order of the learned Rent Controller passed in H.R.C.O.P.No.6 of 2009. The learned Appellate Authority, considering the evidence of first petitioner as P.W.1 held that petitioners have deliberately refused to receive the rent in order to evict the respondents and respondents have taken all the efforts to pay the rent. The learned Appellate Authority also held that the petitioners are owning adjacent room, wherein they can evict other tenant. Petitioners have not even made any arrangement for running the business and also held that the claim of the petitioners for owners' occupation is not bonafide.

8.Against the said judgment and decree dated 30.07.2014 made in R.C.A.No.2 of 2012, setting aside the fair and decretal order dated 05.08.2011, made in H.R.C.O.P.No.6 of 2009, the present Civil Revision Petition is filed by the petitioners.

9. Heard the learned counsel for the petitioners as well as the learned Government Advocate (P) appearing for the respondents and perused the materials available on record.

10. According to the petitioners, the respondents paid rent up to February 2009 and subsequently, failed to pay the rent. According to the respondents, they have tendered the rents. Even the money order sent by the respondents were refused by the petitioners. The respondents issued a notice calling upon the petitioners to give particulars of the bank account so that they can deposit the rent into bank account. The learned Rent Controller considering the pleadings and evidence, held that respondents have committed wilful default. The learned Rent Controller has come to this conclusion based on the fact that respondents called upon the petitioner to furnish the bank details only after the petitioners sent notice dated 21.04.2009 calling upon the respondents to surrender the vacant possession of the petition premises. The learned Rent Controller also took note of the fact that the respondents have not followed the procedure contemplated under Section 8 of the Rent Control Act by filing petition to deposit the rent into Court. Further, the respondents have paid 22 months rent in one lump-sum.

11.As far as the owners' occupation is concerned, the petitioners have let out another portion in the year 2008 and sought the petition premises for their occupation in the year 2009. It is not the case of the respondents that petitioners are owning and in occupation of any other non-residential building wherein they are carrying on their business. The learned Rent Controller considering the judgments relied on by the counsel for the petitioners, ordered eviction on both the grounds. The learned Appellate Authority reversed the well considered order of the learned Rent Controller based on the erroneous reasoning. The learned Appellate Authority erred in holding that respondents have taken all the steps to pay the rent and petitioners refused to receive the rent only to evict the respondents. The learned Appellate Authority failed to consider the fact that after calling upon the petitioners to furnish the bank account, the respondents failed to take further steps by filing a petition to deposit the rent. The learned Appellate Authority failed to see that respondents have paid rent of 22 months in one lump-sum after petitioners filed H.R.C.O.P. As far as the owners' occupation is concerned, the learned Appellate Authority has rejected the claim of the petitioners on the ground that respondents are running Co-

operative Stores and if the petitioners need building for their own use, they can evict the other tenant. The learned Appellate Authority further held that petitioners have not made arrangements for running the business. The reasoning of the learned Appellate Authority for holding that requirements of the petitioners for owners' occupation is not bonafide is erroneous and invalid. The learned Appellate Authority has not properly appreciated the materials on record and without any valid reason, reversed the order of the learned Rent Controller. It is not for the tenant to dictate terms to landlord as to which property will be suitable for his business. In view of the above facts, the judgment of the learned Appellate Authority is liable to be set aside and is hereby set aside. The order of the learned Rent Controller is restored and confirmed.

12.In the result, this Civil Revision Petition is allowed. No costs.

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Index :: Yes
Internet :: Yes/No
gsa

V.M.VELUMANI,J.

gsa

To

1. The II Additional District Judge,
Pondicherry.
2. The Rent Controller
Mahe.



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