



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.04.2018

Delivered on : 12.06.2018

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CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD) No.1867 of 2013

1.PSUA Nowsath Ali

2.PSUA Nasar Ali

3.PSUA Zahir Ali

: Revision Petitioners / landlords

vs.

Raseed Mydeen

: Respondent / Tenant

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decreetal order of the Rent Control Appellate Authority (Principal Subordinate Judge), Dindigul, dated 14.08.2013, in RCA No.4 of 2013 confirming the fair and decreetal order of the learned Rent Controller (Principal District Munsif), Dindigul, dated 08.01.2013 in RCOP No.31 of 2010.

For Petitioners

:Mr.Raguvaran Gopalan

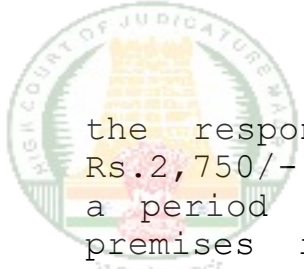
For Respondent

:Mr.J.Lawrence

ORDER

The revision petitioners are the landlords in R.C.O.P.No.31 of 2010, on the file of the Rent Controller (Principal District Munsif), Dindigul. The respondent herein is the tenant in respect of the property owned by the revision petitioners.

2.The revision petitioners filed R.C.O.P.No.31 of 2010 before the Rent Controller (Principal District Munsif), Dindigul, for evicting the respondent on the ground of wilful default and for their own occupation. It is not in dispute that the premises was let out to the respondent for carrying on business and that the present rent is Rs.2,750/-. It is the case of the revision petitioners that the premises was owned by the father of the revision petitioners and the respondent was carrying on business from January'1992, as tenant under the revision petitioners' father. Since the father of the revision petitioners died, the revision petitioners and their mother are taking care of the premises. It is the further case of the revision petitioners that



the respondent, though agreed to pay rent at the rate of Rs.2,750/- from 2010, had committed default from February'2010 for a period of 22 months. It is further stated that the demised premises is required for the revision petitioners for doing finance business by advancing loan for two wheelers under hire purchase agreement. It is also admitted that the respondent filed a suit in O.S.No.229 of 2010 before the District Munsif Court, Dindigul, for restraining the revision petitioners from interfering with the peaceful possession of the respondent otherwise than due process of law.

3.The respondent herein filed a detailed counter disputing the default in payment of rent. It is the case of the respondent that he has been paying rent regularly and obtained receipt for payment of monthly rent on regular basis. The respondent further contended that the mother of the revision petitioners was receiving rent and issuing receipts. The respondent further contended that the mother of the revision petitioners refused to receive the rent when it was tendered by the respondent in the first week of April'2010, ie., the rent payable for the month of March'2010. Since the mother of the revision petitioners refused to receive the rent, the respondent stated that he sent the rent on 06.04.2010, by money order and that the same was also refused by the mother of the revision petitioners. The respondent therefore, stated that he was constrained to send the rent by way of demand draft by registered post. Though demand draft was accepted, it is further stated that no receipt was given. It is further stated by the respondent that subsequently he sent a demand draft dated 06.05.2010 by registered post and the same was refused. It was, in the stated circumstances, the respondent contended that he was constrained to file a petition in R.C.O.P.No.17 of 2010 before the Rent Controller (Principal District Munsif), Dindigul, for depositing the rent in Court and the said petition was allowed on 02.02.2011. During the pendency of R.C.O.P.No.17 of 2010, it is contended that the tenant was depositing the rent without any default and that the rent was deposited continuously as permitted by the Rent Controller in R.C.O.P.No.17 of 2010. The respondent, therefore, contended that there was no wilful default.

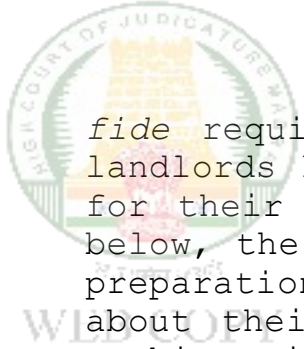
4.It is also the specific case of the respondent that he is running a medical shop in the demised premises in the name and style of "M/s.Shiba Medicals". It is the further case of the respondent that the third petitioner herein is also running a medical shop in the name and style of "M/s.A.J. Medicals" and that it is only with a business motive, the revision petitioners have filed the petition to evict the respondent unlawfully. It is also the case of the respondent that the requirement is not *bona fide*, as the revision petitioners have other shops in the same complex and that the eviction petition was filed with a *malafide* intension to vacate the respondent only due to business rivalry.



5.The Rent Controller after elaborately discussing the documents filed by the respondent herein, found that the respondent was paying the rent regularly and have not committed any default. Having regard to the fact that the petition filed by the respondent in R.C.O.P.No.17 of 2010 was allowed, after referring to the fact that the respondent has been depositing the rent regularly pursuant to the order in R.C.O.P.No.17 of 2010 and that he has not committed any default, the contention of the revision petitioners that the respondent had committed default was rejected. Since the landlords have not produced any document or let in any evidence to prove their *bona fides*, the Rent Controller further held that the intention of the landlords to vacate the respondent is due to business rivalry. The Rent Controller, having regard to the fact that the landlords have not even stated about any preparatory works for commencing the finance business or about their capacity to invest, ultimately held that there is no *bona fide* requirement for own use. Aggrieved by the same, the revision petitioners have preferred an appeal in R.C.A.No.4 of 2013, before the Rent Control Appellate Authority (Principal Subordinate Judge), Dindigul. The appellate authority also confirmed the findings of the Rent Controller and dismissed the appeal. Aggrieved by the concurrent findings of the authorities below, the revision petitioners / landlords have preferred the above civil revision petition.

6.The learned Counsel for the revision petitioners / landlords fairly conceded that the revision petitioners have not made out a case for evicting the respondent on the ground of wilful default. The learned Counsel for the revision petitioners however, submitted that the Rent Controller as well as the Appellate Authority have not considered the question of *bona fides* keeping in mind the settled principles of law that the landlord is not required to prove that he is actually carrying on business to order eviction on the ground of owner's occupation. The learned Counsel for the revision petitioners further submitted that the pharmacy business is run exclusively by the third petitioner and that the two wheeler finance business is proposed to be started by all the revision petitioners. It is further submitted that merely because, one of the revision petitioners is running a business, which is identical to that of the tenant, the *bona fides* of the landlords cannot be decided against the landlord. When the primary question to be answered in the Rent Control proceedings is about the *bona fides*, it is submitted that the Rent Controller as well as the Rent Control Appellate Authority have failed to consider the issue taking into account the relevant facts.

7.The learned Counsel for the revision petitioners further submitted that the landlords need not prove that they are carrying on actual business before seeking eviction on the ground of *bona*



fide requirement for their business. The revision petitioners / landlords have to prove that the premises is required *bona fide* for their own business. In this case, as observed by the Courts below, the revision petitioners have not stated anything about the preparation done by the landlords to commence any business. Even about their ability to mobilise funds to commence the business, nothing is stated in the petition. Even before the Rent Controller, the landlords have not produced any material to show that they had made some arrangements to commence finance business by lending money for purchasing two wheelers under hire purchase agreement. The *bona fides* of the landlords can not readily be inferred from mere asking. The landlords have to prove that their requirement is *bona fide*. Even though this Court has held in number of judgments that it is not necessary for the landlord to prove that he is carrying on business as on the date of petition, the landlords have to prove *bona fides*. The revision petitioners / landlords have not even stated about their financial soundness to advance loan. No whisper about any preparatory works to start business. The landlords have to obtain licence for running finance business.

8. Having regard to the concurrent findings of the authorities below, this Court find no ground or valid reason to interfere with the findings of the Courts below, especially when the findings of the Courts below are well founded and supported by reasons. Having regard to the scope of Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this Court see no ground to interfere with the findings of authorities below.

9. As a result, this civil revision petition is dismissed and the order of the Rent Control Appellate Authority (Principal Subordinate Judge), Dindigul, dated 14.08.2013, in RCA No.4 of 2013 confirming the fair and decreetal order of the learned Rent Controller (Principal District Munsif), Dindigul, dated 08.01.2013 in RCOP No.31 of 2010, is affirmed. However, there is no order as to costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Rent Control Appellate Authority
(Principal Subordinate Judge), Dindigul.

<https://hcservices.accounts.gov.in/hcservices/>
2. The Rent Controller (Principal District Munsif), Dindigul.



3. The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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+1cc to Mr.K.Prabhakar, Advocate Sr.No.67852

+1cc to Mr.J.Lawrence, Advocate Sr.No.67830

cmr

VB/SKN/RSK/SAR3/10.07.2018/5P/7C

order made in
C.R.P. (NPD) (MD) No.1867 of 2013
12.06.2018