

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.3056 of 2011

1. Thangamani
2. P.R.Baby
3. R.Jayanthi
4. Babu

... Petitioners

Vs.

1. V.Vasanthi
2. V.Gurukrishnan

... Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the orders dated 17.09.2010 passed in RCA No.490 of 2006 by the Rent Control Appellate Authority/VII Judge, Court of Small Causes, Chennai reversing the orders dated 10.02.2006 passed in RCOP No.1250 of 2005 by the Rent Controller / XIII Judge, Court of Small Causes, Chennai.

For Petitioners : Dr.P.Vasudevan

For Respondents : Mr.Ashokmenon

ORDER

This revision petition is filed against the orders passed by the Rent Control Appellate Authority in RCA No.490 of 2006 reversing the orders of the Rent Controller in RCOP No.1250 of 2005.

2. Briefly the facts are these. The suit property is owned by the respondents/landlords and the father of the revision petitioners was a tenant for the shop being a part of the premises No.21, Muthiyalu Street, Purasawalkam, Chennai-7 on a monthly rent of Rs.750/- and doing a business of sale of tea, coffee, cool drinks etc. The respondents wanted the premises for their own occupation as the 2nd respondent who is the adopted son of the first respondent wants to have a xerox shop after his studies. The respondents feel that the shop admeasuring 117 sq.ft. could be ideal for a xerox shop and also declared that they have no other own property. The remaining larger portion of the entire building is let out to one Vasantha Lodge for lodging purpose run and managed by one Sripathi Bhat. Hence, the respondents filed RCOP No.1250/2005 for evicting the father of petitioners/tenant on the ground of "requirement for own occupation".

3. The tenant had contested the claim of the respondents/ landlords by contending that the landlords did not substantiate their claim for own occupation. He also contended that "mere desire" to do a business alone would not suffice to get him evicted. According to the tenant, the space was too inadequate for the proposed xerox shop. The further contention of the tenant was that he was in the occupation of the shop for more than 30 years and the water supply was cut off to him by the landlords for which RCOP No.257 of 2001 was filed by the tenant and though there was a government order to restore the water supply, it was not complied with till date. According to the tenant, the landlords were acting at the behest of the other tenant, who is running the lodge. In such circumstances, the intention of the landlords was malafide and mischievous. The tenant also reiterated the likely damage and loss he may incur in case of the eviction as he would lose his only source of livelihood and that is over weighed the benefit accruing to the landlords.

4. The tenant expired in 2010 and the his Legal heirs are defending the case.

5. The Rent Controller had elaborately dealt with the documentary evidence and other oral evidence to conclude that the

documents to substantiate the intention of the landlords were dated subsequent to the date of the filing of RCOP and therefore, was not convinced with the ground of "own occupation" as claimed by the landlords.

6. The landlords preferred an appeal in RCA No.490 of 2006 and in the appeal, the Rent Control Appellate Authority opined that it was not "mere desire" to do business but the documentary evidence in the form of quotation for purchase of the photo copier, computer and the application to the bank for loan are all more than enough to substantiate the claim of the landlords. The Rent Control Appellate Authority relied on the decision in *S.N.Vairavel Vs. P.Sundaram reported in 2001(4) CTC 710*, in which it was ruled that one need not carry on business at the time of filing of petition and even one step, if proved, was taken, towards the intention to do business, that would suffice.

7. In the instant case, the Rent Controller rejected the documents since they were dated subsequent to the date of RCOP. The Rent Control Appellate Authority opined that there is no bar on taking cognizance of documents with subsequent date. It relied on the ruling of this court in *A.Mohand and other Vs. Tmt. Kamalam Ammal and others reported in MLJR 2000 page 62*. Thus, the appeal was allowed and the

decision of the Rent Controller was set aside.

8. This petition is against the decree and judgment of the Rent Control Appellate Authority. The bonafide nature or otherwise of the requirement of the shop for the landlords proposed business is the bone of contention. The landlords have adduced documentary evidence for their intention to start a business. The tenant has stated that the shop may be too small for a xerox shop. This contention is untenable. Another objection of the tenant is the date on the quotation for purchase of the xerox machine, computer and the bank loan application. It is well settled that any subsequent event can be taken into account before the final adjudication of the matter by the tribunal, if the said event has a material bearing on the landlords' right to evict.

9. One aspect which has not been dealt with by both the courts is whether the hardship which the tenant would undergo if evicted, would far outweigh the advantage conferred to the landlords. The plea of the revision petitioners that the tea shop was the only source of income for the family and any eviction at this juncture would cause irreparable loss to the family has substance in it. The original tenant is no more and has left his family members including his widow and children to fend for themselves.

I am inclined to believe that the balance of convenience is definitely in favour of the tenants. The order of eviction will result in havoc to the tenants and the havoc so caused would far outweigh the advantage it may confer on the landlords. Therefore, the civil revision petition is liable to be allowed.

10. In the result,

(i) The civil revision petition is allowed. No costs.

(ii) The orders passed by the Rent Control Appellate Authority/ VII Judge, Court of Small Causes, Chennai dated 17.09.2010 RCA No.490 of 2006 is set aside.

(iii) The orders dated 10.02.2006 passed in RCOP No.1250 of 2005 by the Rent Controller / XIII Judge, Court of Small Causes, Chennai is upheld.

सत्यमेव जयते

01.08.2019

Index : Yes/No

Internet : Yes/No

Speaking/non-speaking order
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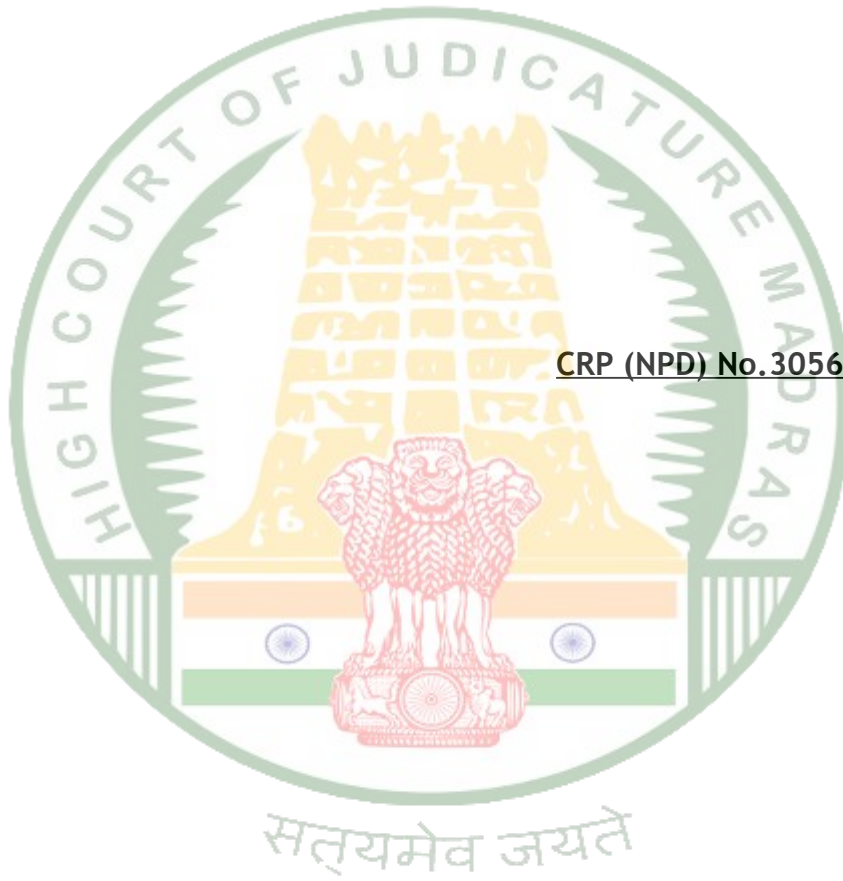
To

1. The the Rent Control Appellate Authority/VII Judge,
Court of Small Causes, Chennai.

2. The Rent Controller / XIII Judge,
Court of Small Causes, Chennai.

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R.HEMALATHA,J.
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