

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2019

PRONOUNCED ON : 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.1892 of 2015

AND M.P.NO.1 of 2015

S.Rajasekara Rao

... Petitioner

vs.

R.Mohan

... Respondent

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 28.11.2014 made in R.C.A.No.36 of 2013 on the file of VII Court of Small Causes, Chennai, confirming the order passed by the Rent Control Appellate Authority, (XIII Court of Small Causes) Chennai.

For Petitioner : M/s.V.Girish Kumar

For Respondent : M/s.K.Sukumaran

ORDER

The present Civil Revision Petition is directed against the order dated 28.11.2014 passed by the VII Small Causes Court in R.C.A.No.36 of 2013 sitting as the Rent Control Appellate Court.

2.By the impugned order the Rent Control Appellate Court has partly allowed the appeal filed by the respondent-landlord under Section 10(3)(a)(iii) for own accommodation and disallowed the appeal against rejection of prayer for evicting the petitioner-tenant under Section 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for the alleged act of waste.

3.The respondent landlord had earlier filed R.C.O.P.No.2649 of 2008 before the 13th Small Causes Court to evict the petitioner/tenant under Section 10(2)(iii) for alleged acts of waste by the petitioner and under Section 10(3)(a)(iii) for own accommodation of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

4.The Rent Controller of by an order dated 09.12.2011 in R.C.O.P.No 2649 of 2008 dismissed the said petition filed by the respondent-landlord and held that the respondent-landlord had neither made out a case for act of waste against the petitioner-tenant nor the respondent-landlord had established that the rented premises was *bonafide* required for his own occupation under Section 10(3)(a)(iii) of the aforesaid Act.

5.The Rent Controller has noted that the petitioner-tenant was running jewellery shop in the rented premises and merely because the petitioner-

tenant had constructed a locker room did not amount to act of waste under Section 10 (2) (iii) of the aforesaid Act.

6.As far as own use and occupation under Section 10(3)(a)(iii) of the Act is concerned, the Rent Controller has considered the evidence of the respondent landlord wherein he has deposed that he has been doing business for the past 5 years from verandah of his residential portion in the first floor of the same building measuring 500 sq.ft which was admittedly more than the rented premises of 480 sq.ft rented out to be petitioner-tenant.

7.The Rent Controller has concluded that the reason given by the respondent-landlord was not sufficient to warrant eviction of the petitioner-tenant under the aforesaid provision.

8.On appeal the Rent Control Appellate Court vide impugned order has upheld the contention of the respondent-landlord qua eviction under Section 10(3)(a)(iii) of the Act.

9.As far as putting up of locker is concerned it has been held that mere construction of a locker room utility of the building had not affected building and therefore no case for eviction on that ground.

10.It was held that the act of waste should impact the value and utility of the building permanently and to a substantial degree and mere putting of a locker room did not impact the value and utility of the building permanently.

11.The Rent Control Appellate Court granted relief to the respondent-landlord under Section 10(3)(a)(iii) of the Act based on the deposition of the respondent-landlord that he vacated the rented premises 5 years back from where he was carrying on business and had requested the petitioner-tenant to vacate rented premises and considering the fact that he was running his business from the verandah of his residential portion.

12.The Rent Control Appellate Court has held that the petitioner- tenant cannot expect the respondent-landlord to run the business from the verandah portion of his residential house. The Rent Control Appellate Authority has therefore set aside the order of the Rent Controller denying the relief under Section 10(3)(a)(iii) of the Act to the respondent-tenant.

13.Aggrieved by the order of the Rent Control Appellate Court, the petitioner-tenant has referred this Civil Revision Petition.

14.The present Civil Revision Petition is restricted to correctness, legality and propriety of the order passed by the Rent Control Appellate Court qua relief granted under Section 10(3)(a)(iii) to the respondent-landlord as no separate revision petition has been filed by the respondent-landlord as far as denial of the relief under Section 10 (2) (iii) for the alleged acts of waste. Thus, to that extent the finding of the Rent Controller stands affirmed in absence of further challenge.

15.Heard learned counsel for the petitioner and the respondent and considered the records of the case and case laws cited.

16.It was argued that the respondent was capable of running his business from the verandah of the first floor of the building as has been done for five years admitted by respondent-landlord in his deposition and therefore the requirement was not bona fide and therefore the order passed by the Rent Control Appellate Court allowing the relief under section 10(3)(a)(iii) requires an interference.

17. The learned counsel for the petitioner relied on the following cases:-

- i) **A.P.Swamy versus V. Kunjthapadam** (1994) 2 MLJ 436;
- ii) **Thilagaraj Match Works versus C Sundaram** 1994 (2) MLJ 436

18.The learned counsel for the respondent has merely submitted that the order of the Rent Control Appellate Court was well reasoned and requires no further interference.

19.I have considered the records of the case and the case laws submitted on behalf of the petitioner and the respondent and the rival submissions.

20.The short point that arises for consideration is whether the eviction ordered by the Rent Control Appellate Court can be justified or not in the fact and circumstances of the case and whether the said Rent Control Appellate Authority committed any mistake while granting relief to the respondent-landlord?

21.As far as maintainability of the present Civil Revision Petition is concerned, I am of the view that the petitioner-tenant was indeed entitled to invoke the jurisdiction of this court under section 25 of Act.

22.The petitioner as a tenant can indeed question the legality, proprietary and correctness, of the order passed by the Rent Control Appellate Court under Section 25 of the Act.

23.However, whether the Rent Control Appellate Court had correctly passed the order is another matter and would depend upon the evidence on record.

24.The petitioner was a tenant and was in possession of the rented premises measuring 480 sq.ft pursuant to a rental agreement dated 06.04.2000.

25.The petitioner-tenant was running a jewellery shop from the aforesaid shop and initially paying a rent of Rs.5000/- p.m to the respondent-landlord. The rental agreement was renewed from time to time and after the last renewal on 23.08.2007, the petitioner was paying a rent of Rs 8,100/- p.m to the respondent -tenant . There has been no further renewal.

26.The respondent-landlord on the other hand was doing other agarbathi business (scented sticks) from a rented premises at No 14 . Tanjore Road, T Nagar Chennai 17 and had vacated the same at the request of his landlord and therefore requested the petitioner-tenant to vacate rented premises. However, the petitioner-tenant resisted same and therefore the above proceedings came to be initiated.

27. In **Thilagaraj Match Works vs C Sundaram** 1994 (2) MLJ 436 cited by the learned counsel for the petitioner, it was held that there should be an honest need of the landlord to occupy the premises in question and not a mere desire of the landlord.

28. The court has also held that bona fide is primarily a subjective element and there must exist essential ingredients to establish that the landlord has an honest need to occupy the premises in question.

29. In the **Bata India Limited vs V.M.r.Manickam** 2004 (1) CTC 94 it was held that for a landlord to maintain a petition under Section 10(3)(a)(iii) of the "Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for "Owners occupation" following ingredients are necessary:-

- (a) building should be non-residential in character
- (b) landlord should be carrying on business on date of application for eviction ;
- (c) landlord should not be occupying any building belonging to him ;and
- (d) claim should be bonafide and not found to be indirect or false attempt to evict tenant to obtain more rent or to harass tenant.

30. There the court held that the landlord was in occupation of his own building near the new bus stop to an extent of 12000 sq.ft for carrying on his business in which he was a partner. Therefore he is deemed to be in occupation of his own premises for non-residential purposes and cannot get another building to carry on the same business, while he is in occupation of his own building.

31. In **K.Rengswamy Naidu vs Tamil nadu Handlooms** (1982) 1 MLJ 130, while dealing with an identical situation, the Court relied upon an unreported decision of this Court in **T.K. Krishna Iyer vs Karur Vysa Bank Ltd. Coimbatore** and held that under section 10(3)(a)(iii) the landlord must be carrying on business at the time of his claim for eviction so as to enable them to put forward a petition for eviction under the aforesaid provision.

32. In **T.K. Krishna Iyer vs Karur Vysa Bank Ltd. Coimbatore** it was held that the phrase used viz., "**a business which he is carrying on**" in Section 7(3)(a)(iii) would apply only to cases where a person is conducting a business in a building which is not his and which he is bound to vacate under an order or decree of a civil Court or any other authority. Since the landlord who claimed that he required the premises for his own business had not done any act in the way of carrying on or preparing for carrying on a business as hotel proprietor on the date on which he filed the application, the landlord was held to be not

entitled to an order of eviction. Even though he wanted to become a hotel proprietor again it would not render him on the date on which he made the application a person who was carrying on a business as hotel proprietor. He was on that date a person who had done business in the past as a hotel proprietor and who was intending to do business in the future as hotel proprietor. Such a person cannot be said to be carrying on a business. To hold it otherwise would be to delete from Section 7(3)(a)(iii) the words "which he is carrying on", a function which the Court is powerless to perform. The learned single Judge held that the landlord was not entitled to evict the tenant from the premises the landlord had purchased.

33. Though not cited, in an unreported decision rendered on 12.2.2008 in CRP (NPD) 1095-1097 of 2004 in **N Jagadeesan vs K Selvam**, the court held as follows:-

"9. It is to be pointed out that Section 10(3)(c) will not govern Section 10(3)(a)(iii). In fact, the landlord should be in occupation if he seeks the aid of Section 10(3)(c) for additional accommodation. The scope of Section 10(3)(a)(iii) is different from that of Section 10(3)(c) each Section will come into play under different contexts. It cannot be gainsaid that Section 10(3)(c) will apply only incase where the landlord is occupying a building which is his own. As a matter of fact, the occupation of landlord and tenant in one structure is seen as per Section 10(3)(c), an exception as per Section 10(3)(c) is made out in a case where the landlord is occupying a portion of the building, which is also occupied by the tenant in another portion. Under Section 10(3)(c) if it is a non-residential building, the landlord can obtain additional accommodation only for the purpose of

his business which he is carrying on as per decision 1980 T.L.N.J. 145 at 154 Tirupathi Nadar V. Kantha Rao.”

34. There on facts, the Court held that, the requirement of the rented premises for the starting the business for his son on the rented premise shall be construed only for additional accommodation under Section 10(3)(c) of the Act. Though relief was denied to the landlord on considering the comparative hardship of the tenant.

35. It was however held that it will suffice if the landlord takes one significant forward step or has taken some steps for the purpose of carrying on business and the the term 'carrying on business' does not mean also that all steps required for carrying on business should have been taken and it is enough that if one step is taken and established as far as the present case is concerned, the commencement of electrical business by the revision petitioner/landlord second son does not need elaborate preparatory arrangements being made thereto yet there was no satisfactory explanation on the side of the revision petitioner as to why he is not utilising the shop No.1 and 2 which were vacant and adjacent ones, wherein the revision petitioner/landlord can commence the electrical business of his second son.

36.The Court there held that Section 10(3)(C) contemplates both the landlord and the tenant in the same building and where the landlord requires

the rented premises for additional accommodation and therefore seeks eviction of the tenant and therefore it cannot be gainsaid that Section 10(3)(C) will not govern Section 10(3)(a)(iii).

37. Thus, Section 10(3)(a)(iii) can be invoked even where the landlord or any member of his family are occupying a portion of the building where a portion has been rented to a tenant. The only requirement under Section 10(3)(a)(iii) is that such landlord or any member of his family for whom rented premises is required should not occupying any other building which belongs to him/her in the town or village concerned for doing business. This view is in line with the reasoning in **Bata India Limited vs V.M.r.Manickam** 2004 (1) CTC 94.

38. Though, the ratio in **N.Jagadeesan vs K.Selvam** answers the issue in favour of the respondent-land lord, I am of the view that the narrow view that Section 10(3)(a)(iii) will apply only where the landlord is not in occupation of any portion of the building needs further clarification.

39. To clarify the position, relevant portion of the said section is reproduced below:-

Section 10 (3) (a).

The landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the

landlord and possession of the building-

(i)

(ii)

(iii) in case it is any other non-residential building, if the landlord or [any member of his family] is not occupying for purposes of the business which he or [any member of his family] is not occupying any such building in the city, town or village concern which is his own:

40. A reading of the underlined portion from in Section 10(3)(a)(iii) bring out the scope of Section 10(3)(a)(iii) of the Act.

41. Unless, the petitioner-tenant comes out with clear evidence that the requirement were motivated with a view to rent out the same premises to the 3rd party for a higher rent, the bona fide of the landlord cannot be questioned.

42. In this case admittedly, the respondent-landlord had vacated the rented premises from where he was earlier carrying on agarbathi business and wanted to petitioner tenant to vacate the rented premises to shift his business there. The petitioner-tenant has not brought out any other evidence to suggest that the respondent-landlord was in occupation of any other building of his for doing business.

43. Further, It is not for the tenant to dictate as to requirement of the landlord and as to where be shall carry on the business or what is the nature of the business which the landlord desires to do.

44. Following passage from the recent decision of the Hon'ble Supreme Court in **Nidhi vs Ram Kripal Sharma** (2017) 5 SCC 640 is relevant which reads as under:-

“14.The legislations made for dealing with such landlord-tenant disputes were pro-tenant as the court tends to bend towards the tenant in order to do justice with the tenant; but in the process of doing justice the Court cannot be over zealous and forget its duty towards the landlord also as ultimately, it is the landlord who owns the property and is entitled to possession of the same when he proves his bona fide beyond reasonable doubt as it is in the case before this Court.”

45. In any case, mere wrong quoting of the provision of the Section 10(3)(a)(iii) cannot be fatal as long as the requirements are satisfied. The language of Section 10(3)(c) clear makes out a case for granting of relief to the respondent-landlord in the facts and circumstances of the case.

46. Under Section 10 (3)(c), a landlord who is occupying only a part of the building, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Rent Controller for an order directing tenant occupying the whole or any portion of the remaining part of

the building to put the landlord in possession thereof if it requires additional accommodation for residential purpose or for the purposes of a business which he is carrying on as the case may be.

47. The respondent landlord was indeed entitled to ask for additional accommodation under the aforesaid provision.

48. Thus, eviction can be ordered for own use under Section 10(3)(a)(iii) and for additional accommodation under Section 10(3)(C) of Act. Therefore, the interpretation given in **R.V.Dharmalinga Mudaliar vs K.Annamalai** requires a reconsideration.

49. In this case, admittedly the respondent-landlord was residing on the 1st floor and the ground floor portion measuring to an extent of 480 sq.ft was rented out to be petitioner tenant. The respondent landlord has asked the petitioner to vacate the rented premises for carrying on his agarbathi business.

50. It would be highly improper for the petitioner-tenant to expect the respondent-landlord to do his business from the veranda. In fact the rental agreement also expired on 22.7.2008.

51. There has been no renewal of the rental agreement. The respondent-landlord has also stated that none of his partners own any other property in North Usman Road and that he also does not own a separate property to do business.

52. For ordering eviction the Courts have held that for the purpose of coming to the conclusion of bona fide need of the landlord only comparative hardship of the parties will have to be taken into consideration. The petitioner is also required to keep in mind the bona fide requirements of the respondent-landlord.

53. Further it is not as if the petitioner is remedy less. Under Section 10 (5) (a), the court has ample power to restore the possession to the petitioner-tenant if the respondent-landlord secures an order under sub-section (3) and (3A) of Section 10 if the respondent - landlord does not himself occupy the rented premises within one month of date of obtaining possession or having occupied it vacates it without reasonable cause within 6 months of such date.

54. The comparative-hardship of the landlord has correctly assessed by the Rent Control Appellate Court. Taking into consideration overall facts and

circumstances of the case and the position of law I am of the view that the order passed by the Rent Control Appellate Court does not suffer from any infirmity and requires no interference.

55. It is noticed that the Rent Control Proceedings were initiated in the year 2008 and the impugned order was passed by the Rent Control Appellate Court as early as 28.11.2014. Another 4 and 1/2 years have lapsed since then to the pendency of the present Civil Revision Petition. The petitioner-tenant is therefore directed to vacate the premises within a period of three months from the date of receipt of a copy of this order by making alternate arrangement for his business.

56. Consequently, the present Civil Revision Petition stands dismissed. No cost. Connected miscellaneous application is also closed.

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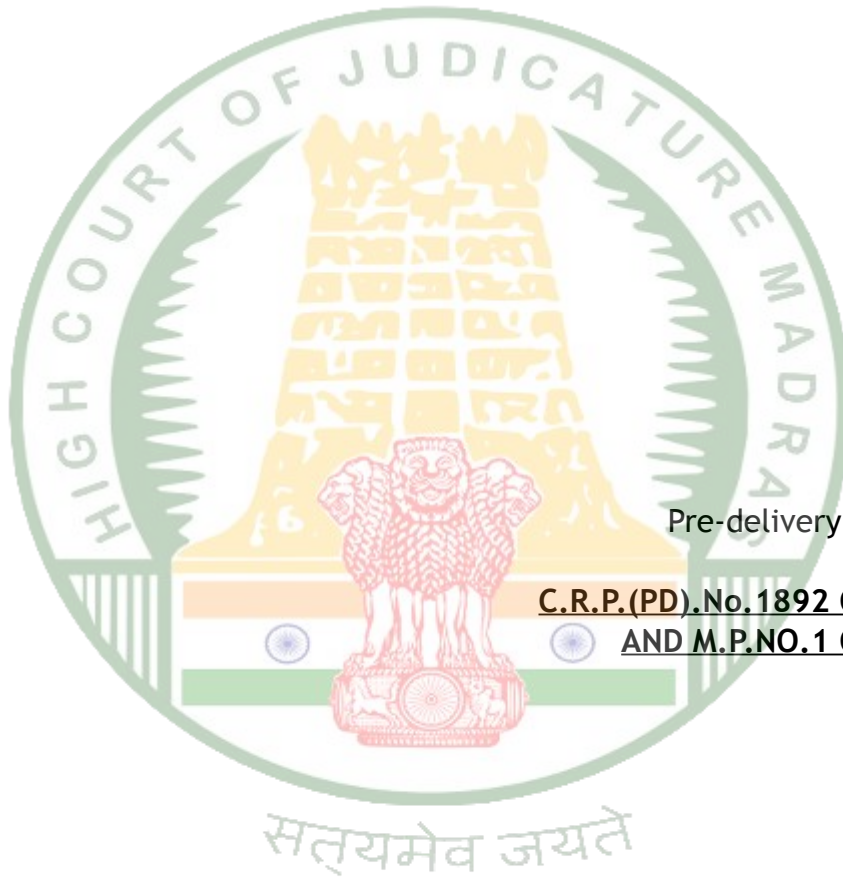
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C.SARAVANAN,J.

Jen/kkd

To

The Sub Court,
Vellore.



Pre-delivery order in

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