

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.11.2018

Pronounced on : 26.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P(NPD) No.3355 of 2015

B.Kumaraswamy

...Petitioner

Vs

1.A.Pauldurai

2.Murugesan

...Respondents

Prayer: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decreetal order dated 24.02.2015 passed in RCA.No.682 of 2013 by the learned VII Judge, Court of Small Causes, Chennai, confirming the fair and decreetal order dated 24.10.2013 passed in RCOP. No.1309 of 2011 by the learned XIV Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.Perumbulavil Radhakrishnan

For Respondent : Mr.L.Rajasekar

ORDER

Challenging the orders passed in the eviction petition in RCOP. No.1309 of 2011 dated 24.10.2013 by the learned XIV Judge, Court of Small Causes, Chennai/Rent Controller, which was confirmed by the learned VII Judge, Court of Small Causes, Chennai/Rent Control Appellate Authority in RCA.No.682 of 2013 dated 24.02.2015, the present Civil Revision Petition has been filed.

2. Heard Mr. Perumbulavil Radhakrishnan, learned counsel for the petitioner and Mr.L.Rajasekar, learned counsel appearing on behalf of the respondents.

3. The brief facts of the case are as follows:-

a) The petitioner herein, who is the landlord of a shop occupied by the respondents in the name and style of 'Sri Kumaran Stores' (Angadi) measuring about 250 sq. feet adjoining the passage in the ground floor of his building bearing Door number viz., New No.12, Old No.9, Kumaran Colony Main Road, Vadapalani, Chennai-26, (hereinafter referred to as 'the premises'), had filed a

petition for eviction of his tenant namely, the first respondent herein, under Section 10(3)(c) and 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground of additional accommodation and subletting. The petitioner herein had let out the premises to the first respondent under an Agreement dated 01.01.2007 for running a grocery shop. The petitioner herein is running a business in the same building. Since he required additional accommodation for parking a car for himself and his family members, he sought for eviction on the ground of requirement of additional accommodation. According to the petitioner, his tenant namely, the first respondent had sublet a portion of the premises to the second respondent for vegetable vending and therefore, sought for eviction on the ground of subletting also.

b) The first respondent herein had opposed the eviction petition stating that the first respondent alone is running the provision shop as well as the vegetable shop and since the clause in Ex.R1-Agreement provides for running a vegetable shop and provision stores, the question of subletting will not arise. Furthermore, the requirement of the petitioner for car parking is not

bona-fide, since there were sufficient space available behind the building in which the premises was situated, the petition has been filed only to evict the petitioner without bona-fide requirement.

c) The learned Rent Controller had dismissed the eviction petition on the ground that there was no bona-fide requirement of additional accommodation for the petitioner. By relying on Ex.P4, which is the proforma invoice for purchasing a car, the learned Rent Controller held that since the petitioner was yet to purchase a car, there was no bona-fide requirement. Insofar as the ground of subletting is concerned, reliance was placed on Ex.R1-Agreement which provides for running a "vegetable shop" and a provision stores, which fact has also been admitted by the petitioner in his evidence, the learned Rent Controller held that the petitioner herein had not established that the first respondent had parted with his legal possession of the petitioner's premises to the second respondent. It was further held that the second respondent herein is a mobile fruit seller and is not a sub-tenant of the first respondent and that his wife alone is an employee of the first respondent as seen from the evidence of R.W.1 and P.W.1.

d) Against the dismissal of the eviction petition, the learned Rent Control Appellate Authority had also confirmed the dismissal on similar grounds. As against the same, the present Civil Revision Petition has been filed.

4. Mr.Perumbulavil Radhakrishnan, learned counsel for the petitioner submitted that the petitioner's premises is required for parking of a car and since he has very narrow passage to his house and there is no other way to park the car, there was a bona fide requirement. The learned counsel also submitted that the Act does not provide that the landlord should be the owner of the vehicle and that the question of ownership is not material. As such, he would submit that both the learned Rent Controller as well as the learned Appellate Authority had not properly appreciated the ground of additional accommodation. The learned counsel also submitted that the relationship between the tenant and the sub-tenant is within their special knowledge and unless the tenant satisfactorily explains the presence of the sub-tenant in the premises, an inference can be drawn by the Court on subletting. In support of his contention, the learned counsel relied on various decisions.

5. Mr.L.Rajasekar, learned counsel for the first respondent, submitted that the requirement of the petitioner for additional accommodation was not bona-fide. According to him, the petitioner is yet to purchase a car and as such, requiring the premises for car parking is not bona-fide. Countering the ground of subletting, the learned counsel referred to the Tenancy Agreement which provides for the business of a provision stores as well as the "vegetable shop" in the premises and therefore, the question of subletting does not arise. Hence, he sought for dismissal of the Civil Revision Petition.

6. I have given careful consideration to the submissions made by the respective counsels.

7. With regard to the ground of requirement of the premises for additional accommodation is concerned, the reason cited by the petitioner is that he intends to buy a car and for parking the same, he requires the premises. The question that arose before the learned Rent Controller was as to whether such a requirement of car parking was bona-fide or not? Before the learned Rent Controller,

the petitioner had produced Ex.P4, which is proforma invoice dated 14.11.2011 for purchasing a Toyota Innova Taxi. Admittedly, the petitioner did not purchase the car even while the eviction petition was pending and such a fact was admitted by the petitioner himself in the cross examination that he does not own a car.

8. Apart from Ex.P4, there was no other evidence, to establish that the petitioner intends to purchase a car. A proforma invoice alone cannot be a conclusive proof that the petitioner intends to purchase a car. The intention to purchase a car may be a requirement for which the premises is required by the petitioner. But such a requirement, cannot be said to be a "bona-fide requirement", in the absence of any evidence to establish that the petitioner had a real intention to purchase a car. While that being so, the defence taken by the first respondent that the petitioner herein had ample car parking space behind the building also gains significance. It is also seen that the proforma invoice of EX.P4 has been obtained on 14.12.2011, which is much after the filing of the eviction petition. As such, it can only be held that when the landlord had filed the eviction petition, he had not even obtained this invoice, which further substantiates that there was no bona-fide

requirement on his part. In the absence of any evidence to prove the bona-fide requirement of the petitioner, the orders of the learned Rent Controller as well as the learned Appellate Authority cannot be found fault with.

9. The learned counsel for the petitioner relied upon the decision in the case of **Pitachaipillai V. Dominique Marie Ignace Prosper** reported in **1997 (1) CTC 572**. In the said judgment, the landlord possessed two vehicles and in that background, the Court held that the Act does not say that the landlord should be the owner of the vehicle and that landlord must have a place to keep the vehicles. By relying upon two vehicles that the landlord possessed, the Court had thus come to the conclusion. In the instant case, the petitioner neither had any car for his requirement of car parking, nor had he established that he bona-fidely intended to purchase a car and therefore, the decision will not help the petitioner. The other two decisions relied upon by the petitioner in **1986 (1) MLJ 291 [Thangam V. P.K.Madhavan]** and **2002 (1) CTC 65 [S.Mohammed Namal V. Sureka]** also will not be applicable to the petitioner's case since the landlords in those two cases owned a Scooter and a Maruti Car respectively. Thus, the

decisions relied upon by the learned counsel for the petitioner would be of no avail.

10. The learned counsel for the petitioner also relied upon the decision in ***Sarla Ahuja V. United India Insurance Company Ltd.***, reported in **1998 (3) CTC 679** and submitted that the tenant cannot dictate terms to the landlord regarding requirement. In the said decision, it was held that when the landlord shows a prima facie case, it is open to the learned Rent Controller to draw a presumption that the requirement of the landlord is bona-fide. I am unable to comprehend as to how the petitioner herein has established a prima facie before the learned Rent Controller. As a matter of fact, the petitioner had not come before the learned Rent Controller with clean hands, in the sense, the only document produced by him namely, the proforma invoice was also procured only after the eviction petition was filed and that in the absence of any other evidence to show that the petitioner intended to purchase a car for he required the premises for car parking, it cannot be said that he had made a prima facie case before the learned Rent Controller. As such, this decision will not be of any help to him.

11. In the light of the above observations, I do not find any infirmity in the findings of both the Authorities on the ground of the landlord's requirement of the premises for additional accommodation.

12. Insofar as the ground of subletting is concerned, the learned Rent Controller had relied upon clause-2 of Ex.R1, which is the Memorandum of Agreement of Tenancy dated 01.01.2007, which states that the tenant should not use the premises for any other purpose other than running a Provisional General Store and a "Vegetable Shop". This aspect has also been admitted by the petitioner himself in the cross examination. When the Tenancy Agreement itself enables the first respondent to run a vegetable shop as well as the provision shop in the premises, the question of subletting will not arise. The learned Rent Controller had relied upon the evidence of R.W.1 as well as the petitioner's oral evidence and found that the second respondent's wife was an employee under the first respondent, while the second respondent was only a mobile fruit vendor, who was not occupying the premises. It is

based on this undisputed facts, the Courts below have come to the conclusion that there is no subletting at all. While the Tenancy Agreement itself enables the first respondent to run a vegetable shop in the premises and there was absolutely no evidence to show that the second respondent was running a vegetable shop in the premises, the findings of the Courts below that there was no subletting in the premises, cannot be found fault with.

13. The learned counsel for the petitioner relied upon various decisions of this Court in ***Syed Maqbul V. M.Thangavel Chettiar*** reported in **2000 (2) MLJ 217** and **1999 LW 1064 [Subramanian & another V. Malar Selvi and another]** to substantiate that subletting can be substantiated only through circumstances. Such circumstances arise only when the materials and evidences before the authority are insufficient. In the present case, tenancy agreement establishes that a vegetable shop could be run by the first respondent in the premises and other than that there was no evidence to show that the second respondent was running a vegetable shop. Hence, these decisions are not applicable to the facts of the present case.

14. For all the foregoing reasons, I do not find any infirmity or illegality in the findings of both the learned Rent Controller and Appellate Authority rejecting the petitioner's petition for eviction. Hence, the Civil Revision Petition stands dismissed. No costs.

26.04.2019

Index : Yes

Order :Speaking

DP



WEB COPY

To

1. The VII Judge, Small Causes Court,
Chennai.
2. The XIV Judge, Small Causes Court,
Chennai.



WEB COPY

M.S.RAMESH, J.

DP



Order made in

C.R.P(NPD) No.3355 of 2015

WEB COPY

26.04.2019