

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3939 of 2013

1. Mrs. H. Meenakshi

2. Mr. M. Hariharan

... Petitioners

v.

Mr. S. Raju

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the Decree and Judgment dated 05.08.2013 made in R.C.A.No.31 of 2006 on the file of Rent Control Appellate Authority, VII Judge, Court of Small Causes, Chennai confirming the decree and judgment dated 23.08.2005 made in R.C.O.P.No.2022 of 2004 on the file of the learned XVI Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.H.Kishore

For Respondent : Mrs.S.Kala

ORDER

Challenging the Judgment and Decree passed in R.C.A.No.31 of 2006, on the file of VII Judge, Court of Small Causes, Chennai, confirming the order passed in R.C.O.P.No.2022 of 2004, on the file of the XVI Judge, Court of Small Causes, Chennai, the petitioners, who are the landlords, have filed the above Civil Revision Petition.

2.1 The petitioners have filed R.C.O.P.No.2022 of 2004 for eviction on the ground of wilful default and own use and occupation. Admittedly, the petition premises is a non-residential shop portion let out to the respondent by the vendors of the petitioners. The petitioners purchased the property in the year 2003. In the year 2004, the petitioners filed the Rent Control Original Petition for eviction on the ground of wilful default and own use and occupation.

2.2 In the Rent Control Original Petition filed before the Rent Controller, the petitioners have stated that the 1st petitioner is a registered Stamp Vendor holding a Stamp Vending Licence and is in the need for commercial premises for the purpose for carrying on her

business as a stamp Vendor. Further, the petitioners have stated that they do not own any other commercial property in the city of Chennai, which would be suitable for the business activity of the 1st petitioner.

3. The respondent filed his counter disputing the averments stated in the Rent Control Original Petition. Further, the respondent has stated that the requirement of the petitioners is not *bona fide* and that he is in occupation of the premises from the year 1990. Originally, the lease was entered between the respondent and the vendor of the petitioners, viz., M.S.Rajagopalan in the year 1990.

4. Before the Rent Controller, on the side of the petitioners, 2nd petitioner was examined as P.W.1 and 2 documents, Exs. P1 and P2 were marked. On the side of the respondent, he was examined as R.W.1 and 2 documents, Exs.R1 and R2 were marked.

5. The Rent Controller, after taking into consideration the oral and documentary evidences let in by the parties, dismissed the Rent Control Original Petition.

6. Aggrieved over the same. The petitioners preferred an appeal in R.C.A.No. 31 of 2006 and the Rent Control Appellate Authority also confirmed the order of the Rent Controller and dismissed the appeal.

7. Aggrieved over the concurrent findings of the courts below, the landlords have filed the above Civil Revision Petition.

8. Heard Mr.H.Kishore learned counsel appearing for the petitioners and Mrs.S.Kala, learned counsel appearing for the respondent.

9.1 Mr.H.Kishore, learned counsel appearing for the petitioners submitted that the petitioners do not own any commercial building in Chennai and therefore, for doing the stamp vending business, the landlords *bona fidely* required the premises. Further, the learned counsel submitted that the petitioners are not pressing the ground of eviction on the ground of wilful default and he is making his submission only on the ground of own use and occupation. Ex.P2 document, which is the Stamp Vendor Licence, produced by the petitioners would establish that the licence was issued for selling the stamp papers at Door No.41/6, Kamarajar Avenue, II Street, Adyar, Chennai – 600 020. The 1st petitioner

was doing Stamp Vending business only in the said place right through. Only after the purchase of the property in the year 2003, the petitioners filed the Rent Control Original Petition for eviction on the ground of own use and occupation. That apart, P.W.1 in his evidence has stated that he was also doing real estate business in his house and he require the petition premises to have his office for doing real estate business. However, in the cross examination, P.W.1 deposed that he is working in Appaswamy Real Estate on a monthly salary of Rs.8,150/-. Therefore, P.W.1 has given contrary evidence. At the first instance, he deposed that he was doing real estate business and in the cross examination he deposed that he was working in Appaswamy Real Estate on a monthly salary. When the Revenue Authorities have issued Stamp Vending Licence in favour of the 1st petitioner to do business at Door No.41/6, Kamarajar Avenue, II Street, Adyar, Chennai – 600 020. The petitioner cannot change the place of business to some other place without the concurrence of the Revenue Authority.

9.2 The learned counsel appearing for the petitioners, in support of his contentions, has relied upon the following Judgments:-

(i) **1967(1) MLJ 289 [Nathella Sampathu Chetty v. sha**

Vajingjee Babuplal] , wherein the Division Bench of this Court, held as follows:-

“ Section 10(3) (a) (iii) of the Madras Buildings Lease and Rent Control Act, 1960, allows a landlord to apply to the Controller for an order directing a tenant to put him in possession of the building if the landlord is not occupying for purpose of business which he is carrying on a non-residential building which is his own. If the conditions of the provisions are satisfied the Controller may make an order as prayed for by the landlord provided he is further satisfied that the claim of the landlord is *bona fide*. This requirement that the claim of the landlord should be *bona fide* is common not only to this provision but also to several other provisions in the Act which provide for eviction of tenants. The expression *bona fide*, therefore, will have to be understood in the context, but subject to that, it means in case under section to (3) (a) , that the landlord honestly desires to occupy the premises from which eviction is sought and his claim is not a device to serve an oblique purpose.”

(ii) **1979) 2 MLJ 187 [S. Jaswant Singh vs A.R.**

Ramanathan], wherein this Court, held as follows:-

“ ... 6. The Rent Controller's finding is that

the petition mentioned building is situated in an industrial area and not being situated in the "heart of the town" it is not suitable for carrying on the diamond business of the petitioner. The appellate Court has held that since the diamond business and the cutting and polishing unit of the diamond business constitute one composite unit and as the building is not suitable for carrying on the diamond business, the requirement of the building by the petitioner for non-residential purpose is not a bona fide requirement. Except a vague reference in the evidence of PW. 2 that the petition-mentioned building is situated in an industrial area, there is absolutely no evidence to suggest why the building is not suitable for the diamond business of the petitioner. The finding by the Courts below is that the rented premises where the petitioner is carrying on the diamond business is not situated in the "heart of the town." This is a finding not supported by any evidence. That apart, there is absolutely no evidence to show why the petitioner-mentioned building is not suitable for the diamond business of the petitioner. The petitioner-premises may be situated in an industrial area. That by itself is not sufficient for holding that it is not suitable for the diamond business of the petitioner. After all, where the petitioner should carry on his business is a matter of his choice and it is not for the

Courts to sit in judgment and indicate the preference. It is next contended for the respondent that the building is required for the non-residential purpose of the petitioner is not indicated in Exhibit A-4, the reply notice sent by the petitioner and this is a strong circumstance to indicate that the contention that the petitioner is requiring the building for non residential purposes is an after-thought and the requirement of the petitioner is not a bona fide one. Exhibit A-4 is a reply to the notice sent by the respondent. The respondent issued a notice containing various allegations and Exhibit A-4 is mainly directed towards denying the various allegations made by the respondent in the notice issued by him Further it is significant to note that even in Exhibit A-4 the petitioner 1 as stated in unmistakable terms that the building is required for the purpose of additional accommodation for carrying on the business of the petitioner. So the contention that the requirement of the building by the petitioner for non-residential purposes is not a bonafide requirement and a mere after-thought, is devoid of merits and has to be negated. ...”

(iii) **1982 (2) MLJ 85 [Bank Of Baroda v. Mahendra Dadha And Two Ors.]**, wherein this Court, held as follows:-

" ... 18. Section 10(3)(a)(iii) of the Act deals with the conditions for obtaining possession of a non-residential building. The conditions are : (1) The building should be nonresidential in character; (2) the landlord should be carrying on business on the date of application for eviction; (3) The landlord should not be occupying any other non-residential building belonging to him in respect of the business; and (4) the landlord's claim is bona fide, for his business needs and is not founded on any indirect or oblique motive for evicting the tenant either with a view to obtaining more rent than what the premises already fetched or with a view to harass the tenant in possession See J. Abdul Kader v. Hussein Ali & Sons . Though the tenant in its counter has pleaded that only one portion of the demised building is used for the non-residential purpose of running the banking business and the other portion is used for a residential purpose, i.e., for the residence of the Branch Manager of the Bank, the present case of the respondents that it was let out only for a non-residential purpose is not seriously challenged. No argument on behalf of the tenant has been advanced

before this Court that the building was let out only for non-residential purposes. Therefore, it can be held that the entire building was let out for non-residential purposes and that the tenancy was non-residential in character. ...”

(iv) **1999 (3) MLJ 17** [Selvarj v. Amudhavalli], wherein this Court, held as follows:-

“ ... 8. On a plain reading of the Section 10(3) (a) (iii) of the Madras Buildings Lease and Rent Control Act, 1960, it is clear a landlady seeking eviction of the tenant would be disentitled for claiming possession a non-residential building where she requires those premises for her own use, if she is occupying a non-residential building of her own. Similarly, the landlady would also be disentitled for claiming possession of non-residential premises for the benefit of a member of her family, if that member of the family was in occupation of a non-residential building of his own. It is also clear that the husband of the landlady or the son of the landlady is occupying a non-residential premises of his own cannot prevent the landlady or cannot operate as a bar to the landlady seeking eviction for her benefit who does not occupy any other premises of her own. ...”

(v) **2016 (5) CTC 339 [T.Krishna Pandian v. K.S.**

Bharath Kumar], wherein I held as follows:-

" ... 16. Coming to the issue of bona fide requirement of the landlord, in order to prove that he is carrying on Transport Business at the premises adjacent to the petition premises, the landlord had marked Ex.P1 Partnership Deed dated 03.09.1994. On a perusal of Ex.P1 Partnership Deed, it is clear that the landlord is carrying on Transport Business Company along with his relative namely Shiva in the name and style of Shree Sai and Co. Ex.P2 is the Registration Certificate of the Partnership Business. Ex.P3 is the Registration Certificate issued in the name of Shree Sai & Co. Ex.P4 would establish that the goods permit was issued by the Transport Department in respect of the goods carriage at Shree Sai & Co., in the said premises. The Registration Certificate of the vehicle standing in the name of the landlord was marked as Ex.P5 and the Insurance Certificate of the vehicle was marked as Ex.P6. Ex.P7 would establish that the goods carriage permit stands in the name of the landlord mentioning his residential address. The summons issued by the Motor Accident Claims Tribunal in M.C.O.P.Nos.925 & 926 of 2009 to Shree Sai & Co., were marked as Exs.P8

& P9. All these documents would establish that the landlord is carrying on Transport Business in the name and style of M/s.Shree Sai & Co., in the rented premises. ...”

10.1 Mrs.S.Kala, learned counsel appearing for the respondent submitted that the courts below have concurrently held that the petitioners requirement for own use and occupation is not *bona fide* and declined to order eviction on the ground of own use and occupation, therefore, this Court should not interfere with the concurrent findings of the courts below.

10.2. The learned counsel appearing for the respondent in support of her contentions, has relied upon a Judgment of the Hon'ble Supreme Court reported in **2009(9) SCC 678 [N.Eswari vs K.Swarajya Lakshmi]** wherein, the Hon'ble Supreme Court held as follows:-

“ ...13. In **Smt. Rajbir Kaur av. M/s S. Chokesiri and Co. 1989 (1) SCC 19**, this Court considered this aspect of the matter and at Page 43, has dealt with the aforesaid question elaborately -

"43. When the findings of fact recorded by the Courts- below are supportable on the evidence on record, the revisional Court must, indeed, be reluctant to embark upon an independent re-assessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the Courts-below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent-finding of fact of the Courts-below could not be dealt and supplanted by a different finding arrived at on an independent re-assessment of evidence as was done in this case".

14. The Rent Controller and the Appellate Authority had considered the entire materials on record and the arguments adduced by the parties and came to a finding that the requirement of the landlady/respondent was not genuine and there was no need to leave her permanent house at Hyderabad, where she has been living, to come over to Vijayawada to stay alone at the age of 70 years without there being anyone to look after her. This finding of fact arrived at by the Rent Controller and the Appellate Authority, in our view, cannot be said to be perverse and arbitrary.

15. That being the position, we are of the view that it was not open to the High Court, in the

exercise of its revisional jurisdiction, to interfere with the concurrent findings of fact of the Rent Controller as well as of the Appellate Authority. ...”

11. As already stated, when the Revenue Authority had issued Stamp Vending Licence to the 1st petitioner in respect of the address mentioned in Ex.P2, the petitioners, on their own, cannot change the venue of the licence to some other place other than the place mentioned in the licence. Unless the Revenue Authority permit them to do business in some other place, the 1st petitioner cannot change the place of stamp vending business to some other place. That apart, it is an admitted fact that right from the date of issuance of Stamp Vending Licence, the 1st petitioner has been doing the Stamp Vending Business only in the address mentioned in the licence. Since the 2nd petitioner had taken a contrary stand in his evidence as stated above, the courts below have rejected the petition and declined to order eviction on the ground of own use and occupation.

12. Though there is no dispute with regard to the ratio laid down in the Judgments relied upon by the learned counsel appearing for

the petitioners, since the facts and circumstances of the case differs from the case on hand, the said Judgments are not applicable

13. The courts below, taking into consideration the oral and documentary evidences, have rightly come to the conclusion that the requirement of the respondent-tenant is not *bona fide* and declined to order eviction.

14. For the reasons stated above, I am of the view that the requirement of the petitioners for own use and occupation is not *bona fide*. I find no ground to interfere with the concurrent findings of the courts below. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs.

21.11.2019

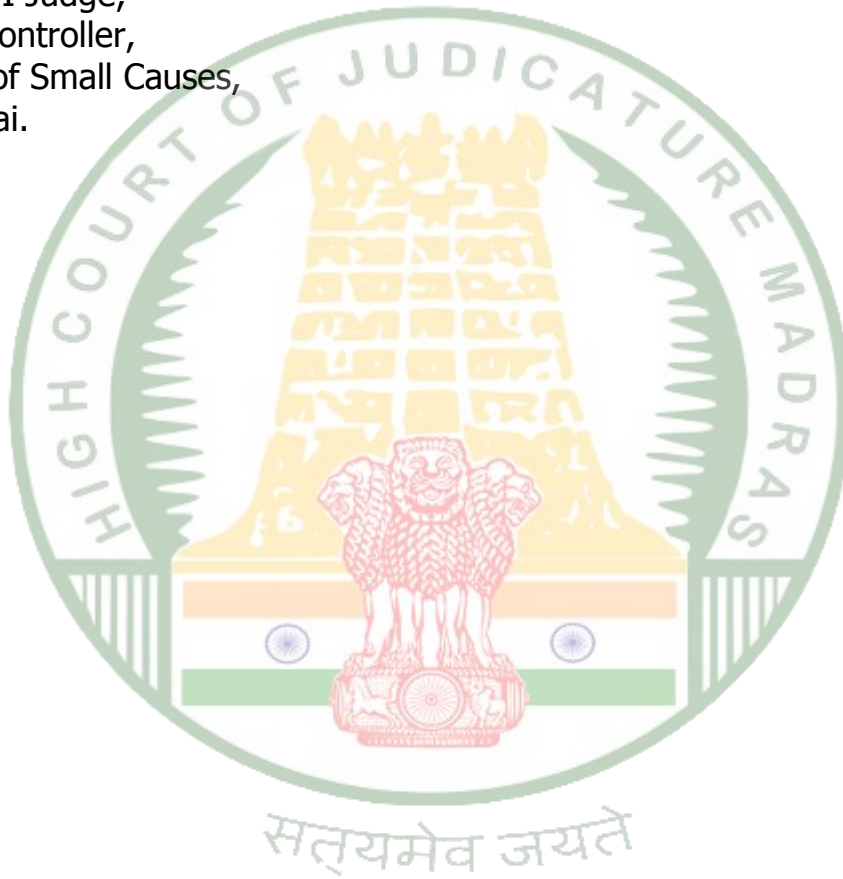
Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

1. The VII Judge,
Rent Control Appellate Authority,
Court of Small Causes,
Chennai.
2. The XVI Judge,
Rent Controller,
Court of Small Causes,
Chennai.



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C.R.P.(NPD).No.3939 of 2013

M.DURAISWAMY, J.

Rj



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