

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(NPD).No.1124 of 2019

and

CMP.No.7304 of 2019

M/s.Akbar Stores,
Rep. by S.Akbar,
No.51, Mint Street,
Sowcarpet, Chennai – 600 079.

..Petitioner/Tenant

Vs

Tmt. Subburathanamma since Died

1.G.Venkataraju
2.Mahesh Raju

..Respondent/Landlady

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 06.02.2019 passed in E.A.SR.No.11801 of 2019 in E.P.No. 81 of 2019 in RCOP.No.361 of 2012 by the Hon'ble XV Judge, Court of Small Causes, Chennai rejecting the petition filed under Section 47 CPC at threshold without giving an opportunity to contest the case on merits and allow this appeal.

For Petitioner : Mr.M.Mahendra Kumar
For Respondents : Mr.M.Ganeshan

ORDER

The above Civil Revision Petition is filed challenging the order passed by the XV Small Causes Judge, Chennai in E.A.SR.No.

11801 of 2019 in E.P.No. 81 of 2019 in RCOP.No.361 of 2012, which

was an application filed under Section 47 of the Code of Civil Procedure by the tenant.

2 It is necessary to briefly elude to the facts and events that have been ultimately culminated in the filing of the above Civil Revision Petition.

The deceased landlady Subburathanamma had filed R.C.O.P.No.361 of 2012, on the file of the XV Small Causes Judge, Chennai, for eviction on the ground of owner's occupation. It was her case that, she was carrying on business in the name and style of Sri Dhana lakashmi Power Rolling Mills at No.246 Wall tax road, Chennai³, and another business in the name and style of Sri Krishna Power Rolling Mills at No. 221 Wall tax road, Chennai 3, and she was engaged in the business of manufacturing silver articles and that she is running the business at Door Nos. 221 & 246, which belongs to the Corporation of Chennai. The Corporation of Chennai had issued notice that she is in unauthorized occupation of the said building, since they had not given a lease to her and she was directed to hand over the vacant possession of the said land. Therefore, the landlady was left with no other option but to shift to the premises now in the occupation of the revision petitioner, which is her property.

3 In the petition filed for the eviction, the landlady has clearly stated that she has been assisted in the business by her brother's sons viz; G.Venkataraju and G.Mahesh Raju and that she had executed a Settlement Deed in their favour in respect of the petition premises after retaining a life interest for herself. In the said petition she has further stated that the premises was required not only for running business by her but also for the ultimate benefit of the two settlees, who were assisting her in the business, who would continue the business after her life time.

4 The tenant had filed a counter questioning the bona fides of the claim and ultimately, the learned XV Small Causes Judge, Chennai by order dated 21.11.2012 was pleased to allow the eviction petition. Challenging the said petition, the tenant had filed R.C.A.No.26 of 2013 on the file of the learned VIII Small Causes Judge, Chennai. The appeal also ended in a dismissal and tenant had taken up the said orders/concurrent findings before this Court CRP.No.4245 of 2015. This Court by order dated 10.08.2017 was pleased to dismiss the said petition. The proceedings were all along continued/defended by the deceased Subburathanamma and after the disposal of the Civil Revision Petition, she has passed away. Thereafter, the respondents herein had filed execution proceedings in E.P.No.81 of 2019, after obtaining necessary leave of the Court since

they were stepping into the shoes of the original landlady, who had died on 19.01.2018, after the order passed in CRP.No. 4245 of 2015. In the said Execution Petition, the tenant has come forward with the Section 47 application of the Code of Civil Procedure impinged in these proceedings, which was disposed by the learned Judge even without numbering the same but, however, after notice to the respondents. The Section 47 application has been filed on the following grounds:

a) that with the death of the original landlady execution comes to an end since, the eviction proceedings were filed on the ground of owner's occupation and on her death this need has come an end.

b) The land lady had filed rent control proceedings on a false basis that she was a owner of the property when she had divested herself of the possession of the property by executing the Settlement Deed in favour of the respondents herein.

c) G.Venkataraju, one of the settlees who was examined as PW1 has not deposed truly about the Settlement Deed and after the Settlement Deed the filing of the rent control petition itself was a fraud played upon the Court.

d) that on 01.09.2017, a fresh lease agreement had been entered into between the landlady and the revision petitioner and prior to that, an undertaking letter dated 07.12.2016, had been

entered into between the landlady and the tenant. The said application was dismissed by the learned XV Small Causes Judge (the learned Rent Controller), Chennai and challenging the same the revision petitioner is before this Court.

5 Heard Mr. Mahendrankumar, learned counsel appearing on behalf of the revision petitioner and Mr. Ganeshan, learned counsel appearing on behalf of the respondent.

6 The First ground on which the Section 47 application has been filed is that the cause of action for seeking eviction came to be an end with the death of the landlady since the petition has been filed for owner's occupation and her death has brought the need to an end. The landlady even prior to the filing of the rent control petition, had executed a Settlement Deed in favour of the respondent herein retaining the life interest in her favour. This fact has been spelt out by her in detail in the rent control petition. The landlady has made the following submission in paragraph 9 of the RCOP.No. 361 of 2012:

"The petitioner submits that she is being issueless her husband's brother's sons have taken care to look after her and as well as business run by her and they being ultimate beneficiaries in respect of

the petition property the portion occupied by respondent in petition premises is required for her own use and occupation for running of business as well as the benefit of the ultimate beneficiaries G.Venkatesraju and G.Maheshraju in assisting the business run by the petitioner. The requirement being bonafide needful and imminent and genuine one and it has become necessary that the respondent is directed to vacate and hand over vacant possession of the shop portion in his occupation to the petitioner on the ground of owner's occupation for carrying on business of the petitioner."

7 Therefore, even in the petition, the landlady had made it clear that owner's occupation is not only for herself but also for the settlees viz; the respondents herein. Therefore, the first limb of argument that the cause of action dies with the decree holder dies fails. The second arguments that was put forward was that PW2 in his evidence has stated that the premises was required for the own occupation of the landlady and therefore the second respondent cannot seek to execute the order in the Rent Control proceedings. This argument is also answered by referring to the very petition that has been filed. The respondents have become the owners of the premises on the death of the revision petition/landlady, it is well within their rights to file the Execution Petition and more particularly

when in the Rent Control Petition itself their right to continue the proceedings have been spelt out.

8 The revision petitioner/tenant has come forward with a contention that after the disposal of the R.C.A.No.26 of 2013, a letter of undertaking and lease agreement had come into an effect between him and the revision petitioner/deceased landlady. However, there is no whisper about the said documents in CRP.No. 4254 of 2015, which has been dismissed only on 10.08.2017. This raises a doubt in the mind of this Court about the genuineness of the said documents. The learned counsel for the petitioner has relied upon the Judgment reported in **1991 (2) Kar LJ 219 – Yasimsab Fakruddinsab Dori Vs. Basappa** in which the Division Bench of the Karnataka High Court of which our former Hon'ble Chief Justice Mr.K.A.Swami, was a member. The Division Bench had extracted the definition of the word landlord and proceeded to hold as follows:

"As already pointed out in the instant case, the original landlord has not pleaded that the premises are also required by the members of his family to run the business. The original landlord pleaded that he himself required the premises for running the business in order to maintain his family. Therefore, it is not possible to hold that the L.Rs. of the deceased landlord falling within

the definition of the word 'landlord' are entitled to continue the proceedings because there is no plea that they also reasonable and bona fide required the premises for running the business. Therefore, the petition has to fail.

20. For the reasons stated above, Point No. 1 is answered as follows:

"In the light of the plea raised by the original landlord, the cause of action perished with the death of the original landlord as such the legal representatives of the landlord are not entitled to continue the proceeding.""

9 A mere perusal of the finding in the Judgment cited supra will clearly demonstrate that the legal representatives would not be entitled to continue the petition filed for eviction on the ground of owner's occupation, unless the original landlord had pleaded that the tenancy was required also by them. In the instant case in paragraph No. 9 of the rent control petition, the landlady has clearly mentioned that her need was not only for herself but also for the respondents herein.

10 In the result, this Court find not infirmity in the order passed by the learned XV Small Causes Judge. The Civil Revision Petition Stands dismissed and order passed in

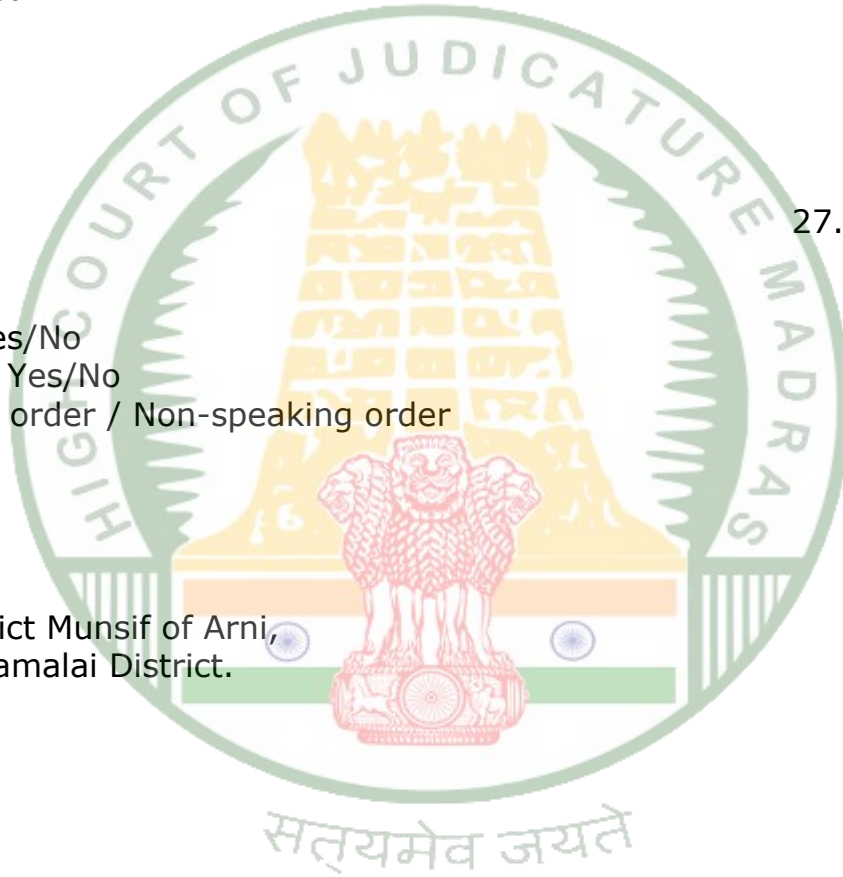
E.A.SR.No.11801 of 2019 in E.P.No. 81 of 2019 in RCOP.No.361 of 2012 by the Hon'ble XV Judge, Court of Small Causes, Chennai is confirmed and the respondents are at liberty to execute the decree passed. No costs. Consequently, connected miscellaneous petition is also closed.

27.03.2019

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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

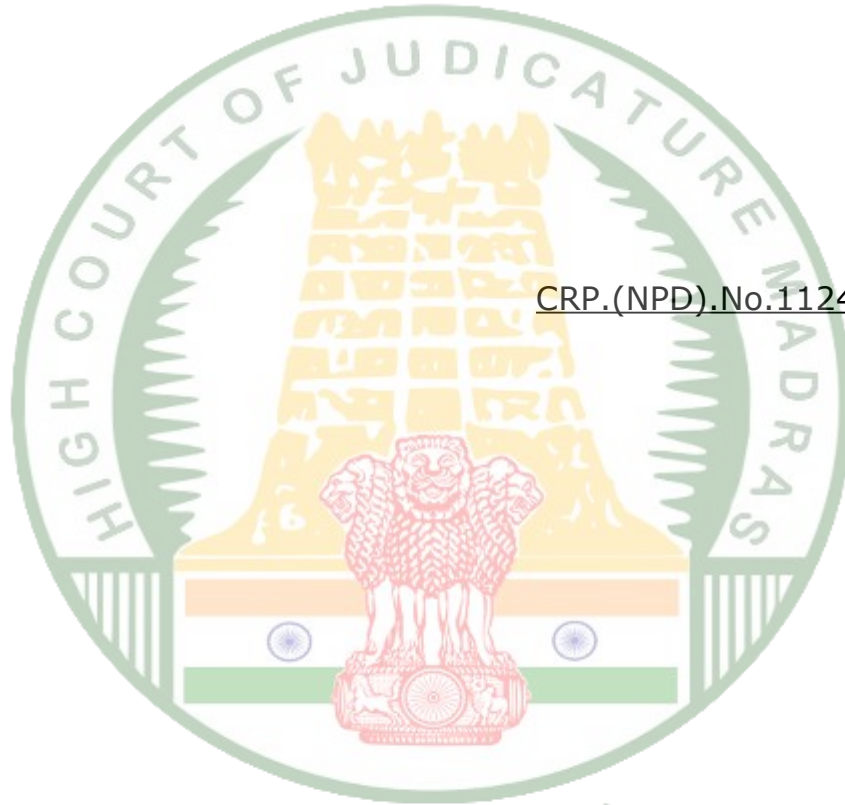
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Tiruvannamalai District.



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P.T.ASHA, J.

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