

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.No.1568 of 2019
and
C.M.P.No. 10246 of 2019

Md.Moinuddeen ..Petitioner/Petitioner/Respondent

Vs.

E.Malarvizhi ..Respondent/Respondent/Petitioner

This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 19.03.2019 passed in M.P.No.33 of 2019 in RCOP.No.1584 of 2014, on the file of the learned XV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.T.Sirish Chowdary
for M/s.T.M.Naidu and Co.

O R D E R

The above Civil Revision Petition is filed challenging the order passed in M.P.No. 33 of 2019 in RCOP.No.1584 of 2014, which is an application that has been filed by the tenant seeking production of the following documents:

- "1.Building Plan of the suit premises;
- 2.Assessment of Corporation sub-division of Door Number from 18 to 18/2
- 3.Whether the suit property is Mortgaged to Financial Institution / Bank and if yes, then the Statement to Financial Institution / Bank that statutory Tenant/s are occupying the suit premises to be furnished by the Respondents;"

2 It is necessary to allude to the facts which have culminated in filing the petition. The respondent/landlady filed the Rent Control Petition for eviction under Section 10(3) (a)(iii) r/w 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in respect of the following property:

"Non-residential shop portion bearing Shop Nos.1 and 2 in the ground floor northern side in the property bearing Old Door No. 18, New Door No. 176,

Jawaharlal Nehru Street, Arumbakkam, Chennai - 600 106."

3 It is the case of the landlady that the tenant had taken possession of the demised premises on a monthly rental of Rs. 2,700/- for shop No.1 and Rs.2,000/- for shop No.2 and that an advance and security deposit in a sum of Rs.1,62,000/- and 1,25,000/-, respectively has been received by the landlady. The respondent is carrying business under the name and style of "MOIN AUTO AGENCIES" dealing in automobile, glasses and rubber accessories. The respondent/landlady would submit that her husband had retired from service and without any other avocation and therefore, she need the premises for carrying business in retail outlet for sale of tiles and sanitary ware. The ground floor portion in the property consists of totally five shop portions, which are divided by walls. Therefore by removing the walls, the landlady would get an entire unit in which she could run the shop. Therefore, she would submit that her need is bona fide and that she required the property.

4 Per contra, the revision petitioner/tenant has filed counter affidavit containing allegations both with reference to the rent as well as the advance and would also contend that the respondent is occupying only a portion of the ground floor and other half was being used by the petitioner's husband, wherein, he was doing business in the name and style of M/s.Malar Tiles & Sanitaryware.

5 It is further contended that there has been no bona fide and the petitioner has deliberately suppressed the facts that her husband was already carrying business in a portion of the property. He has further contended that the second floor in the premises has been constructed by the respondent and therefore, he cannot seek to have the tenant vacated from the premises.

6 He would further contended that second floor was completed only in the year 2013 and therefore, the rent control petition was not maintainable. When the matter was posted for trial, the revision petitioner/tenant has come forward with an application that which is the subject mater of the present revision. In the affidavit filed in support of the said petition, revision petitioner would contend as follows:

"I state that officials from Corporation had visited the entire building and other tenanted premises during 2016 and informed that the building ought to be demolished due to not obtaining necessary approvals and that we need to vacate with immediate effect. When I had approached the Landlord he used filthy words and asked me to

vacate. A police complaint was tendered and CSR obtained for threatening and illegally dispossessing me.

Thus the balance of convenience and interests of justice requires that the instant petition seeking for the details herein mentioned have already been notified as enumerated under the procedure in Order XI Rule 16 CPC. Thus the Petitioner is thus entitled to the present documents to ascertain the status of the petition premises so as to lead the facts and circumstances for the better adjudication of the instant case. The Respondent on the contrary have suppressed vital facts and based on such vital facts should this Hon'ble Court based on the suppressed facts / without production of the present documents if proceed to pronounce a finding the same may cause irreparable hardship to the Petitioner. It is not known why the respondent is shy of producing the vital documents. Should the Respondent produce the said documents the same will not prejudice the case in any manner to them under law."

On this basis, the documents were called for.

7 The landlady has filed counter inter alia contending that these documents are not germane to the case on hand, earlier in the suit for bare injunction, a similar application was moved and though the learned Subordinate Judge had directed the production of the documents, the same was set aside by this Court in the Civil Revision Petition as the Court found that these documents were not relating to the relief sought for.

8 The defendant would further contend that there is no mortgage in respect of the petition property and therefore, there is no question of the petitioner being evicted from the premises by the financial institution/Banks. The documents according to her were not germane to the issue on hand. The learned XV Small Cause Judge vide order dated 19.03.2019, was pleased to dismiss the above application, stating that the Court was at a loss to understand as to how the present documents, which are listed in the petition for eviction would be helpful to the tenants case before the Court. Challenging the same, revision petitioner is before this Court.

9 Mr.T.Sirish Chowdary, learned counsel representing M/s.T.M.Naidu and Co., appearing on behalf of the revision petitioner, would contend that these documents are very essential in order to establish the identity of the demised

premises, since there is a dispute with reference to the same and also to establish the fact that the construction in the second floor has been put up by the tenant for and on behalf of the landlady only in the year 2013 and therefore, the dismissal of the application would cause injustice.

10 Heard the counsel and perused the papers.

11 The petition in question is simplicitor a petition seeking eviction on the ground of owners occupation. The identity of the property under the tenancy of the revision petitioner/tenant is not in dispute. It is not the case of the tenant that he is not in the occupation of the demised premises as detailed in the schedule. He is attacking the petition for eviction on the ground that the petition lacks bona fides since there is suppression on the side of the landlady and there is no dispute with reference to the property in question. The documents which are now sought to be called for does not in any manner, advance the case of the revision petitioner/tenant. As regards the third document namely mortgage Sale Deed, landlady has gone on record in her counter to state that there is no mortgage with reference to the suit property and that there is no imminent threat from any financial institution/Bank. The other two documents are no way required for considering the issue in the Rent Control Petition, since the only issue that has to be considered is whether the revision petitioner is a tenant or not? This Court does not find any infirmity in the order passed by the court below.

12 In the result the Civil Revision Petition stands dismissed and the order passed in M.P.No.33 of 2019 in RCOP.No.1584 of 2014, by the learned XV Judge, Small Causes Court, Chennai, dated 19.03.2019, stands confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The learned XV Judge,
Small Causes Court, Chennai.

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and

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