

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P.(NPD)No.411 of 2018
and
C.M.P.No.2224 of 2018

Khaja Mohideen .. Petitioner

Versus

K.A.Ashraf Ali
Represented by his Power of Attorney
K.A.Ismail Rafique .. Respondent

Prayer: Civil Revision Petition filed under Section 25 of the TN Buildings (Lease and Rent Control Act, 1960), challenging the order and decretal order in R.C.A.No.03/2016 dated 13.12.2017, on the file of the Rent Control Appellate Authority/Principal Subordinate Judge, Salem in reversing the judgment R.C.O.P.No.59 of 2011 dated 22.09.2015 on the file of Rent Controller/Principal District Munsif, Salem.

For Petitioner : Mr.V.Lakshminarayanan
For Respondent : Mr.T.S.Vijaya Raghaan

ORDER

The above Civil Revision Petition has been filed challenging the eviction order passed in R.C.O.P.No.59 of 2011 on the file of Rent Controller (Principal District Munsif, Salem).

2.The tenant is the revision petitioner before this Court. The parties are referred to as landlord and tenant respectively.

3.The brief facts are as follows:-

The landlord had filed R.C.O.P.No.59 of 2011 for evicting the tenant on the ground of nuisance and owners occupation. It is the case of the landlord that the tenant had completely damaged the floors and doors of the building, RCC column has been greatly damaged and the entire building requires to be renovated and restored.

4.The learned counsel for the landlord would submit that the landlord had let out the petition premises to the tenant on a monthly rental of Rs.3,250/- under rental deed dated 25.06.2003 and the petition premises had been taken on lease for non residential purpose for stocking coir rope. The landlord would further submit that he required the premises for his business. He is occupying the first floor of the premises building with his wife and two sons, for their residence and that he required petition premises for his two sons, who were doing business in a rented building. The petitioner has contended that his sons are presently in a rented premises on a

monthly rent of Rs.7,250/- and the petition premises was required for their bonafide purpose and they did not own any other building of their own in the town except the petition mentioned building. Therefore, the petitioner had sought for the eviction of the tenant.

5.The tenant in his counter would contend that the allegations of nuisance and damage to the building are totally false and it is the landlord who has damaged the floor of the first floor causing water to drip on the coir products stored by the tenant. The tenant would also deny the plea of own use, since owners were not doing any business and according to the tenant, these allegations are made only for the purpose of evicting the tenant.

6.The Rent Controller by his order dated 22.09.2015 dismissed the petition both on the ground of nuisance as well as on the ground of owners occupation. As regards the plea of nuisance, the learned Rent Controller held that no question or suggestion was made by the landlord to R.W.1 who had deposed on behalf of the tenant to show that the tenant had committed acts of waste. In fact, the rent controller would observe that the plea of nuisance had not been proved by the landlord. As regards, the eviction on the ground of owner's occupation, the rent controller held that the application filed

under Section 10(3)(a) (iii) was not maintainable, it was only the application under Section 10(3)(c) that was maintainable. The rent controller had also found that there was no evidence on the side of the landlord to show that their sons are carrying on business in a different premises for rent, despite the fact that the landlord had produced Ex.P7 which is rental deed, executed in favour of P.W.1.

7.The order was taken up on appeal to the Rent Control Appellate Authority (Sub Judge, Salem) by the landlord in RCA No.3/16. The learned rent control appellate authority allowed the appeal insofar as it relates to the owner's occupation but dismissed the appeal with reference to the acts of nuisance. Challenging the said order, the tenant is before this Court.

8.Heard Mr.V.Lakshminarayanan for the revision petitioner and Mr.T.S.Vijaya Raghavan for the sole respondent.

9.The appellate authority has clearly held that the landlord has proved his bonafide need of the petition premises for the purpose of business of his two sons. As per Ex.P7, he is carrying on business in a rented premises. The appellate authority has observed that the tenant owns property within a few feet from the petition premises and

in fact the tenant had purchased the property from the landlord and the sale deeds have been marked as Exs.P4 and P5. This fact has been admitted by R.W.1 during his cross-examination. From the evidence of the tenant, it is seen that he is owning a premises and therefore, the bonafides of the landlord in seeking the petition premises stands vindicated. I do not find any infirmity in the order passed by the learned appellate authority.

10. Therefore, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed. The tenant is granted four months time to vacate the premises on condition he files an affidavit of undertaking to vacate petition premises on or before 25.07.2019 and to continue to pay the rent without any default and also not to induct any third party into the premises by way of sub lease.

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AT

P.T.ASHA,J.

AT

To

1.The Rent Control Appellate Authority/
Principal Subordinate Judge,
Salem.

2.The Rent Controller/
Principal District Munsif, Salem.

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