

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr. C.M.P. No.524 of 2019

P.K.Mohammed Ali

... Petitioner

-vs-

J.Kabali

Jaya Shree Stores,
No.4/7/14, Ground Floor,
Anna Nagar, Kottivakkam,
Tharamani, Chennai - 600 041

.... Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw R.C.O.P.No.1567 of 2017 on the file of XI Small Causes Court, Chennai and transfer the same to the file of District Munsif Court, Alandur.

For Petitioner : Mr.N.Saravanan

For Respondent : No Appearance

O R D E R

The present Transfer C.M.P. has been filed to withdraw the R.C.O.P.No.1567 of 2017 pending on the file of XI Small Causes Court, Chennai and transfer the same to the file of District Munsif Court, Alandur.

2. The petitioner is the landlord and the respondent is the tenant in the petitioner's premises. According to the petitioner, he has let out the portion in the schedule mentioned premises to the respondent on a monthly rent of Rs.30,000/- and the respondent paid an advance amount of Rs.3,00,000/- in the year 2011. Though he had let out the portion for residential purpose, the respondent used the same for shoe retail shop. The respondent is a chronicle defaulter. After agreement period for tenancy has been expired, the respondent, again, entered into a new rental agreement on 31.01.2017. When the petitioner demands the respondent to pay rent for eleven months from 10.03.2016 to 10.01.2017, the respondent was not able to pay the same, which is totally about Rs.3,30,000/-. Hence, the petitioner adjusted

the rent in previous advance amount and entered into the new agreement stating that he is ready to give Rs.1,00,000/- on March 2017 and remaining rent amount of Rs.2,40,000/- on May, 2017.

3. It is the further case of the petitioner that inspite of repeated demand notice sent by him, the respondent failed to pay the arrears of rent and that the respondent is liable to pay a sum of Rs.2,70,000/- being arrears from 10.02.2017 to 10.10.2017 for nine months at Rs.30,000/- per month, as per Section 80 of 23/73 of Tamilnadu Buildings [Lease and Rent Control] Act, 1960. Since the respondent is working as a government servant in Conservancy Department in Corporation of Chennai and having influence of local politicians, has threatened the petitioner for continuation of the premises. Hence, the petitioner gave a complaint before Kottivakkam Police Station, by stating that the matter is purely civil in nature, the police authorities have not received the complaint.

4. It is also the case of the petitioner that his counsel had issued a legal notice to the respondent on 14.09.2017 and the same was returned with an endorsement 'unclaimed' and 'door locked', but, the petitioner tried to contact the respondent, however, ended in vain. Therefore, with no other option, the petitioner has filed R.C.O.P.No.1567 of 2017 for recovery of possession of schedule item and order of eviction against the respondent and direct the respondent to quit, vacate and deliver the vacant possession.

5. The case of the respondent is that according to the rental agreement entered between the petitioner and the respondent, the respondent is running a shoes, T-Shirt shop in the name of 'Jaya sree Stores' under the petition in respect of the petition premises on a monthly rent of Rs.30,000/- and the respondent was regular and paying rent without any default. Moreover, in petition premises, the respondent's son had stayed along with two other servants in first floor and ground floor is the shop. The respondent had paid Rs.5,000/- for first floor and Rs.25,000/- as rent, for ground floor and all of a sudden, one day, the petitioner came and locked the first floor. When the same was questioned, the petitioner had asked the respondent to visit his office and thereafter, the petitioner had informed the respondent to put his signature in 'unfilled stamp paper' for renewing the rental agreement.

6. It is also the case of the respondent that he has to pay only one month rent, viz., Feb 2018 and ready to pay the same and the respondent was not able to open the premises shop because of his illness and at that time, the petitioner has sent a notice to the shop address, therefore, the respondent is not aware of the notice and though the petitioner is aware of the residential address of the respondent, he has not chosen to send notice to the residence address. In the meanwhile, the petitioner had taken E.B.Card and informed the respondent that after verification, he will hand over the same, but he has not handed over the same.

7. It is the further case of the respondent that the petitioner has sent rowdies to the respondent's house and again they threatened the respondent and in this regard a complaint was lodged by the respondent in Duraipakkam Police Station. The petitioner is planning to vacate the respondent from the shop and would like to handover it to other person for higher rent. therefore, the respondent prays to dismiss the petition filed by the petitioner.

8. The learned counsel for the petitioner submitted that the petitioner had filed an eviction petition in R.C.O.P.No.1567 of 2017 on the file of XI Small Causes Court, Chennai and the case was posted for cross examination on 09.08.2018 and 23.08.2018, but the respondent / tenant had not appeared before the lower court and hence, the court below had closed the evidence on 23.08.2018. Thereafter, the respondent had filed a recall and reopen petitions before the lower court in M.P.Nos.464 and 465 of 2018 and the same were ordered on condition to cross examine on 01.10.2018. At that time, the respondent had filed M.P.No.474 of 2018 before the lower court stating that the petition mentioned property falls within the jurisdiction of District Munsif Court, Alandur. However, originally the petitioner had filed R.C.O.P before the District Court, Alandur and the same was returned on 31.10.2017 with an endorsement that the said village is not within the concerned jurisdiction. Therefore, the petitioner has filed the petition before the court at Chennai jurisdiction and numbered the R.C.O.P. and the court below had ordered notice to the respondent to file counter and conducted fair trial, now, the respondent has questioned about jurisdiction, which does not arise.

9. Apart from the above, it is represented on behalf of the petitioner that some sector of Chennai - 41 falls within the jurisdiction of Alandur and the petitioner, being senior citizen is suffering from age old ailments and from mental depression

and the respondent being a chronicle defaulter is liable to pay Rs.5,00,000/-. Further, it is great difficult to conduct the case before the lower court, hence pleaded to allow this Transfer Civil Miscellaneous Petition.

10. Heard the learned counsel for the petitioner and perused the documents placed on record. Though on several occasions, the matter has been adjourned for filing counter and the private notice was served on Mr.D.Saravanan, learned counsel, on 08.08.2019 itself, but till date, no counter has been filed by the respondent and there is no representation on behalf of the respondent.

11. Considering the limited scope of the prayer of the petitioner, who is seeking transfer from Chennai to Alandur, which is about only 15 kms, and taking note of the fact that though private notice was served to the learned counsel Mrs.Manimegalai, she has not filed vakalat for the respondent and another private notice was served to Mr.D.Saravanan on 08.08.2019, there is no representation on behalf of the respondent and coupled with the fact that no prejudice would be caused to the respondent in allowing this petition, this Court is inclined to allow this petition.

Accordingly, the present Transfer Civil Miscellaneous Petition is allowed and the proceedings in R.C.O.P.No.1567 of 2017 on the file of XI Small Causes Court, Chennai is withdrawn and the same shall be transferred to the file of District Munsif Court, Alandur. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy// सत्यमेव जयते
Sub Assistant Registrar

ssd
To

- 1.The XI Small Causes Court, Chennai
- 2.The District Munsif Court, Alandur.

+1cc to Mr.N.Saravanan, Advocate SR.No.87485

Tr. C.M.P. No.524 of 2019

SS (CO)
GMY (28/11/2019)