

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(NPD)No.3317 of 2019

V.Manimegalai

... Petitioner

Vs.

Selvaraj Kannan

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside order dated 09.09.2019 passed in RLTOP.SR.No.55813 of 2019 on the file of the Rent Court at Chennai and consequently direct the Court below to dispose of the said RLTOP SR.No.55813 of 2019 on merits.

For Petitioner : Mr.P.B.Balaji

ORDER

This revision petition has been filed against the docket order passed by the Registrar of Small Causes Court, Chennai, by order dated 09.09.2019, whereby RLTOP.SR.No.55813 of 2019 was returned by stating the reason that, the petition was not maintainable, as there has been no registered rental agreement between the landlord and the tenant in respect of the property, which is the subject matter in the said Rent Control Proceedings, as against which, the present revision has been filed.

2.I have heard Mr.P.B.Balaji, learned counsel appearing for the revision petitioner, who has submitted that, admittedly there has been no registered rental agreement between the revision petitioner and the respondent, nevertheless that would not make an absolute bar for entertaining an application under Section 21(2) of the Act filed by the revision petitioner who is the landlord.

3.In this context, the learned counsel has brought to the notice of this Court about the provision of Section 4-A of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (hereinafter referred to 'the Act') which reads thus:

"4-A. Effect of non-registration.- No document required to be registered under sub-section (3) of Section 4 shall, unless it has been registered, -

- (a) affect any immovable property comprised therein, or*
- (b) confer any power to adopt, or*
- (c) be received in evidence of any transaction affecting such property or conferring any right.]"*

4.The learned counsel, by relying upon the said Section, has specifically referred to sub-section (c) of Section 4-A and submit that, if at all the unregistered rental agreement does not have any evidentiary value within the meaning of sub-section (c) of Section 4-A,

that would not create an absolute bar in approaching the Rent Court by either party under the provisions of the Act to seek for remedy.

5. Herein the case in hand, according to him, the revision petitioner is the landlord who filed the said Application (RLTOP.SR.No.55813 of 2019) for eviction against the respondent on the ground of default of rent and also on the ground of owner's occupation. But, on those grounds, whether the revision petitioner/landlord is entitled to get the relief from the Rent Court is a matter to be decided on merits, for which, evidence have to be let in only by the revision petitioner/landlord and based on such evidence, the decision would be made by the Rent Court.

6. He would further submit that, merely because there has been no registered rental agreement within the meaning of Section 4 of the said Act, it cannot be said that, the very Rent Court Proceedings (Application) itself is vitiated or the provisions of the said Act cannot be invoked by the landlord or tenant on the ground of non-availability of registered rental agreement.

7.I have considered the said submission made by the learned counsel for the revision petitioner and I have also gone through the aforesaid provisions of the new Act specifically Section 4-A and that, more particularly sub-section (c) of Section 4-A.

8.As has been rightly pointed out by the learned counsel for the petitioner, sub-section (c) of Section 4-A makes it clear that, if the rental agreement (document) required to be registered, has not been registered, it does not have any evidentiary value of any transaction affecting such property or conferring any right. However, on the grounds urged or to be urged by the party who are the landlord, it is for the landlord to prove his case for getting the relief of eviction on the two named grounds i.e., default as well as the owner's occupation and for the said purpose, it is not a pre-condition that, the registered rental agreement must be accompanied with the application filed under Section 21(2) of the Act. सत्यमेव जयते

9.If at all the tenant, who is the respondent herein, takes a stand before the Rent Court, in the instant proceedings that, there has been no landlord-tenant relationship in the absence of registered rental

agreement, it is for the tenant to face the consequences. Therefore, the said circumstances will not preclude the revision petitioner/landlord from invoking the provisions of the Act to maintain an application before the Rent Court seeking for eviction on specific grounds, as has been contemplated under the Act.

10.It is further to be noted that, Section 4(2) of the Act reads thus:

"(2) Where, in relation to a tenancy created before the commencement of this Act, no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy within a period of ninety days from the date of commencement of this Act:

Provided that where the landlord or tenant, fails to enter into an agreement under this sub-section, the landlord or tenant shall have the right to apply for termination of the tenancy under clause (a) of sub-section (2) of Section 21."

11.In the aforesaid sub-section (2) of Section 4 especially under the proviso, right has been conferred on landlord as well as tenant to apply for termination of the tenancy under clause (a) of sub-section

(2) of Section 21, in case landlord and tenant failed to enter into an agreement under the said sub-section i.e. Section 4(2).

12. Therefore, it has become clear that, even in the absence of a written rental agreement between the landlord and tenant especially in relation to a tenancy created before the commencement of the Act i.e. on or before 22.02.2019, even in such circumstances, on the sole ground of failure to enter into an agreement between the landlord and tenant, both can approach the Rent Court under Section 21(2)(a) of the Act to seek for termination of tenancy.

13. When that being the position, it cannot be construed that, for approaching the Rent Court for getting relief of either termination of tenancy or repossession of the premises by the landlord, such application to be filed under Section 21 of the Act be accompanied with a registered rental agreement. Therefore, Section 4(3) can only be construed that, by virtue of the provisions of the Act, there must be a written agreement between the landlord and tenant and that is compulsorily registerable and without being a registered document i.e. rental agreement, it does not have an evidentiary value, in other

words, it is inadmissible in evidence. Only to that purpose or to that extent alone, the effect of non-registration of rental agreement can be construed or the provision of Section 4-A can be pressed into service.

14.In that view of the matter, I am of the considered opinion that, the reasons cited by the Registrar of Small Causes Court, which is impugned herein, for returning the papers by not entertaining the application (RLTOP), is unsustainable and therefore, this Court feels that, a suitable direction can be given to the Rent Court/Small Causes Court Registry to number the RLTOP, if it is otherwise in order.

15.In the result, this Civil Revision Petition is ordered and the Registrar of Small Causes Court, Chennai is hereby directed to entertain the RLTOP.Sr.No.55813 of 2019 and to proceed in accordance with law, if it is otherwise in order. No costs.

16.The Registry is directed to return the original impugned proceedings filed before this Court in this revision to the learned counsel for the petitioner after due acknowledgment.

17.The Registry is also directed to communicate the copy of this order to all Rent Courts for due information and compliance of the import of this order.

14.10.2019

Index : Yes/No

Internet : Yes/No

Note : Issue order copy on 15.10.2019

Sgl

To

The Registrar,
Small Causes Court,
Chennai.



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R.SURESH KUMAR, J.

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