

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.03.2019

Delivered on:20.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD)No.3782 of 2018

and

C.M.P.No.21176 of 2018 and 1309 of 2019

N.Thillaiarkarasi

...Petitioner

Vs

Mrs.Joicy Priscilla Selvam

S.Manoj

...Respondents

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease And Rent Control) Act, against the order decree dated made in R.C.A.No.752 of 2017 on the file of the VIII Judge, Small Causes Court, Chennai, confirming the order and decretal order made in R.C.O.P.No.40 of 2015 dated 24.08.2017 on the file of the XIV Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.S.P.Meenakshi Sundharam

For Respondent 1 : Mr.N.A.Mohamed Noohu

For Respondent 2 : Not Ready in Notice

ORDER

The tenant who is the 2nd respondent in the Rent Control Petition is the revision petitioner before this Court. The Civil Revision Petition arises out of the eviction petition filed by the landlord on the ground of additional accommodation. The parties are arrayed in their same status as in the Rent Control Petition. The facts in brief which are necessary for disposing of the above Civil Revision Petition are as follows:

2.The Petitioner had filed a petition under Section 10 (3) (c) of the Tamil Nadu Buildings (Lease And Rent Control) Act, for eviction of the tenant on the ground of additional accommodation against the respondents 1 and 2. The petitioner had contended that she was the owner of the ground and 1st floor of the premises measuring an extent of 2,160 Sq.ft. marked as G1 and F2 bearing Door No.8/2, R.V.Nagar Main Road, Anna Nagar East, Chennai-600 102. It was her case that 1st respondent was inducted as a tenant by her father in November 2006 and she was not directly in the know-how of the transaction

between her father and the 1st respondent and the details that has been extracted by her in the Rent Control Petition has been culled out from the suit O.S.No.5944 of 2009 filed by the 1st respondent in the month of July 2009 for a permanent injunction restraining the Petitioner's father from interfering with the peaceful possession and enjoyment of the property except by due process of law.

3.In the said suit the 1st respondent had contended that he had paid a sum of Rs.30,000/- as an advance to the Petitioner's father and that the monthly rent was a sum of Rs.5,000/-. The suit was not contested by the petitioner's father and was ultimately decreed in favour of the 1st respondent.

4.The Petitioner would contend that she had become the owner of the property by virtue of a settlement deed dated 02.06.2010 executed by her father in her favour. On becoming the owner she had asked the 1st respondent to attorn tenancy in her favour. The 2nd respondent represented that she was the wife of the 1st respondent and that she is the present tenant under the Petitioner's father. She had also filed a suit O.S.No.4959 of 2014 on the file of the XIV

Assistant City Civil Court, Chennai against the Petitioner's father and her husband. In the above suit she would contend that it was she, who had been inducted as a tenant in respect of the rear portion of the ground floor in November 2006 on a monthly rental of Rs.10,000/-.

5.The petitioner would contend that the 2nd respondent who works with the Police force on account of her conduct had been suspended from service on 31.05.2009 and further the 1st respondent had suddenly vanished into thin air deserting the 2nd defendant. The petitioner would contend that the 2nd respondent was misusing the petition premises and was putting it to immoral use and she had also given a complaint to T.P.Chatham Police Station on 04.08.2014 informing them about the same. Infact, the 2nd respondent had appeared before Police authorities and had given undertaking she would deliver vacant possession of the property and after giving such an undertaking she had rushed to file suit O.S.No.4959 of 2014. The petitioner would further contend that she and her husband are qualified Physiotherapists who are running their clinic at another rented premises on a monthly rental of Rs.30,000/-.

6.The petitioner would further contend that since she is using the 1st floor premises for her residential purpose it would be advantageous if she had got the petition premises so as to enable them to run their business. The petitioner would contend that the usage of building by the 2nd respondent for her immoral activities has causing great deal of nuisance to the petitioner.

7.The 2nd respondent had filed a counter inter alia denying the various allegations contained in the petition and she would contend that she and the 1st respondent had been inducted as a tenant in the month of November 2006 and the 2nd respondent had paid an advance of Rs.40,000/- though the 1st respondent had vacated the premises the petitioner's father had requested the 2nd respondent to remain in possession and therefore she continued in possession.

8.The 2nd respondent would further contend that the suspension has been revoked and since she was living alone the petitioner was giving her a great deal of harassment and on occasions she had her relatives staying over at her house. The respondent would further contend that there are other portions which has a To-Let board in

which the petitioner could open shop and the present petition is nothing but an attempt to arm-twist the 2nd respondent into paying a higher rent. The requirement of the petitioner lacked bonafides.

9.The petitioner had examined herself as P.W.1 and her husband as P.W.2 and had marked Ex.P.1 to Ex.P.8. The 2nd respondent on her side examined herself as R.W.1 and marked one document Ex.R.1. The 1st respondent had remained ex parte in the proceedings. The learned Rent Controller (XIV Small Causes Judge), Chennai, by his order dated 24.08.2017 was pleased to allow the Rent Control Petition and directed the eviction of the respondent from the petition premises within a period of two months from the date of the order.

10.The Rent Controller had proceeded to allow the application on the ground that the petitioner had proved her need for additional accommodation by filing Ex.P.8 and the contention of the 2nd respondent that the alternate flats were available had not been proved by her. The said order was taken up by way of an appeal to the VIII Small Causes Court (Rent Control Appellate Authority), Chennai,

by the 2nd respondent in R.C.A.No.752 of 2017. The learned Appellate Authority by order dated 13.08.2018 dismissed the appeal and confirmed the order passed by the learned Rent Controller.

11.Challenging the concurrent orders of eviction the revision petitioner is before this Court. Heard, Mr.S.P.Meenakshi Sundharam, learned counsel for the 2nd respondent/revision petitioner. He would contend that the petitioner had failed to prove bonafides and except for a visiting card no other documents had been filed by the petitioner to show that either she was Physiotherapist or that she was running a clinic at a rental premises and that she require the suit premises for the very same purpose.

12.Mr.N.A.Mohamed Noohu, learned counsel appearing on behalf of the respondent/landlord would argue that the petitioner has proved her requirement and further the 2nd respondent was misusing the premises for which the petitioner had examined P.W.2 and therefore the order cannot be found fault with. He had also relied upon the following Judgements:

i)***Kanniammal Vs. Chellaram*** reported in **2002-4-L.W.424** in

support of the arguments that the application filed under Section 10 (3) (c) was maintainable.

ii) ***S.Balamani Vs. V.Periaswami*** reported in **1995-1-L.W.616** that subsequent events have to be taken into account before final adjudication of the matter by the Court. Further it is not proper for the tenant to say that merely because the landlord had secured some other accommodation during the pendency of the litigation the original claim under 10 (3) (a) (i) should be substituted by seeking a relief under Section 10 (3) (c).

iii) ***S.C.Dhatchayani Vs. A.Sathar Essa*** reported in **2008 (4) CTC 759** in support of the use of the expression "occupation" under section 10 (3) (c) of the Act which depends upon the intention of the parties. The learned Judge has held that even if the landlord had not occupied the properties that she had got evicted and kept the premises under lock and key her actions cannot be questioned since she would want possession of the entire property before she entered into possession of the same.

iv) ***M/s.Batco Roadways, Rep., by its partner Mr.M.H.Patni, No.21, Muthu Mari Street, Chennai – 600 001. Vs. Mrs.A.Radhammal*** reported in **2009-2-L.W.141** to bring out the

distinction between Section 10 (3) (a) (iii) and 10 (3) (c).

c)**C.Susila Devi and others Vs. S.Govindan** reported in **2013 (2) CTC 538** with regard to bonafide requirement and relative hardship.

12.Heard the counsels and perused the records as well as the Judgements. The present petition has been filed to evict the respondents from the premises on the ground that the petitioner requires the portion in the occupation of the respondents as an additional accommodation for running a Physiotherapy clinic. The petitioner is in occupation of the 1st floor which is being used as her residence and she is seeking an additional accommodation of the premises in the occupation, now of the 2nd respondent for the purpose of running Physiotherapy clinic. Before proceeding to deal with the issue on hand it is necessary to extract the provisions of Section 10 (3) (c) of the Tamil Nadu Buildings (Lease And Rent Control) Act.

"(c)In the case of any non-residential building other than the non-residential building mentioned in clause (b), the landlord or any other member of his family requires it for the purpose of his business and the landlord or the

member of his family does not occupy any such non-residential building of his own for the purpose of his business in the city, town or Village concerned;"

13.A reading of the said provision would indicate that the additional accommodation should be for the very same purpose for which the landlord was occupying the other portion of the building. If the landlord is using one part as residential, he can seek additional accommodation only for a residential purpose and if he is in occupation of a portion for a non residential purpose then additional accommodation can also been chosen only for a non residential purpose. Admittedly, the revision petitioner is occupying a part of the premises as her residence and therefore she can seek additional accommodation only for the residential purpose and not for running a Physiotherapy clinic. The Honorable Supreme Court in **2004-4-L.W.424** has held as follows:

"The phraseology employed by the Legislature in framing Section 10(3) (c) and the use of non obstante Clause therein makes it clear that Section 10 (3) (c) overrides the provisions of Section 10(3)(a)(i) and (iii).

The latter provision, i.e. 10(3)(a)(i) and (iii) have two in-built restrictions, viz. the landlord seeking eviction of a tenant thereunder should not be occupying a building of his own, and secondly, the nature of user of the leased property by the tenant must correspond to the nature of the requirement of the landlord. The use of the words "requires additional accommodation", as qualifying "for residential purpose or for purpose of a business which he is carrying on" indicates that under Section 10(3) (c) the requirement for additional accommodation must be for the same purpose for which the part of the building in occupation of the landlord is being used. If a landlord is occupying only a part of a residential building he may seek ejectment of tenant for his requirement of additional accommodation for residential purpose though the tenancy premises are being used by tenant for non-residential purpose. Similarly, a landlord who is occupying only a part of a building for non-residential purpose may have the tenant evicted if he requires additional accommodation for non-residential purpose it being immaterial that the tenant

is occupying a part of the premises for residential purpose. Since the requirement of additional accommodation by the landlord is with reference to the manner of the user of that part of the building which is in his occupation it is the nature of that requirement that should prevail over the manner of user of the tenant of the portion leased out to him."

This Judgement has been followed by this Court in the Judgement reported in **2009-2-L.W.141**.

14.A perusal of the papers would further reveal that, apart from marking a visiting card the petitioner has not let in any evidence whatsoever to show that she and her husband are running a Physiotherapy clinic and that the same is being run in a rented premises. The petitioner has not filed the rent deed that she had entered into with the landlord of the premises in which she claims that she is presently running a clinic. Therefore the contention of the 2nd respondent that the landlord has not proved bonafides has to be upheld. In an application seeking eviction on the ground of additional accommodation it is a sine qua non that the landlord should plead the

relative hardship that would result to him/to her in the event of eviction not being granted. A perusal of the petition would show that such a plea has not been taken in the petition seeking eviction and nor has evidence been let in to show the relative hardship. The Authorities below have also not considered the issue of relative hardship and this is fatal to a petition filed under Section 10 (3) (c) of the Act **(1999 (3) CTC 512 – S.M.Subbiah Vs. Nandappan and others).**

In these circumstances, this Court is constrained to hold that the petitioner/landlord has not proved the necessary ingredients required for seeking eviction on the ground of an additional accommodation under Section 10 (3) (c) and further the requirement is for a non-residential purpose whereas the petitioner is using the other portion for her residential use. The authorities below have failed to take into consideration the above factors and has erroneously granted an order of eviction. It is needless to state that the petitioner/landlord is at liberty to invoke the provisions of the new Act to seek possession of the demised premises from the tenant as per the provisions contained therein.

The Civil Revision Petition is therefore allowed and the order of the authorities below are set aside. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition are also closed.

20.03.2019

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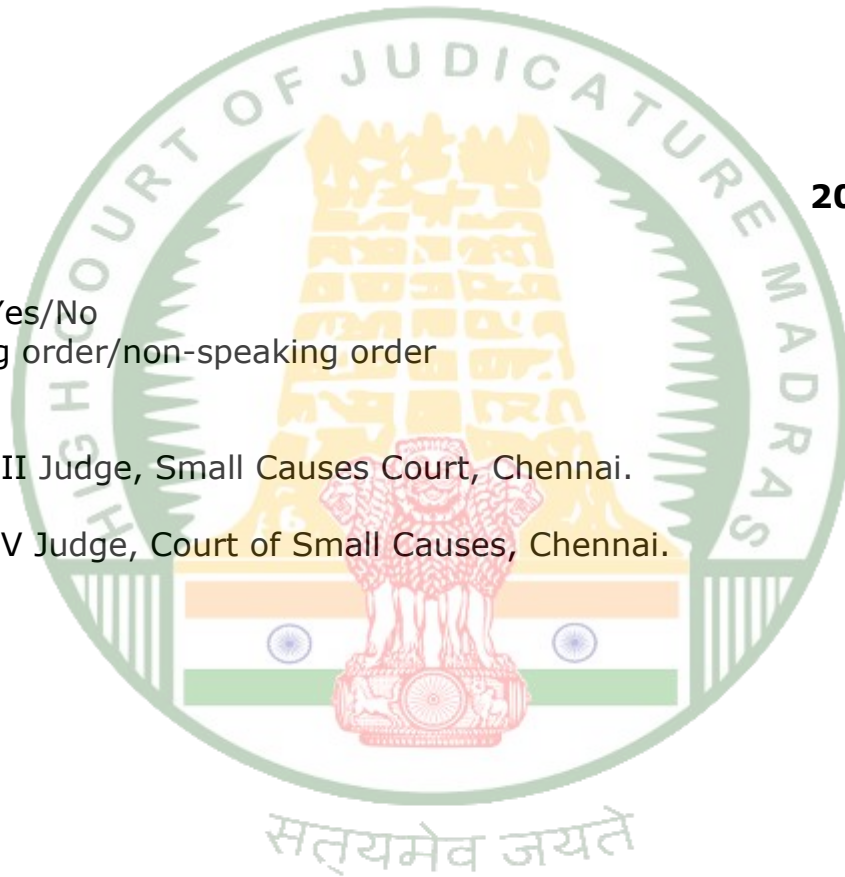
Index : Yes/No

Speaking order/non-speaking order

To,

1.The VIII Judge, Small Causes Court, Chennai.

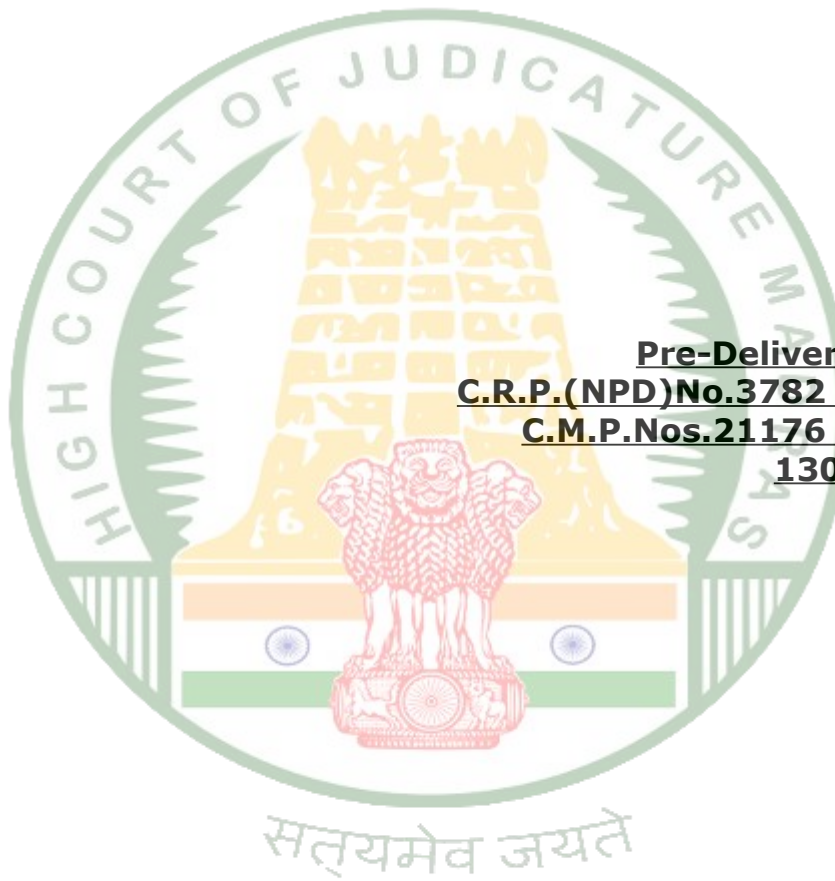
2.The XIV Judge, Court of Small Causes, Chennai.



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P.T.ASHA, J.,

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Pre-Delivery order in
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