



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2019
(Reserved on 23.04.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD)No.1778 of 2012
and
M.P (MD)No.1 of 2012

Veerasangili

... Petitioner

vs.

M.Jeyalakshmi

... Respondent

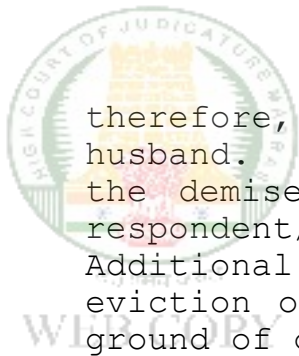
Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, against the order dated 06.07.2012 made in RCA.No.46 of 2009 on the file of the Principal Sub Court, (Rent Control Appellate Authority), Madurai, confirming the order passed in RCOP.No.131 of 2006 dated 30.06.2009 on the file of the Additional District Munsif (Rent Controller) Court, Madurai.

For Petitioner	: Mr.S.C.Herold Singh
For Respondent	: Mr.R.Surianarayanan

ORDER

This revision petition is filed against the order dated 06.07.2012 made in RCA.No.46 of 2009 on the file of the Principal Sub Court, (Rent Control Appellate Authority), Madurai, confirming the order passed in RCOP.No.131 of 2006 dated 30.06.2009 on the file of the Additional District Munsif (Rent Controller) Court, Madurai.

2.The revision petitioner is the tenant and the respondent is the landlady in RCOP. The case of the respondent/landlady is that she is the owner of the demised premises, in which, the revision petitioner was inducted as a tenant for non residential purpose and the respondent's husband is a surgeon in gastro entrocology and running a consultancy in a rented premises at Anna Nagar, Madurai, on a monthly rent of Rs.6,000/-. The further case of the respondent is that her brother-in-law who is also a doctor practising in general medicine, is running a consultancy in the first floor of the building, in which, the demised premises is situated and he used to refer some patients to the respondent's husband and those patients find it difficult to consult the respondent's husband since his consultancy is located 5 kms away from the demised premises and

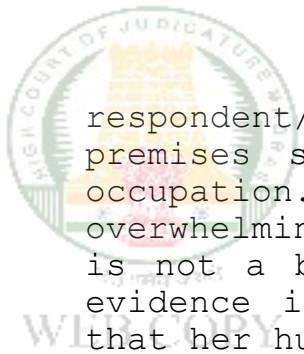


therefore, she is in requirement of the demised premises for her husband. When the respondent approached the petitioner to vacate the demised premises, the petitioner did not do so. Hence, the respondent/landlady filed RCOP.No.131 of 2006 on the file of the Additional District Munsif (Rent Controller) Court, Madurai, for eviction of the petitioner/tenant from the demised premises on the ground of own use and occupation.

3.The case of the revision petitioner/tenant is that the respondent filed RCOP for eviction on the ground of own use and occupation with false allegations, as the respondent owns several other properties at Madurai which are all more spacious than the demised premises. Even the building wherein, the demised premises lies has many portions which are more suitable for running the consultancy service and without doing so, the respondent has deliberately chosen the demised premises and further, the demised premises has an entrance measuring only 3 feet which is unsuitable for running consultancy service and therefore, there is no bonafide requirement for filing the RCOP. The petitioner would further contend that the respondent resorted to disconnect the electricity connection to the demised premises and therefore, the petitioner filed RCOP.No.56/2003 to restore the electricity connection which was allowed. Subsequently, the respondent filed RCOP.No.30/2003 for eviction of the petitioner on the ground of wilful default, but later it was dismissed as withdrawn and therefore prayed for dismissal of the RCOP.

4.After considering the oral and documentary evidence on either side, the rent controller allowed the RCOP on the ground of own use and occupation. Aggrieved by the same, the tenant filed rent control appeal contending that the respondent/landlady has not filed any document to show that her husband was doing consultancy service in a rented building. The husband of the respondent is a Government Doctor and he has not filed any document to show that he got permission from the Government to do medical service. In the building, in which, the demised premises is located, some other tenants have vacated their portions and they are remaining vacant and therefore, there is no bonafide requirement by the landlady in seeking eviction of the demised premises. He also contended that though the petitioner did not dispute the consultancy services run by the respondent's husband, yet the respondent has to prove the same irrespective of whether the petitioner disputes or not in view of Section 10(3)(a)(ii) of the Act which specifically mention the words, "'carrying on business'". The rent control appellate authority also concurring with the rent controller, dismissed the appeal holding that the plea of own use and occupation was proved. As against the concurrent findings of the Courts below, the tenant has filed this revision petition.

5.Learned counsel for the petitioner would submit that the
<https://hsevtcstcours.gov.in/tocservices> is regularly paying the rent to the



respondent/landlady, but the Court below failed to note that the premises sought for by the respondent is not for own use and occupation. Despite the fact that the petitioner has produced overwhelming evidence to show that the requirement of the landlady is not a bona fide one coupled with the fact that no documentary evidence is marked on behalf of the respondent/landlady to prove that her husband was permitted to run consultancy service, still the Courts below favoured with the landlady without any basis. Hence, he prays for setting aside the orders of the Court below.

6.Per contra, learned counsel appearing for the respondent would submit that the Courts below has meticulously dealt with each and every point urged by the petitioner/tenant and eventually came to the conclusion that the prayer of the respondent/landlady is a bona fide one, and therefore, both the Courts have concurrently held that the petitioner/tenant has to be evicted from the demised premises. Thus, he prays for the dismissal of the revision petition.

7.Heard the learned counsel for the petitioner as well as the respondent.

8.The main contention urged by the tenant is that the landlady has not proved that her husband wanted to do consultancy services. Perusal of record shows that the Courts below has specifically recorded a finding to the effect that neither in the counter nor in the deposition, the tenant has denied the fact that the respondent's husband was doing consultancy services, but only during the course of arguments, the tenant raised such a plea and therefore, the plea raised by the petitioner in respect of the factor that the respondent did not prove that her husband was doing consultancy services, was rejected by the Court below. The evidence of PW1 who is the husband of the respondent, in the chief examination clearly states that he runs a consultancy service and therefore, the requirement can be construed as bonafide requirement unless and until the petitioner denies the averment of the respondent/landlady as to the running of the consultancy service by her husband with documentary evidence. The learned Judge has rightly taken the oral evidence of PW1 which is legally admissible. As far as running of consultancy service is concerned, the respondent need not prove the same for a simple reason that any Doctor who is duly qualified, can put up consultancy service on their own. Here, admittedly, the husband of the respondent is a surgeon in Gastro Entroecology and therefore, the requirement of the landlady cannot be construed as not genuine. Relying upon the judgment in B.Kishore, Proprietor, B.Kishore Auto Spares, Chennai, vs. D.Maragathavalli, Chennai, reported in 2007 (2) CTC 797, it is always open to the respondent/landlady to choose the building which she requires for her husband and the petitioner/tenant cannot dictate or compel the landlady to choose another place.



9. Therefore, I do not find any merit in the contentions of the petitioner. This Civil Revision Petition is liable to be dismissed and accordingly dismissed. No costs. The tenant is directed to vacate the demised premises within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1) The Principal Sub Judge,
(Rent Control Appellate Authority),
Madurai.

2) The Additional District Munsif,
(Rent Controller),
Madurai.

COPY TO:
THE SECTION OFFICER,
V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1 CC to M/s.R. SURIYANARAYANAN, Advocate (SR-83859[F] dated 28/08/2019)
+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-83949[F] dated 28/08/2019)

C.R.P (NPD) (MD) No.1778 of 2012
28.08.2019

bala
JM/23.09.2019/4P/7C