

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.03.2019****CORAM:****THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM****C.R.P. (MD) (NPD) .No.360 of 2019**

WEB COPY

Palani Chidambaram : Petitioner/Appellant/Petitioner-landlord

Vs.

Prema Selvam : Respondent/Respondent/Respondent

PRAYER: The Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings(Lease and Rent Control Act, 1960) against the fair and decreetal order dated 22.06.2017 passed in R.C.A.No.9 of 2016 on the file of the learned Rent Control Appellate Authority (Subordinate Court), Devakottai confirming the fair order and decreetal order dated 26.06.2014 passed in R.C.O.P.No.7 of 2013 on the file of the learned Rent Controller (Principal District Munsif), Karaikudi.

For Petitioner : Mrs.M.Ezhil Selvi
For Mr.R.P.Ramachanthiran

For Respondent : Mr.S.Sivathilagar
For Mr.B.Muruganandam

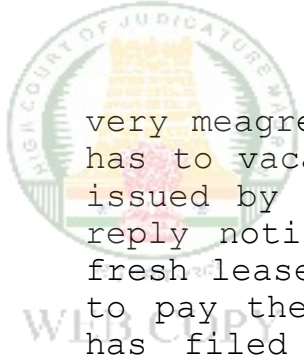
ORDER

This Civil Revision Petition has been preferred by the petitioner against the fair and decreetal order dated 22.06.2017 passed in R.C.A.No.9 of 2016 on the file of the learned Rent Control Appellate Authority (Subordinate Court), Devakottai confirming the fair order and decreetal order dated 26.06.2014 passed in R.C.O.P.No.7 of 2013 on the file of the learned Rent Controller (Principal District Munsif), Karaikudi.

2.The petitioner herein is the landlord and the respondent herein is the tenant.

3.The brief facts of the case are as follows:

3.1.The petitioner is having shopping complex by name Abarajitha at Karaikudi. The shop no.1 and 2 are the petition mentioned properties. The respondent herein entered tenancy for monthly rent of Rs.1,200/- on oral lease agreement for a period of three years and the said tenancy period was cancelled on 31.08.2008. While so, the elder son of the petitioner needed petition mentioned shop building for his own occupation to run a bakery cum tea stall in the said property. Further, the petitioner has contended that there was an arrear of rent on the side of the respondent and also contended that the rent fixed in the year 2003 at Rs.1,200/- is



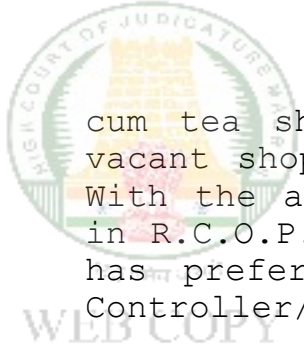
very meagre. Hence, appropriate rent to be fixed and the respondent has to vacate the suit property. In view of the above, notice was issued by the petitioner/landlord to the respondent/tenant. In the reply notice, the respondent stated that she cannot enter into a fresh lease agreement regarding the payment of rent and she can able to pay the rent only through Bank. Hence, the petitioner/landlord has filed the suit in O.S.No.77 of 2008 before the Additional District Munsif Court, Karaikudi for recovery of rental building from the respondent. The suit was dismissed and as against the same, appeal in A.S.No.14 of 2010 was filed before the Subordinate Court, Devakottai which was also dismissed. Against the first appeal, S.A.No.270 of 2012 has been preferred by the petitioner herein which was also dismissed by this Court on 04.12.2012, in which, the petitioner was directed to file a petition before the appropriate forum. Hence, the petitioner has filed R.C.O.P.No.7 of 2013 to evict the respondent from the petition mentioned property for the purpose of running the tea stall for his son.

4. In the said R.C.O.P, the petitioner has contended that he is 80 years old and out of his hard-earned money, he constructed the building and it is for his own use and enjoyment and the building in question is very much suitable property for running the tea stall by his son.

5. On the other hand, the learned counsel for the respondent would contend that there are other shops which are very much available for the petitioner's son to run a tea stall. Only for the purpose of evicting the respondent from the suit property, the petitioner herein filed many cases against the respondents. The learned counsel would further contend that the petitioner is conducting Sidha Medical Shop and Clinic in the said petition mentioned property. He cannot get new license to change the building. Further, the said shop is very small and it is not fit to conduct bakery cum tea shop and there is no water facility and drainage facility. Therefore, the petitioner filed the petition with *malafide* intention to vacate the respondent from the rental building. Further, he would contend that the petitioner has refused to receive the rent and hence, the respondent has sent monthly rent through Demand Draft which is also refused by the petitioner.

6. In the trial Court, on the side of the petitioner, there are two witnesses were examined as P.W.1 and P.W.2 and Exhibits P1 to P8 documents were marked. On the side of the respondent, one witness was examined as R.W.1 and Exhibits R1 to R7 were marked.

7. The Rent Controller Authority after considering the oral and documentary evidence, has given a finding that the petitioner herein has not pleaded as the particular petition mentioned shop building is alone convenient for doing business than other shop building and at the time of filing the present proceedings the adjacent shop building was vacant as admitted by P.W2 himself. So, if the intention of the petitioner is *bona fide* to conduct bakery



cum tea shop for his son, definitely he could have done in the vacant shop itself instead of present petition mentioned property. With the above observation, the trial Court dismissed the petition in R.C.O.P.No.7 of 2013. Aggrieved against the same, the petitioner has preferred an appeal in R.C.A.No.9 of 2016 before the Rent Controller/Subordinate Judge, Devakottai.

8.The learned Rent Control Appellate Authority after observing the oral and documentary evidence, dismissed the appeal by confirming the order passed by the Rent Controller (Principal District Munsif Cum Judicial Magistrate, Karaikudi). Against which, the petitioner before this Court.

9.In the grounds of revision, the learned counsel for the petitioner would submit that the Courts below ought not to have held that the petitioner has another shop vacant and suitable for the business of his son and his requirement of the premises is not *bona fide*. The learned counsel would further submit that the petition mentioned property is very much suitable for the petitioner to run the tea stall that is lying in front of the portion in which the respondent is residing. Further he would submit that the Courts below erred in dismissing the petition on the ground that the petitioner's son did not have adequate past experience in running the business. The learned counsel for the petitioner would contend that even without having any experience, one can run the tea stall. In support of his contention, he has relied upon the Judgment of the Hon'ble Supreme Court reported **in AIR 1999 Supreme Court 2226 (Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkune and another)** in which, it is stated that " The landlord who seeks eviction of his tenant on ground of bona fide requirement of starting business need not establish that he possess the know-how necessary for doing the business. If a person wants to start new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his bona fides is a fallacious and upragmatic approach" .

10.Since the petitioner/landlord is aged about 80 years and he can decide according to his convenience that the other shops in the building may be used for his own use or not and it is not for the tenant to suggest the landlord to use the other shops for his own use. The owner of the building can choose the suitable shop for running the tea stall and the respondent/tenant cannot offer any other option by way of suggestion to the petitioner. Considering the age of the petitioner and the building in dispute which is owned by the petitioner, he can choose any shop to run his business. In support of his contention, he quoted the case law of this Court reported **in 2010(2) MWN (Civil) 644 (S.Jesudoss Vs.A.P.Ramachandran)** in which, it is stated that "The requirement of the law is that there need not be any actual business being carried on by the landlord or by the members of the landlord for seeking eviction of a tenant on the ground of personal occupation. It is



sufficient, if there is genuine intention on the part of the landlord or his family members to carry on business in the premises concerned"

11. Whereas, the learned counsel for the respondent/tenant would submit that the respondent/tenant is ready to pay the balance amount of rent and also ready to vacate the petition mentioned property. Recording the submission made by the learned counsel for the respondent/tenant, the respondent/tenant is directed to vacate the petition mentioned property within a period of 4 months from the date of receipt of a copy of this order and hand over the same to the petitioner/landlord.

12. With the above observations and directions, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (cs-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Rent Control Appellate Authority
/Subordinate Judge, Devakottai

2. The Rent Controller/Principal District Munsif Cum Judicial
Magistrate
Karaikudi

3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

C.R.P. (MD) (NPD) .No.360 of 2019
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SP/24.04.2019/4P/4C

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