

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 03.01.2020**

**PRONOUNCED ON : 06.03.2020**

**CORAM :**

**THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN**

**C.R.P. (NPD) No.1029 of 2011**

**and**

**M.P(MD) Nos.1 of 2011 and 1 of 2014**

M/s.Designer Dresses (P) Ltd.

40/144, North Usman Road,

T.Nagar, Chennai-600 017

Rep by its Director S.Rajagopalan

...Petitioner

**-VS-**

M/s.G.R.Natarajan & Co

Rep by its Managing Partners,

1.N.Sairam

2.N.Ramasundaram

3.K.Balakrishnan

4.R.Sarala

...Respondents

(Cause title amended vide Court order dated 30.07.2019  
made in C.M.P.No.15349 of 2019)

**PRAYER:** Civil Revision Petition is filed under Section 25 of the Tamilnadu Building (Lease and Rent control) Act, 1960, against the judgment and decree made in RCA No.730 of 2005 on the file of the VII

Court of Small Causes at Chennai-cum Appellate Authority dated 25.01.2011 reversing the order of the XI Judge, Small Causes Court dated 25.01.2005 made in RCOP No.1602 of 2003.

For Petitioner : Mr.Niranjana Rajagopalan  
for M/s.G.R.Associates

For Respondents : Mr.T.R.Rajagopalan  
Senior Counsel  
for Mr.R.Sivaraman

**ORDER**

The tenant is the revision petitioner herein.

2.For the sake of convenience the parties are referred to as landlord and tenant.

3.The landlord filed RCOP No.1602 of 2003 before XI Judge, Small Causes Court, Chennai, seeking for eviction on the ground of wilful default and owner's use and occupation. The learned Rent Controller, Chennai, after considering the materials available before her, dismissed the RCOP. Aggrieved against the said order, the landlord has preferred RCA

No.730 of 2005, before the VIIth Small Causes Court at Chennai and by an order dated 25.01.2011, the Rent Control Appeal filed by the landlord was allowed in part whereby the order of eviction was passed on the ground of owner's use and occupation of the petition premises for non-residential purpose. However, in respect of the finding of the learned Rent Controller as to there is no wilful default, the same was confirmed and the Rent Control Appeal was rejected to the limited extent and hence, the civil revision petition has been filed by the tenant.

4.The learned counsel for the tenant would contend that the petition for eviction is not bonafide and nor there is any bonafide requirements. The landlord has also filed fair rent petition simultaneously. A bonafide applicant for eviction on the ground of owner's use and occupation would not have simultaneously filed for fair rent as well as eviction petition. Yet another contention is that the petition building has basement, ground floor plus mezzanine and first floor and the first floor is kept vacant and basement has been let out to persons at various points of time and the landlord has never chosen to occupy it.

5.Per contra, Mr.T.R.Rajagopalan, learned Senior Counsel for the respondents would submit that the landlord is now running the Office in his residential house and the landlord is the best judge of his requirement for residential or business purpose and it is not for the tenant to dictate the landlord to which portion or which building, he has to occupy when the bonafide requirement has been proved in the manner known to law.

6.The learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court of India in the case ***Super Forgings & Steels (sales) Pvt. Ltd., Vs. Thyabally Rasuljee(Dead) through LRs*** reported in (1995) 1 SCC 410, wherein it has been held as follows:-

*9.The answer to the said question, in our view, cannot be anything other than that a non-residential building in occupation of landlord which is "his own" envisaged in Section 10(3) (a) (iii) above, is not only that of which he is an absolute owner, but also that of which he is a co-owner, for a co-owner of a building who is its landlord is regarded under Rent Control laws of our country as its owner entitled to obtain possession of such a building from a tenant for his bona fide requirement.*

*17.In the facts of the present case as we have pointed out earlier respondents 2 to 11 become disentitled to obtain eviction*

*order under Section 10(3)(a)(iii) of the Act because they are the co-owners of a non-residential building, where they are carrying on the business of M/s.Fakruddin and Company for carrying on which business the deceased respondent 1 had sought eviction of the appellant-tenant from another non-residential building of which also respondent 2 to 11 have become the co-owners after the demise of Respondent 1.*

7.The learned counsel for the petitioner would also rely upon the judgment of this Court in the case of ***C.R.Subramanian Vs. N.Vasudevan*** reported in ***1998 (II) CTC 211***, wherein it has been held as follows:-

*11.In this connection, it may also be worthwhile to note a decision of the Honourable Supreme Court in, D.Devaji V.K.Sundarashana Rao, 1994 Supp (1) SCC 729 wherein Their Lordships said that possession of a non-residential building in the city, town or village is an embargo for filing an eviction petition for getting possession of a non-residential premises. In paragraph 5 of the judgment (at page 733), Their Lordships have further said thus:-*

*“....The analysis of the provisions made hereinbefore indicates that the landlord must be in possession of a non-residential building in the city, town or village and if he requires another non-residential building for*

*expansion of his business or to establish another business or needs additional accommodation of a non-residential building in the same city, town or village, Section 10(3)(a) (iii) creates an embargo. Suitability or convenience does not appear to have, from the language found therein, been envisaged by the legislature.....*

8.The learned senior counsel for the respondents would rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Prativa Devi (SMT) Vs. T.V.Krishnan*** reported in ***(1996) 5 SCC 353***, wherein it has been held as follows:-

*Bona fide requirement of landlord—Landlord is best judge of his residential requirement—Whether an alternative accommodation was actually available would depend upon landlord's right to such accommodation.*

*The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.*

9.The learned senior counsel for the respondents would also rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Uday Shankar Upadhyay and others Vs. Naveen Maheshwari*** reported in ***(2010) 1 SCC 503***, wherein it has been held as follows:-

*Once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually conducted on the ground floor, because customers can reach there easily. The Court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide.*

10. In support of his contention, the learned counsel appearing for the respondents further relied upon the following decisions in the case of:-

(i) ***S. Mariappan Vs. Kadar Beevi*** reported in (1997) 3 L.W. 141

(ii) ***Ragavendra Kumar Vs. Firm Prem Machinery & Co*** reported in (2000) 1 SCC 679.

(iii) ***D. Sasikumar Vs. Soundararajan*** reported in (2019) 9 SCC 282

(iv) ***Meenal Eknath Kshirsagar (MRS) Vs. Traders & Agencies and another*** reported in (1996) 5 SCC 344 .

11. On consideration of the evidence on records and the pleadings,

it is seen that the landlord filed the petition in RCOP No.1602 of 2003 seeking eviction of the tenant on the ground of wilful default and owner's use and occupation. The Rent Control Authority has dismissed the RCOP, while the Appellate Authority has allowed the RCA in part in respect of owner's occupation. One of the essential ingredients for seeking eviction of tenants under Section 10(3)((a)(iii) is that he is not already in occupation of the non-residential building of his own. The landlord in this case is admittedly in occupation of a residential building of his own and using it as office in home.

12. Section 10(3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act is extracted below for reference:-

10(1).....

(2).....

(3) (a) *A landlord may, subject to the provisions of clause (d), apply to the controller for an order directing the tenant to put the landlord in possession of the building-*

(i).....

(ii).....

(iii) *in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or [any member of his family] is carrying on, a non-residential building in the city, town or*

*village concerned which is his own.*

13. In the case of ***Bata India Ltd Vs. M.R. Manickam*** reported in ***(2004) 1 CTC 94***, it has been encapsulated the ingredients necessary to maintain petition for eviction under the 10(3)(a)(iii) of the Act as follows:-

- “(a) building should be non-residential in character*
- (b) landlord should be carrying on business on date of application for eviction*
- (c) landlord should not be occupying any building belonging to him and*
- (d) claim should be bonafide and not found to be indirect or false attempt to evict tenant to obtain more rent or to harass tenant”*

14. On perusal of the evidence of PW.1/landlord and the pleadings in the petition, the need for the additional accommodation namely owner's use and occupation of the petition premises has been clearly stated in the RCOP so also in chief examination of P.W.1. Even in the cross-examination, he has categorically stated that he is running the Office in his house and RW-1/tenant has also admitted in the cross-examination that the landlord is running the Office in his residential house and furthermore, it is seen from the evidence of PW1 and RW1 that the requirement for running

Office by landlord and the total extent of the land occupied by the tenant is more than the total extent of the land occupied by the landlord in his residential house also, assumes significance.

15. It is the specific pleadings of the landlord that the landlord is not in occupation of any building of his own and requires bonafide the building in the occupation of the tenant. The only building that would be suitable for the landlord's occupation, is the petition mentioned property having regard to its locational advantage particularly to the partners who own their residential house in the proximity, the size of the building and the requirement of the business. All the commercial properties, that belong to the partnership, are in the hands of tenants and the only property that is presently vacant at old door No.193, Roypettah High Road, Chennai, has only a constructed area of 1982 sq.ft, which is inadequate for the purpose of the landlord's business. Amongst the rented premises, the property in the occupation of the tenant alone is the largest and most suitable for its personal occupation. The said pleading was not challenged during the cross-examination of the P.W1, which also assumes significance.

16.Both in the pleadings as well as in the evidence, the stand of the landlord is that the landlord is a partnership firm undertaking construction works in the city. It is having a staff strength of 50 persons and also has got 8 mixer machies, 2 mini lorries, 5 commercial motor cars and 28 motor cycles. The present office at which the landlord is functioning is built within the compound of the residential house at No.1, Jawaharlal Nehru Street, T.Nagar, which is not sufficient. There is a lot of inconvenience in parking the vehicles for the staffs and the customers and as the business of the landlord is ever expanding, the landlord is in need of the petition premises for his own use and occupation.

17.Per contra, the stand of the tenant is that the landlord has also let out several portions in the very same building to other tenants and if there is any requirement for the landlord for its own use, then the said portions would have been utilised. The claim of the landlord is not bonafide.

18(a).Admittedly, the jural relationship between the parties

namely landlord and tenant is not in dispute. It is the specific case of the tenant that he is paying the rent regularly and he has not committed any default in payment of the rent. Though the landlord has stated that there was a lease agreement, however it was unregistered since the lease agreement dated 18.08.2000, was not produced by either side. The Appellate Authority has rightly fixed the quantum of rent at Rs.50,000/- per mensem.

18(b).On perusal of Ex.R4, the rent has been paid to the tune of Rs.5,27,970/- and on a combined reading of Ex.P7, Ex.P8 and Ex.P10 coupled with Ex.P11, the Appellate Authority has categorically gave a factual findings that after deducting the amount paid by the tenant by paying rent, there is a balance of sum of Rs.3,23,321/- was still available in the hands of the landlord and accordingly, held that there is no wilful default, since excess amount over and above the alleged rent is lying in the hands of the landlord.

18(c).Though P.W.1 has stated that there is an arrears and that the arrears arise out of arrears in different between the agreed and contractual

rent, however there is no specific plea or period as to the difference of amount between the agreed rent and contractual rent and the period of non payment of difference amount was not stated either in the petition or in the evidence of P.W.1. Admittedly, the pleadings do not contains the specific period of default.

18(d). Taking into consideration of the above factual position and also non-marking of the alleged lease agreement regarding commencement of monthly rental as pleaded by the landlord, both the Courts below have concurrently held that there is no wilful default. Such a finding does not suffer from any irregularity or illegality warranting interference by this Court at the revisional jurisdiction.

19. It is specific case of the landlord that the present office at which the landlord is functioning is built within the compound of the residential house at No.1, Jawaharlal Nehru Street, T.Nagar, which is not sufficient, there is a lot of inconvenience in parking of the vehicles for the staff and the customers and for expansion of business and the portions occupied by the tenant alone is the largest and most suitable for their own

use and occupation and hence the landlord is in need of the demised premises for his own use and occupation.

20. On the contrary, the tenant resisted the eviction proceedings on the ground that the landlord had let out several portions in the very same building to other tenants and if there is any requirement for the landlord for its own use, then the said portions would have been utilised and the claim of the landlord is not bonafide.

21. The nature of the business and the strength of the workforce and the requirement thereon, have been duly demonstrated before the Rent Control Court by way of oral and documentary evidence viz., P.W.1, P.W.2, Ex.P2 to Ex.P5 and also Ex.R6 to Ex.R8. It is the specific case of the landlord that the landlord's firm is carrying on business in the construction field and running its office in the portion of his residential building and so, the landlord is required the petition premises for his own use and occupation. Though it is admitted by PW1 and PW2 that the landlord's firm is having some other buildings, it is the main requirement of the landlord's firm is that the petition premises alone, which is suitable for his requirement. It is also admitted by RW1 in his evidence that the portion

occupied by the landlord for the purpose of having his office and his residential portion, are bearing same door number.

22. Though the tenant has stated that if the landlord has any requirement for own use, he can very well use other portions that have been lying vacant in the building. But the landlord/PW1's evidence is clear that the other portions are not suitable for his business, except the petition premises in the above referred decision. It is specifically held by the Hon'ble Apex Court that it is not for the tenant to dictate to which the portion of the landlord can be occupied and the landlord is the best judge of his requirement for residential or business purpose and he has complete freedom in the matter. In this case the landlord wanted eviction of the tenant from the petition premises for shifting his business as it was suitable and it is found to be bonafide.

23. In view of the above observations, this Court finds that the order of the eviction passed by the Rent Control Appellate Authority is well considered and well merited, which does not warrant any interference. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.03.2020

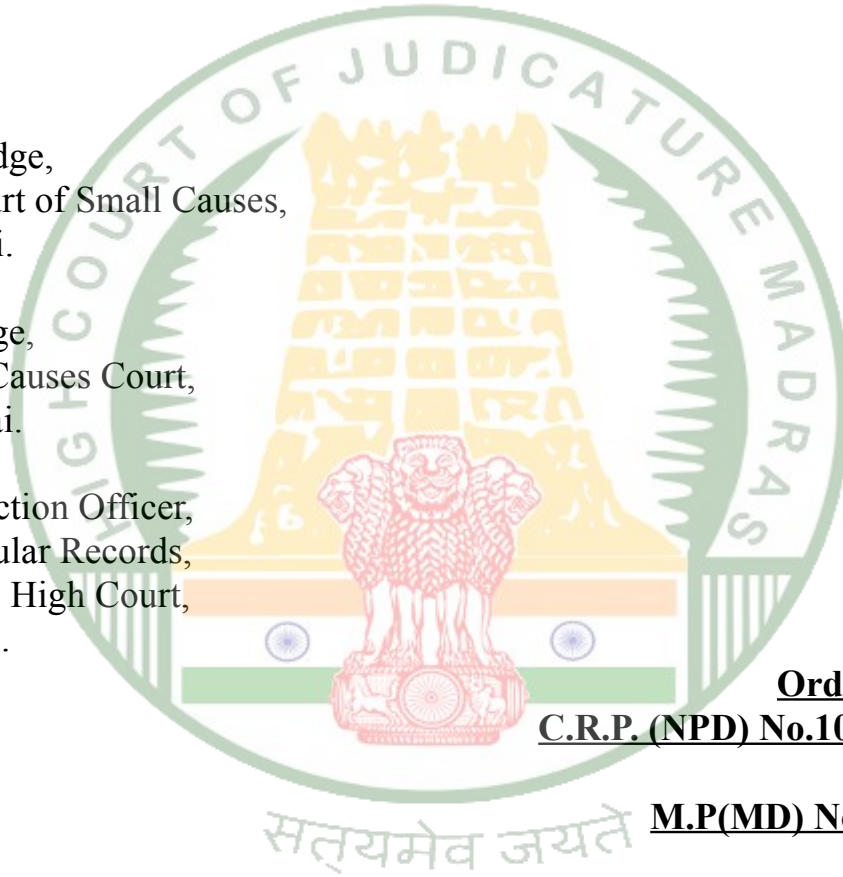
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**RMT. TEEKAA RAMAN, J.**

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To

- 1.The Judge,  
VII Court of Small Causes,  
Chennai.
- 2.XI Judge,  
Small Causes Court,  
Chennai.
- 3.The Section Officer,  
Vernacular Records,  
Madras High Court,  
Madras.



**Order made in**  
**C.R.P. (NPD) No.1029 of 2011**  
**and**  
**M.P(MD) No.1 of 2014**

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**06.03.2020**