

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) No.589 of 2020
and C.M.P.No.3061 of 2020

B.Murugesan

... Petitioner

Vs.

Vanaja Selvasekaran

... Respondent

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order dated 03.01.2020 passed in M.P.SR.No.20773 of 2019 in R.C.O.P.No.546 of 2018 pending on the file of the XI Judge, Court of Small Causes, Madras.

For Petitioner : M/s.K.Bijai Sundar

For Respondent : M/s.R.Santhanam

ORDER

Challenging the order of the Rent Controller in M.P.SR.No.20773 of 2019 dated 03.01.2020, the petitioner is before this Court.

2. Originally, the respondent/landlady's husband filed a fair rent petition under Section 4 of the Rent Control Act, in R.C.O.P.No.611 of 1996 and rent was fixed as Rs.663.25 per month, as against which, an appeal was preferred in R.C.A.No.636 of 1997 and the same was allowed on 22.03.2002 and the fair rent was enhanced to Rs.808/- per month.

3. While the matter stood thus, the respondent/landlady's husband passed away. Likewise, the petitioner/tenant's father has also passed away.

4. It is submitted by the learned counsel for the petitioner that the tenant has offered to pay Rs.2,000/- per month. Thereafter, another Rent Control Petition for fixation of fair rent came to be filed in R.C.O.P.No.546 of 2018. The tenant has taken an objection on maintainability of the second petition for fixation of fair rent without any change of circumstances under Section 5 of the Act.

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5. When the matter is taken up for trial, the respondent/landlady has not appeared as a witness, instead an Engineer deposed as P.W.1. Immediately, the petitioner/tenant has filed a petition questioning the maintainability of RCOP since his opportunity to cross examine the landlady

has been taken away. The petition was disposed of at the SR stage itself. The Rent Controller in M.P.SR.No.20773 of 2019 rejected the petition on 03.01.2020 on the ground that the maintainability of RCOP can be decided after full fledged. But, the fact remains that a legal issue of maintainability has been raised. It is for the Rent Controller to decide on the issue of maintainability as preliminary issue and proceed with the trial.

6. The facts and circumstances of the case shows that there is some force in the contention of the petitioner that his effective opportunity to cross examine the landlady is taken away and he has no other go, other than filing the petition to decide the matter of maintainability as preliminary issue. The Rent Controller should have entertained the petition and should have given the opportunity to all the parties and should have decided the matter on merits rather than dismissing the petition on technicalities.

7. Considering the facts and circumstances of the case, without expressing any opinion on merits of the matter, the order passed in M.P.SR.No.20773 of 2019 dated 03.01.2020 is set aside and a direction is issued to the Rent Controller to number the miscellaneous petition and decide the same on merits giving opportunities to all the parties and thereafter, proceed

M.GOVINDARAJ, J.

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with the main petition, if it is permitted by law. The above-mentioned exercise shall be completed within a period of one month from the date of resumption of physical hearings of the Courts.

With the above directions, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.08.2020

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To

The XI Judge,
Court of Small Causes,
Madras.

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