

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.1973 of 2015

K.Liaquat Ali

... Petitioner/2nd respondent

-Versus-

Kuppuswamy

.... Respondent/ Petitioner

Petition filed under section 25 of the Tamil Nadu Building (Lease & Rent Control) Act, praying to set aside the order dated 12.11.2013 passed in R.C.A.No.1 of 2010 by the learned Rent Control Appellate Authority [Subordinate Judge], Cheyyar, confirming the order dated 18.02.2010 by the learned Rent Controller (District Munsif), Cheyyar, dismissing the eviction petition in R.C.O.P.No.5 of 1994.

For Petitioner : Mr.Shivakumar

For Respondent : Mr.K.G.Senthilkumar

ORDER

This civil revision petition challenges the order dated 12.11.2013 passed by the learned appellate authority, Cheyyar, dismissing the appeal in R.C.A.No.1 of 2010 and thereby confirming the order dated 18.02.2010 passed by the learned Rent Controller, Cheyyar, dismissing the eviction petition in R.C.O.P.No.5 of 1994.

2. The petitioner is the land lord. The respondent is the tenant under the petitioner in respect of the petition demised property. The petitioner filed a petition in R.C.O.P.No.5 of 1994 before the Rent Controller, Cheyyar, for eviction on the ground of demolition and reconstruction and own use and occupation. The learned rent controller refused to order for eviction and thereby dismissed the original petition. Aggrieved by the same, the petitioner preferred an appeal in R.C.A.No.1 of 2010 before the learned Appellate Authority, Cheyyar and the appellate authority has also dismissed the appeal thereby confirming the order of the rent controller. Further aggrieved by the same, the land lord is before this court with this revision petition.

3. The brief facts leading to the filing of the eviction petition are as follows: The petitioner is the land lord. The petition demised property is a non residential property. The respondent was inducted as tenant in the petition demised property for a non residential purpose in 1987 on the monthly rate of Rs.50/- which was periodically enhanced and in the year 1992, the rent was fixed at Rs.175/- p.m. However, the respondent had failed to pay the rent from January 1993 and thus, he had committed willful default in payment of rent. The petitioner is a tailor by profession. He has been doing tailoring work in a rented building by paying Rs.350/- p.m. As the petition demised premises is a non residential building, he required the premises for his own use and occupation to establish his own business. Further, according to the petitioner, as the disputed building is in a dilapidated condition, the petitioner wanted to demolish the same and reconstruct the building. Hence, the filed the original petition for eviction on the grounds of willful default in payment of rent, demolition and reconstruction and willful default in payment of rent.

4. The respondent contested the eviction petition inter alia contending that he had been paying rent regularly to the father of the petitioner and after his death, as there was no formal partition between the owners. During the life time of the father of the petitioner, when he was not in a position to receive rent, the respondent filed a petition under Section 9(1) of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and on the orders of the court, he has been depositing the rent periodically before the court and therefore, there is no willful default in payment of rent and the petition has been filed only with a mala fide intention to evict the respondent. There is no bonafide in the petition and the building is not required for immediate demolition and reconstruction and for own use and occupation.

5. On considering the evidence, both oral and documentary, the rent controller dismissed the eviction petition on the ground that the petitioner, after the demise of his father, did not issue any notice to the respondent regarding transfer of property in his favour. In fact, the respondent himself filed a petition under Section 9(1) of the Act and on the orders of the court, he has been depositing the rent into the court regularly, and therefore, there was no wilfull default in payment of rent. That apart, there is absolutely, no material to show that the building is in a dilapidated condition and it requires immediate demolition and reconstruction. The rent controller further held that the petitioner had also failed to establish that he has been doing his tailoring business in a rented building. In the

absence of any material to show that the building required for immediate demolition and reconstruction and also for own use and occupation, eviction could not be ordered. On appeal, the findings of the rent controller were confirmed by the appellate authority.

6. So far as the ground of willful default of payment in rent is concerned, it is not in controversy that the respondent was paying rent to the father of the petitioner regularly and after his demise, when the ownership of the building was in issue, the respondent himself filed a petition under Section 9 (1) of the Act and on the orders of the court, he has been depositing the monthly rent regularly before the rent controller. Both the authorities have found that there was no willful default in payment of rent on the part of the respondent. This court does not find any factual error in this regard warranting interference at the hands of this court.

7. As far as the ground of demolition and reconstruction of the building is concerned, there is not even a single piece of evidence to show that the building is in a dilapidated condition and the petitioner has got means to demolish the building and put up constructions. Both the authorities below have rightly refused to accept the contention of the petitioner in this regard in which also this court does not find any factual error warranting interference.

8. As regards the requirement of the building in question for own use and occupation, both the authorities below have held that there was no material to show that the petitioner has been doing tailoring business in a rented building. However, the admission of the respondent himself in his cross examination would fortify the fact that the petitioner has been doing his tailoring business in the name and style "Leo Tailors" in a premises belonging to one Rabi Shahib on a monthly rent. When the respondent himself had clearly admitted that the petitioner has been running his tailoring business in a rented building then what more the authorities below required to hold that the premises is required for own use and occupation. In the considered opinion of this court, this piece of evidence would be sufficient enough to hold that the premises in question is required for the own use and occupation of the petitioner. But, both the authorities below have committed a factual error and thereby held that the petitioner failed to establish that the building is required for own use and occupation and therefore, the findings of both the authorities below in this regard require interference at the hands of this court.

9. For the foregoing discussion, the findings of both the authorities below refusing to order eviction on the ground of

own use and occupation of the landlord, the petitioner herein are set aside and the petition for eviction is liable to be allowed accordingly.

10. At this juncture, the learned counsel for the respondent submitted that the petitioner is of 82 years old and he is taking care of his only son who is a differently able person and therefore, the petitioner may be granted one year time to vacate the premises and hand over the vacant possession peacefully to the petitioner. The learned counsel for the respondent, in fact, filed an affidavit sworn in by the respondent undertaking that he would vacate the premises and hand over the vacant premises to the petitioner on or before 31.12.2020. The above said affidavit is placed on record.

In the result, this civil revision petition is allowed in the following terms:

- (i) the Judgement dated 12.11.2013 made by the learned Rent Control Appellate Authority (Subordinate Judge), Cheyyar, dismissing the appeal in R.C.A.No.1 of 2010 and the order dated 18.02.2010 made the learned Rent Controller (District Munsif), Cheyyar refusing to order for eviction and thereby dismissing the eviction petition in R.C.O.P.No.5 of 1994 stand set aside;
- (ii) the original petition in R.C.O.P.No.5 of 1994 on the file of the learned Rent Controller (District Munsif), Cheyyar, is allowed;
- (iii) the respondent herein is directed to vacate the premises on or before 31.12.2020.
- (iv) Considering the facts and circumstances of the case, both parties are directed to bear their own costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CO Mdu)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,[Rent Control Appellate Authority],
Cheyyar, Tiruvannamalai District.

2.The District Munsif (Rent Controller), Cheyyar, Tiruvannamalai District.

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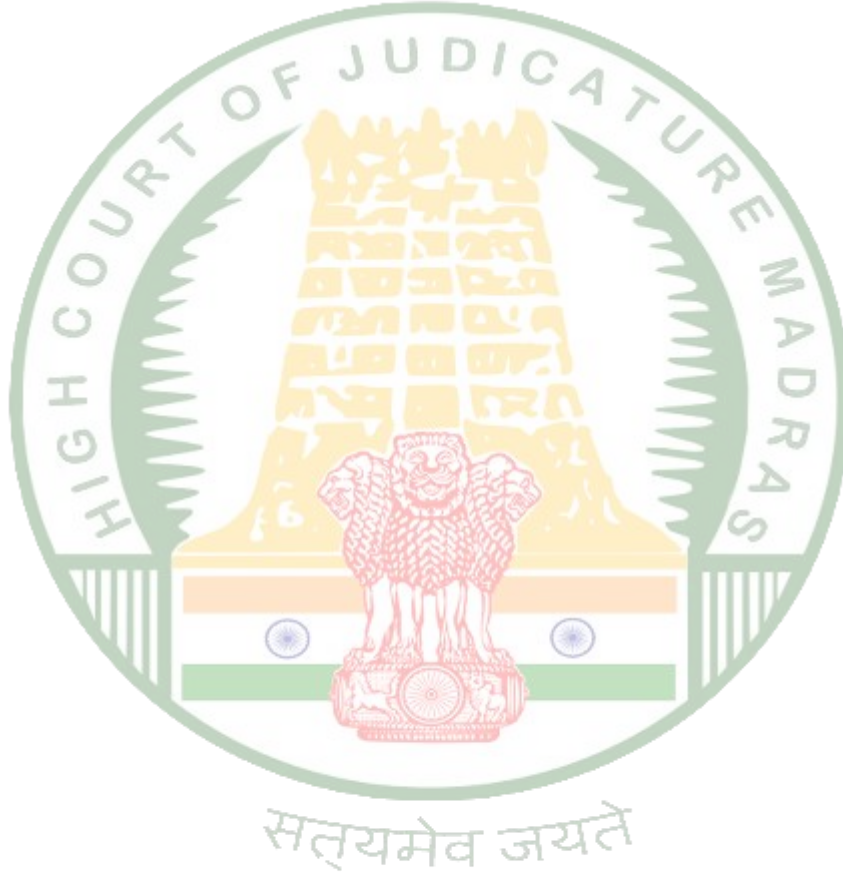
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.G.Senthil Kumar , Advocate SR.No. 10649

+1cc to Mr.Shiva kumar , Advocate SR.No. 10554

C.R.P.No.1973 of 2015

A.SK(05/10/2020)



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