

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2020

PRONOUNCED ON : 02.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.2498 of 2015

and

M.P.No.1 of 2015

N.Mathialingan,
S/o. A.S.Narasimma Mudaliar. ... Petitioner

Vs.

1.S.J. Ibrahim,
S/o. S.M.Jallaludin.

2.S.J.Rahamathullah,
S/o. S.M.Jallaludin ... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to prefer against the fair and decreetal order dated 09.10.2015 passed in R.C.A.No.5 of 2014, Learned Subordinate Judge, Arakkonam, confirming the order dated 24.07.2013 passed in R.C.O.P.No.5 of 2011 by the Learned District Munsif, Sholinghur.

For Petitioner : M/s. S.Saravana kumar

& M/s.I.Abrar Md Abdullah

For Respondents : Mr.K.N.Pandian

ORDER

This Civil Revision Petition has been filed by the respondent/tenant under Section 25 of the Tamil Nadu (Building Lease and Rent Control) Act, 1960 against the dismissal of the appeal in R.C.A.No.5 of 2014 on the file of the Rent Control Appellate Authority (Sub-Judge), Arakkonam dated 09.01.2015.

2. The Respondents herein had filed R.C.O.P.No.5 of 2011 on the file of the Rent Controller (District Munsif), Sholinghur under Section 10(3)(a)(iii) of Tamil Nadu (Building Lease and Rent Control) Act, 1960, for eviction of the petitioner herein from petition mentioned property on the ground of own use and occupation. The Learned Rent Controller by the order dated 24.07.2013 had allowed the said petition without costs and directed the petitioner herein to vacate the petition

mentioned premises and deliver vacant possession within three months from the date of the said order and also directed the respondents herein to return the Rental Agreement amount of Rs.1,74,000/- to the petitioner herein within the aforesaid period. Feeling aggrieved, the petitioner herein / tenant had filed an appeal in R.C.A.No.5 of 2014 on the file of the Rent Control Appellate Authority (Sub-Judge), Arakkonam. The learned Rent Control Appellate Authority by the Judgment dated 09.01.2015 had dismissed the said appeal and thereby confirmed the order passed by the Learned Rent Controller in R.C.O.P.No.5 of 2011. Feeling aggrieved, the petitioner herein/tenant has filed the present Civil Revision Petition.

3. For the sake of convenience, the parties are referred to as described before the Rent Controller.

4. The averments made in the petition filed by the respondent herein/landlords in R.C.O.P.No.5 of 2011 are in brief as follows:

The petitioners are the absolute joint owners of the non-residential premises which is mentioned in the said petition. The respondent is the

tenant under the petitioners. At the time of entering Rental Agreement, the respondent had paid a sum of Rs.1,75,000/- to the petitioners as lumpsum amount with an understanding that the interest payable on the said sum by the petitioners calculated at the rate of 12% per annum and the said interest shall be treated as rent for the said premises and thus the rent payable by the respondent is Rs.1,750/- per month and the same shall be adjusted with the interest to be paid by the petitioners. The first petitioner carrying on TV and Radio repair shop at door No.28-D, Yadava street, Sholinghur, which is their own property. The second respondent is carrying on seasonal fruits and Mango business in a rented premises that is at Door No.54, Market Street, Sholinghur. The second petitioner is facing several hardships in the said rented premises. It is also not convenient for him to run the business and he wanted to expand his business in his own premises and hence the second petitioner is in need of the demised premises. The second petitioner explained the aforesaid facts and circumstances to the respondent and requested him several times to vacate and deliver vacant possession of the same but the respondent did not come forward to surrender possession. Hence, the petitioner issued a lawyer's notice dated 17.10.2008 calling upon the

respondent to deliver vacant possession. On receipt of the said notice, the respondent did not send any reply, on the contrary, he approached the petitioners and requested them to give two months time for vacating the premises but subsequently, the respondent did not vacate the same and hence the second respondent once again sent another lawyer's notice dated 10.11.2011 to vacate and deliver vacant possession on the 1st of February 2011. The respondent had received the said notice also but he did not send any reply nor vacate the premises and hence the petitioners were constrained to file the petition for eviction. They are ready to refund the aforesaid lumpsum of Rs.1,75,000/- to the respondent at the time of delivery of the vacant possession of the premises.

5.The averments made in the counter filed by the respondent are in brief as follows:

It is true that the petitioners are absolute owners of the petition mentioned property and the respondent is the tenant under the petitioners. It is also true that the respondents paid a sum of Rs.1,75,000/- as lumpsum amount for the said tenancy. It is also true that the interest payable on the said amount shall be adjusted with the rent to

be paid by the respondent. The petitioners are owning a shop premises at Door No.28 D, Yadava Street, Sholinghur. But the first petitioner is not carrying on TV and Radio repair in the said premises. The first petitioner is not doing any business in the said building. It is true that the second petitioner is doing seasonal fruits business in the rented premises and also in his own building which belongs to his family. The petition mentioned property is not fit for the seasonal fruits business. Since it is very small place and the rented premises kept by the second petitioner is larger measurement over the petitioner mentioned property, the said property will not be sufficient for the second petitioner to run the seasonal fruits business. The petitioners borrowed several amounts from the respondent as hand loan and also by executing pronotes. The respondent demanded to repay the amounts which were borrowed by the petitioners but they wantonly evading to repay the amount and hence the respondent had filed a Suit in O.S.No.20 of 2009 on the file of the District Munsif, Sholinghur and obtained a decree also and hence, the petitioners had filed the above R.C.O.P.No.5 of 2011 with a view to harass the respondent. The respondent is doing textile business in the petition mentioned property and his family is depending upon the said

income. He cannot run the said business successfully other than the petition mentioned property and therefore, he prayed to dismiss the said petition.

6. During enquiry, on the side of the petitioners, the second petitioner examined himself as P.W.1(S.J.Rahamadullah) and examined one more witness as P.W.2 (R.Krishnamurthy). They marked Ex.P.1 to Ex.P15. On the side of the respondent, the respondent examined himself as R.W.1 (N.Mathialagan) but he did not mark any document on his side.

7. The learned Rent Controller after considering the materials placed before him found that the petitioners are bonafidely demanding eviction of the petition mentioned property for the purpose of running the seasonal fruits business by the second petitioner. Accordingly, the learned Rent Controller had allowed the said petition without costs. Feeling agrieved, the respondent/tenant had filed an appeal in R.C.O.P.No.5 of 2014 on the file of the Rent Control Appellate Authority (Sub-Judge) Arakkonam. The learned Rent Control Appellate Authority had dismissed the said appeal confirming the order passed by

the Rent Control Act. Feeling further aggrieved, the respondent/tenant has filed the present Civil Revision Petition.

8. Heard Mr.S.Saravanakumar for Mr.I.Ibrar Md Abdullah, the learned counsel for the petitioner/tenant and Mr.K.N.Pandian, the learned counsel for the respondents/Landlords.

9. The learned counsel for the petitioner/tenant has submitted that the respondents herein have stated in the Rent Control petition that the first petitioner is doing TV and Radio repairing shop in their building and further, the second petitioner is doing seasonal fruits business in a rented building and they wanted to expand their business and hence the petition mentioned premises is required for their own use and occupation but the first petitioner failed to establish that the petition mentioned premises is necessary for his business. He further submitted that the second petitioner has not produced any material before the Court that his landlord is demanding to evict the said premises in which he is running fruits business at present. He further submitted that the Rent Controller as well as the Rent Control Appellate Authority failed to consider the

relative hardship which would cause to the petitioner herein/tenant, if he is suddenly evicted petition mentioned premises. He further submitted that admittedly, the petitioner herein/tenant had filed a Suit in O.S.No.20 of 2009 on the file of the District Munsif, Sholinghur and obtained a money decree against the respondents herein and only thereafter they filed the above R.C.O.P.No.5 of 2011 with an intention to harass the petitioner herein and therefore, he prayed to allow this Civil Revision Petition and the set aside the order passed by the Authorities below and dismiss the R.C.O.P.No.5 of 2011.

10. Per contra, the learned counsel for the respondents herein/landlords has submitted that the petitioner herein has admitted in his evidence that the second respondent herein is running a seasonal fruits business in a rented premises. He further submitted that the petitioner herein has also admitted in his evidence that in the area in which the petition mentioned property is situated other persons also selling the fruits. He further submitted that the respondents herein had sent a lawyer's notice dated 17.10.2008 calling upon the petitioner to

deliver vacant possession for the purpose of own use and occupation and after receipt of the said notice, the petitioner herein did not send any reply and thereafter another notice dated 10.01.2011 was sent and in the said notice, it has been clearly stated that after receipt of the first notice, the petitioner herein had approached the respondents herein and made a request to give two months time for vacating the premises and the petitioner herein had received the said notice also and for that also, no reply has been sent and therefore, it is not open to the petitioner herein to content that there is no bonafide on the part of the petitioners in seeking petition mentioned premises for the second respondent's business. He further submitted that it is not open to the tenant to content that the petition mentioned premises will not be sufficient for the landlord to run his business. He further submitted that taking into consideration the aforesaid facts, the learned Rent Controller had allowed the eviction petition by giving three months time for eviction and also directed the respondents herein to pay the lumpsum amount of Rs.1,75,000/- within the aforesaid period. He further submitted that as per the aforesaid direction of the learned Rent Controller, the respondents herein had deposited the aforesaid amount of Rs.1,75,000/- before the learned Rent

Controller on 10.10.2013 itself. He further submitted that taking into consideration the aforesaid facts, the learned Rent Control Appellate Authority had rightly dismissed the appeal filed by the tenant and in the said judgment, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

11. A perusal of the typed set of papers filed by the petitioner would show that the respondents herein had filed R.C.O.No.5 of 2011 on the file of the Rent Controller (District Munsif) Sholinghur, to direct the petitioner herein to vacate and deliver vacant possession of the petition mentioned property on the ground that the said premises is required for running a seasonal fruits business by the second respondent herein. In the said petition, the respondents herein have stated that on 17.10.2008, they sent lawyer's notice calling upon the petitioner herein to vacate and deliver vacant possession of the petition mentioned property for running a seasonal fruits business by the second respondent herein. They also stated that though the petitioner herein had received the said notice, he did not send any reply; on the contrary, he approached them and made a request to give two months time for vacating the

premises but, thereafter also not vacated and hence they sent another notice dated 10.01.2011 and the petitioner herein had received the said notice and for that also, no reply has been sent. In the counter filed by the petitioner herein, he had not disputed the aforesaid facts. Further, it is seen from the evidence of the petitioner herein (R.W.1) that he is the law graduate and he knows the law but he has not sent any reply to the aforesaid notices.

12. The second respondent herein while examining himself as P.W.1 had deposed that he is running a seasonal fruits business in a rented premises and now he wanted to expand the said business in the petition mentioned premises. The petitioner herein while examining himself as R.W1 has admitted in his evidence that the second respondent herein is running seasonal fruits business in a rented premises. He also admitted in his evidence that in the area in which the petition mentioned property is situated, other persons are selling fruits and therefore, it is clear that in the area in which the petition mentioned property is situated also fruits business can be done.

13. The learned Rent Controller and also the learned Rent Control Appellate Authority after taking into consideration the fact that the petitioner herein had obtained money decree in O.S.No.20 of 2009 against the respondents herein, concurrently held that merely because the petitioner herein obtained money decree against the respondents herein, it cannot be said that they filed RCOP with a malafide intention to evict the petitioner. This Court does not find any infirmity in the said findings.

14. The learned Rent Controller and also the learned Rent Control Appellate Authority relying upon the decision of this Court in *Varadhan Vs., Kannammal & Others, 2004 (3) CTC* had held that it is not for the tenant to state that the petition mentioned property is insufficient for the landlord to do business and it is settled that the tenant cannot have a say in such matters. This Court does not find any illegality or irregularity in the said findings. Further, admittedly the respondents herein had deposited a lumpsum amount of Rs.1,75,000/- before the Rent Controller on 10.10.2013 as per the direction of the learned Rent Controller. Therefore, looking for any angle this Civil Revision Petition sans merit. Hence, this Civil Revision Petition is liable to be dismissed.

15. In the result, this Civil Revision Petition is dismissed. The judgment passed by the Rent Control Appellate Authority(Sub Judge), Arakkonam, in R.C.A.No.5 of 2014 dated 09.01.2015 and the order passed by the learned Rent Controller (District Munsif), Sholinghur, in R.C.O.P.No.5 of 2011 dated 24.07.2013 are confirmed. No costs. Consequently connected miscellaneous petition is closed.

02.12.2020

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Index : Yes/No

Internet : Yes/No

To

1.The District Munsif, Sholinghur.

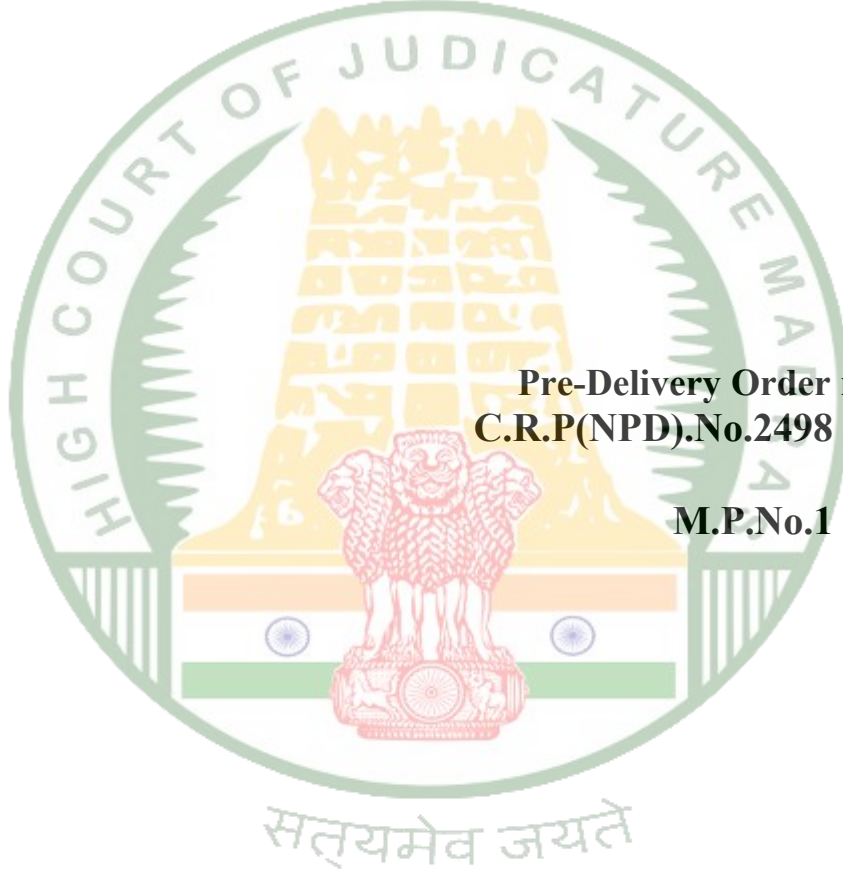
2.The Subordinate Judge, Arakkonam

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CRP (NPD).No.2498 of 2015
and MP.No.1 of 2015

P. RAJAMANICKAM.,J.

Vsn



**Pre-Delivery Order made in
C.R.P(NPD).No.2498 of 2015
and
M.P.No.1 of 2015**

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