

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2020

DELIVERED ON : 09.12.2020

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD)No.3113 of 2015
and
M.P.No.1 of 2015

Rajan Ganesan

... Petitioner / 1st respondent

Vs.

1. C.Venkatachalapathy

... 1st respondent / Appellant

2. Smt.Jayasree

... 2nd respondent / 2nd respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the Judgment and decree dated 23.01.2015 made in R.C.A.No.347 of 2007 on the file of the VII Court of Small Causes, Chennai, reversing the order and decretal order dated 15.03.2006 made in R.C.O.P.No.2326 of 2004, on the file of the XV Court of Small Causes, Chennai.

For Petitioner : Mr.V.G.Suresh Kumar

For R1 : Mr.P.Haribabu

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner against the judgment dated 23.01.2015 passed by the learned Rent Control Appellate Authority (VII Court of Small Causes) Chennai in R.C.A.No.347 of 2007 and MP.No.72 of 2013.

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

The petitioner herein is the tenant under the first respondent, who had filed R.C.O.P.No.2326 of 2004 before the learned Rent Controller, (XV Court of Small Causes), Chennai, against the petitioner and the second respondent for eviction of the petition mentioned property, on the ground of wilful default in paying the rent and subletting the property. The learned Rent Controller, by the order dated 15.03.2006, had dismissed the said petition. Feeling aggrieved, the first respondent had filed an appeal in R.C.A.No.347 of 2007 before the learned Rent Control Appellate Authority (VII Court of Small Causes) Chennai. He had also filed a petition in M.P.No.72 of 2013 to receive additional documentary evidence. The learned Rent Control Appellate Authority, by the Judgment dated 23.01.2015 had allowed the petition in M.P.No.72 of

2013 and marked Exs.P2 to P6 and also allowed the said appeal, by setting aside the order passed by the learned Rent Controller in R.C.O.P.No.2326 of 2004 and directed the respondents therein to deliver vacant possession of the petition mentioned property within two months. Challenging the same, the petitioner, who is the first respondent therein, has filed the present Civil Revision Petition.

3.Heard Mr.V.G.Suresh Kumar, learned counsel for the petitioner and Mr.Haribabu, learned counsel for the first respondent.

4.The learned counsel for the petitioner has submitted that the first respondent had filed R.C.O.P.No.2326 of 2004 for eviction on the ground that the petitioner had committed the act of sub-letting the petition mentioned premises to the second respondent; and that the said petition was contested by the petitioner by filing counter stating that the first respondent is not the absolute owner of the petition mentioned property and as such, he is not entitled to file petition for eviction. The learned counsel further submitted that the petitioner has not committed any wilful default in paying the rent and he has deposited the rent to the credit of

the suit in O.S.No.8161 of 1996 regularly, except for a short period from November 2002 to June 2003; that since the petitioner had already paid a sum of Rs.6,000/- as advance, the rent for the aforesaid period could have been adjusted from the said advance amount and hence, there is no wilful default in paying the rent. The learned counsel also submitted that the second respondent is an employee of the petitioner and she is looking after the business of the petitioner, but the first respondent has falsely alleged that the second respondent is a sub-tenant under the petitioner herein; and that taking into consideration the aforesaid fact, the learned Rent Controller had rightly dismissed the petition filed for eviction, but, the learned Rent Control Appellate Authority, without appreciating the aforesaid facts in a proper prospective, had erroneously allowed the appeal and set aside the order passed by the learned Rent Controller. Adding further, the learned counsel submitted that the learned Appellate Authority, while allowing the petition to receive the additional evidence, had not followed the procedure as prescribed under Order 41 Rule 28 of CPC and had straight away marked the documents as Exs.P2 to P6 and relying upon the said documents, allowed the appeal. He further submitted that since no opportunity has been given to the petitioner to

cross examine the witness with regard to the aforesaid documents, no reliance can be placed upon the said documents. Therefore, the learned counsel for the petitioner prayed to allow the Civil Revision Petition by setting aside the order passed by the learned Rent Control Appellate Authority and remit the matter back to the learned Rent Control Appellate Authority with a direction to follow the procedure as prescribed under Order 41 Rule 28 of Civil Procedure Code and thereafter, dispose of the appeal in accordance with law.

5. In support of the said contentions, the learned counsel for the petitioner, relied upon the decision in ***Shalimar Chemical, Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others [(2010) 8 SCC 423]***.

6. Per contra, the learned counsel for the first respondent has submitted that it is well settled that any one of the co-owners can file eviction petition against the tenant. He further submitted that the petitioner himself had categorically admitted in his counter that due to the reason beyond his control, he did not deposit the rent before the

Court for the period from November 2002 to June 2003. He further submitted that the petitioner has not made any request to adjust the rent for the aforesaid period with the advance amount and in the absence of any such request, the landlord cannot adjust the advance amount towards the rent. The learned counsel also submitted that the petitioner has permanently settled in London and the said fact has been admitted by his brother (RW1) and the second respondent has also admitted in her evidence that the petitioner settled in London and taking into consideration the aforesaid facts, the Appellate Authority had rightly allowed the said appeal.

7. The learned counsel for the first respondent has further submitted that M.P.No.72 of 2013 was filed to receive a copy of the Sale deed dated 25.07.1996 and copies of the orders passed in other R.C.O.Ps, only to prove the fact that the first respondent is a co-owner and he already filed R.C.O.Ps against other tenants in the capacity of co-owner and the said R.C.O.Ps were allowed; and that since the petitioner himself has admitted that the first respondent is the co-owner of the petition mentioned property, the aforesaid documents need not be looked into and

the matter need not be remitted back to the Appellate Authority for proving the said documents. The learned counsel also submitted that the first respondent has proved the wilful default and sub-letting the property to the second respondent through other evidence and hence, he made a request to ignore Exs.P2 to P6 documents and dispose of the case with the available other evidence. Therefore, the learned counsel prayed to dismiss this Civil Revision Petition.

8. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

9. There is no dispute with regard to the relationship between the petitioner / tenant and the first respondent / owner of the property. The first respondent filed a petition for eviction in RCOP.No.2326 of 2004, which was dismissed. Feeling aggrieved, he filed an appeal in RCA No.347 of 2007. Pending the same, he filed MP.No.72 of 2013 to receive additional documents. The Appellate Authority allowed the said petition as well as the appeal by judgment dated 23.01.2015, which is impugned herein.

10. In ***Shalimar Chemical, Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others*** (cited supra), the Hon'ble Supreme Court has held that the Appellate Court, after allowing the application filed under Order 41 Rule 27 of the Civil Procedure Code for receiving additional evidence, should follow the procedure as prescribed under Order 41 Rule 28 of CPC and give an opportunity to the respondent to lead rebuttal evidence. In this case, the Appellate Authority had allowed the petition in MP.No.72 of 2013, which has been filed to receive additional documentary evidence and had straight away marked the documents as Exs.P2 to P6 and disposed of the appeal. In view of the said decision of the Hon'ble Supreme Court, the procedure followed by the Appellate Authority is not proper.

11. However, considering the submissions made by the learned counsel for the first respondent that the aforesaid documents were filed only to prove the fact that the first respondent is also one of the co-owners and he already filed Rent Control Petitions against the other tenants and got eviction orders, and that it is well settled that any one of

the co-owners can file eviction petition against the tenant, the said documents need not be looked into. Therefore, the matter need not be remitted back to the Appellate Authority.

12. Insofar as the ground raised with regard to wilful default is concerned, the petitioner himself had admitted in his counter statement that he did not deposit the rent for the period from November 2002 to June 2003 into the Court due to the reason beyond his control. He further stated that the application filed by him in I.A.No.3191 of 2004 seeking permission to deposit the said rent before the Court, has also been dismissed. From the said statements, it is clear that the petitioner has not paid the rent for the period from November 2002 to June 2003.

13. Though the learned counsel for the petitioner has submitted that the petitioner herein while entering into the lease agreement, paid a sum of Rs.6,000/- as advance and the rent for the period from November 2002 to June 2003 could be adjusted with the said advance amount, the petitioner has not made any request to the first respondent to adjust the rent for the said period with the advance amount. In the absence of any

such request, the landlord cannot adjust the advance amount towards the rent payable by the petitioner. So, it is clear that the petitioner has committed wilful default in paying the rent for the said period.

14. Insofar as the ground of sub letting is concerned, the Appellate Authority in its Judgment, had held that the petitioner has not adduced any evidence on his behalf. He examined only his brother as RW1 and the said RW1 in his evidence has categorically admitted that the petitioner has permanently settled in London. The second respondent also while examining herself as RW2, has admitted that the petitioner herein is in London. The learned Appellate Authority has further held that RW1 has stated in his evidence that Mahatma Home for aged is functioning in Chinmaya Nagar and only customer service call center is conducting in the petition mentioned premises and for conducting customer care business, no permission was obtained from the landlord. Taking into consideration the said facts, the learned Appellate Authority had held that the petitioner has permanently settled in London by subletting the petition mentioned premises to the second respondent herein. This Court does not find any irregularity or illegality in the

judgment impugned herein. Therefore, this Civil Revision Petition sans merit and the same is liable to be dismissed.

15. In the result, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

09.12.2020

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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To

1. The VII Court of Small Causes,
Chennai.
2. The XV Court of Small Causes,
Chennai.

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P.RAJAMANICKAM, J.

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Pre-Delivery Order made in
C.R.P(NPD)Nos.3113 of 2015
and
M.P.No.1 of 2015

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