

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.(NPD)No.1417 of 2016 &
C.M.P.No.7836 of 2016

Manikandan

.. Petitioner

Vs.

S.Dhanalakshmi

.. Respondent

PRAYER : Civil Revision Petition filed under Section 25(1) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, against the Judgment and Decree made in R.C.A.No.2 of 2015, on the file of Principal District Judge, Puducherry, dated 25.11.2015, confirming the Judgment and Decree made in H.R.C.O.P.No.11 of 2009, on the file of the Rent Controller-I, Puducherry, dated 15.12.2014.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.P.S.Ganesh

* * *

ORDER

Challenging the fair and final order passed in R.C.A.No.2 of 2015 on the file of the learned Rent Control Appellate Authority (Principal District Judge), Puducherry, confirming the order passed in R.C.O.P.No.11 of 2009 on the file of the learned Rent Controller-I (Principal District Munsiff), Puducherry, the tenant has filed the Civil Revision Petition.

2. The revision petitioner is the 'tenant' and the respondent is the 'landlady'. For convenience sake the rank of the parties to this revision will be maintained as 'tenant' and 'landlady'.

3. The case of the landlady before the lower court in the petition filed by her would be as follows:

The petitioner is the landlady of the schedule mentioned property and the respondent is the tenant. As per the rental agreement dated 05.01.2005, the petition mentioned property was let out to the tenant for a monthly rent of Rs.3,630/-. The tenant paid an advance of amount of Rs.2,25,000/- and the lease period is for a period of 11 months. The tenant is carrying on textile business in the name and style of "Jeans Collection" in

the said shop premises. The landlady required the demised premises to shift over the business of her son. Since either she or her son do not possess any other property, except the disputed property, the landlady requested the tenant to vacate the demised premises. Since the tenant did not vacate the same, the landlady has filed the eviction petition before the learned Rent Controller-I, Puducherry, on the ground of own use and occupation.

4. The revision petitioner, as respondent before the Rent Controller, while resisting the claim made by the landlady for eviction on the ground of own use and occupation admitted that the landlady is the owner of the demised premises and the revision petitioner is in occupation of the said premises on a monthly rent of Rs.3,630/- and also advance amount of Rs.2,25,000/-. It is contended that in order to increase the rent, the landlady deliberately refused to receive the rent from him from November 2008 onwards, and therefore, he was constrained to send the the amount by way of Demand Draft drawn on Karur Vysya Bank. The demised premises is required for own use and occupation under Section 10(3) (iii) of Pondicherry Buildings (Lease and Rent Control) Act is a bogus and unsustainable in law. Therefore, there is no bonafide requirement on the part of the landlady on the ground of own use and occupation.

5. After considering the submissions made on both sides and in the light of the material evidence available on record, the learned Rent Controller has come to the conclusion that the requirement of the demised premises for own use and occupation of the landlady is bona fide and genuine. Accordingly, the learned Rent Controller ordered eviction of the revision petitioner from the demised premises. Aggrieved by the order dated 15.12.2014 made in H.R.C.O.P.No.11 of 2009, the tenant, as appellant, preferred an appeal in R.C.A.No.2 of 2015 on the file of the learned Principal District Judge, Puducherry. After considering the submissions made on both sides and in the light of the material evidence available before Court, the learned Rent Control Appellate Authority sustained the order of eviction passed by the learned Rent Controller on the ground of own use and occupation and dismissed the Rent Control Appeal filed by the tenant, as appellant, on 25.11.2015. Aggrieved by the concurrent findings of the Courts below, the revision petitioner / tenant has come forward with this Civil Revision Petition.

6. The learned counsel for the revision petitioner / tenant would submit that the Appellate Authority is a fact finding Court and it has to re-

appreciate the evidence independently and has to assign the reason for eviction and in this case, the learned Rent Control Appellate Authority has not assigned any specific reason and without giving any reason, simply, confirmed the order of the learned Rent Controller-I, Puducherry. He would further submit that the respondent/landlady has not filed any accommodation for herself and she has stated that the requirement for housing for her son's business and however, the son of the landlady was not examined and not proved the requirement and therefore, the Power Agent was examined as P.W.1 and the Assistant Commercial Tax Officer was examined as P.W.2. Neither the landlady, nor the son of the landlady, was examined to prove the bona-fide requirement. The learned Rent Control Appellate Authority (Principal District Judge) Puducherry, has also failed to consider and re-appreciate the evidence and without assigning any reason, simply confirmed the order of the learned Rent Controller-I, Puducherry, which warrants interference of this Court.

7. *Per contra*, the learned counsel for the respondent / landlady would submit that the learned Rent Controller has deeply gone into the petition filed by the landlady and the counter filed by the tenant and after considering the oral and documentary evidence of both the parties, found that the requirement of the landlady is a bona-fide one. The learned Rent

Control Appellate Authority, is the final Court of fact finding, has also deeply analyzed the evidence of both the parties and re-appreciated the entire material evidence on record and found that the requirement of the landlady is *bona-fide*. The learned Rent Control Appellate Authority has also independently dealt with the entire materials on record and discussions about the oral and documentary evidence and lastly found that there was no infirmity in the order and therefore, confirmed the order of the learned Rent Controller and also given the valid reasons for the confirmation of the order of the learned Rent Controller. Since the findings of both the Authorities are concurrent in nature, there is no legal issues involved in this case. It is further contended that the Revision Court has no powers to sit over in the arm chair of the appellate Court and re-appreciate the entire evidence, unless the appreciation of the evidence by the Courts below are perverse. Therefore, the revision petition is liable to be dismissed.

8. Heard both sides and perused the materials placed on record.

9. Admittedly, the respondent is the landlady and the petitioner is the tenant. The nature of tenancy, rent, period, advance amount, as stipulated in the agreement were admitted. It is also an admitted fact that the son of the landlady is doing business in the rented premises. Therefore,

the landlady wanted the demised premises for her son to do the business and she filed the petition for eviction on the ground of own use and occupation. Though the revision petitioner / tenant has stoutly denied the requirement of the landlady, he neither adduced any oral evidence nor filed any document to rebut the evidence of the respondent / landlady. On the other hand, the landlady examined two witnesses and proved through P.W.2, the Assistant Commercial Tax Officer, stating that her son was doing business in the rented premises. It is not in dispute that the demised premises is in the prime locality in Pondicherry and the landlady proved that her son is doing business in the rented premises through P.W.2, and she required the demised premises for her son to do the business. The landlady established that her son was doing business in the rented premises and also established that she has neither owned any other property except the demised premises and the premises covered in C.R.P.No.1418 of 2016. Therefore, the landlady has decided to shift his son's business from the rented premises to her own property.

10. Once the landlady has proved that her requirement is *bona-fide*, either the landlady or their family members are doing any business and they do not have any other property to do their business; and if they wanted to either shift the existing business or establishes a new business, they are

entitled to get eviction on the ground of own use and occupation. In this case, the landlady has established that her son was doing the business in rented premises. Hence, she required the premises for the business of her son. Therefore, once they established that it is for the tenant to establish that the landlady has some other property or neither landlady nor her family members are not doing any business and the requirement is not bona-fide, or in order to get the enhanced rent, they are trying to evict him and in this case, the petitioner / tenant has not established the said fact.

11. A careful reading of the order of the learned Rent Controller-I, Puducherry, would show that he has rightly appreciated the entire evidence and ordered for eviction and the learned learned Rent Control Appellate Authority [Principal District Judge], Puducherry also rightly re-appreciated the entire evidence and found that the requirement of the landlady was a bona-fide one. Therefore, the Appellate Authority, as a fact finding Authority, has rightly re-appreciated the entire evidence independently and came to the conclusion that the requirement of the landlady is bona fide and confirmed the order of the learned Rent Controller-I, Puducherry. This Court, while exercising the revisional jurisdiction cannot sit in the arm chair of the appellate Court and re asses the entire evidence and substitute its own view, unless, there is any perversity in appreciation of evidence by the Courts below. On reading of the materials, this Court does not find any

perversity in the judgment of the Rent Control Appellate Authority.

12. Therefore, under the circumstances, this Court does not find any merit in the Civil Revision Petition and accordingly, the Civil Revision Petition is liable to be dismissed and accordingly, the Civil Revision Petition is dismissed as devoid of merits. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

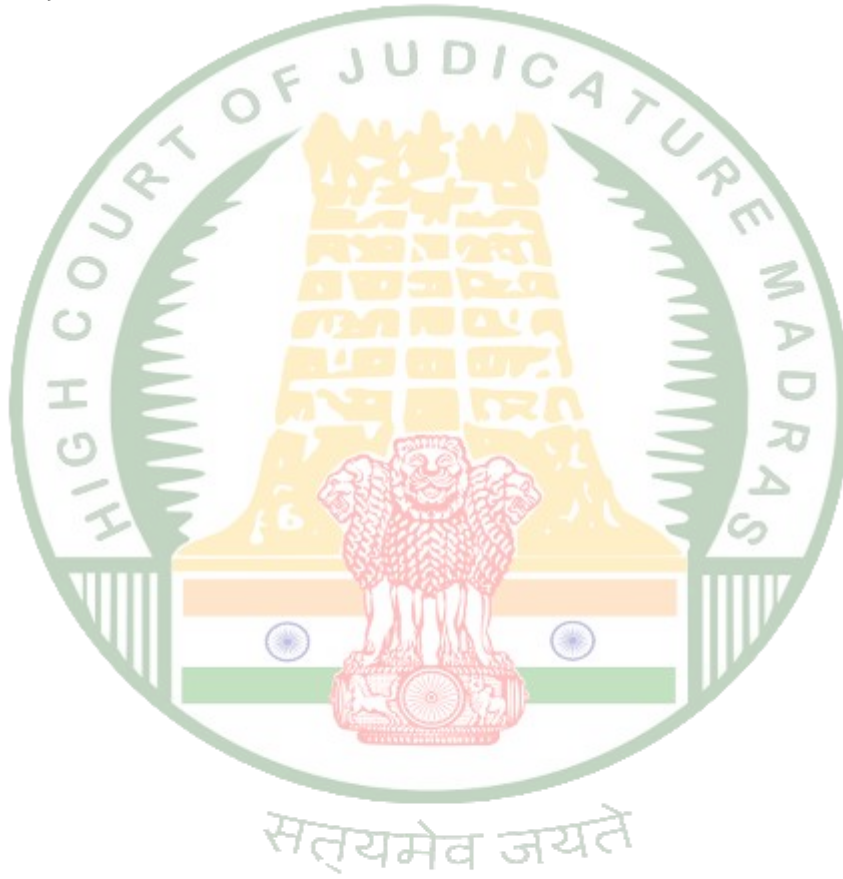
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To

1. The Principal District Judge,
Puducherry.
2. The Rent Controller-I,
Puducherry.

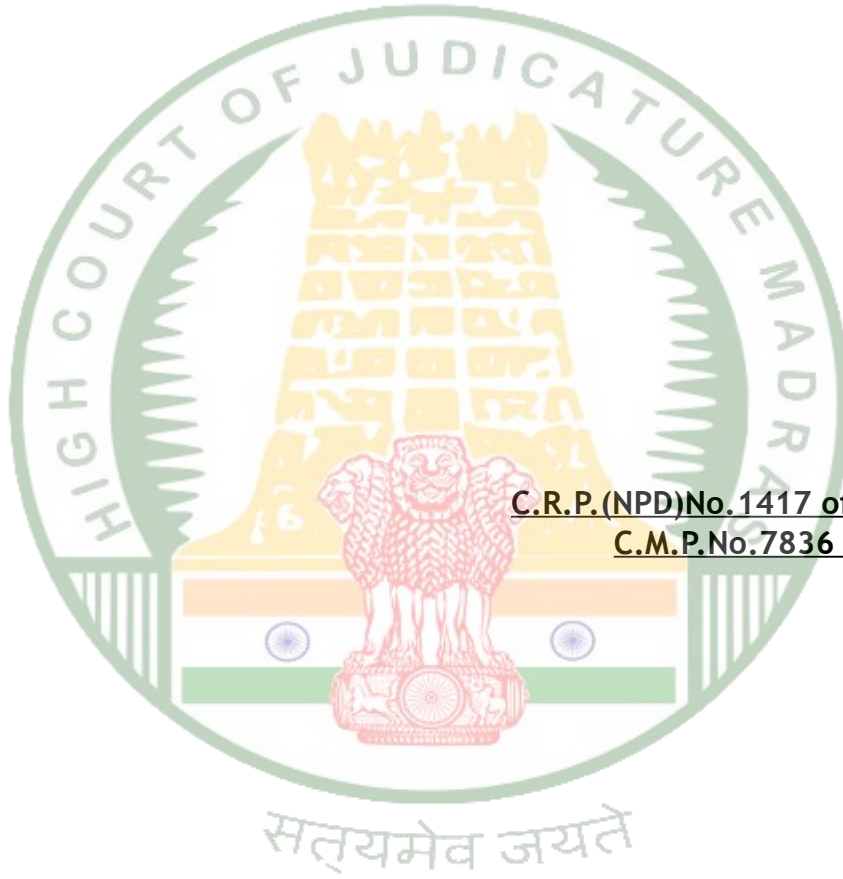


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