

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 04.12.2020]

[ORDERS PRONOUNCED ON : 09.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (NPD).No.2086 of 2020

and

C.M.P.No.13175 of 2020

Madanchand Baradiya
Proprietor Ethnic Jewels

... Petitioner

.. Vs ..

U.Pushparaj

... Respondent

PRAYER: Petition filed under Section 25(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, against the judgment and decree dated 04.01.2020 made in R.C.A.No.152 of 2017 on the file of the Court of the IX Small Causes Court at Chennai confirming the order and decree dated 06.01.2017 made in R.C.O.P.No.191 of 2013 on the file of the Court of the XIV Small Causes Court, Chennai.

For Petitioner : Mr.T.Susindran

For Respondent : Mr.J.R.K.Bhavanathan

ORDER

Heard the learned counsel for the Caveator.

2. The tenant is the revision petitioner herein.

3. The landlord/respondent has filed R.C.O.P.No.191 of 2013 for eviction of the tenant on the ground of owner's occupation. Along with the said application he also filed another R.C.O.P.No.210 of 2013 for fixation of fair rent and another R.C.O.P.No.1786 of 2013 for eviction on the ground of subletting. All the 3 cases were taken together and orders have been passed on 06.01.2017 whereby eviction on the ground of subletting was negated. While eviction on the ground of owner's occupation was allowed and fair rent has been fixed.

4. Aggrieved against the said order, the tenant has preferred R.C.A.No.152 of 2017 against the order of eviction while both the landlord and tenant has preferred R.C.A.492 of 2017 and R.C.A.No.153 of 2017 against the fixation of fair rent thereto.

5. By a common order dated 04.01.2020, the fair rent fixed by the Rent Controller was confirmed so also the eviction order passed by the rent controller in R.C.O.P.No.191 of 2013 on the file of the XII Small Causes Court, Chennai is confirmed and hence this petition filed by the petitioner/tenant.

6. So far as against the fair rent proceedings neither the tenant nor the landlord has filed however it is said to have been filed now at this in numbering stage. As against the order of rejection of eviction on the ground of subletting landlord has not filed any appeal before the Rent Controller Appellate Authority Court.

7. The learned counsel for the petitioner/tenant could contend that in the absence of any bonafide, both the Authorities under the Rent Control Act had concurrently held that the requirement of the landlord is bonafide and the said finding is under challenge.

8. The learned counsel for the petitioner/tenant could content that the R.C.O.P was instituted against the proprietor concern viz., Ethnic Jewels whereas it is a Partnership Firm and this factum was not taken into consideration by the Authorities below under the Rent Controller Act.

9. The next submission is that the landlord is having a shop in the lane adjacent petitioner premises which is 140 sq.ft and the same is enough to conduct the proposed business and the last and final submission is that the landlord has not made any preparation for the commencement of the proposed business.

10. Per contra, the learned counsel for the caveator/respondent could contend that as per Exhibit P1 Lease Agreement marked before the trial Court the rental agreement is with the Ethnic Jewels which was a

proprietorship concern and hence, the R.C.O.P filed as such by the landlord is maintainable.

11. A next submission is that the 140 sq.ft which is in the lane is not a fit for commencing the new business of Real Estate, DTP and to run the DTP centre and Xerox centre. The present property is situated in the North Mada Street, First floor. Furthermore, during the subsistence of lease the original tenant namely Madanchand Baradiya who was a proprietor of Ethnic Jewels and the same has been converted or changed into Partnership Firm in which the son was doing the business and draw my attention in Paragraph No.3 of the counter affidavit filed by the Court below which reads as under respondent submit that it is true to state that Madan Chand Baradiya was the proprietor of the Ethnic Jewels and the same has been converted or changed into the partnership firm in which Madan Chand Baradiya, Vimal Chand Baradiya, Anand Kumar Chand Baradiya and Harish Chand Baradiya."

12. Before the Rent Controller Authority, the tenant has not entered into the witness box. The authorized person on behalf of the tenant has entered into the witness box and it is to be stated that with regard to the plea of factum of who is the tenant, for the reasons unknown the original tenant has not entered the witness box also assumes significance. As per Exhibit B1 Lease Agreement dated 10.06.2009 it was entered between this landlord with one Ethnic Jewels by his proprietor Madanchand Baradiya.

13. It is a specific case of the tenant before the Rent Controller that during the subsistence of the tenancy, the proprietorship has been turned into partnership firm and hence, in view of the above factual background, as could be seen from the records, this Court hold that the petition as such filed is held to be maintainable.

14. Based upon Exhibit P3 copy of the Quotation dated 01.11.2012 and Form No.16A Income Tax Form under Exhibit P4 and also the evidence of P.W.1 and P.W.4, both the Courts below have concurrently held that the requirement of the petition premises by the landlord is bonafide.

15. It is a specific evidence of P.W.1 and P.W.2 is that the tenant is also having a big showroom in the nearby main road namely Dr.Radhakrishnan Road.

16. The size of the tenement is only 360 sq.ft. The landlord requires the petition premises for his own use and occupation. It is not in dispute that nearby the area where the landlord is having a shop is only 140sq.ft which is hardly enough to run proposed business that too, in a narrow lane. From Exhibits P1 to P4 coupled with oral evidence of P.W.1. both the Courts below has concurrently held that the requirement of the landlord is bonafide. He also issued notice to the vacate the petition premises showing his requirement and also obtained quotation and purchase order to commence his business. Furthermore, the suitability of the building for the proposed the

business has pleaded by the respondent/landlord appears to be just and proper and he has also taken steps to commence his business and hence, I find that the concurrent finding rendered by both the Courts below is hereby upheld.

17. It is for the landlord to make the choice established when the existing building is insufficient to commence the new business. Admittedly, the premises referred to by the revision petitioner/tenant is only 140 sq.ft that to it is situated in a lane which is admitted by the cross-examination of R.W.1. also assumes significance and hence the concurrent finding passed by the Rent Controller Authorities does not warrant any interference in the revisional jurisdiction.

18. In this view of the matter, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P is closed.

09.12.2020

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Speaking Order: Yes/No
Internet: Yes/No

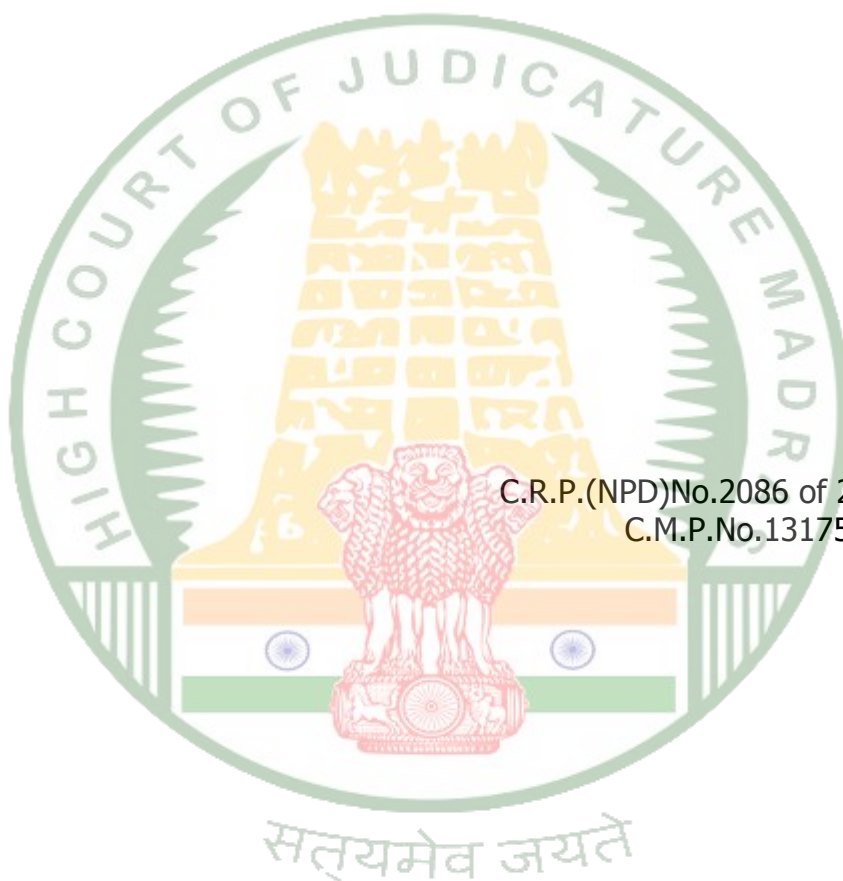
To

1. The IX Small Causes Court at Chennai
2. The XIV Small Causes Court, Chennai.

CRP(PD).No.2086 of 2020

RMT.TEEKAA RAMAN,J.,

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Order in
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