

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)Nos. 2718 & 2719 of 2018  
in  
C.M.P.Nos. 16005 & 16006 of 2018

A.Akbar ...Petitioner in C.R.P.No.2178 of 2018

A.Mahaboob Basha ...Petitioner in C.R.P.No. 2179 of 2018

Vs.

1.R.Arulmozhi

2.B.Shantha

3.T.Bhuvaneshwari

4.S.Amutha

5.R.Vasuki

6.V.Gajalakshmi

7.S.Geetha

..Respondents in both CRPs

Prayer in both CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal orders of the learned XIV Small Causes Judge, Chennai M.P.Nos. 248 & 249 of 2018 in R.C.O.P.Nos. 683 & 684 of 2016 dated 01.08.2018.

For Petitioners in both CRPs : Mr.C.A.Theagarajan

For Respondents in both CRPs : Mr.R.Thiagarajan

C O M M O N O R D E R

The tenants who are facing eviction proceedings in R.C.O.P.No. 683 & 684 of 2016 are on revision challenging the order of the Rent Controller dismissing their applications in M.P.Nos. 248 & 249 of 2018 seeking amendment of the counter statements filed by them in the eviction petitions.

i) In R.C.O.P. No. 683 of 2016, the amendment sought for is as follows:-

"In counter statement line 3 in paragraph 3 instead of "the petitioners are the landowners", it should be "the petitioners are not the landowners". Likewise in page 5 line 7 in paragraph 14 "2<sup>nd</sup> petitioner" instead of "2<sup>nd</sup> petition"

ii) In R.C.O.P. 684 of 2016, the amendment sought for is as follows:-

"In counter statement in paragraph 3 in the 3<sup>rd</sup> line "that the petitioners are the landowners" instead of "that the petitioners are not the landowners", in page 2 in the second line has been stated as "father of the respondent" instead of "father of the petitioners". Likewise page 4 Paragraph 12 in the 3<sup>rd</sup> line I have stated "RCOP No.1801 of 2013" instead of "RCOP No.1800 of 2013". Further in page 5 paragraph 15 in the 7<sup>th</sup> line has been stated as "2<sup>nd</sup> petition" instead of "2<sup>nd</sup> petitioner".

2. The learned Rent Controller allowed both the applications partly thereby, permitting petitioners / tenants to correct certain mistakes except the inclusion of the word "not" in Para 3 of the counter statements in both the R.C.O.Ps. This, according to the Rent Controller would amount to withdrawal of admission and therefore, the same cannot be allowed. Aggrieved, the petitioners have come up with this Civil Revision Petition.

3. Mr.C.A.Theagarajan, learned counsel for the petitioners would contend that the fact that there is a typographical error in Para 3 and word "not" has been omitted to be typed is apparent from a very reading of the sentence in Para 3. He would also draw my attention to the other portions of the counter statement where, the tenants have very specifically stated that the petitioners in the R.C.O.Ps (Landlords) are not the owners of the land and building. The petition for the eviction is not maintainable. Mr.R.Thiagarajan, learned counsel appearing for the respondents would submit that the proposed correction would amount to withdrawal of an admission and therefore the Learned Rent Controller was right in dismissing the application for inclusion of the word "not" in para 3.

4. I have considered the submissions of Mr.C.A.Theagarajan, learned counsel for the petitioners and Mr.R.Thiyagarajan, learned counsel for the respondents. The relevant portion to which the amendment is sought for the Para 3 of the counter statement is reads as follows:-

"It is further submitted that the petitioners are the land owners and they have no right to file this petition for eviction".

A reading of the sentence, as it stands, does not convey any meaning. If the status of the petitioners in the R.C.O.P as land owners is admitted then it is automatic that they have a right to file an eviction petition. A tenant need not admit the status of the petitioners as land owners and follow it up with a statement that they have no right to file an eviction petition. Apart from the above, in the other portions of the counter statement referred to by Mr.C.A.Theagarjan, the tenants are very clearly denied the title of the petitioners to the land as well as the building. In Para 5 of the counter affidavit stated is as follows:-

"This respondent submit that this would clearly go to prove that the neither the father of the petitioners nor the petitioners are the owner of the land and the building in occupation with this respondent and the act is not applicable to this respondent."

5. Again, in Para 16 of the Counter in R.C.O.P.No. 683 of 2016 and in Para 17 of R.C.O.P.No. 684 of 2016, it is stated as follows:-

"This would clearly go to prove that the petitioners are neither owners of the land nor the building and hence the act is not applicable. (emphasis supplied)."

6. A reading of the above statements made in the counter filed before the Rent Controller would very clearly show that the omission to type the word "not" in Para 3 is only a typographical error and it cannot be construed as an admission of the title of the petitioners in the R.C.O.P. Therefore, there is no question of withdrawal of an admission by way of an amendment. The Trial Court was not right in concluding that the petitioners want to introduce the new stand by way of amendment.

7. No doubt, Mr.R.Thiyagarajan would submit that the applications were filed belatedly after the commencement of the Trial and the Trial Court was right in dismissing them. I do not think that the application should be dismissed solely on the ground of delay when it is found that the mistake is a typographical error and the same can be corrected at any stage of the proceedings.

8. In view of the above, these Civil Revision Petitions are allowed, the order of the Rent Controller is set aside, the amendment applications will stand allowed as prayed for.

9. Taking into account, this RCOPs are pending nearly 4 years now, the petitioner shall carry out the amendment in the counter statement within a period of 10 days from the date resumption of physical hearing in the trial Court. It is open to the respondents to file an additional reply statement, in view of the amendments now introduced. The Rent Controller is directed to dispose of the RCOPs within a period of four months from the date of presumption of physical hearing.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:-

1.The learned XVI judge,  
Court of Small Causes, Chennai.

+2 Ccs to Mr.R.Thiagarajan, Advocate sr 27041 & 27042.

C.R.P(PD)Nos. 2718 & 2719 of 2018

in

C.M.P.Nos. 16005 & 16006 of 2018

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AJS (CO)

SP(16/10/2020)

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