

C.M.P.No.9774 and 9777 of 2019

and C.R.P.No.1316 of 2018

P.T. ASHA, J.

This petition is filed to rehear the revision which had been disposed of by order dated 10.04.2019.

2.In the affidavit filed in support of the petition, it is seen that the learned counsel could not appear as he was engaged in other Court. Though the reasons given were inadequate, however, this Court permitted the learned counsel for the petitioner/tenant to make his submissions.

3.The only point canvassed by the learned counsel for the petitioner/tenant to sustain the order of the Appellate Authority is that the petition filed on the ground of owner's occupation is not maintainable since the landlord was occupying the other portions of the property and therefore, the landlord can seek eviction only on the ground of additional accommodation.

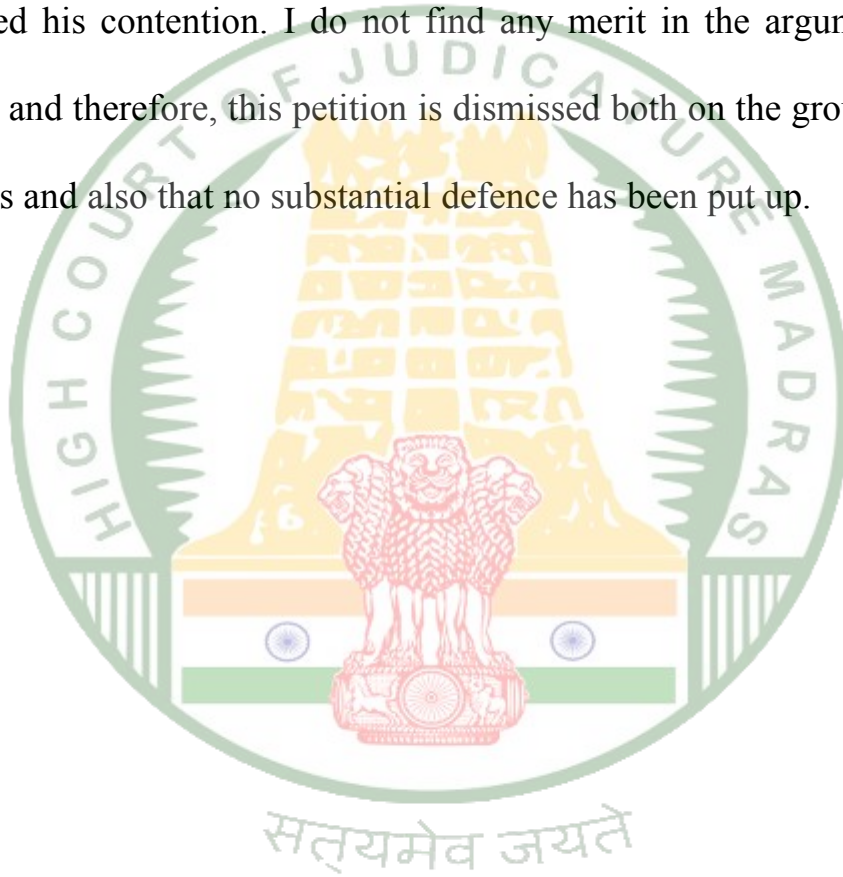
4.It is an admitted fact that on the date of the filing of the petition and even during the pendency thereof the landlord was not in possession of any portion of the property. The landlord has also not entered into possession of the portions that had fallen vacant. He would also argue that just prior to the filing of the petition, two portions had fallen vacant which was not occupied by the landlord but instead leased out to the third parties.

5.On a perusal of the documents it would show that the petition mentioned premises was the ideal place for the respondent son to start his business as there was a wooden partition between the Shop No.3 once the wooden partition is removed, it would become a Shop of the larger area. Therefore, on the date when the petition was filed admittedly the landlord was not in occupation of any portion of the property. It was pending the proceedings that the landlord had occupied a very small portion of the petition premises which was not sufficient for them to run the business. Therefore, on the date of the filing of the petition, the landlord was not in possession of any portion of the property.

Therefore, the findings of the Appellate Authority that the applicant ought to have been moved under Section 10(3)(c) of the Act is absolutely misconceived. The Rent Controller had also observed that the tenant has not proved his contention. I do not find any merit in the argument of the applicant and therefore, this petition is dismissed both on the ground of lack of reasons and also that no substantial defence has been put up.

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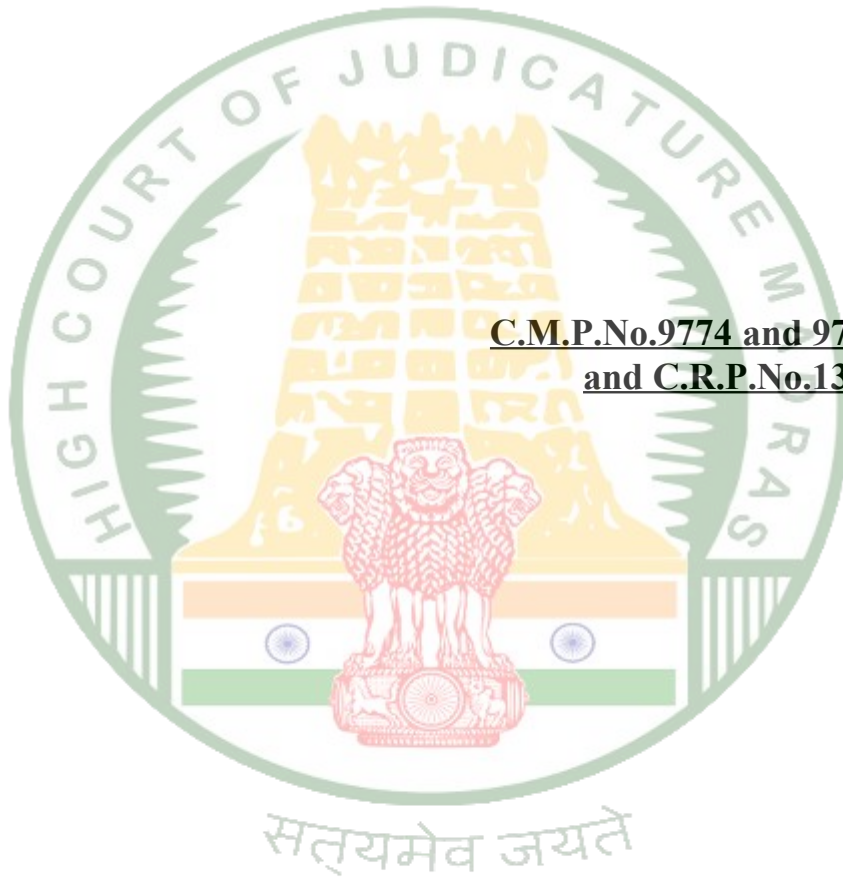
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