

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.08.2020	Delivered on 04.09.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. NPD.No.308 of 2018
and CMP No.1668 of 2018

V.Pradeep

.. Petitioner

Vs.

Sarojini

.. Respondent

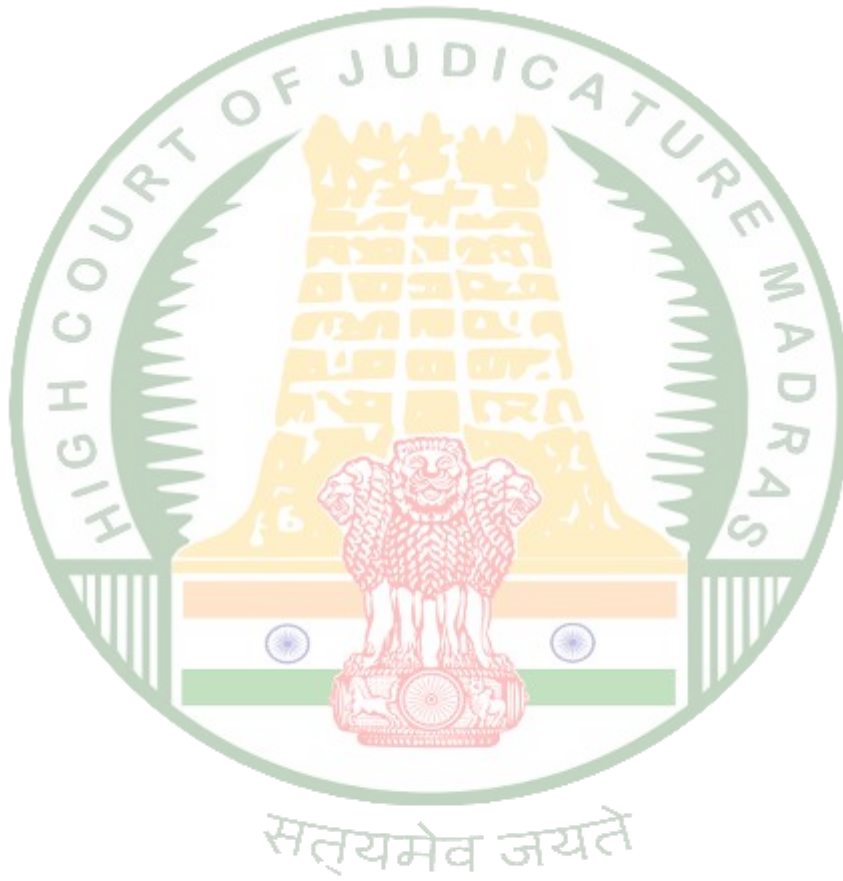
PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent) Control Act 18/60 as amended by Act 23 of 1973, praying to set aside the order dated 21.11.2017 passed in RCA No.72 of 2013, on the file of VIIth Judge, Court of Small Causes, Chennai, and thereby confirm the order dated 20.02.2012 passed in RCOP No.991 of 2010, on the file of XIVth Judge, Court of Small Causes, Chennai.

For Petitioner : Mr. V.Manokar
for M/s.C.Rajan & C.Girish Babu

For Respondent : Mr.P.Wilson, Senior Counsel

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for M/s.Richardson Wilson



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ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is at the instance of the tenant, who suffered an order of eviction at the hands of the Appellate Authority, in an Appeal filed by the landlord as against the dismissal of her petition for eviction in RCOP No.991 of 2010.

2. The said Original Petition was filed by the landlord Under Sections 10(2)(iii) and 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, seeking an order of eviction on the ground that the tenant has committed acts of waste and that she requires the building as additional accommodation for her own occupation.

3. The case of the landlord in brief is as follows:

The demised premises was inherited by the petitioner, her sons and daughter Sugunadevi. On 07.11.1995, there was a family arrangement in the

family which resulted in a partition and the Deed of Partition came to be registered on 07.11.1995. As per the said family arrangement, the petitioner and her sons were allotted an extent of 1788 sq.feet, out of the total extent of 1 ground and 282 sq.ft and the remaining 894 sq.ft. was allotted to the daughter Sugunadevi. It is stated that the petitioner and her first son are in possession of the second floor of the building, while the daughter Sugunadevi is in enjoyment of the other portion measuring 894 sq. ft.

4. The building consists of three floors, the petitioner has let out the entire ground floor for non residential purpose to three tenants. The first floor is being let out to the patients of Apollo Hospitals and the petitioner is residing in the second floor. The portion occupied by the respondent, wherein he is running a hotel business was let out to the father of the respondent on 12.03.1999 under a Tenancy Agreement. The father of the respondent, viz., the original tenant died some time during October 2009 and thereafter, the respondent continues the business in the name of "Big Boy Fried Chicken Stall". Claiming that the petitioner needs the petitioner premises for her second son, who is in Kerala working in a Private Company on a temporary basis and that the petitioner has effected several alterations inside the building

by removing the walls, which amounted to acts of waste, which are likely to impair the value and utility of the building, the petitioner sought for eviction of the respondent.

5. The said claim of the petitioner was resisted by the respondent contending that the claim for additional accommodation is not *bona fide* and that the respondent has not committed any act of waste that would have the effect of impairing the value and utility of the building as required under Section 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The requirement under Section 10(3)(c) of the of the Tamil Nadu Buildings (Lease and Rent Control) Act, was also vehemently denied, claiming that the petitioner's son Santhosh kumar is living abroad with his family for several years and the claim that he is in Kerala is false. It was also contended that the respondent has singled out the respondent for eviction as there are three tenants in the ground floor portion of the premises. On the above contentions, the tenant sought for dismissal of the Rent Control Original Petition.

6. At trial, the petitioner was examined as P.W.1 and two other witnesses were examined as P.Ws. 2 and 3. The respondent was examined as

R.W.1. Exhibits P1 to P4 were marked on the side of the petitioner.

7. The learned Rent Controller upon the consideration of the evidence on record concluded that the petitioner has not made out a case for eviction either under Section 10(2)(iii) or under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act. As regards Section 10(2)(iii), the learned Rent Controller found that the petitioner has not established that there is an alteration made by the respondent which would materially affect the value and utility of the building. Insofar as, the claim for eviction under Section 10(3)(c) is concerned, the learned Rent Controller concluded that the requirement for additional accommodation has not been established, the petitioner ought to have examined her son to show the *bona fide* need for eviction. On the above conclusions, the learned Rent Controller dismissed the RCOP. Aggrieved the landlord preferred an appeal in RCA No.72 of 2013 on the file of the Appellate Authority.

8. Pending Appeal, the landlord had produced her Medical Records to show that she has got Osteo Arthritis in the knees and she cannot claim stairs. Even during her examination as P.W.1, the petitioner has deposed about her

knee pain and that she is not able to climb stairs and hence she needs the petitioner premises for her residential purpose. The portion in the occupation of the respondent measures about 1384 sq. ft., and according to the landlord, it can be converted into a residential accommodation for her as she is unable to climb stairs.

9. The learned Appellate Authority taking into account the evidence that was offered regarding the knee problems suffered by the landlord concluded that the requirement under Section 10(3)(c) has been made out. The learned Appellate Authority concluded that the evidence in the form of Ex.P5 series would show that the landlord is suffering from Osteo Arthritis in the knees and she cannot climb stairs. On the above conclusion, the learned Appellate Authority allowed the Appeal and ordered eviction. Aggrieved the tenant has come up with this Revision Petition.

10. I have heard Mr.V.Manohar, learned counsel appearing for M/s.C.Rajan & C.Girish Babu, for the petitioner and Mr.P.Wilson, learned Senior Counsel appearing for M/s.Richardson Wilson, for the respondent.

11. Mr.V.Manohar, learned counsel appearing for the petitioner would submit that the learned Appellate Authority erred in ordering of eviction on a totally nonexistent ground which was not supported by any pleading. Pointing out that the Original requirement of the landlord under Section 10(3)(c) was for her son and in the Appellate Court a new case has been developed, as if the premises is required for the landlord for her own occupation for her residence because of her illness and her inability to climb stairs. Mr.V.Manohar, learned counsel would therefore submit that the Appellate Authority was not right in travelling beyond the pleadings and ordering eviction on a new found ground.

12. Supporting the order of the learned Appellate Authority, Mr.P.Wilson, learned Senior Counsel appearing for the respondent would contend that the Rent Control proceedings being summary proceedings strict rules or pleadings need not be applied. Once the Court finds that the requirement of the landlord is bona fide and it falls within any one of the provisions contemplated under Section 10 of the Act, the Rent Controller can direct eviction. He would also submit that sufficient evidence is available even before the Rent Controller, to show that the landlord was suffering from

Osteo Arthritis of the knees and cannot climb stairs. Mr.Wilson, learned Senior Counsel, would draw my attention to the evidence of P.W.1, viz., the landlord, who has deposed that she has got knee pain and she is unable to climb stairs and she requires the building for her occupation as her residence.

13. The learned Senior Counsel would also draw support from the evidence of P.W.2, son of the landlord, who has also deposed that they have sought for eviction because of the illness of his mother. According to the learned counsel, the tenant was very much aware of the need of the landlord, inasmuch as, even in cross-examination, it has been stated that his mother is unable to climb stairs because of old age and hence the petitioner premises is required for her own use.

14. Relying upon the aforesaid evidence, Mr.Wilson, learned Senior Counsel, would contend that the learned Appellate Authority was right in concluding that the landlord has made out the case for eviction, under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act. In answer to the contention of Mr.V.Manohar, learned counsel appearing for the tenant, that the demised premises being a non residential portion cannot be sought

for, for residential purposes, Mr.Wilson, learned Senior Counsel would point out that the petitioner premises measuring an extent of 1358 sq. ft. and it can easily be converted into a residential accommodation for the landlord.

15. I have considered the rival submissions.

16. The question that would loom large is, as to whether, the Appellate Authority was right in granting an order of eviction on a different ground than what is pleaded before the Rent Controller.

17. Of course before the Rent Controller, the landlord has asked for eviction on two grounds, viz., act of waste and additional accommodation for the purposes of her son. But during the evidence she has also deposed about her inability to climb stairs and had sought for eviction on that ground also. The learned Rent Controller adopted a strict approach concluded that in the absence of the pleadings, she cannot go into the *bona fide* or otherwise of the claim made on the ground of illness of the landlord.

18. The learned Appellate Authority, however, found that there is no bar

under the Act, for ordering eviction on a ground which existed even though there was no sufficient pleading regarding the said plea. In support of his conclusion, the learned Appellate Authority has relied upon the judgment of this Court in *N.Dakshinamoorthy v. Alphonsea Celestine Kamala Benjamine*, reported in (2000) II MLJ 72, wherein, it is held that if the parties have understood the case and have adduced evidence, the application cannot be rejected merely on the ground of lack of pleadings or vague pleadings.

19. I do not find any error on the part of the Appellate Authority in coming to such a conclusion. Even as P.W.1, the landlord in her evidence has clearly spoken about the requirement for her own purposes as she is not able to climb stairs due to Osteo Arthritis of the knees and P.W.2 her son has also spoken about the said illness and both the witnesses have been cross-examined on the illness. The only suggestion that has been put to the witness regarding illness is that the said plea is not supported by tangible evidence. Before the Appellate Authority, the Medical Records have been produced to show that the landlord is suffering from Osteo Arthritis of the knees and she cannot climb stairs. If that much is accepted, I do not think that the Appellate

Authority could be faulted for ordering eviction of the tenant on the ground that the landlord requires the premises for her own accommodation under Section 10(3)(c) of the Act.

20. As already stated the demised premises alone measures 1358 sq. ft. and it is capable of being converted into a residential accommodation. Even in the Original Petition, the landlord has prayed for eviction on the ground that it is required to accommodate her son, who is to return from Kerala. Therefore, it cannot be said that additional accommodation of a non-residential premises cannot be sought for by the landlord, more so, when it can be suitably altered as a residential premises and the landlord is residing in a portion of the same building, viz. the first floor. It is settled law that the Rent Controller proceedings are summary proceedings and strict Rules of pleadings or evidence as required in civil suits need not be applied in these proceedings. If there is enough evidence, the tenant is not taken by surprise and the landlord is able to satisfy the requirements of the statutory provision, the Courts are empowered to grant an order of eviction on the grounds for which there is no pleadings or vague pleadings

21. I therefore do not see any illegality of irregularity in the order of the learned Appellate Authority in order to enable me to interfere with the same under Section 25 of the of the Tamil Nadu Buildings (Lease and Rent Control) Act. In view of the above, the Revision Petition fails and it is accordingly **dismissed**.

22. Considering the fact that the tenant is running a business, displacement would cause certain hardship, which may not out-weigh the hardship caused by the landlord, I deem it fit to grant eight months time to the tenant to vacate and handover vacant possession. If the tenant desirous of availing the time granted by this Court, he has to file an affidavit of undertaking to vacate on or before 30.04.2021, such affidavit shall be filed in this Court on or before 14.09.2020. If such affidavit is not filed on or before 14.09.2020, the landlord will be free to execute the decree, as if, no time has been granted by this Court. No costs. Consequently, the connected miscellaneous petition is closed.

04.09.2020

jv

Index: Yes/No
Internet: Yes/No
speaking order/Non speaking order

To

1. The VIIth Judge, Court of Small Causes, Chennai.
2. The XIVth Judge, Court of Small Causes, Chennai.
3. The Section Officer, V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



Pre Delivery Order

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