

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 06.11.2020]

[ORDERS PRONOUNCED ON : 30.11.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (NPD).No.1979 of 2020

and

C.M.P.No.12287 of 2020

G.Karunakaran

....Petitioner

...Vs..

P.V.Saradha

....Respondent

PRAYER: Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, against the order and decreetal order dated 06.03.2020 passed by the Hon'ble VIII Judge, Small Causes Court, Chennai in R.C.A.No.412 of 2014 confirming the order and decreetal order dated 04.06.2014 passed in R.C.O.P.No.690 of 2011 on the file of the Hon'ble XI Judge, Small Causes Court at Chennai.

For Petitioner

: Mr.S.Natana Rajan

ORDER

The respondent/tenant is the revision petitioner herein.

2. The respondent herein/landlord filed R.C.O.P for eviction on the ground of wilful default and for own use and occupation, act of waste and different user and the said R.C.O.P was partly allowed. While eviction was granted on the ground of wilful default and building required for owner's occupation. However on the plea of putting the building for different use and committing act of waste was rejected by the learned Rent Controller.

3. Aggrieved against the said R.C.O.P order of eviction, the tenant has preferred appeal in R.C.A.No.412 of 2014 and the same was dismissed and hence, this Civil Revision Petition has been filed.

4. Heard the learned counsel for the petitioner/tenant.

5.The admitted factual matrix of the case are as under:-

(i) The petitioner is the owner of the petition premises measuring an extent of 803 sq.ft., out of the said extent an extent of 500 sq.ft., in the front portion and 303 sq.ft., in the rear portion was let out to the respondent on a total monthly rent of Rs.3,000/- and an advance of Rs.1,00,000/- was paid. Further, rear portion was let out by the petitioner's mother in favour of the respondent.

(ii) The petitioner had been doing business in the name and style of Star E Publishing Services since 2009 in a rented premises on a monthly rent of Rs.13,500/-. Due to loss in business, she had to vacate the rented

premises. Further even for residential purpose, she is residing in the same premises for a rent of Rs.3,500/-, under her sister Lalithabai and hence the petitioner requires the premises for her own use and occupation both for residential and non-residential purpose.

The stand of tenant in the counter statement is that:-

(iii) The landlady had mortgaged the petition property for a sum of Rs.23,00,000/- in December 2009 at the time of execution of mortgage deed itself, it was agreed that the tenant need not pay any rents for the petition premises.

(iv) He further states that an advance of Rs.1,00,000/- was paid as advance at the time of inspection of tenancy for non-residential portion fixing the rent as Rs.6,500/- and by February 2005, she let out the residential portion to the petitioner-tenant and an additional advance of Rs.4,00,000/- was paid and the rent was fixed at Rs.3,000/-. Thus the total rent was Rs.9,500/- and the same was paid by the respondent till the end of 30.09.2010.

6. It is specifically pleaded by the tenant that in view of the amount of Rs.23,00,000/- paid at the mortgage amount. The interest was agreed to be adjusted for in lieu of the rent however it is an only agreement between the parties. In C.S.No.316/2011 filed by the landlady before the Original Side of the High Court for redemption of mortgage is pending.

7. In the trial, the landlady examined herself as P.W.1 and marked as Exhibits P1 to P18. On the side of the tenant, he examined himself as R.W.1 and marked as Exhibits R1 to R13.

8. The Rent Controller has held as stated supra and as confirmed by the Appellate Authority.

9. The learned counsel for the petitioner contended that the finding arrived at by both the Courts below is erroneous and the trial Court has rendered finding the requirement of the building by the land lady is bonafide without any material.

10. This Court has given its anxious consideration for both the points raised by the learned counsel for the petitioner/tenant.

11. On perusal of the pleadings and the cross-examination of P.W.1 and R.W.1 the landlord tenant relationship is admitted by both parties, the building is consist of front portion and rear portion, the front portion measuring 500 sq.ft was let out to the tenant for non residential purpose and the rear portion 303 sq.ft was let out for residential purpose.

12. According to the landlady the monthly rent is Rs.3,000/- and the petitioner has paid sum of Rs.1,00,000/- as advance, according to the tenant the monthly rent is Rs.9,500/- and he has paid Rs.5,00,000/- as advance, the alleged default period is from October 2010 to March 2010.

13. Admittedly, Exhibit P5-Demand Notice was issued by the landlady calling upon the tenant to pay the arrears of rent. Despite the notice, tenant has not paid the pending arrear rent amount. A plea has been raised in the counter statement that in view of an oral agreement between the parties that for the mortgage amount, the landlady had not pay interest, the same should be adjusted towards rent.

14. On perusal of the pleadings and the answer elicited in the cross-examination of P.W.1, it appears, the main contention of tenant is that the monthly rent is Rs.9,500/- the petitioner has executed a mortgage deed on 31.12.2009 and received sum of Rs.23,00,000/- from appellant, she did not pay interest for the mortgage money from January 2010 onwards, she requested the appellant to adjust the monthly rent from interest amount, the same was also orally agreed by the parties, when there is a oral agreement between the parties for adjustment of rent from interest amount, the revision petitioner is not liable to pay monthly of rent from interest amount, the revision petitioner is not liable to pay monthly rent to the petitioner.

15. Further contention of the tenant/revision petitioner is that he has paid a sum of Rs.5,00,000/- as advance to the petitioner. Therefore the question of wilful default does not arise and there is no bonafide requirement on the part of landlady for eviction on the ground of owners occupation.

16. Admittedly, there is no clause in Exhibit P4-Mortgage Deed for non-payment of any rent and furthermore it is also admitted by R.W.1 in the cross-examination. It is to be stated that admittedly there is clause for adjustment of rent with the interest to be paid by the landlord under Ex.P4. Under Ex.P5 the landlady has called upon the tenant to pay the rent which was defaulted.

17. The trial Court has relied upon in the case of S.Venkatesalu Vs. V.Chandra and 2 others reported in 1997 (3) CTC 39, the Honourable Madras High Court has held that "tenant is bound to pay rent even if landlord enters into agreement of sale, unless there is specific recital not to pay rent in sale agreement", the principle laid down by Honourable Madras High Court in citation supra is applicable to the facts of present case, because here also there is no clause in the Ex.P4 in respect of not to pay rent, therefore this Court has come to conclusion that the revision petitioner is liable to pay monthly rent to the landlady.

18. Thus, this Court finds that the combined reading of the answer elicited in the cross-examination of R.W.1 regarding absence of any clause in the Ex.P4-Mortgage Deed regarding adjustment of rent towards interest coupled with Ex.P13 which is the receipt issued by the High Court on the Original Side in C.S.No.316/2011 whereby the landlady has already deposited

Rs.20,00,000/- in the redemption suit and also taking note of the consideration of Ex.P8 that the tenant has paid Rs.46,000/- towards the interest for the period of April 2011. However the tenant has not paid or has not filed any document to show the alleged advance amount of Rs.5 lakhs except self serving version under Exhibit P6-Reply notice. Thus, the Lower Appellate Authority has rightly come to the conclusion that Ex.P6 Reply Notice is invented to escape the liability and it is only after thought is well foundd and well merited.

19. Except the oral admission under Ex.P6-Notice, there is no scrap of paper or no documentary evidence evidencing payment of Rs.5 lakhs as an advance alleged to have been received by the landlord has been filed before the Rent Controller and hence, the Rent Controller and Appellate Authority have rightly come to the conclusion that the alleged payment of Rs.5 lakhs as an advance is not proved in the manner known to law and the same does not suffer from any irregularity or illegality warranting any interference.

20. Yet another point is that in the absence of any clause in the mortgage deed regarding adjustment of rent in lieu of the interest coupled with Ex.P8 which is shows that the landlady has separately paid the interest of the mortgage amount and also deposited the mortgage amount of Rs.20 lakhs before the Hon'ble High Court under Ex.P13.

21. The plea raised by the learned counsel for the petitioner/tenant that there is an adjustment clause and there is no default after adjustment is not substantiated by any documentary evidence and hence, both the Courts below has concurrently held that the default is wilful and for the wilful default the order of eviction is passed on that ground.

22. The next point i.e raised by the petitioner/tenant is that the order of eviction on the ground of owners occupation.

23. After going through the evidence of P.W.1 coupled with Exs.P2 and P3, both the Courts below have come to the conclusion that the landlady is running the business in a rental premises and she is in requirement of that building petition premises and her requirement is genuine and bonafide and accordingly, held the requirement of the building is bonafidy the building and hence, in view of the positive evidence on this ground for the requirement of building for owners occupation, both authorities below has rightly held that the landlady has substantiated her plea by adducing oral and documentary evidence and hence, I find that the order of eviction passed by authorities below is sustainable in law and there is no merits in the C.R.P.

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24. Accordingly, this Civil Revision Petition is dismissed and the order passed by the Courts below are hereby confirmed. No costs. Consequently, connected C.M.P is closed.

30.11.2020

Internet :Yes

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To

1. The VIII Judge, Small Causes Court, Chennai
2. The XI Judge, Small Causes Court at Chennai.

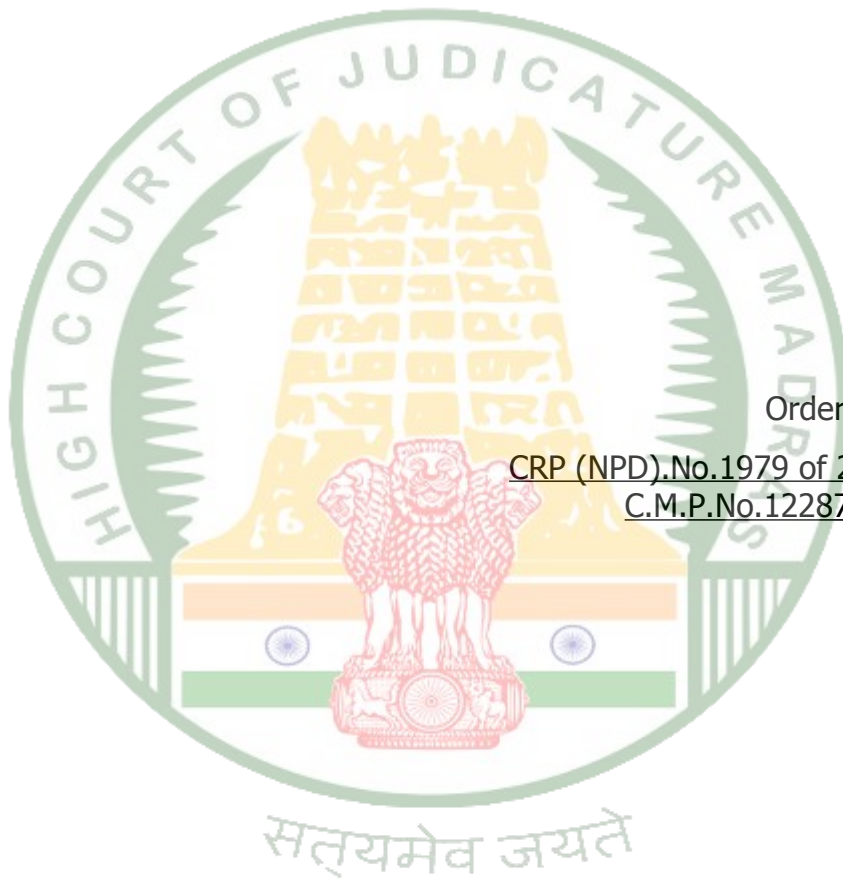


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