

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) Nos.1649 & 2605 of 2015
and M.P.Nos.1 & 1 of 2015

M/s.M.D.Metals,
Rep by its Proprietor Mr.T.Mohanlal,
No.30/1, Kesava Iyer Street,
Park Town,
Chennai - 600 003.

... Petitioner in
CRP.No.1649/2015

M/s.Tarun Trading Corporation,
No.30/1, Kesava Iyer Street,
Park Town,
Chennai - 600 003.

... Petitioner in
CRP.No.2605/2015

1. V.Shantha
2. A.Shankar

... Respondents in
both CRPs.

Prayer in C.R.P.(NPD)No.1649 of 2015 :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to set aside the judgment and decree dated 27.01.2015 in R.C.A.No.613 of 2008 on the file of the learned VIII Judge, Court of Small Causes (Appellate Authority) Chennai, reversing the order dated 12.06.2008

made in R.C.O.P.No.2188 of 2006 on the file of the XIII Judge, Court of Small Causes, Chennai.

Prayer in C.R.P.(NPD)No.2605 of 2015 :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to set aside the judgment and decree dated 27.01.2015 in R.C.A.No.2008 passed by the learned VIII Judge, Court of Small Causes at Chennai, setting aside the Decree and order dated 12.06.2008 made in R.C.O.P.No.2190 of 2006 on the file of the XIII Judge, Court of Small Causes, Chennai.

For Petitioner
in CRP.1649/2015 : Mr.S.Ramesh Kumar
For Petitioner
in CRP.2605/2015 : Mr.J.Jamesh
For Respondent
in both CRPs : Mr.P.Seshadri

COMMON ORDER

These Civil Revision Petitions are arising out of the fair and decreetal orders dated 27.01.2015 passed by the learned VIII Judge, Court of Small Causes at Chennai, in RCA.Nos.613 & 614 of 2008 respectively, thereby setting aside the orders dated 12.06.2008 passed by the learned XIII Judge, Court of Small Causes, Chennai in R.C.O.P.Nos.2188 & 2190 of 2006 respectively, thereby dismissing the petition for eviction.

2. Both the petitioners are tenants under the respondents herein. The respondents filed petitions in R.C.O.P.Nos.2188 & 2190 of 2016 respectively, for eviction on three grounds of own use, occupation for residential & non-residential and additional accommodation. The learned Rent Controller dismissed the eviction petitions on those grounds for the reason that for requirement of a non-residential portion for owner's occupation to run a business, the burden is on the landlord to establish that it is not a mere desire to commence such business, instead it is bonafide requirement to commence and run such a business. The burden is heavy on the landlord to prove preparation towards such commencement of business.

3. The learned Rent Control Appellate Authority allowed the petitions only on the ground that under Section 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purpose of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village

concerned which is his own. Therefore, the claim of the respondents is bonafide and the petitioners are liable to be evicted.

4. That apart, the petition premises is a shop portion in the front side of the ground floor let out to the petitioners to run their business. The petition premises consists of ground floor and first floor. The first floor is meant for residential purpose and front portion of the ground floor let out to the petitioners herein for non-residential purpose. Therefore, if the landlord wanted to occupy the premises for his residential purpose, it shall be restored. If the landlord using a portion for residential purpose wants another portion of the said premises under occupation of the tenant for non-residential purpose then the landlord has to proceed under Section 103(3)(a)(iii) for owner's occupation and not under Section 10(3)(c) of the Act which deals with the additional accommodation for the existing usage of the landlord. Therefore, the petitions for eviction cannot be dismissed for technical reasons and the right of the parties should not be prejudiced.

5. Admittedly, the respondents have satisfied the conditions as contemplated under Section 10(3)(a)(iii) of the Act. Further the petitioners are running their business which is non residential in character. Therefore, the learned Rent Control Appellate Authority allowed the eviction petitions on the ground of Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Further the respondents have right to choose the portion which is suit for them. It is also seems to be one of the boanfide reason for own occupation. Therefore, this Court finds no illegality or infirmity in the order passed by the learned Rent Control Appellate Authority.

6. Further the learned counsel appearing for the petitioners sought sufficient time to vacate the premises. Considering the above submission, the petitioners are directed to vacate the premises and hand over the vacant possession to the respondents within a period of six months from the date of receipt of a copy of this Order.

7. Accordingly, both the Civil Revision Petitions are dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

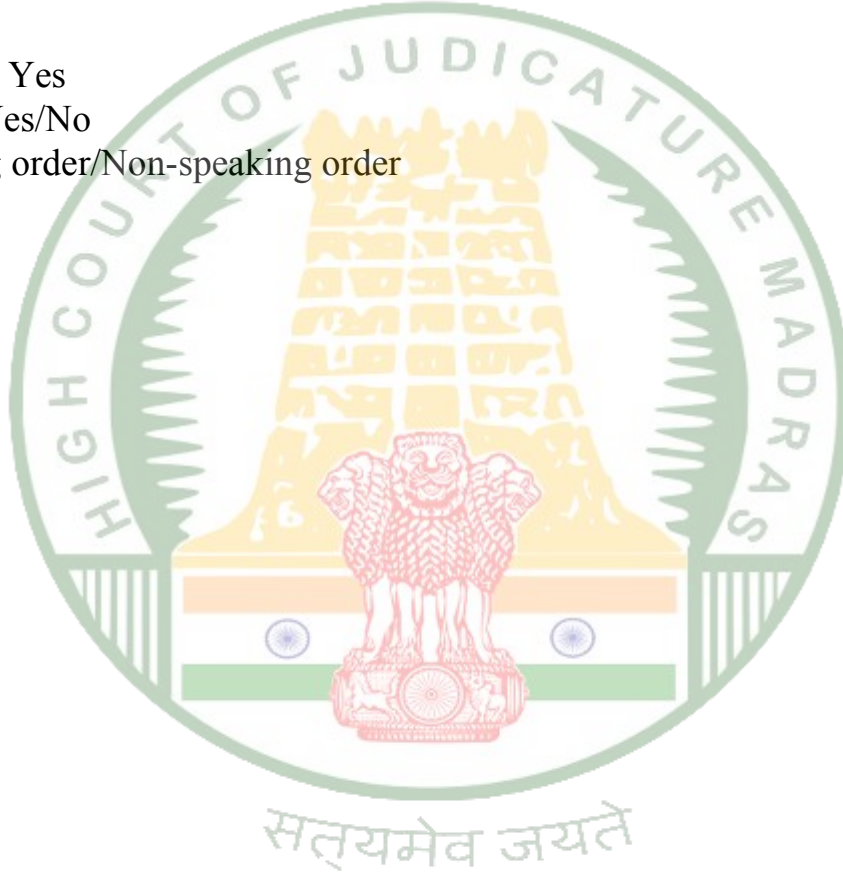
21.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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To

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



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G.K.ILANTHIRAIYAN, J.

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