

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

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

C.R.P.(PD)No.3961 of 2012
and M.P.No.1 of 2012

1. Noori Lace House
Rep by its Proprietor
V.M.Shamsudeen (died)
No.57, Ground Floor Shop,
Pondy Bazaar, T.Nagar,
Chennai - 600 017.
2. Umsalama Beevi
3. V.MS.Akbar
4. V.M.S.Madhar Badrudeen
5. V.M.S.Kamaludeen
6. M.Suklthana Razia
7. S.Sulthana Rabiya
8. Alli Fathima
9. Madhar Meera
10. K.Hasan Sabina
(Petitioners 2 to 10 brought on record
as the LRs of the deceased sole petitioner
vide Court Order dated 01.02.2021
made in C.M.P.No.1425 of 2021 in
CRP.NPD.No.3961 of 2012)

... Petitioners

Vs.

1. K.S.Sureshkumar
2. K.S.Nareshkumar

... Respondents

Prayer:- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent control) Act 18 of 1960, to set aside the fair and decreetal order passed in R.C.A.No.189 of 2008 by the learned VIII Court of Small Causes Judge at Chennai (Appellate Authority) dated 27.07.2012 confirming the fair and decreetal order passed in R.C.O.P. No.1304 of 2006 dated 31.01.2008 by the learned XV Small Causes Judge, Chennai.

For Petitioners : Mr.S.Parthasarathy

For Respondents : Mr.S.Soundarajan

ORDER

The Civil Revision Petition is directed as against the fair and decreetal order dated 27.07.2012 passed by the learned VIII Judge, Court of Small Causes, Chennai (herein after referred to as "Rent Control Appellate Authority") in R.C.A.No.189 of 2008 confirming the fair and decreetal order dated 31.01.2008 passed by the learned XV Judge, Small Causes Court, Chennai (herein after referred to as "Rent Controller") in R.C.O.P.

No.1304 of 2006, thereby allowing the eviction petition filed by the respondents on the ground of additional accommodation.

2. The petitioners are the tenants and the respondents are the landlords. The respondents (herein after called as 'landlords') filed petition for eviction on the ground of willful default and additional accommodation as against the petitioners (herein after called as tenants). The petition premises was purchased by the landlords by the registered sale deed dated 16.03.2005, thereby attorned the tenancy in favour of the landlords and also requested the tenants to pay the rent to the landlords. But the tenants failed to pay the rent from the month of April, 2005 to December, 2005. Further the landlords are running the textile business in the portion of the ground floor of the petition premises. Therefore, the landlord filed petition for eviction on the ground of willful default and additional accommodation.

3. The learned Rent Controller allowed the petition only on the ground of additional accommodation and dismissed the petition on the ground of willful default. Aggrieved by the same, the landlords as well as

the tenants filed appeal before the learned Rent Control Appellate Authority in R.C.A.Nos.499 of 2008 & 189 of 2008 respectively. The learned Rent Control Appellate Authority dismissed both the appeals filed by the tenants in respect of eviction on the ground of additional accommodation and the appeal filed by the landlords as against the dismissal order of eviction petition on the ground of willful default.

4. Aggrieved by the same the landlords filed a Civil Revision Petition before this Court in C.R.P.No.4613 of 2012 and the same was allowed by this Court. As against which, the tenants filed a Special Leave Petition before the Hon'ble Supreme Court of India and the same was dismissed as withdrawn with liberty to file appropriate petition. Thereafter the tenants filed review petition before this Court in Review P.No.24162 of 2019 and the same is pending. In respect of the order of eviction on the ground of additional accommodation, the tenants filed the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners/tenants would submit that the petition premises situated in the ground floor ad measuring 56 sq.ft. The original tenant died and one of his son runs the business. He is the only bread winner of entire family. The tenants occupied in the ground floor only and the landlords running their business in the first floor. Admittedly the second floor of the building is lying vacant and hence they can very well expand their business in the second floor. The tenants are paying the admitted rent promptly without fail. Now the rent has been enhanced at Rs.1,250/- and they are paying regularly. In fact, the tenants are ready to pay any fair rent fixed by this Court.

6. Per contra, the learned Senior counsel appearing for the respondents/landlords submitted that the landlords are running textile business. The petition premises situated in the corner of Pondy Bazzar in the entrance of T.Nagar. In the business of textile, the showcase of items are very much important. That apart, the landlords purchased the petition premises by the sale deed dated 16.03.2005 and attorned the tenancy in favour of the landlord and the tenants are directed to pay the rents to them.

Even then the tenants failed to pay the monthly rent for the months from April 2005 to December 2005.

6.1. The learned Senior Counsel further submitted that in fact, the tenants failed to pay rents to the erstwhile owner and he also filed petition for eviction on the ground of willful default. After sold out the property, the erstwhile landlord withdrawn the petition for eviction filed on the ground of willful default. However, the learned Rent Controller allowed the petition for eviction only on the ground of additional accommodation. Therefore, the landlords filed Civil Revision Petition in C.R.P.No.4613 of 2012 and the same was allowed as such the eviction was ordered on the ground of willful default also.

6.2. He further submitted that the tenants cannot dictate the terms regarding which portion is suitable to the landlord. This dictum already held by the Hon'ble Supreme Court of India in so many cases. In this regard, he relied upon the judgment reported in (2014) 6 MLJ 597 in the case of ***Hindustan Petroleum Corporation Limited V. Dilbahar Singh*** and the

judgment dated **27.01.2021** passed by the Hon'ble Supreme Court of India in **Civil Appeal Nos.231- 232 of 2021** in the case of **Balwant Singh @ Bant Singh & anr Vs. Sudarshan Kumar & anr.**

7. Heard Mr.S.Parthasarathy, learned counsel appearing for the petitioners/tenants and Mr.S.Soundarajan, learned Senior Counsel appearing for the respondents/landlords.

8. The petitioners are the tenants and the respondents are the landlords. The landlords filed petition for eviction on the ground of willful default and additional accommodation of the petition premises. The petition premises is situated in the ground floor. Adjacent to the petition premises, the landlord are carrying the business of textile. Though the entire first floor is occupied by the landlords, the second floor is lying vacant and not used for their business. The present Civil Revision Petition is filed as against the order of eviction order on the ground of additional accommodation.

9. Insofar as the another ground of willful default is concerned this Court already allowed the Civil Revision Petition filed by the landlords in C.R.P.No.4613 of 2012 and ordered eviction. In fact, the Hon'ble Supreme Court of India also confirmed the same by giving opportunity to the tenants to file appropriate petition. Accordingly, the tenants filed review petition in Rev.P.No.24162 of 2019 and it is pending. The landlords seeking for eviction on the ground of additional accommodation to develop their business.

10. Admittedly the landlords are running textile business. Now they want to show case their textile materials to develop their business. As rightly pointed out by the learned Senior Counsel appearing for the landlords, the tenant cannot dictate the landlord with regard to portion which is suitable for expansion of business. That apart, the landlords are running their business in the part of the portion in the ground floor and the entire first floor. Due to expansion of business, they required the petition premises situated in the ground floor occupied by the tenants.

11. In this case, an Advocate Commissioner was appointed and his report and the rough sketch were marked as Ex.C.1 and Ex.C.2. On perusal of the report and the plan revealed that the second floor of the petition premises was covered with tin sheet roofing and plastic sheets on all four sides, which is only to prevent rain water sweeping and it is used as a dumping yard by the landlords. Therefore, it cannot be used for the landlords' business purpose.

12. The learned Senior Counsel relied upon the judgment reported in (2014) 6 MLJ 597 in the case of **Hindustan Petroleum Corporation Limited V. Dilbahar Singh** as follows :-

"45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is

confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is

not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

13. He also relied upon the latest judgment dated **27.01.2021**, passed by the Hon'ble Supreme Court of India in **Civil Appeal Nos.231-232 of 2021** in the case of **Balwant Singh @ Bant Singh & anr Vs. Sudarshan Kumar & anr**, which held as follows :-

"11. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate.....सत्यमेव जयते

13. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established.

According to us, the adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate. The special procedure for NRI landlord was deliberately designed by the Legislature to speedily secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative intent to confer the right of summary eviction, as a one time measure cannot be frustrated, without strong reason."

The Hon'ble Supreme Court of India repeatedly held that the tenants cannot dictate the terms of the landlords with regard to suitable portion for business expansion.

14. The above judgments are squarely applicable to the case on hand. Therefore, the Court below rightly ordered the eviction petition on the ground of additional accommodation and this Court finds no illegality or infirmity in the orders passed by the Courts below. At that juncture, the learned counsel appearing for the petitioners/tenants seeks further time to vacate and hand over the premises to the landlords. Considering the

submission, the petitioners/tenants are directed to vacate the premises and hand over to the landlords within a period of four months from today.

15. With the above direction, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The VIII Judge,
Court of Small Causes,
Chennai

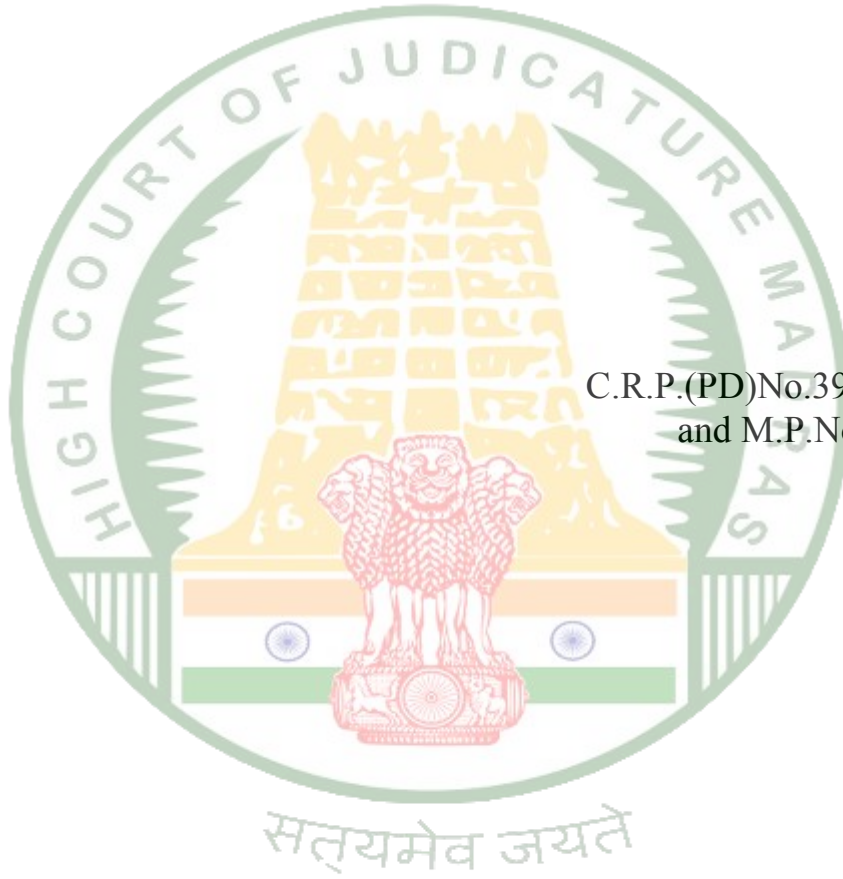
2. The XV Judge,
Court of Small Causes,
Chennai.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

C.R.P.(NPD)No.3961 of 2012

G.K.ILANTHIRAIYAN, J.

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