

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

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

CRP.NPD.No.3306 of 2015 and
MP.No.1 of 2015

K.Rajan

..Petitioner

Vs.

D.Suryakanth

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu (Buildings Lease and Rent Control) Act, 1961 against the order and decree of the VII Small Causes Court cum Rent Control Appellate Authority, Chennai in RCA.No.455 of 2010 dated 08.01.2015, in confirming the judgment and decree in RCOP.No.1409 of 2008 dated 01.06.2010 on the file of the XII Court of Small Causes cum Rent Controller, Madras.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Mr.R.Manickavel

ORDER

This Civil Revision Petition is directed as against the judgment and decree passed in RCA.No.455 of 2010 dated 08.01.2015 thereby

confirming the judgment and decree passed in RCOP.No.1409 of 2008 dated 01.06.2010 on the file of the XII Court of Small Causes cum Rent Controller, Madras thereby allowed the petition for eviction.

2. The learned counsel for the petitioner would submit that the respondent filed petition for eviction on the ground of bonafide requirement to shift and carry his own business. The respondent averred that the petitioner is a tenant for the petition premises and leased out the same for non residential purpose for the monthly rent of Rs.5,000/-. The respondent is doing Pharmaceutical business under the name and style of Lavisha Pharmaceutical, Sun Pharmaceutical and Sri Nursery Garden in a rented premises. After purchasing of the petition premises, he wanted to shift his business to his own premises to carry on all his business. He further submitted that the respondent denied the relationship of tenant and landlord between the petitioner and the respondent herein. In fact, the petitioner has been put in possession of the petition premises by one Kasthuri, the erstwhile owner of the premises by virtue of lease deed dated 01.03.2005 on receipt of Rs.5,00,000/- to be refunded in one lumpsum without interest on the expiry of five years. During the said term of five years, no rent need be paid by the respondent and on expiry of five years and upon three months notice and upon refund of Rs.5,00,000/- in one lumpsum lease shall terminate.

Therefore, no rental due from the petitioner to the respondent herein. He further submitted that it is nothing but usufructuary mortgage and as such there is no landlord tenant relationship between the petitioner and the erstwhile owner by name Kasthuri. As per the deal, a sum of Rs.5,00,000/- was duly received by her and only on return of the said amount, that too in one lumpsum, the said deed shall terminate and the question of demanding surrender of possession will arise. Admittedly, the respondent or erstwhile owner of the premises did not return the amount which was received by her. Even then, the court below ordered for eviction without considering the above facts.

3. Per contra, the learned counsel for the respondent would submit that the petitioner was inducted as a tenant by the erstwhile landlady Mrs.E.Kasthuri. Thereafter, the respondent purchased the petition premises vide registered sale deed dated 24.11.2006 vide document No.5003 of 2006. After leasing out the property in favour of the petitioner herein, the erstwhile landlady mortgaged the property with the Muthialpet Benefit Fund Limited. Thereafter she failed to redeem the mortgage with the mortgagee. As per the order passed by the Hon'ble First Division Bench of this Court through auction, the respondent purchased the property and sale deed was executed in his favour. Therefore, after purchase of the said property, the petitioner

was duly informed and directed to pay rent directly to the respondent herein. Whereas, the petitioner colluded with the erstwhile landlady, namely E.Kasthuri did not pay any rent to the respondent herein. Further he submitted that even after purchasing the petition premises, the respondent runs his business in the rental premises and as such he filed petition for eviction for owner's occupation.

4. Heard Mr.V.Lakshminarayanan, the learned counsel for the petitioner and Mr.R.Manickavel, the learned counsel for the respondent.

5. The petitioner is tenant by the lease deed entered between the erstwhile owner of the petition premises and the petitioner herein dated 01.03.2005. On perusal of the lease deed he paid a sum of Rs.5,00,000/- to the erstwhile landlady and the interest for the said sum will be treated as monthly rent for period of 5 years. After completion of five years, when the amount is returned to the petitioner, the lease deed shall terminate. While being so, the said Kasthuri mortgaged the said property with Muthialpet Benefit Fund and thereafter failed to redeem the property. In the court auction sale, the respondent purchased the said property for valid sale consideration for the registered sale deed dated 24.11.2006 vide document No.5003 of 2006. Thereafter, the same was duly informed to the petitioner

and even then, the petitioner failed to pay any rent to the respondent herein. It is also to be noted that the petitioner also filed suit before this Court in CS.No.866 of 2008 for recovery of money from the erstwhile landlady and it is pending. According to the respondent, the petitioner agreed to pay a sum of Rs.5,000/- as monthly rent and permitted to run the tailoring business in the name and style of Aristo Tailors. Even then, the petitioner failed to pay a single pie to the respondent from the year 2006 onwards. Therefore, the respondent also runs his business in a rented premises. Therefore, he caused notice for payment of arrears of rent. In fact, the respondent filed petition for eviction on the ground of wilful default as well as owner's occupation. The court below dismissed the ground of wilful default since admittedly the petitioner entered in to a lease agreement with the erstwhile owner and he paid a sum of Rs.5,00,000/-. In the said lease agreement categorically stated that the interest will be adjusted towards monthly rent.

6. In respect of owner's occupation, the respondent adequately established by documentary evidence that he is running his business in the rented premises. Therefore, the respondent is entitled for eviction on the ground of owner's occupation. Accordingly eviction is ordered on the ground of owner's occupation. That apart, the petitioner admittedly did not pay even single paise to respondent from the year 2006, namely the date of purchase

of the petition premises by the respondent herein. Though wilful default could not attract as against the petitioner since the erstwhile landlady received a sum of Rs.5,00,000/- from the petitioner, the petitioner ought to have paid the rent as demanded by the respondent herein. Therefore, this Court finds no irregularity or infirmity in the order passed by the court below, and the civil revision petition is liable to be dismissed. The learned counsel for the petitioner seeks further time to evict petition premises due to covid 19 pandemic circumstances.

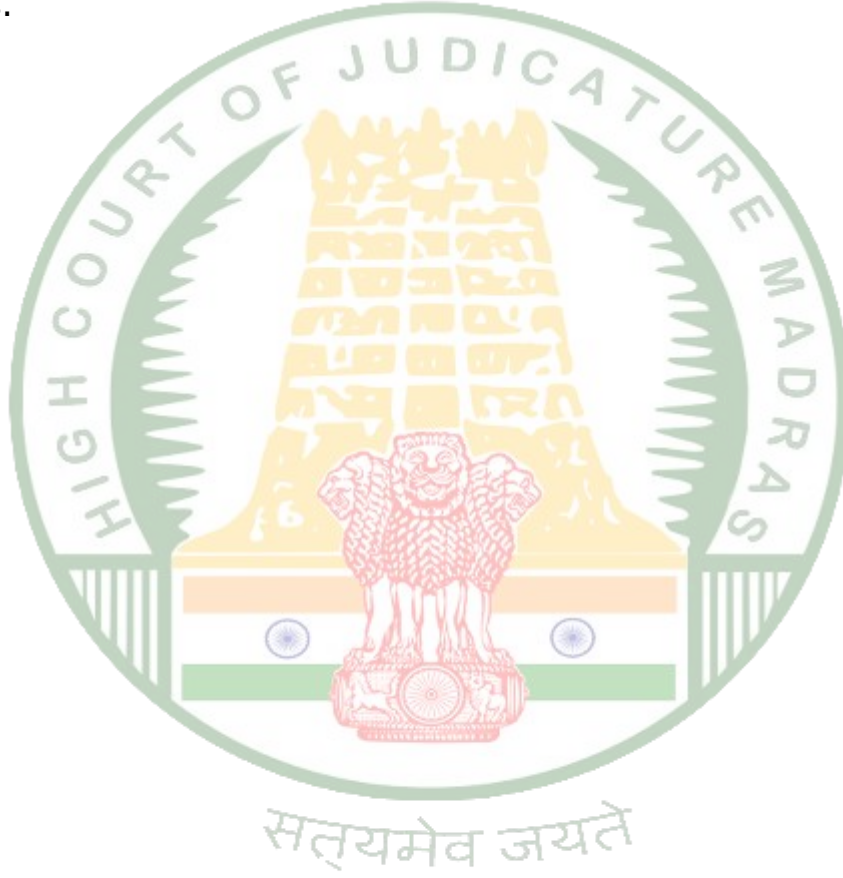
7. Considering the above submission, the petitioner shall vacate the petition premises within a period of three months from the date of receipt of copy of this order. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

11.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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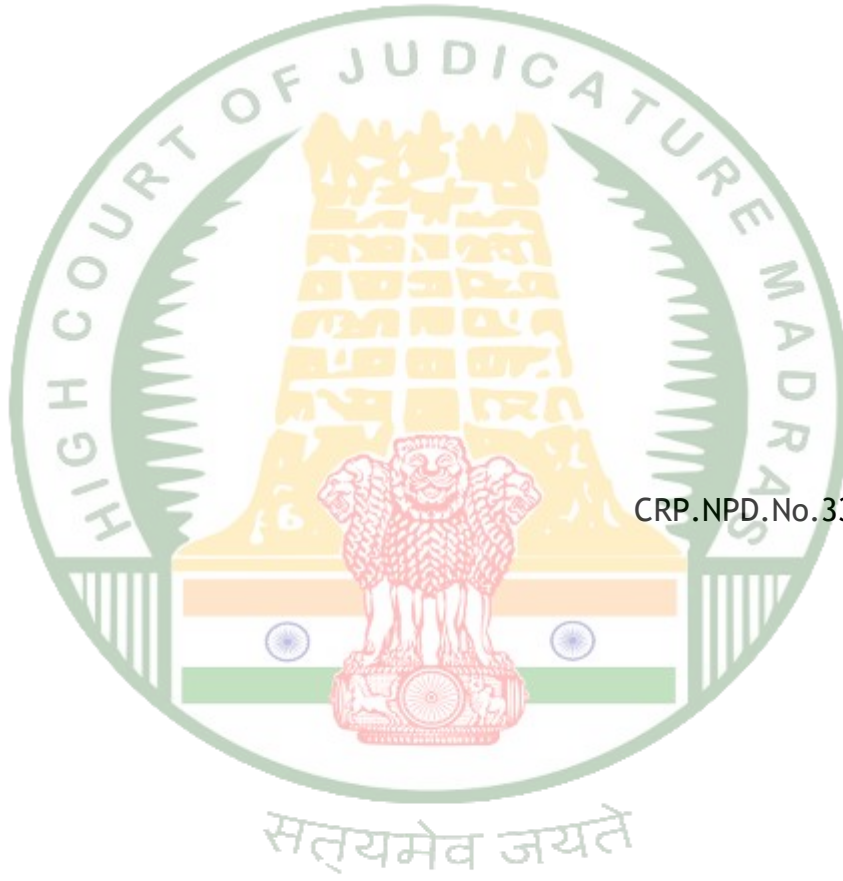
- 1.The VII Small Causes Court cum
Rent Control Appellate Authority, Chennai
- 2.The XII Court of Small Causes cum Rent Controller,
Madras.



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G.K.ILANTHIRAIYAN,J.

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