

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2021

PRONOUNCED ON : 29.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(N.P.D)No.1300 of 2020

Bharathan

...Petitioner

Vs.

Tamil Nadu Paints,
Represented by its proprietor Sunil Joshi,
Puducherry – 13.

...Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment dated 03.01.2020 in R.C.A.No.07 of 2019 passed by the learned II Additional District Judge, Pondicherry, confirming the order passed by the learned Rent Controller-II in R.C.O.P.No.82 of 2013 dated 04.04.2018.

For Petitioner : Mr.V.Ramamurthy

For Respondent : Mrs.HemaSampath, Senior Advocate
for M/s.Prakash Adiapadam

ORDER

This Civil Revision Petition is filed challenging the judgment passed in R.C.A.No.7 of 2019 on the file of the learned II Additional

District Judge, Pondicherry, confirming the order of the learned Rent Controller II, Pondicherry in R.C.O.P.No.82 of 2013.

2.The petitioner is the landlord and the respondent is a tenant in respect of non-residential building in ground floor portion measuring 1125sqft, bearing door No.184, Tiruvallur Salai, Puducherry-605013. The tenancy is for non-residential purpose of running the business of Tamil Nadu Paints. The lease agreement was entered into on 01.06.2007 for a period of three years. The monthly rent was fixed at Rs.8000/- per month. After the expiry of three years of lease, the lease was not renewed. Petitioner wanted the premises for own occupation and therefore requested the respondent to vacate the premises. Respondent agreed to vacate the premises and prayed one year time for vacating the premises. He also agreed to pay enhanced rent of Rs.11,000/-per month and that was accepted by the petitioner. Even after the lapse of one year, the respondent has not chosen to vacate the premises. The petitioner has an unemployed son and was about to retire from his job. He reiterated his request for vacating the premises by the respondent. The respondent himself raised the rent to Rs.12,000/- and that

was objected by the petitioner. Petitioner retired from his job as A.E in Puducherry Government in 2008. His son is a Mechanical Engineering graduate and he was unemployed. His son's wife has experience in the education field and she planned to open a creche for children in the premises. It will help the entire family members to survive. However, despite several request respondents has not chosen to vacate the premises and therefore the petition in R.C.O.P.No.82 of 2013 was filed under Section 10 (3) C of Pondicherry Building (Lease and Rent Control) Act 1969, for evicting the respondent.

3.The respondent filed counter admitting that he is tenant and the petitioner is landlord. It is his submission that he paid an advance of Rs.1,00,000/-. Even after the completion of three years of lease period, the lease was extended and monthly rent was also enhanced. Petitioner is always in the habit of demanding excess rent. When the respondent sent the rent of Rs.11,000/- through a cheque for June 2012, petitioner acknowledged the rent with an endorsement that “Sir, received a cheque with protest our demand of rent Rs.15,000/- plus Rs.2,00,000/- for advance

is our request”. The intention of the petitioner is to demand higher rent and advance. The claim of the respondent that premises is required for starting a creche for his daughter-in-law is not a genuine and bonafide. There are other shops available in the building and all of them are let out for commercial purposes. It is not possible and practicable to run a creche in a commercial complex. Respondent is running the business of paint merchant having sizeable customers in and around the area. If he is asked to vacate the premises it would lead to irreparable loss to him.

4. During the enquiry before the learned Rent Controller-II, Puducherry, PW1, PW2 and RW1 were examined. Exhibits P1 to P4 and R1 were marked. On considering the oral and documentary evidence produced before the learned Rent Controller-II, Puducherry, the Rent Controller dismissed the petition on the ground that petitioner cannot claim eviction on the ground of additional accommodation for the purpose of business of his daughter-in-law. Petitioner filed appeal in R.C.A.No.7 of 2019, against the order of the learned Rent Controller-II, Puducherry. The learned Rent Control Appellate Authority found no reason to defend the decision arrived

by the learned Rent Controller and confirmed the order of learned Rent Controller-II, Puducherry, and dismissed the appeal. Against the said dismissal order, this Civil Revision Petition is preferred.

5.The learned counsel for the petitioner submitted that a landlord who is occupying a portion of the premises is entitled to seek the other portion in the premises for his additional accommodation for the purpose of residential or non-residential. It is not necessary that the petitioner/landlord should be carrying on any business on the date of filing the petition, if the premises is required for non-residential purpose. Additional accommodation can be sought even for a family members for commencing a business. However, without considering the scope of Section 10 (3) C of Pondicherry Building (Lease and Rent Control) Act 1969, the learned Rent Control Authorities wrongly dismissed the eviction petition. The finding of the Courts below that the petitioner cannot seek the premises for additional accommodation for his daughter's-in-law business and no material produced to show that petitioner has taken steps for starting creche are not based on proper reasoning. Petitioner can very well seek for additional

accommodation for starting a new business by his daughter-in-law. Only if the premises is taken possession, effective steps can be taken for starting a creche. Without taking possession, steps cannot be taken for starting the creche. The finding of the Appellate Rent Control Authority that petitioners has not produced any material to show the starting a creche is not correct. Therefore, the learned counsel for the petitioner prayed for setting aside the judgment of the learned Appellate Rent Control Authority and for allowing the eviction petition.

6.In response, the learned counsel for the respondent submitted that even as per the petition averments and the counter averments, it is clear that petitioner is in habit of demanding higher rents. When the respondent refused to pay a higher rent of Rs.15,000/-, this petition is filed only with a view to evict the respondent from the premises under Section 10 (3) C of Pondicherry Building (Lease and Rent Control) Act 1969. Landlord can seek the non-residential premises in the occupation of the tenant for the purpose of additional accommodation, only if the landlord is running a business. In the case before hand, petitioner is not running any business and

therefore, he cannot seek eviction of the respondent on the ground of additional accommodation. The learned Appellate Rent Control Authority has rightly considered the matter and dismissed the appeal. Therefore, learned counsel for respondent prayed for confirming the order of the Rent Control Appellate Authority and for the dismissal of this Civil Revision Petition.

7.Considered the rival submissions and perused the records.

8.The scope of this petition is very limited as to whether the petitioner is entitled to seek the eviction of the respondent on the ground of additional accommodation for accommodating his daughter-in-law in the premises for setting up a creche. There is no dispute with regard the jural relationship of landlord and tenant between the parties. Admittedly the tenancy agreement was entered into between them on 01.06.2007. The period of tenancy is for three years and monthly rent was Rs.8000/-per month and an advance of Rs.1,00,000/- was paid. It was agreed that if the party is willing to continue the lease, fresh lease deed should be executed

before the completion of lease period. It appears that no fresh lease deed was executed but the tenant continued to occupy the premises and the landlord continued to receive the rent even after the completion of the tenancy period in 2010. Only in 2013, petitioner claimed the premises for his own occupation and sent legal notice followed by filing of the R.C.O.P. The Section 10 (3) C of Pondicherry lease control Act 1969 reads as follows:

“A landlord who occupying only a part of a building, whether residential or non-residential, may notwithstanding anything contained in clause (a), apply to the controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purposes of a business which he is carrying on, as the case may be”.

Provided that in the case of an application under clause (c), the controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

9.This Section makes it clear that a landlord may apply to the rent controller for an order against the tenant to put landlord in possession for the purpose of additional accommodation.

i)there must be a tenant in a building who is occupying the whole or any part of the building,

ii)landlord must be occupying a part of the same building,

iii)occupation of the landlord may be for residential or non-residential,

iv)the landlord may require the building for additional accommodation, for residential purpose or for the purpose of business which he is carrying on.

10.It is clear from the Section that a landlord can seek the non-residential premises, only if he is carrying on business. It is admitted case of the petitioner that he is not carrying on any business on the date of filing the petition. The petition is filed primarily for the reason that his daughter-in-law is going to start a creche in the petition mentioned premises. Therefore, this Court finds that the claim of the petitioner that he requires premises in

the occupation of the tenant for the purpose of starting a creche by his daughter-in-law cannot be maintained under Section 10 (3) c of Pondicherry Building (Lease and Rent Control) Act 1969.

11.It is seen from the pleadings and also evidence that the monthly rent was periodically enhanced. Exhibit R1 is the communication sent by the petitioner to the respondent. It is admitted in Exhibit R1 that petitioner received the cheque for Rs.11,000/- (monthly rent for June 2012) with protest against the demand of rent of Rs.15,000/- and Rs.2,00,000/- advance. It lends credence to the case of the respondent that petitioner is in habit of enhancing the rent and when the respondent refused to give the rent of Rs.15,000/- as claimed by the petitioner, eviction petition was filed, only with a view to evict the respondent. Exhibit R1 makes the intention of the petitioner loud and clear that his intention was only to enhance the rent. Not only that, it is specifically claimed by the respondent that if he is ordered to be evicted from the premises he would be put to irreparable loss in his business. In other words it is submitted that the hardship caused to him will outweigh the advantage to the landlord.

12.Respondent's business is a running business. Petitioner's claim is that he is going to set up a creche for his daughter-in-law. Respondent is regularly paying the agreed rent. If running business is stopped for not a valid ground, certainly tenant would be put to great hardship. The hardship caused to the tenant will certainly outweigh the advantage to the landlord. This Court finds that the petitioner has not made out ground for ordering eviction of the respondent on the ground of additional accommodation for the reason aforesaid. Therefore, this Court finds no reason to interfere with the order dated 03.01.2020 in R.C.A.No.07 of 2019 passed by the learned Rent Control Appellate Authority and it is confirmed.

13.Resultantly, this Civil Revision Petition is dismissed. No costs.

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Index: Yes/No

Internet: Yes/No

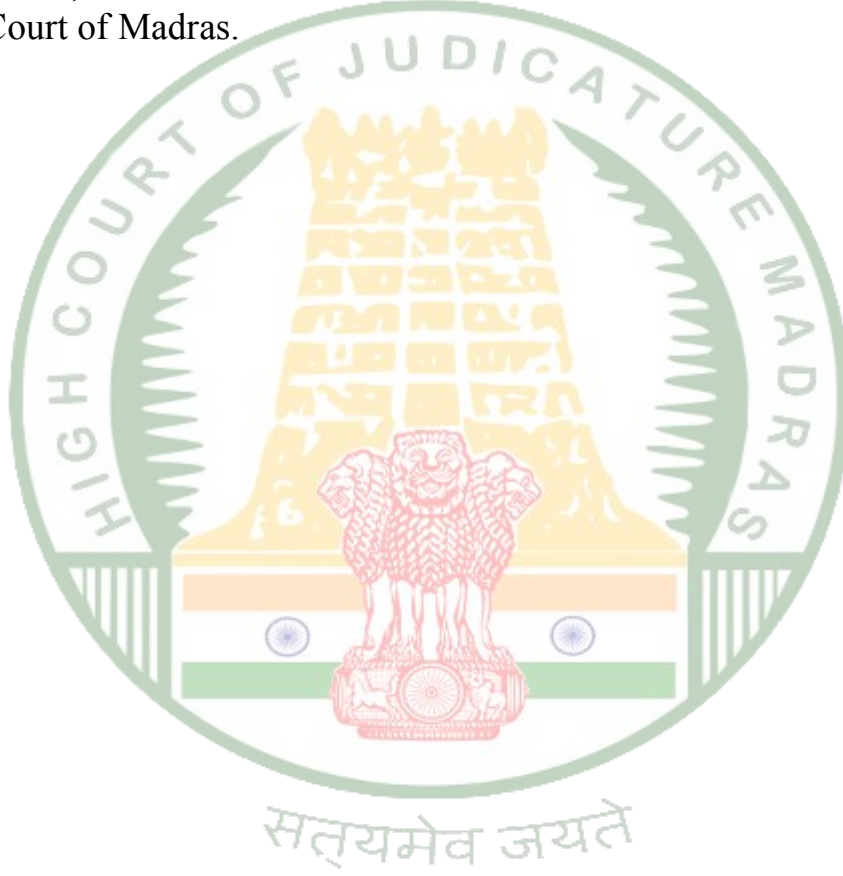
Speaking Order: Yes/No

29.10.2021

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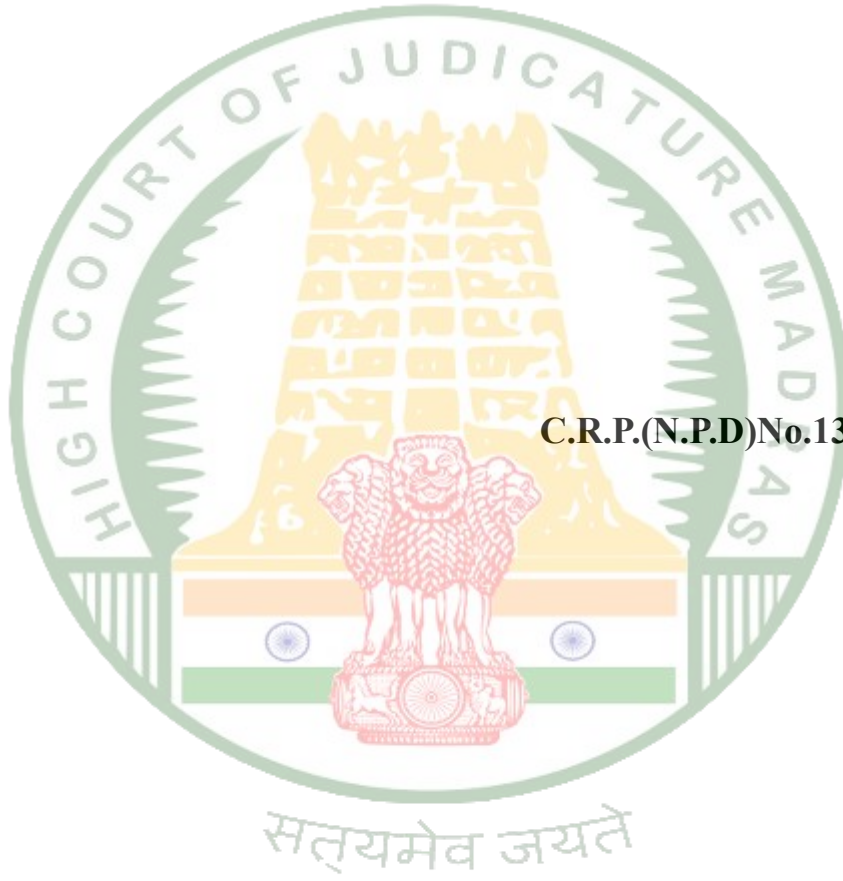
1. The II Additional District Judge,
Pondicherry.
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J.

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