

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.07.2021

PRONOUNCED ON: 28 .07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 1188 of 2020

And

C.M.P.No. 6406 of 2020

S.Jagadeesan

... Petitioner/Appellant/Petitioner/Landlord

-Vs-

1. Mangaiyarkarasi

... Respondent/Respondent/Respondent/Tenant

2. Kumaragurubharan

... Respondents/Respondents/Respondents/Sub-Tenant

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, against the Judgment and Decree dated 10.02.2020 passed in R.C.A.No. 37 of 2019 on the file of the VIII Judge, Court of Small Causes, Chennai, varying the decree and order dated 10.12.2018 in R.C.O.P.No. 1046 of 2017 on the file of XI Judge, Court of Small Causes, Chennai.

For Petitioner : Mr. P.B.Balaji

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended, by the petitioner/landlord.

2. Originally the petitioner/landlord had filed R.C.O.P. No. 1046 of 2017 on the file of the XI Court of Small Causes, Chennai/Rent Controller, seeking eviction of the two respondents/tenant and sub tenant respectively on the grounds of willful default in the payment of rent, sub letting and requirement of the petition premises for owner's occupation. The petition premises was described in the schedule to the petition as a shop measuring 600 sq.ft., named 'Ambal Store', at No. 106, Arcot Road, Vadapalani, Chennai.

3. The respondents filed counter denying title and in fact denying there was landlord/tenant relationship. They also claimed title to the premises.

4. During trial, the petitioner/landlord was examined as P.W.1 and Exs. P 1 to P 26 were marked. The respondents did not adduce oral or documentary evidence.

5. The Rent Controller by Order dated 10.12.2018 dismissed R.C.O.P. No. 1046 of 2017. He primarily relied on the cross examination of P.W.1 and observed that there was an admission that in both Exs. P 18 and P 19, Rental Agreements, the door number of the premises was given as 138 and new number 197, and therefore held that no document had been produced by the petitioner/landlord to substantiate lease of premises in door number 106, and consequently held there was landlord/tenant relationship and hence dismissed the Rent Control Original Petition.

6. Records reveal that the petitioner/landlord had also filed M.P. No. 226 of 2018 claiming that the premises originally bore door numbers 138-139, and was subsequently assigned door number 106 and later new door number 197 therefore seeking amendment of the schedule to the petition by incorporating new door number 197. That petition was

dismissed by order dated 31.08.2018. The petitioner/landlord filed R.C.A. No. 787 of 2018 questioning that order.

7. Questioning the order dated 10.12.2018 dismissing R.C.O.P. No. 1046 of 2017, the petitioner/landlord filed R.C.A. No. 37 of 2019.

8. Both the Rent Control Appeals came up for consideration before the VIII Court of Small Causes, Chennai/Rent Control Appellate Authority.

9. The respondents were served in the Rent Control Appeals. They engaged counsels to represent them. Subsequently, the counsels reported 'no instructions'. Thereafter the respondents were set exparte.

10. The learned Rent Control Appellate Authority took up both the appeals for consideration and passed a Common Judgment on 10.12.2018. The Appellate Authority re-examined the exhibits marked and came to a definite finding that the petition premises was originally door number 138, subsequently door number 106 and then door number 197. It was therefore

held that there no doubt about the identity of the property. He therefore allowed R.C.A. No. 787 of 2018, thereby allowing M.P. No. 226 of 2018, which, as stated above had been filed before the Rent Controller to amend the door number of the schedule mentioned property by incorporating door number 197.

11. The Rent Control Appellate Authority then also allowed R.C.A. No. 27 of 2019, but remanded the matter back to the trial Court for fresh consideration and disposal after carrying out the amendment to the schedule of the property and also gave liberty to both the parties to let in additional evidence.

12. That order of remand has been seriously questioned by Mr. P.B. Balaji, learned counsel for the petitioner/landlord. It is the contention of the learned counsel that the Rent Control Appellate Authority has no power to remand the matter back to the Rent Controller for fresh consideration. It is contended by Mr. P.B. Balaji, that having decided to allow R.C.A. No. 787 of 2018, the Rent Control Appellate Authority should have proceeded to examine all the issues which arise for consideration and

should have passed final orders, either allowing the appeal or dismissing the appeal.

13. It must be pointed out that the respondents had, though served, A conscious decision not to appear before this Court. The records reveal that the Court Bailiff had served the Court Notice on both the respondents on 28.05.2020. The Private Notice was also served on the two respondents on 22.06.2021 and 23.06.2021 respectively. Affidavit of service had also been filed. The name and addresses of the respondents was also printed in the cause list. However, since the Rent Control Appellate Authority had passed an Order of remand which cannot withstand judicial scrutiny, final orders are passed in this Revision Petition.

14. Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended is as follows :

“23. Appeal. –

(1) (a)

(b)

(2)

*(3) The appellate authority shall call for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller, **shall decide the appeal.***

Explanation. - The appellate authority may, while confirming the order of eviction passed by the Controller, grant an extension of time to the tenant for putting the landlord in possession of the building,

(4) ”

15. It is thus seen that the Rent Control Appeal Authority has to **decide the appeal.** There is no provision to remand the matter back to the Rent Controller.

16. In 2002 (3) *MLJ 500, N. Bacherlal vs S. Subhash Chandra Bose*, where also a Revision was filed questioning an order of remand by the Rent Control Appellate Authority, it was held as follows :

*The civil revision petition has to be allowed on a short ground. The Rent Control Appellate Authority has remanded the matter to the Rent Controller on the question of wilful default. This Court in series of decisions in **Rangaswami Naidu v. The Second Judge, Court of Small Causes, Madras (1949)1 MLJ. 24** and **Kuttappa Nair v. S.S.A. Shahul Hameed (1973)2 MLJ. 55**, has held that the Rent Control Appellate Authority has no such power of remand. Following the said decisions I hold that the Rent Control Appellate Authority was not correct in remanding the matter to the Rent Controller.*

2. Mr.K.Kannan, learned counsel appearing for the respondent submitted that the Rent Control Appellate Authority has remanded the matter because the petitioner herein sought to introduce documents, which the respondent stoutly opposed. I am of the view that when the petitioner has produced certain documents, the appellate authority should have either considered the documents or called for findings from the rent controller on the documents and hence for that purpose the power of remand cannot be exercised.

17. In *Tiruchengode Agricultural Producers Co-operative Marketing Society, Ltd. v. Appellate Authority under Payment of Gratuity Act*, (2002) 3 LLN 1085 : (2002) 1 LLJ 1105 the two judgments cited supra, *Rangaswami Naidu v. The Second Judge, Court of Small Causes, Madras* (1949)1 MLJ. 24 and *Kuttappa Nair v. S.S.A. Shahul Hameed* (1973)2 MLJ. 55, were referred with approval even with respect to an appellate authority under the Payment of Gratuity Act, 1972, and it was held as follows :

“7. I am inclined to agree with the contentions raised by learned counsel. Inasmuch as the statutory provision, namely, S. 7(8) of the Payment of Gratuity Act does not confer any specific power on the appellate authority to remand the matter, the order of remand of the appellate authority is liable to be set aside. However, if in the opinion of the appellate authority any further materials are required for evidence, it is open to the appellate authority to himself to call upon the parties to adduce further evidence and to dispose of the appeal in accordance with law on the basis of the further materials placed.”

18. The position of law has been again reiterated in ***A. Anbumani vs Kanthammal, (2008) 7 MLJ 244***, where it was held as follows :

*“4. It is well settled position and consistent judicial opinion of this Court that whenever the matter is pending before the Rent Control Appellate Authority, he has to decide the matter with the available materials before him and he shall not remit the matter back to the Rent Controller for disposal afresh. The view has been taken in more than one occasion by this Court. For instance, the decisions reported in ***N. Bacheral v. S. Subbhash Chandra Bose, 2002 (3) MLJ 500*** and ***S. Parameshwaran Pillai v. The Deputy General Manager, Tele Communication, Trichy and others, 2003 (3) MLJ 445***. In fact, the former decision has also been referred to by this Court in the latter decision, where the order of Appellate Authority remitting the mater back, was set aside and the Appellate Authority was directed to decide the matter afresh in accordance with law”*

19. Even in the instant case, when the Rent Control Appellate Authority had thought it fit to allow R.C.A. No. 787 of 2018 permitting amendment of the schedule of the property, then the only other option

available to the Authority was to proceed to decide the appeal after considering the merits of the rival contesting parties. The Appellate Authority cannot and should not have shirked from that duty. In view of the above well settled proposition, the order under revision is set aside and the Revision Petition is allowed.

20. In the result, the Civil Revision Petition is allowed setting aside the order of remand dated 10.12.2020 made in R.C.A. No. 37 of 2019 and the learned Rent Control Appellate Authority is directed to dispose of the R.C.A. No. 37 of 2019 on merits within six months from the date of receipt of records from the Registry. The Rent Control Appellate Authority may issue fresh notice to the respondents, and if sufficient cause is shown by them for non appearance in the first instance, give them an opportunity to put forth their case. Connected Civil Miscellaneous Petition is closed. No costs.

28.07.2021

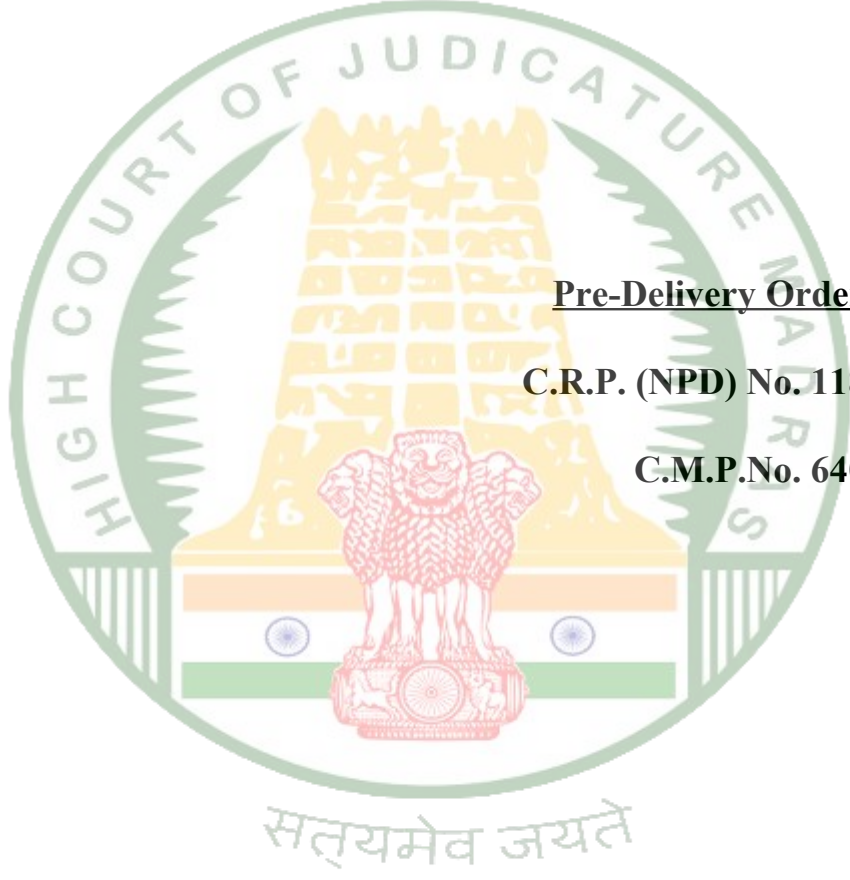
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Speaking / Non speaking

C.V.KARTHIKEYAN, J.

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Pre-Delivery Order made in

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