IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 02.08.2021	Orders pronounced on 13.08.2021

Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) No.1002 of 2021
and
C.M.P.No.8071 of 2021

S.Rajaganesh ... Petitioner / Tenant

Vs

A.M.Suseela ... Respondent/Landlady

Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the fair and decreetal order dated 06.10.2020 passed in RCA No.240 of 2018 on the file of the Rent Control Appellate Authority / VII Small Causes Judge, Chennai, confirming the fair and decreetal order dated 01.11.2017 passed in RCOP No.957 of 2014 on the file of the Rent Controller / XIV Judge, Small Causes Court, Chennai.

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For Petitioner .. M/s.G.Sumitra

For Respondent .. Mr.G.Saravanan

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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 06.10.2020 passed in RCA No.240 of 2018 on the file of the Rent Control Appellate Authority / VII Small Causes Judge, Chennai, confirming the fair and decreetal order dated 01.11.2017 passed in RCOP No.957 of 2014 on the file of the Rent Controller / XIV Judge, Small Causes Court, Chennai.

2. Respondent herein as the petitioner filed RCOP No.957 of 2014 under 10(3)(c) of Tamil Nadu Buildings Lease and Rent Control Act, 1960. The case of the respondent is that she is landlady in respect of the schedule mentioned property and the petitioner is a tenant in respect of the shop portion. The monthly rent was Rs.4,000/- and the tenancy is according to English calendar month. Respondent is a widow and she has a widowed daughter. Her daughter is employed in LIC and her income is not sufficient. They spend money on charitable purposes and give donations to the temples and allied activities. Respondent's daughter is taking care of her husband's family. They have no sufficient

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funds. Therefore, the respondent decided to start a petty shop in the petition premises and she requested the petitioner to vacate the property for starting her business. The petitioner promised to vacate the property, but he filed a suit in O.S.No.7 of 2014 with the Hon'ble V Assistant Judge, City Civil Court for injunction on false grounds. Therefore, this petition is filed. Respondent's requirement is bonafide. The advantage accrued to the respondent will outweigh the hardship caused to the petitioner.

3. This petition was contested by the petitioner admitting the tenancy, quantum of rent. He denied that the respondent and her daughter are short of funds. Respondent's daughter is permanent employee of LIC and earning a handsome salary. The averments that the respondent and her daughter are spending money on charitable purposes and give donation to temples are all false. Respondent never requested the petitioner to vacate the premises. Petitioner paid an advance amount of Rs.50,000/- on 01.12.2006. When the tenancy was commenced, the rent was fixed at Rs.2,600/- per month and subsequently, it was enhanced and now the petitioner is paying Rs.4,000/- per month as rent. Petitioner had also paid further advance amount of Rs.10,000/- on 13.02.2007,

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Rs.15,000/- in March 2008. Respondent demanded higher rent from March 2008, which is unreasonable. Respondent is not in a good health condition, therefore she may not be able to run the petty shop. She is earning sufficient income through renting of buildings. The only aim for filing this petition is to vacate the petitioner and to lease out the premises for higher rent, especially to the Bank for installing ATM. Therefore, petitioner sought for dismissal of the petition.

4. Considering the materials placed before the Rent Controller, learned Rent Controller allowed the petition and directed the petitioner to vacate and handover the vacant possession. Against the said order, the petitioner preferred RCA No.240 of 2019 and the learned Rent Control Appellate Authority concurred with the finding of the learned Rent Controller and dismissed the appeal. Against the said order, this Civil Revision Petition is preferred.

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5. Learned counsel for the petitioner submitted that the courts below have failed to consider the evidence of PW.1 with regard to her health conditions. The documents filed in support of the case of the respondent had come into existence after filing of the eviction petition,

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but the lower appellate court found that these documents had come into existence prior to the filing of RCOP. Respondent has not established her bonafide requirement. Finding of the court below is contrary to the evidence available. The finding with regard to the fact that the respondent established the relative hardship is more on her side is not correct. There are other vacant shop portions available in the said complex at the time of filing of RCOP and even now. There is no materials produced to establish that the respondent needs money and she is short of money to sustain herself. The finding with regard to the fact that the petitioner has not established that the respondent demanded more rent is not correct. There is clear and ample evidence to show that the respondent wanted the petitioner to vacate premises and lease the premises. Without considering these aspects, the courts below have wrongly ordered eviction of the petitioner and therefore, they seek to set aside the orders.

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6. Learned counsel for the respondent submitted that the courts below had concurrently found that the respondent required the petition premises for additional accommodation to commence a petty shop. The points raised by the learned counsel for the petitioner now had been

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considered by the Courts below and they found in favour of the respondent. The respondent though owns other shop portions, she is entitled to choose the portion, which is convenient to her. The petition mentioned portion is convenient and suitable to her for starting the petty shop. She is involved in various charity works. Therefore, she requires money. Tenant cannot dictate as to how the landlord/landlady should act and seek remedy. The scope of Civil Revision Petition under section 25 of Tamil Nadu Buildings Lease and Rent Control Act is very limited. This Court cannot revisit the evidence unless there is perversity in appreciating the evidence. May be there are some documents, which have come into existence after the filing of RCOP and filed in the Court. Respondent has also filed documents which came into existence, prior to filing of RCOP. What is to be considered in this petition is whether the requirement of the petitioner is bonafide and whether the hardship which may be caused to the tenant by granting the relief will outweigh the advantage to the landlord. The respondent established that the hardship which may be caused to the tenant will not outweigh the advantage to the landlord. Therefore, learned counsel for the respondent prays for confirming the order of the learned Rent Control Appellate Authority and for dismissal of this Civil Revision Petition.

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7. Perusal of the oral and documentary evidence produced in this case shows that during the enquiry before the learned Rent Controller, the landlady was examined as PW.1 and her daughter was examined as PW.2 and Exs.P1 to P26 were marked. Tenant was examined as RW.1 and no document was marked on the side of the tenant.

8. This petition is filed under Section 10(3)(c) of Tamil Nadu Buildings Lease and Rent Control Act. Section 10(3)(c) reads as follows:-

> *"**10. Eviction of tenants.**-*
>
> *(3) (c) A landlord who is 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 purposes of a business which he is carrying on, as the case may be."*

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This section provides relief to the landlord, who is occupying a part of the building, whether residential or non-residential to seek eviction of tenant, occupying the whole or any portion of the remaining part of the building on the ground of additional accommodation for residential purpose or for purpose of a business, which he is carrying on, as the case may be.

9. Learned counsel for the petitioner submitted that the case of the respondent is that she is going to start the petty shop in the petition premises and for that purpose she requires the petition premises by way of additional accommodation. This section clearly indicates that additional accommodation can be sought for for the purpose of business which the landlady is already carrying on. It is the admitted case of the respondent that the respondent was not carrying on any business on the date of filing the petition, but she intends to start a petty shop. Therefore, the learned counsel for the petitioner submitted that this petition is not maintainable for the reason that the respondent was not carrying on business on the date of filing the petition.

10. This submission of the learned counsel for the petitioner

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cannot be accepted for the reason that what is required to be seen is, as to whether the requirement is bonafide requirement and if such bonafide requirement is proved by showing the intention and qualification and eligibility to start the business, that is enough. It is not necessary that the landlord/landlady should be already carrying on business for seeking eviction against the tenant under Section 10(3)(c) of Tamil Nadu Buildings Lease and Rent Control Act. It is pertinent to refer the order of this Court in ***CRP (NPD) No.656 of 2009 (A.S.Venkataraman ..vs.. A.V.Harikrishnan Naidu)***. The relevant portion is extracted for better understanding:

> *"15.In a case reported in 2004 (5) CTC 675,* ***T.Sivakumar vs. K.Prabhakaran****, the learned single Judge of this Court has considered similar issue almost on similar set of facts and found that though the landlord or the person for whom the eviction sought for, is not already carrying on business the requirement on the ground of own use and occupation can be ordered, if steps have been taken by the landlord for commencement of the business. At this juncture, it is to be noted that it is not necessary that in all the cases the landlord has to prove or show some materials that he has taken steps to commence*

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the business. Such requirement depends upon the nature of each business. What is required to be seen most importantly is that as to whether the requirement is a bonafide requirement and if such bonafide is proved by material documents the landlord should succeed in his attempt. The bonafide may be proved even by showing the intention and the qualification or eligibility to start the business. When such intention coupled with eligibility is established, then the bonafide of the landlord has to be held proved and mere non preparation for commencement of the business cannot be put against such person in all the cases. In certain business, even the pre-commencement preparation could be done only after occupying the premises. Some would venture in large scale business. Some would intend to do petty business. Whether pre-commencement preparation is required or not is to be considered and decided based on the facts and circumstances of each case and there cannot be any universal formula for all the cases. ....."

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11. The scope of the revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act is limited. It is held in the order reported in ***2007 (2) CTC 127 (V.Kannadasan and others ..vs..***

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K.Swaminatha Pathar (died) and others) that

> *"23.Taking note of the subsequent conduct of the tenants, the appellate authority has rightly held that the tenants have committed wilful default and ordered eviction. Exercising jurisdiction under Section 25 of the Act, the High Court will not interfere with the findings unless there is perversity in the appreciation of evidence by the authorities below. There is absolutely nothing to show that there is perversity in the appreciation of evidence by the appellate authority and there is no reason calling for interference with the order of eviction passed by the appellate authority."*

It is thus clear that only if there is perversity in appreciation of evidence by the rent control authority, the order can be interfered.

12. In the case before hand, learned counsel for the petitioner submitted that most of the documents filed in support of the respondent's case had come into existence after the filing of the revision petition. It is seen from Exhibits list that Exs.P3, P4, P5, P8 and P12 to P19 had come into existence after filing of RCOP. This eviction petition was filed in 2014. As pointed out by the learned counsel for the petitioner most of the documents have come into existence after filing of the RCOP. These

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documents relate to receipt issued by temples, medical records of the respondent, flight tickets. They have been filed to show that the respondent was contributing funds to charitable works and she had taken pilgrimage. The respondent has categorically said during the course of her cross examination that she was living in the petition premises with her daughter. Her daughter takes care of her husband's family because they are in penury. She is paying property tax and for the medical expenses. The income got from other tenants is not sufficient to meet her expenses. When she was confronted that because of her illness, she may not be in a position to sit in the shop and do business, she denied the suggestion and claimed that she used to sit from 10am to 3pm in the temple and therefore, she can sit and do business.

13. The learned trial Judge has considered that Exs.P2 to P23 came into existence after filing of RCOP and held that some of the receipts are donation receipts issued by temples, which come under Hindu Religious and Charitable Endowment and therefore, there is no point in disputing these documents. It is found that PW.1 to PW.2 are in the habit of providing funds to temples, cancer centres, Seva Sangam and going to pilgrimage. Finding that the claim of the respondent is

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bonafide, the learned Rent Controller allowed the petition for eviction. That order was confirmed by the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority has also referred to the oral and documentary evidence and finding that the requirement of the respondent is bonafide, confirmed the eviction order of the learned Rent Controller. The learned Rent Control Appellate Authority discussed about the rental income of the respondent, monthly income of PW.2, charitable work, necessity for PW.2 to take care of her husband's family, bonafide requirement of the petition premises for augmenting the income of the respondent, found in favour of the respondent and dismissed the Rent Control Appeal. It is also held that the respondent has sufficient means to start the business of petty shop and she has no other non-residential building other than the building in Chennai to start the business.

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14. May be that there are other non-residential portions in the petition mentioned building, but there is no other building owned by respondent in Chennai to start her business. Respondent is living in a part of the building. As mentioned earlier, what is to be considered is whether the landlady requires the petition premises for starting a petty

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shop to augment her income and whether this claim is bonafide. Next is the relative hardship. Tenant cannot say that landlady cannot start business and question her ability to start and run the business. No great skill and investment is required to start a petty shop and run it. Landlady/respondent established that she has means to start a petty shop and ability to run the business. In the absence of any tangible evidence to show that the respondent filed this petition with a view to lease the premises to a third party for higher rent, the claim of the petitioner that the eviction petition is filed only to lease the premises to higher rent, cannot be accepted. If she is not accommodated in the petition mentioned property, she may not be in a position to start the business. On the other hand, petitioner can very well find another suitable place for his business. Hardship that may be caused to the petitioner will not outweigh the advantage accrue to the petitioner. There is no perversity in appreciating the evidence available and coming to the conclusion of ordering eviction against the petitioner.

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15. In the result, fair and decreetal order dated 06.10.2020 passed in RCA.No.240 of 2018 on the file of the Rent Control Appellate Authority/ VII Small Causes Judge, Chennai, confirming the fair and

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decreetal order dated 01.11.2017 passed in RCOP No.957 of 2014 on the file of the Rent Controller/XIV Judge, Small Causes Court, Chennai, is confirmed and this Civil Revision Petition is dismissed. Petitioner is granted three months time from today to vacate and hand over possession to the respondent. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Mra 13. 08.2021
Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

To:

1. The Rent Control Appellate Authority /
   VII Small Causes Judge, Chennai.

2. The Rent Controller / XIV Judge,
   Small Causes Court, Chennai

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G.CHANDRASEKHARAN, J.

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