

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 05.10.2021	Orders pronounced on 02.11.2021
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Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) No.1264 of 2021
and
C.M.P.No.9910 of 2021

R.Siddarth

... Petitioner

Vs

N.Hemraj

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the judgment and decree passed in RCA No.332 of 2018 dated 13.02.2020 by learned VII Small Causes Judge, Chennai, partly allowing the same and ordering eviction by reversing the order and decreetal order passed in RCOP No.350 of 2015 dated 06.03.2018 by learned XI Small Causes Judge, Chennai.

For Petitioner

..

Mr.Adinarayana Rao
for
M/s.Karan and Uday

For Respondent

..

Mr.D.Manimaran

ORDER

This Civil Revision Petition is filed challenging the order passed in RCA No.332 of 2018 on the file of VII Small Causes Judge, Chennai, against the order passed in RCOP No.350 of 2015.

2. Petitioner herein is the tenant under respondent. Respondent filed petition under Section 10(2)(ii)(b) and 10(2)(v) of Tamil Nadu Buildings (Lease and Rent) Control Act for evicting the petitioner. The case of the respondent, as seen from the petition, is that the petitioner became the tenant in respect of the petition mentioned property for residential purpose. The tenancy commenced on 5th November 2013. Petitioner offered to pay 14 months' rent as one time payment and paid Rs.7,50,000/- including amenity charges. Without respondent's consent, petitioner changed the residential premises into a dubbing studio and started business. Petitioner has no right to use the petition mentioned building for the purpose other than that for which it was leased, without written consent of respondent. Due to petitioner's illegal act, respondent was fined by Electricity Board for converting the

residential electrical line into commercial electrical line. Petitioner is causing nuisance to other co-tenants by inviting several female models. Other residents have given several complaints to the respondent informing about the illegal activities carrying over in the petition building. Petitioner's occupation of the building is causing nuisance and inconvenience to other occupants. Therefore, the petition.

3. Petitioner filed counter stating that respondent approached the Court with unclean hands, with an intention to play fraud and swindle Rs.7,50,000/- which he paid as lease amount. Petitioner completed Diploma in Visual Communication and interested in carrying on business in Science and Art films etc. He approached respondent for accommodation and respondent insisted to take the double bedroom for lease at a rate of Rs.10,000/- per month and on an advance amount of Rs.50,000/-. Tenancy was for commercial purpose. Petitioner had alone paid Rs.50,000/- to Electricity Department to get the electric service connection converted into commercial purpose. Respondent requested for hand loan and then, oral agreement of tenancy was converted as lease and accordingly, petitioner paid additional sum of Rs.7,00,000/- on four

dates. At no stretch of imagination, any student would accept to pay Rs.7,50,000/- as lease amount for 14 months and this would go to prove that respondent's claim is false and ill-motivated with a view to defraud the petitioner of Rs.7,50,000/-. Other occupants never objected or complained about the business carried on by the petitioner. Respondent tried to illegally dispossess the petitioner and therefore, petitioner filed a direction petition before this Court to the police department. Petitioner understands that respondent is not the owner of the property.

4. During the enquiry before the learned Rent Controller, PW.1 and RW.1 were examined. Exs.P1 to P8 and R1 to R8 were marked. On the basis of oral and documentary evidence and the submissions made on behalf of the parties, learned Rent Controller found that petitioner failed to establish that the petition mentioned premises was used for different purpose than for which it was leased and the allegation of nuisance was not established and on this reasoning, the petition was dismissed.

5. Respondent filed RCA No.332 of 2018 against the order of learned Rent Controller. Learned Rent Control Appellate Authority, on re-appreciating the evidence, found that the finding of learned Rent Controller that respondent has not established the ground of different user is not correct and reversed the finding of learned Rent Controller. At the same time, learned Rent Control Appellate Authority confirmed the finding of learned Rent Controller that respondent has not established the act of nuisance committed by the petitioner. Resultantly, learned Rent Control Appellate Authority allowed the appeal in part and set aside the order passed in RCOP No.350 of 2015 by learned Rent Controller insofar as the ground of different user is concerned and confirmed the order of the learned Rent Controller insofar as the ground of nuisance is concerned. Accordingly, the appeal was allowed in part and eviction was ordered on the ground of different user. Against the said judgment, this Civil Revision Petition is preferred by the petitioner/tenant.

6. Learned counsel for the petitioner submitted that, may be the structure of building is residential building, but the building was leased for the purpose of commercial purpose of running petitioner's dubbing

studio. The lease agreement shows that the petitioner paid a huge sum of Rs.7,50,000/- for a building measuring 1100 sq.ft. Nobody would pay this huge amount for residential purpose. Though the lease started as a monthly rent basis, subsequently, respondent suggested leasing the building for a sum of Rs.7,50,000/- for a period of 14 months without any monthly rent. This amount represents lease amount for 14 months. The lease deed is an unregistered lease deed. The amount of Rs.7,50,000/- is liable to be refunded on the expiry of lease period. Accepting the case of the petitioner, learned Rent Controller dismissed the petition. However, learned appellate authority, without considering the real scope of the lease agreement and tenancy, has reversed the finding of learned Rent Controller on the ground that the nature of the premises is residential building and petitioner has not produced any document to prove that the petition building was let out for non-residential purpose. This finding, according to learned counsel for the petitioner, is contrary to the evidence available. Therefore, learned counsel for the petitioner prayed for setting aside the order of learned Rent Control Appellate Authority and for dismissing the eviction petition in toto.

7. In response, learned counsel for respondent submitted that the premises was leased out only for the purpose of residence. However, it was used for non-residential purpose by the petitioner. Learned Rent Control Appellate Authority rightly found that the petition building was used for different purpose than that for which it was let out and ordered eviction. Thus, he prayed for confirming the order of learned Rent Control Appellate Authority and for dismissal of this petition.

8. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the materials available on record.

9. Lease agreement dated 05.11.2013 entered into between the petitioner and respondent is a vital document to this case. This lease agreement was entered into between them on 05.11.2013. Description of schedule property is shown as Plot No.7, Ground Floor, Goodwill Garden, No.5, V.O.C. 1st Cross Street, Kodambakkam, Chennai. Apparently, this description of property shows that it is purely a residential premises. However, the terms of lease agreement shows that

a sum of Rs.7,50,000/- was paid as lease amount and this lease amount is a non-refundable lease amount. Lease period commences from 05.11.2013 to 31.12.2014 and it is for a period of 14 months. It is specifically stated that the lease amount is non-refundable and was collected in advance for utilisation of the above said premises by the lessee for 14 months. There is no specific recital as to the purpose of lease, as to whether the purpose of lease is residential or non-residential. One important question that crosses one's mind is that whether any one would be willing to pay Rs.7,50,000/- as lease amount for the residential building measuring 1100 sq.ft with two bedroom. When calculated monthly rent for 14 months of this Rs.7,50,000/-, the monthly rent comes to Rs.53,571/-. As rightly pointed out by learned counsel for the petitioner, nobody would pay Rs.53,571/- as monthly rent for a two bedroom flat. This is one aspect of the matter.

10. The next aspect is that it is specifically recited in the lease agreement that the lease amount is non-refundable and collected in advance for utilisation of the above said premises by the lessee for 14 months. It is reiterated in the notice sent on behalf of respondent on

01.01.2015. Petitioner sent a reply to this notice, wherein, it is alleged that Rs.7,50,000/- is refundable at the time of vacating the premises by the petitioner. It is further said in this reply that signature of the petitioner in the agreement was obtained by playing trick. Terms of lease agreement, notice by respondent and reply by petitioner show that both petitioner and respondent have taken contradictory position with regard to the nature of payment of Rs.7,50,000/- as to whether it is refundable or non-refundable and as to whether this amount represents rents for 14 months and paid in advance. It is a common knowledge that at no stretch of imagination, we can say that a two bedroom flat measuring 1100 sq.t would fetch Rs.53,571/- as monthly rent. It is apparent that both the petitioner and respondent are not projecting true facts before the Court.

11. It appears that respondent has willingly received Rs.7,50,000/- as lease amount for 14 months to a residential building for being used as non-residential purpose. It is evident from the notice. It is stated in the notice that respondent is not interested in extending the lease period and the petitioner is also running a dubbing studio, several

female models are coming there and several complaints were given to him that illegal activities are carried on. In the notice, it is not specifically stated that building was used for a different purpose other than that for which it was let out. It is just stated that the petitioner is also running a dubbing studio. It is also said in the notice that respondent requires the building for his own occupation for trading of food items. It means that respondent wants to use the building for non-residential purpose, a business in selling food items.

12. Even as per the case of petitioner, the building was originally let out for the rent of Rs.10,000/- per month and a sum of Rs.50,000/- was paid as advance. It is quite a reasonable rent for a residential premises measuring 1100 sq.ft of two bedroom flat. It makes it clear that petitioner entered the petition premises as a tenant for residential purpose. Subsequently, petitioner paid Rs.7,50,000/- and converted the monthly rental lease to 14 months' lease agreement. As rightly stated, there is no specific recital in the lease agreement as to the purpose for which the building was let out, as to whether for residential or non-residential. For running a business especially a dubbing studio,

petitioner requires permission from concerned authorities. Petitioner has not produced any permission obtained for running a dubbing studio. As rightly pointed out by the learned Rent Control Appellate Authority, he has not produced any document to show that the property was let out for non-residential purpose. Materials produced before this Court show that both the petitioner and respondent are suppressing real facts, especially with regard to the purpose of lease agreement, nature of amount paid and whether the sum of Rs.7,50,000/- is refundable or not ? The fact remains that a residential premises cannot be used for non-residential purpose, without proper permission. Use of residential building for non-residential purpose without permission is against law and public policy. Petitioner has not produced any document to show that he has got permission to use a residential premises for non-residential purpose. In the absence of legally approved sanction for using a residential premises for non-residential purpose, it has to be construed that the petition mentioned building, which was initially let out for residential purpose, is illegally used for non-residential purpose of running a dubbing studio. It means a 'different user' than the purpose for which, the building was let out.

13. In this view of the matter, this Court finds no reason to interfere with the order of the learned Rent Control Appellate Authority and confirms the judgment and decree of learned Rent Control Appellate Authority passed in RCA No.332 of 2018 dated 13.02.2020 and this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.2021

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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

To,

1. VII Judge, Court of Small Causes, Chennai.

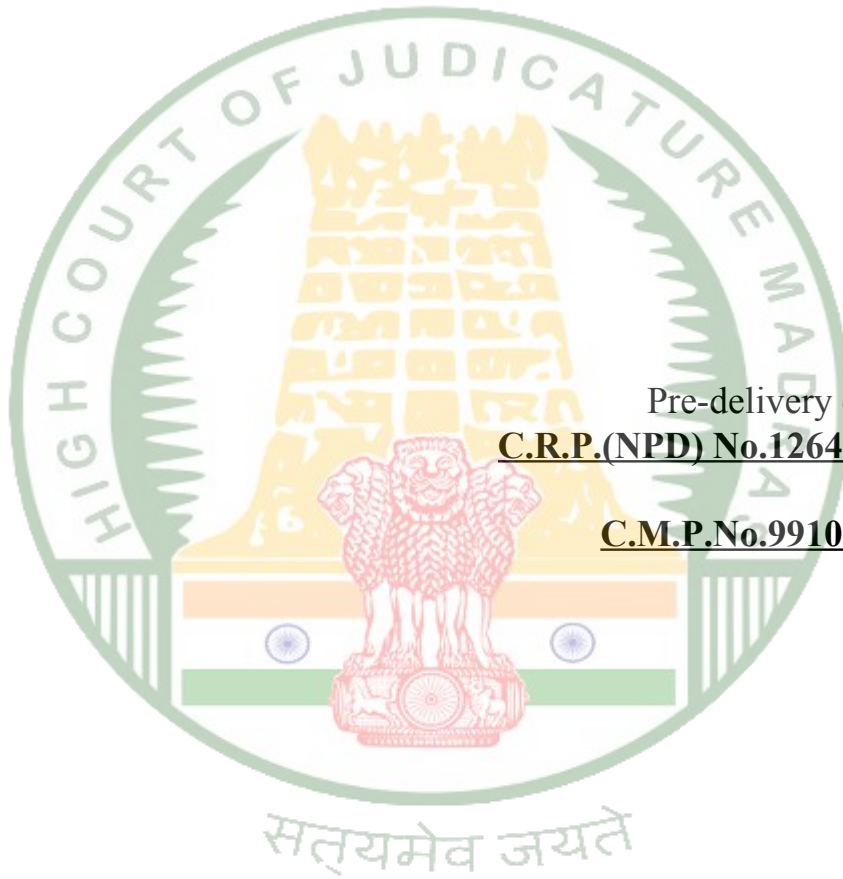
2. XI Judge, Court of Small Causes, Chennai.

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G.CHANDRASEKHARAN, J.

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Pre-delivery order in
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