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C.R.P.(NPD).No.1679 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.1679 of 2021

and

C.M.P.No.12979 of 2021

V.N.Rajamanickam

.. Petitioner

Vs.

Sadhuna,
Wife of Mansoor,
Represented by her husband
and Power of Attorney Holder, Mansoor

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil nadu (Building Lease and Rent Control) Act, against the fair and final order dated 22.12.2020 made in RCA.No.18 of 2019 on the file of the Court of the Rent Control Appellate Authority cum Principal Sub-ordinate Judge, Erode confirming the fair and final order dated 29.07.2019 made in RCOP.No.8 of 2016 on the file of the I-Additional District Munsif (Rent Controller), Erode.

For Petitioner : Mr.C.Ramaraj
For Respondent : Mr.T.Murugamanickam,
Senior Counsel for
Mrs.Zeenath Begam



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ORDER

The challenge in this revision is to the order of eviction passed in RCOP.No. 8 of 2016 on the file of the learned Rent Controller, Erode , confirmed in RCA.No.18 of 2019 on the file of the Rent Control Appellate Authority, Erode.

2.The respondent / landlord sought eviction of the petitioner / tenant under Section 10(2)(i) and 14(1)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act. The claim of the landlord was that the tenant was very irregular in payment of rent and he had paid the rent for the months of November & December 2007, January & February 2008 only on 13.05.2008. The rent for the months of March, April, May and June, 2008 was paid only on 21.07.2008. The rents for the months of August, September 2008 were paid only on 03.11.2008. The rent for the months of October, November and December 2008, January and February 2009 were paid by the respondent only on 26.03.2009. It is also claimed that rents for the months of April and May 2016 were not paid. Therefore, according to the landlord, the respondent had committed wilful default and has exhibited supine indifference in payment of the rent. It was claimed that the building



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is old and is in dilapidated condition. It is also averred that the building has asbestos sheet roof and the tenant himself has been in possession of the property, since 1992. Therefore, the building is sufficiently old according to the landlord and the landlord sought for eviction on the ground of demolition and reconstruction also.

3.The claim was resisted by the defendant contending that the building bearing Door Nos.49, 51, 53, 55 and 21 belonging to the petitioner / landlord, while Door Nos.55 and 49 and in occupation of the tenant there were other people in occupation of the building and the landlord has not taken any steps for eviction of other tenants. It is the further contention of the tenant that the monthly rent, which was Rs.2,500/- in the year 1989 was periodically increased and he was paying a rent of Rs.7,000/- per month. It is also claimed that he has paid an advance of Rs.1,00,000/- and therefore, non-payment of rent will not amount to wilful default.

4.As regards the claim of demolition and reconstruction, the tenant would also contend that there is no bonafide in the claim of the landlord.



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The power of attorney of the landlord was examined as P.W.1 and tenant was examined as R.W.1. Exs.P1 to P14 have been filed on the side of the petitioner. Exs.R1 to R32 were filed on the side of the respondent. The learned Rent Controller, on appreciation of the evidence on record concluded that the tenant has been irregular in paying the rent and therefore, the claim of the landlord that the tenant has committed wilful default in paying the rent has been established. On the claim of the landlord for demolition and reconstruction, the learned Rent Controller found that the landlord has established her bonafides and also has filed documents to show that she has taken all steps to demolish and to reconstruct the building. Ex.P14, the passbook of the landlord would also demonstrate that the landlord is possessed sufficient means to carry out the demolition and reconstruction. On the above findings, the learned Rent Controller ordered eviction.

5. Aggrieved, the tenant preferred an appeal in RCA.N.18 of 2019. The learned Appellate Judge after reconsideration of the evidence on record particularly, the Commissioner's Report held that the landlord has



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established that the building is old and it requires immediate demolition and reconstruction. The Appellate Court also concurred with the findings of the Trial Court and the bonafide nature of the claim of the landlord. The finding regarding the wilfull default was also upheld by the Appellate Court, upon consideration of the evidence on record. The fact that the tenant has admitted that he has paid rents in lump sum was taken into account by the Appellate Court to conclude that the default is wilful. On the aforesaid findings, the learned Appellate Judge dismissed the appeal. Hence, this civil revision petition.

6.Heard Mr.C.Ramaraj, learned counsel appearing for the petitioner and Mr.T.Murugamanickam, learned Senior Counsel appearing for the respondent.

7.Mr.C.Ramaraj, learned counsel appearing for the petitioner would vehemently contend that the landlord has not given an undertaking as required under 14(2)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act. He would contend that the provisions are mandatory and the



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non-filing of an undertaking to the effect that the landlord will commence the work of demolition, the material portion of the building within one month from the date of taking over possession and complete the same within three months would disentitle the landlord from claiming eviction under Section 14(1)(b).

8.No doubt, the landlord has not furnished such an undertaking in the petition in RCOP.No.8 of 2016. Though the requirement under Section 14(2)(b) is mandatory, the provision is silent as to the stage at which the affidavit of undertaking or undertaking should be furnished. This Court as well as the Hon'ble Supreme Court have held that such undertaking could be filed even at the time of execution of the decree, since the undertaking is only to the effect that the landlord will commence the work of demolition within one month from the date of taking possession and complete it within three months. Therefore the contention of the learned counsel for the petitioner cannot be accepted.



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9.Mr.C.Ramaraj would further contend that under the Act landlord has not proved that the other portions of the premises are vacant and therefore, the authorities are not justified in granting an order of eviction under Section 14(1)(b). Mr.T.Murugamanickam, learned Senior Counsel appearing for the respondent / landlord would submit that the landlord has taken possession all other portions of the premises and they have also demolished. In any event, it is always open to the tenant to seek re-possession, if the landlord has not complied with the undertaking that is given under Section 14(2)(b) of the Act therefore, I do not see any merit in the submission of the learned counsel for the tenant. Both the Rent Controller and the Appellate Authority had analysed the evidence on record and have arrived at a concurrent finding based on the evidence.

10.Though the scope of revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act is slightly wider than a Revision under Section 115 of C.P.C., I do not think, this Court can re-appreciate the evidence and reach a different conclusion even if such conclusion is possible. I therefore, do not see any reason to interfere with the findings of



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the Appellate Court. This civil revision petition therefore, fails and it is dismissed confirming the order of eviction. No costs. Consequently, connected miscellaneous petition is closed.

11.Mr.C.Ramaraj, learned counsel for the petitioner would seek time for vacating and handover possession of the premises to the landlord. Considering the fact that the petitioner is carrying on business in the premises, time is granted till 31.07.2022, subject to the condition that the petitioner files an affidavit, undertaking to vacate and handover possession by 31.07.2022 without thriving the landlord to execution proceedings. Such affidavit shall be filed on or before 30.11.2021. If the affidavit is not filed by 30.11.2021, it will be open to the landlord to execute the decree as if no time is granted. The landlord shall file the undertaking as required under Section 14(2)(b) before this Court by 30.11.2021.

09.11.2021

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Speaking order

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To:-

- 1.The I-Additional District Munsif,
Erode.
- 2.The Rent Control Appellate Authority-cum-
Principal Sub-ordinate Judge, Erode.



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R.SUBRAMANIAN, J.

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