



C.R.P.(PD)No.3701 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3701 of 2016
and C.M.P.No.18781 of 2016

Ghousia Begum

.. Petitioner

Vs.

V.Babulu Gopala Krishna Raj

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.08.2016 made in M.P.No.87 of 2016 in R.C.O.P.No.1389 of 2015 on the file of XV Small Causes Court, Chennai.

For Petitioner : Ms.Lekha Sankar

For Respondent : Mr.Jaikumar

ORDER



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(The matter is heard through “Video Conferencing/Hybrid Mode”.)

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Civil Revision Petition is filed against the fair and decretal order dated 12.08.2016 made in M.P.No.87 of 2016 in R.C.O.P.No.1389 of 2015 on the file of XV Small Causes Court, Chennai.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

3.The petitioner is landlord and respondent is tenant. The petitioner filed R.C.O.P.No.1389 of 2015 on the file of XV Small Causes Court, Chennai, for eviction of the respondent on the ground of wilful default to use the residential portion for different use and for owner's occupation. Along with R.C.O.P., the petitioner also filed M.P.No.525 of 2015 under Section 11(4) of the Tamil Nadu Building Rent Control Act 18 of 1960 amended Act 23/1973 (hereinafter referred to as 'the Act'). The respondent filed counter affidavit. When M.P.No.525 of 2015 was



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taken up for hearing on 02.02.2016, the counsel for the petitioner sought time to make submissions on behalf of the petitioner. According to the petitioner, the Court informed the counsel for petitioner that he would hear the arguments of counsel for respondent and will adjourn the case for petitioner's counsel arguments. Subsequently, the counsel for petitioner found out that the respondent's side arguments were heard, Exs.R1 to R10 have been marked and the petition stood posted to 10.02.2016 for petitioner's side arguments. According to the petitioner, no witness was examined on that day and no oral evidence was recorded. The learned Rent Controller without verifying the original documents, marked xerox copy of the documents filed by the respondent behind the back of the petitioner. Hence, those documents Exs.R1 to R10 have to be rejected as inadmissible as per Section 63(3) of Indian Evidence Act. On these averments, the petitioner filed M.P.No.87 of 2016 under Rule 11 of Rent Control Rules read with Section 63(3) of Indian Evidence Act.

4.The respondent filed counter affidavit and stated that on the day,



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when M.P.No.525 of 2015 filed under Section 11(4) of the Act was taken up for hearing, the petitioner's counsel was not ready, counsel for respondent was ready and argued the matter. With the leave of the Court, the respondent marked Exs.R1 to R10. In the above 10 documents, Exs.R2, R3, R4 and R10 are originals. The respondent is having originals for Exs.R1, R6 and R7. Ex.R1 is made between the petitioner's son and respondent's mother-in-law. The petitioner did not deny the documents. Hence, it amounts to admission of documents by the petitioner and made various averments on merits with regard to petition in M.P.No.525 of 2015 filed under Section 11(4) of the Act.

5.The learned Rent Controller dismissed M.P.No.87 of 2016 holding that whenever an objection is raised for marking the document, the objection has to be recorded and at the final stage, considering the objection, the document may be marked or rejected. The learned Rent Controller also held that the parties are at liberty to raise their objections and the petitioner cannot state that same was marked in his absence. It is



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for the petitioner to be vigilant and cautious, when the matter stands for enquiry.

6.From the materials on record, it is seen that when the petitioner filed M.P.No.525 of 2015 under Section 11(4) of the Act and when the said M.P. was posted for enquiry, the counsel for the petitioner sought time for making his arguments. According to the counsel for the petitioner, the learned Rent Controller informed him that he would hear the counsel for respondent and adjourn the petition for petitioner's counsel arguments. The learned Rent Controller while hearing the said petition also permitted the counsel for the respondent to mark 10 documents as Exs.R1 to R10 in the absence of the counsel for the petitioner. It is also seen that some of the documents marked were xerox copies. When the learned Rent Controller informed the counsel for petitioner that he would hear the counsel for respondent and grant time for arguments on the side of the petitioner, erred in marking the documents, that too xerox copies of documents produced by the counsel



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for respondent, in the absence of counsel for petitioner. The learned Rent Controller erred in holding that the petitioner ought to have been vigilant, when the petition was posted for hearing. From the materials on record, it is seen that after informing the counsel for petitioner that he would hear the counsel for the respondent and hear the arguments of counsel for petitioner on the adjourned date, the learned Rent Controller ought not to have permitted the counsel for respondent to mark the documents in the absence of the counsel for petitioner, that too without any witness being examined to speak about the documents.

7.For the above reasons, the impugned order of the learned Rent Controller made in M.P.No.87 of 2016 in R.C.O.P.No.1389 of 2015 is liable to be set aside and is hereby set aside. M.P.No.87 of 2016 stands allowed. The learned Rent Controller is directed to return Exs.R1 to R10 to the respondent. The learned Rent Controller is directed to hear M.P.No.525 of 2015 under Section 11(4) of the Act and pass orders on merits and in accordance with law. It is open to both the parties to let in



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oral and documentary evidence, if they so desire. R.C.O.P.No.1389 of 2015 is of the year 2015, the learned Rent Controller is directed to dispose of the case as expeditiously as possible.

8.With the above directions, this Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.11.2021

Index : Yes/No

Internet: Yes/No

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To

XV Judge

Small Causes Court, Chennai.

V.M.VELUMANI,J.

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