

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.02.2021

Date of Verdict : 04.03.2021

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2953 of 2013

and

C.M.P.No.1653 of 2021

N.Swaminathan

Rep. by Registered Power of Attorney

R.Hariharan

... Petitioner

Vs.

D.Somasekar Reddy

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 25(1) of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, against the judgement and decree passed in R.C.A.No.1161 of 2006 dated 18.07.2013 by the learned VII Judge, Court of Small Causes, Chennai, reversing the order and decree passed in R.C.O.P.No.1894 of 2005 dated 30.08.2006 by the learned XI Judge, Court of Small Causes, Chennai.

For Petitioner

: Mr.S.Rajasekar

For Respondent

: Mr.K.S.Madhavan

ORDER

This Civil Revision Petition is directed as against the judgment and decree passed in R.C.A.No.1161 of 2006 dated 18.07.2013 on the file of the learned VII Judge, Court of Small Causes, Chennai, reversing the order and decree passed in RCOP.No.1894 of 2005 dated 30.08.2006 on the file of the learned XI Judge, Court of Small Causes, Chennai, thereby, allowing the petition for eviction filed by the petitioner herein.

2. The petitioner is the landlord (hereinafter called as “the landlord”). The respondent is the tenant (hereinafter called as “the tenant”). The landlord is the absolute owner of the residential flat bearing Old No.2, Door No.3, Flat No.5, Second Floor, Ramachandra Road, T.Nagar, Chennai - 600 017 ad-measuring 950 sq.ft. area vide is located in very proximate place in T.Nagar (hereinafter referred to as “the petition premises”). The landlord let out the petition premises on lease for residential purpose to the tenant on 15.09.1991 for the monthly rent at Rs.2,000/-. Subsequently, the monthly rent was enhanced to Rs.5,000/-. While being so, the tenant is not tendering monthly rents regularly and as such, the arrears accumulated and the tenant used to pay in lump sum. For the past three years, the tenant had

been very irregular in paying the monthly rents. That apart, the tenant, without getting any prior permission from the landlord, had made structural changes in the petition premises and carried material alteration and additions by installing wooden structures and other permanent and semi-permanent structures in concrete and brick. Further, the landlord requires the petition premises for own use and occupation, as his brother and sister, who are in desperate need of residential Flat. Therefore, the landlord filed a petition for eviction, on the ground of wilful default, act of waste and owner's occupation.

3. The tenant resisted the same by filing counter stating that the tenant paid a sum of Rs.15,000/- as advance for the petition premises. The tenant never committed any wilful default in payment on rents. In fact, the tenant would pay six months' rent in advance. On the notice issued by the landlord, the tenant sent a detailed reply stating that there is no arrears of monthly rents and in fact, the tenant paid rent upto July 2005 and thereafter, he paid six months' rent in advance till December 2005, on 24.08.2005 itself. Again on 29.12.2005, the tenant paid another sum of Rs.30,000/- as monthly rent, upto period of June 2006. Therefore, there is absolutely no wilful default in

payment of rents. The tenant never made any structural change in the petition premises. He has not carried any material alteration or addition. He simply installed the wooden structure, since there is no wooden structure in the petition premises and as such, the tenant put up a cupboard by wooden structure. It would not amount to any permanent or semi-permanent structure. It is not made of any concrete or brick, therefore, there is no act of waste caused by the tenant to the petition premises. In respect of owner's occupation, the tenant stated that there is no bonafide requirement by the landlord, since the landlord seeks the petition premises for his brother and sister and not for himself.

4. The landlord was examined as P.W.1 and Exs.P1 to P5 were marked. The tenant was examined as D.W.1 and Exs.D1 to D3 were marked. The learned Rent Controller, considering the evidence let in by either side, allowed the petition and directed the tenant to vacate and hand over the petition premises within a period of two months. Aggrieved by the same, the tenant filed an appeal before the learned Rent Control Appellate Authority and the learned Rent Control Appellate Authority allowed the appeal and dismissed the petition for eviction on all the grounds. Aggrieved

by the same, the landlord filed the present Civil Revision Petition.

5. The learned counsel for the petitioner/landlord submitted that though the landlord filed the eviction petition on the ground of owner's occupation, now, he is not pressing the said ground and pressing the petition on other grounds, viz., wilful default, act of waste, sublet and non payment of fair rent as fixed by the learned Rent Controller in RCOP.No.1998 of 2015, which was confirmed by the learned Rent Control Appellate Authority in RCA.No.124 of 2017. Admittedly, the tenant is not tendering periodic monthly rents. As per the lease agreement, the tenant shall pay rent as per the English Calendar Month. After accumulation of rents, the tenant used to pay the arrears in lump sum. For the past three years, the tenant was irregular in tendering the periodic monthly rents. It is also categorically admitted by him and he would tender the periodic monthly rents, once in six months. In fact, the cheque given by the tenant towards the payment of rental arrears was dishonored and it was marked as Ex.P.5, which would show that the tenant committed wilful default in payment of rents. Insofar as, the act of waste is concerned, admittedly, the tenant, without getting any prior permission, made structural changes

besides carrying out material alterations by installing the wooden structural, besides permanent and semi-permanent structures both in concrete and brick. He also categorically admitted the fact that he installed wooden structures and if the said structure is removed, it would result in damage the Wall/building.

6. He further submitted that pending the Civil Revision Petition, the landlord filed a petition for fixation of fair rent in RCOP.No.1998 of 2015. The learned Rent Controller fixed the fair rent as Rs.43,645/- by order dated 05.01.2017. Aggrieved by the same, the tenant preferred an appeal in RCA.No.124 of 2017 and the fair rent was modified by the Appellate Court as Rs.42,204/-. It has become final and no revision was preferred by the tenant, till today. Therefore, the rental arrears comes to Rs.22,71,864/- till 10.01.2021. He further submitted that the tenant subleased the petition premises for commercial purpose to the third parties viz., one M/s.Vanathi Exports Private Limited. It is evident from the fact that the extracts from the Ministry of Corporate Affairs of the website, the petition premises mentioned as the Registered Office of the said M/s.Vanathi Exports Private Limited. The said company also filed a Writ Petition before this Court in

W.P.No.8573 of 2020 and shown the petition premises' address in the said Writ Petition. In fact, on one occasion, the said M/s.Vanathi Exports Private Limited deposited the rent to the petitioner's account, by an accident, for a month. Therefore, the landlord filed a petition to raise additional grounds including the ground for eviction, such as, for subletting the petition premises and for non payment of fair rent fixed by the learned Rent Controller. He further submitted that the subsequent events can also be taken into consideration, while hearing the matters pertaining to the eviction. In support of his contentions, he relied upon the decisions reported in (1975) 1 SCC 770 (*Pasupuleti Venkateswarlu -vs- Motor and General Traders*), 1992 (2) Supp (2) SCC 623 (*Ramesh Kumar -vs- Kesho Ram*) and (2004) 8 SCC 490 (*Pratap Rai Tanwani -vs- Uttam Chand*).

7. Per contra, the learned counsel appearing for the respondent/tenant contented that the landlord failed to prove any of the ground for eviction against the tenant. The tenant used to pay the rents six months in advance. In fact, the tenant had paid the rent upto July 2005 and thereafter, on 24.08.2005 paid six months' rents in advance for the period from July to December 2005. Further, he also paid a sum of Rs.30,000/- for the period

till June 2006. Thereafter, when the landlord refused to receive the rent, he is regularly depositing the contractual rent without any default. Insofar as the act of waste is concerned, admittedly, the tenant has fixed only wooden cupboard and it would not amount to alteration or addition. Even, if wooden cupboard is removed, it will not cause any damage to the Wall/Building. The tenant never put up any permanent or semi-permanent structures either in concrete or in brick. Therefore, no act of waste has been caused by the tenant. Insofar as the owner's occupation is concerned, the brother or sister will not come in purview on the said ground and the landlord was rightly withdrawn the said ground, for eviction.

8. He further contented that the new Act came into force, for eviction, and the subsequent events cannot be considered as grounds for eviction without conducting fresh trial and it is not permissible under law. Though the landlord filed an affidavit it would not satisfy to prove the same. The report of Private Detective Agency produced by the landlord is not an authenticated one and as such, he cannot be permitted to raise the additional grounds. Even assuming the said report is true, the address mentioned in the said report completely differs from the petition premises. He further

contented that this Court cannot go to the facts of the case, while exercising its revisionary powers. Therefore, the new grounds raised by the landlord cannot be considered by this Court, since the new Act applies and the landlord has to agitate by way of separate petition. In support of his contentions, he relied upon the decisions reported in 1998 (1) MLJ 155 (*M.Karuppanna Gounder -vs- C.Visuvasam*) and (2000) II MLJ 65 (*T.N.Narayanasamy -vs- N.Govindaraj*) in respect of act of waste. In respect of wilful default, he relied upon the decisions reported in (2000) II MLJ 31 (*K.L.Suganthi -vs- T.Sambalingam*) and AIR 1995 SC 383 (*Dakaya -vs- Anjani*). In respect of the subsequent events, he relied upon the judgment reported in (2002) 2 MLJ 63 (SC) (*J.J.Lal Private Limited -vs- Murali*).

9. Heard the learned counsel for the petitioner/landlord as well as the respondent/tenant.

10. The landlord filed a petition for eviction on the ground of wilful default, act of waste and owner's occupation. The landlord also filed a petition (C.M.P.No.1653 of 2021) to raise the additional grounds as

follows:-

“15. It is submitted that the respondent/tenant has illegally and unlawfully sublet the premises to various third parties from time to time and presently has sublet to one Vanathi Exports Private Limited for commercial gains.

16. It is submitted that the records maintained by the Ministry of Corporate Affairs as available in its website shows that the demised property has been shown as the registered office of the said Vanathi Exports Private Limited and the said Vanathi Exports also has initiated litigation in W.P.No.8573 of 2020 on the file of this Court mentioning the same address as its office as evident from order dated 21.08.2020.

17. The respondent has unlawfully put the property for commercial use by the means of his illegal subletting of the demised premises.

18. The respondent has unlawfully used the demised premises for a purpose other than what it was let for, which was strictly residential purpose.

19. The respondent has failed to pay the fair rent as Rs.42,204/- per month as fixed vide order dated 02.01.2020 in RCA.No.124 of 2017 on the file of VII Small Causes Court, Chennai despite the demand notice issued by the petitioner.”

11. Considering the reasons stated in the affidavit filed in support of the petition to raise additional grounds, and this Court being satisfied with the same, **C.M.P.No.1653 of 2021 is allowed** and the above grounds are added as grounds Nos.15 to 19, is the main grounds raised in the Civil Revision Petition.

12. The learned Rent Controller allowed the petition for eviction on all grounds, whereas, the learned Rent Control Appellate Authority reversed the same and dismissed the petition for eviction. The landlord nowhere stated in his petition the period in which the tenant had defaulted in payment of monthly rents. The landlord admitted that upto December 2005, the tenant has paid the rent for the petition premises and towards advance amount, a sum of Rs.15,000/- was paid by the tenant, by way of security

deposit. Therefore, the learned Rent Control Appellate Authority rightly reversed the findings of the learned Rent Controller.

13. As far as the ground of owner's occupation is concerned, the landlord has not pressed the same.

14. Insofar as the act of waste is concerned, the tenant has put up the wooden structure as cupboard annexed to the Wall, therefore, no structural change is effected in the petition premises and even, if the wooden structure removed, it would not cause any damage to the main structure. It requires only fresh painting of the Wall. As such, this Court does not find any infirmity or illegality in the order passed by the learned Rent Control Appellate Authority, insofar as the grounds of wilful default and the act of waste.

15. Admittedly, the landlord filed a petition for fixation of fair rent for the petition premises in RCOP.No.1998 of 2015. The learned Rent Controller, by an order dated 05.01.2017, fixed the fair rent at Rs.43,645/- p.m, payable by the tenant. Aggrieved by the same, the tenant also filed an

appeal in RCA.No.124 of 2017 and it was also modified the fair rent was fixed at Rs.42,204/-, by an order dated 02.01.2020. Though the learned counsel for the tenant submitted that the tenant preferred this Civil Revision Petition before this Court, till today as against the said order, no Civil Revision Petition is filed, since the limitation for filing the Civil Revision Petition is one month and another one month by way of filing condone delay. Thereafter, the landlord caused notice dated 06.02.2020 for payment of arrears of rent as per the fair rent fixed for the petition premises. The arrears of rent comes to the tune of Rs.22,71,864/-, till 10.01.2021.

16. The learned counsel for the landlord vehemently contented that the petition premises is sublet to the third parties viz., one M/s.Vanathi Exports Private Limited. Though the landlord produced the report of the Private Detective Agency stating that the tenant is not residing in the petition premises and some other police officer's family is residing there, the said report dated 06.03.2012, cannot be considered, since it is not form part of the records. Whereas, on a perusal of the electoral list, the tenant is residing in some other place and not in the petition premises.

17. On a perusal of the averments in W.P.No. 8573 of 2020, it reveals that M/s.Vanathi Exports Private Limited is having its office in the petition premises. The said M/s.Vanathi Exports Private Limited is a company registered with Registrar of Companies, Chennai, which is consisted with three Directors, in which the tenant is not a Director of the said company. Therefore, it is clear that the petition premises is occupied by M/s.Vanathi Exports Private Limited and it is used for commercial purpose. Originally, the petition premises was leased out to the tenant for residential purpose. Now, it is converted into the commercial purpose that too sub-leased to the third party, by the tenant herein.

18. The learned counsel for the landlord relied upon the judgment reported in (1975) 1 SCC 770 (***Pasupuleti Venkateswarlu -vs- Motor and General Traders***), in which, the Hon'ble Apex Court held as follows:-

“4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-avis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be

judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice – subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautions cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions

the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into Section 10 (3) (iii) itself. We are not disposed to disturb this approach in law or finding of fact.”

19. The learned counsel for the landlord further relied upon the judgment reported in 1992 (2) Supp (2) SCC 623 (**Ramesh Kumar -vs- Kesho Ram**), in which, the Hon'ble Apex Court held as follows:-

“9. When subsequent events are pleaded in the course of an appeal or proceedings of revision, the court may, having regard to the nature of the allegations of fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order XIX CPC. The court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The court, if

it finds that having regard to the nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure. It may record the evidence itself or remit the matter for an enquiry and evidence. All these depend upon the factual and situational differences characterising a particular case and the nature of the plea raised. There can be no hard and fast rule governing the matter. The procedure is not to be burdened with technicalities.”

20. The learned counsel for the landlord also relied upon the judgment reported in (2004) 8 SCC 490 (**Pratap Rai Tanwani -vs- Uttam Chand**), in which, the Hon'ble Apex Court held as follows:-

“8. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of the petition. In Ramesh Kumar -vs- Kesho Ram 1992 Supp (2) SCC 623 a two-Judge Bench of this Court (M.N.Venkatachalia, J., as he then was and

N.M.Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp.626-27, para 6)

“6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief.”

21. The Hon'ble Supreme Court of India held that if a fact, arising after the lis has come to Court and has fundamental impact on the right to relief or the manner of moulding it is brought diligently to the notice of the Tribunal, it cannot blink at it or be blind to events which stultify or render

inept the decretal remedy. The Hon'ble Supreme Court of India further held that the allegations of the fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order XIX of the Civil Procedure Code. The Court may also treat any affidavit filed in support of pleadings itself as one under the said provision and call upon the opposite side to traverse it.

22. In the case on hand, the landlord filed a petition and also document in support of the averments made in the affidavit. Further, admittedly the landlord filed fixation of fair rent petition and the fair rent was fixed at Rs.42,204/- per month by order dated 02.01.2020. It has become final and no Civil Revision Petition is filed before this Court, till today. Therefore the subsequent events can be taken into account and accordingly moulded the relief. The landlord is now aged about 80 years and he filed a petition for eviction in the year 2005. The petition premises is located in prime locality of T.Nagar and it ad-measuring 950 sq.ft (Flat). Originally, it was leased out for residential purpose and now converted into commercial purpose by sub-leasing to third party. Considering the above, this Court moulded the relief accordingly.

23. The learned counsel for the tenant in this aspect relied upon the judgment reported in (2002) 2 MLJ 63 (SC) **J.J.Lal Private Limited -vs- Murali**, wherein, the Hon'ble Supreme Court of India held that:-

“16. Om Prakash and others v. Ram Kumar and others, (1991) 1 S.C.C. 441 was a landlord tenant dispute where the plaintiff-landlord claimed relief of a direction to the tenant to put the landlord in possession on the ground of non-payment of rent under Rent Control Law. This Court opined that under the relevant provisions in the Statute a landlord seeking eviction of the tenant is required to make an application in this behalf. Such application is sustainable on one of the grounds specified in the Act. When a specific allegation is made that the tenant is in arrears, the tenant is given an opportunity to pay or tender the rent within stipulated time and avoid an order of eviction. In the absence of definite allegation of non-payment of rent the tenant is not expected to meet the case by being called upon to answer the claim. It was held that a party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights

under the statute. In an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeking to enforce that cause of action in the same proceedings must do so by amendment or may have recourse to separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle that the Court is to mould the relief taking into consideration subsequent events is not applicable in such cases.”

24. The Hon'ble Supreme Court of India held that in the absence of definite allegation of non-payment of rent, the tenant is not expected to meet the case by calling upon to answer the claim. A party cannot be granted relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the Statute. The principle, that the Court is to mould the relief taking into consideration subsequent events is not applicable in such cases. In the same judgment, the Hon'ble Supreme Court of India held that:-

“13. Recently in Om Prakash Gupta v. Ranbir

B.Goyal, (2002) 1 Supreme 202, while dealing with power of the Court to take note of subsequent events and then to grant, deny or modify the relief sought for in the plaint, this Court has held:

“...The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take notice of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties: (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise....”

Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to

affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the later case, the party relying on the subsequent event, which consists of facts beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under O.6, Rule 17 of the C.P.C. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties.”

25. The Hon'ble Supreme Court of India held that the Court has to take note of subsequent events and mould the relief accordingly subject to the condition that taking note of such subsequent event or change in circumstances would shorten the litigation and enable complete justice being done to the parties.

26. In the case on hand, the eviction petition was filed in the year 2005 and subsequently fair rent was fixed at Rs.42,204/- for the petition premises. Even till today, the fair rent is not paid by the tenant. In fact, the landlord also caused notice on 06.02.2020 thereby calling upon the tenant to

pay the arrears of rent. The said notice was returned with the postal endorsement as "left".

27. On a perusal of other documents, which were stated supra, the tenant is not residing in the petition premises and he is residing elsewhere. However, the tenant managed to return the postal cover with endorsement as "left". Therefore, subsequent event is brought to notice of the tenant and in fact, he vehemently contested the fair rent petition and he also filed an appeal as against the fair rent fixed by the learned Rent Controller in RCOP.No.1998 of 2015 and the same was confirmed in RCA.No.124 of 2017, with slight modification. Therefore, it is proved that the tenant used the petition premises for the purpose other than that for which it was leased. Further, the tenant transferred his right and sub-leased the entire petition premises to the third parties. Therefore, the tenant is liable to be evicted from the petition premises on the ground of Section 10 (2) (ii) (a) & (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

28. In view of the above discussion, this Civil Revision Petition is

ordered accordingly. The respondent/tenant is directed to vacate and hand over the petition premises to the petitioner/landlord within a period of three months from the date on which the order copy made ready. No costs.

04.03.2021

Speaking order

Index : Yes/No

Internet : Yes

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Note to office: The Registry is directed to carry out the necessary amendments as stated in paragraph 10 of this order in the Court bundle.

To

1. The VII Judge, Court of Small Causes, Chennai.
2. The XI Judge, Court of Small Causes, Chennai.
3. The Section Officer,
V.R.Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

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**order made in
CRP.NPD.No.2953 of 2013**

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04.03.2021