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C.R.P(NPD).No.2836 of 2021
and CMP.No.20554 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No.2836 of 2021

and

CMP.No.20554 of 2021

C.Rajkumar

..Petitioner

Vs.

A.Micheal

..Respondent

Praye: Civil Revision Petition filed under Section 25(1) of the Tamilnadu Buildings (Lease & Rent Control) Act, 1960, against the order of the Rent Control Appellate Authority, IX-Small Causes Court Judge at Chennai made in RCA.No.417 of 2017 dated 08.03.2021 confirming the order passed by the Rent Controller and the XIV-Small Causes Court Judge, Chennai made in RCOP.No.1594 of 2004 on 12.06.2017 filed under Sections 10(2)(i), 10(2)(ii)(a), 10(2)(iii), 10(2)(iv), 10(2)(v) and 10(3)(a)(iii) of Tamilnadu Buildings (Lease & Rent Control) Act, 1960.

For Petitioner : Mr.N.Poovanalingam

For Respondent : Mr.S.R.Sundar for Mr.S.Ramesh
for Caveator



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ORDER

The revision is filed by the tenant, who had suffered orders of eviction before the Authorities constituted under the Tamilnadu Buildings (Lease & Rent Control) Act, 1960. The landlord sued for eviction on more than one ground. The learned Rent Controller granted an order of eviction under Sections 10(2)(i) (wilful default) and 10(3)(a)(iii) (own use of occupation) and the other grounds namely, subletting, act of waste and change of user were rejected. In the Tenant appeal, the Appellate Authority confirmed the eviction on both the grounds. Hence, the tenant is on revision.

2.Heard Mr.N.Poovanalingam, learned counsel appearing for the petitioner and Mr.S.R.Sundar, learned counsel appearing for the respondent / Caveator.

3.Mr.N.Poovanalingam, learned counsel appearing for the petitioner would submit that since the landlord had sufficient advance, which would be more than the rent payable for the default period, and hence there cannot be wilful default. According to him, if there is no default at the



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inception of the proceedings, subsequent irregular payment of rent would not constitute a ground for ordering eviction, since the original petition itself without cause of action. Of course, the learned Rent Controller and the Appellate Authority have concluded that the tenant has committed wilful default on the ground that he had not sought for adjustment of the rent. The Hon'ble Supreme Court had gone into the question and held that it is not necessary for the tenant to seek adjustment in **K.Narasimha Rao Vs. J.M.Nizamuddin Ahmed** reported in **1996 (2) CTC 78**. If the Court finds that the advance of the tenant that is available with the landlord is more than a months rent, the question of default will not arise till the same is adjusted. Hence, the order of eviction on the ground of wilful default cannot be sustained.

5.However, on the other question namely, owner's occupation, both the authorities have accepted the claim of the landlord and on evidence, they have held that the landlord's requirement is bonafide. The defence of the tenant is that the landlord is in possession of many buildings within the city limit and therefore, he cannot seek for owner's occupation. There is no



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such requirement under the Act. The landlord sought for eviction of the premises, which is a non-residential building of a special type namely, a lodging house, in order to run as a lodging house on monthly rent. The Tenant is also doing the same business and there is no dispute that the nature of the building would admit such user. Though the tenant is able to show that the landlord has some other buildings, which is of his own, the Authorities under the Act found that those are residential buildings, which are occupied by the landlord or the members of the family. Therefore, the mere occupancy of a residential building of the landlord will not preclude him from seeking eviction of a non-residential building for the business, which his son proposes to carry on.

6.Mr.N.Poovanalingam, learned counsel appearing for the petitioner would point out that the landlord has not obtained a licence for running the business. Mere non-obtaining of licence would not in any way whittle down the bonafides of the landlord. It is not in dispute that the landlord purchased the building and it has been found that his son, who is aged about 40 years is unemployed. There is nothing wrong with the father



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seeking eviction of building in order to establish a business for his son, who is a member of the family.

7.The claim of the tenant that the son is doing business of his own has also been found against. More ever, finding as regards the requirement of the landlord is a concurrent finding. Considering the scope of a revision under Section 25, I do not think, I can disturb the concurrent findings unless it is shown to be illegal or not based on any evidence. It is a settled law that a revisional Court cannot re-examine the evidence and substitute its own conclusions, even if such conclusions are possible. Section 25 of the Tamilnadu Buildings (Lease and Rent Control) only authorises this Court to satisfy itself as to the regularity of such proceedings or to the correctness, legality or propriety of any decision or order passed therein. Therefore, this revision under Section 25 cannot be treated as an appeal under Section 96 of CPC wherein, the Court is empowered to even disturb factual findings. I therefore, do not see any ground to interfere with the order of eviction on the ground of own use and occupation. This civil revision petition therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected



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miscellaneous petition is closed.

8.Mr.N.Poovanalingam, learned counsel appearing for the petitioner would seek time to vacate. Considering the nature of the business and the efforts involved, I am of the opinion that the petitioner can be granted a year time to vacate and handover possession. Therefore, the petitioner is granted time to vacate and handover possession to the landlord by 15.12.2022. He shall file an affidavit undertaking to vacate on or before 15.12.2022 without driving the landlord to execution proceedings. Such affidavit shall be filed into this Court by 22.12.2021. If such affidavit is not filed by 22.12.2021, it will be open to the landlord to execute order of eviction as if no time has granted by this Court.

9.It is stated that there is arrears of Rs.17,85,000/- due towards rent. The tenant shall pay the arrears of rent in three equal instalments within a period of six months from today. The tenant shall also pay the monthly rent payable without any default. If the tenant commits default in payment of even one instalment of the arrears, the landlord is at liberty to



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execute the decree *de hors* the time granted. If the tenant defaults any payment of monthly rent for a period of two months, the landlord will be entitled to execute the decree *de hors* the time granted.

13.12.2021

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Index:No
Internet:Yes
Speaking

To:-

- 1.The IX Judge,
Court of Small Causes,
Chennai.
- 2.The XIV Judge,
Court of Small Causes,
Chennai.



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R.SUBRAMANIAN, J.

KKN

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