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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP No.2890 of 2021 and
CMP.No.20846 of 2021

A.Kannan

...Petitioner/Respondent/Tenant

Vs

Maheshwari

...Respondent/Petitioner/Landlord

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to set aside the Judgment and Decree dated 17.09.2021, passed by the Rent Control Appellate Authority viz., Sub-Court, Dharapuram in RCA.No.1 of 2018 reversing the Fair and Final order dated 23.08.2018, passed by the District Munsif Judge, Dharapuram in RCOP.No.3 of 2014.

For Petitioner : Mr.Ponambala Thiagarajan
for Mr.S.Senthilkumar

For Caveator : Mr.S.Kalyanaraman

O R D E R

The tenant is on revision aggrieved by the order of eviction granted by the appellate authority reversing the findings of the learned Rent Controller. RCOP.No.3 of 2014 was filed by the landlord seeking eviction on the grounds of willful default, committing acts of waste, subletting and own use and occupation under Sections 10(2)(i), 10(2)(a), 10(2)(iii) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The landlord claimed that the tenant is in possession of the premises for non-residential purposes and the rent payable is Rs.11,100/- per month. It is also her claim that she is a resident of Kottaiyam in Kerala, where she is continuing the business that was carried on by her husband.



2.It is her case that her husband died and her daughter is pursuing BDS course in Medical College in Salem and her son is pursuing his education in Kerala. According to her, she would like to shift her native place and carry on business at her native place namely, Dharapuram. Therefore, she requires the premises for her own use and occupation. It was the further contention of the landlord that the tenant has not paid the rent of Rs.11,100/-, but has paid only Rs.4,000/- per month and therefore, there is a default. It was also contended that the respondent/tenant is preventing people from using the staircase to go for first and second floor of the buildings and hence he has also preventing the landlord from letting out the other portion of the property to others by preventing access to the first and second floors. The fact that the tenant is carrying on tea shop business is projected as a reason for causing damage to the building since the tenant using the ovens to make tea through out the day.

3.This claim of the landlord was resisted by the tenant contending that the rent was always only Rs.4,000/- and not Rs.11,100/- and the same has been paid. Therefore, there is no default. The business of the tenant is running a tea shop, therefore, he is bound to use oven/stoves throughout the day and it cannot be said that such user would amount to acts of waste, which is likely to affect materially the value and the utility of the building as required under Section 10(2)(iii) of the Act. He would also denied the fact that he is using the premises for other purposes. On the requirement of the landlord for own use and occupation, the tenant would contend that the requirement is not bonafide and the landlord being a resident of Kottaiyam in Kerala is not likely to shift to Dharapuram.

4.The said ground, according to the tenant has been invented for the purpose of eviction, despite there being no actual requirement. The fact that the landlord did not plead such own use and requirement in the prior proceeding namely, in the suit in O.S.No.355 of 2010 and in the application filed by the tenant under Section 8(5) seeking deposit is also projected the reason for lack of bonafide. The learned Rent Controller accepted the defence of the tenant on all four grounds and dismissed the application for eviction. The landlord preferred an appeal in RCA.No.1 of 2018.



5.The learned Appellate Authority while confirming the conclusion of the Rent Controller on the ground of nuisance and committing of acts of waste accepted the claim of the landlord on the ground of willful default and owner's occupation. The Appellate Authority arrived at a conclusion that the tenant has committed willful default and the landlord's requirements for own use and occupation is bonafide. On the said conclusion, the Appellate Authority allowed the appeal and ordered eviction. The learned Appellate Authority also granted time to the tenant to vacate till March 2022 subject to the tenant paying monthly rent of Rs.10,000/-. Thus, it is seen that the Appellate Authority has exercised the power of suo motu revision of rent.

6.I have heard Mr.Ponambala Thiagarajan, learned counsel appearing for the petitioner.

7.Mr.Ponambala Thiagarajan would submit that the Appellate Court was not right in concluding that the tenant had committed default in payment of rent, on the sole ground that the procedure prescribed prior to invocation of Section 8(5) of the Act was not strictly adhered to. As regards own use and occupation, the learned counsel would contend that the landlord being a resident of Kottaiyam and carrying on business there, the claim that she requires the premises for starting a new business at Dharapuram cannot be said to be bonafide.

8.The learned counsel would also state that the landlord has not made any preparation for carrying on business at Dharapuram. He would also point out that her parents are residing with her at Kottaiyam and therefore, the claim that she wants to shift to Dharapuram itself is not bonafide. The learned Appellate Authority had considered those objections and has held that though the landlord is carrying on business at Kottaiyam, she has pleaded in the petition that her daughter is doing Bachelor of Dental Surgery in a College in Salem and her son is studying in school. After she lost her husband, she plans to shift to Dharapuram, which is her native place, so that she will have the support of her relatives. This claim, the learned Rent Controller held to be not bonafide on the ground that her parents are staying with her in Kottaiyam.

9.The learned Appellate Authority has rightly analysed the evidence and requirements of law and has held that this claim of the landlord that she wants to shift to her native place after her husband's death is bonafide and the fact that her daughter is studying in Salem and her son is school student were also taken into consideration by the Appellate Court to



come to the conclusion that the requirement is bonafide. As regards steps to be taken for carrying on business, the Appellate Court held that the fact the landlord is carrying on business at Kottaiyam is sufficient proof of her intention to carry on business at Dharapuram.

10.The Appellate Court also noticed the provisions of Section 10(5) which enable the tenant to re-occupy the premises, if the landlord does not commence the business within one month from the date of taking possession and continue it for a period of six months thereafter. In the light of the said protection available to the tenant, the Appellate Authority concluded that the landlord's claim is bonafide and ordered eviction on that ground also.

11.As regards the ground of willful default, it is clear to my mind that the findings of the Appellate Authority cannot be sustained. Once an application under Section 8(5) of the Act has been entertained and disposed of, the tenant cannot be termed a willful defaulter for not merely because, he has not complied with the requirements that should precede the filing of the application.

12.It is not in dispute that an application under Section 8(5) was contested and it was allowed. The Appellate Authority cannot sit in appeal over that order and decide the same in an appeal against the order rejecting the claim of the landlord for eviction. Therefore, the conclusions of the Appellate Authority on the ground of willful default cannot be sustained and they are set aside. However, as far as the claim of own use and occupation is concerned, I find myself in complete agreement with the findings of the Appellate Authority. The Appellate Authority has referred to various decisions of this Court and the Hon'ble Supreme Court, I am not repeating the same. The law is settled that if the landlord requires a premises for his/her own occupation and proves that the claim is bonafide, then eviction must follow. The term bonafide is a concept. There cannot be a straight jacket formula to fit in the requirements of bonafides.

13.In a case where the landlord is resident of outside the State and wants to shift to her native place to start a business, the Court cannot insist on her starting the business and then seeking an order of eviction for her to continue the business or to shift the premises to her own place. The strict interpretation of Section 10(3)(a)(iii) has been given a go by and Courts have taken to liberal interpretation to include



14. In the case on hand, it is admitted that the landlord is doing business at Kottaiyam and it is also admitted that she is a native of Dharapuram. Her daughter is studying in Salem. Her son is in school. She wants to shift to her native place after the death of her husband and continue the business at her native place. There is nothing on record to doubt her bonafides. Of course, Mr. Ponambala Thiagarajan, learned counsel appearing for the petitioner would contend that landlord has not projected this requirement in either the written statement filed in the suit or in the counter to the 8(5) application, I do not think that alone could be a ground to doubt the bonafide in a law. As already pointed out Section 10(5) protects the rights of the tenant, if a landlord does not occupy the premises within a month after obtaining the possession, it is open to the tenant to seek re-possession. With such right available to the tenant, I do not think that the claim of the landlord can be thrown out as not bonafide. I am unable to fault the Appellate Authority for having come to the conclusion that the requirement of the landlord under Section 10(3)(iii) is bonafide and ordering eviction on that ground. Therefore, the revision fails and it is accordingly dismissed.

16. Considering the fact that the tenant is carrying on business, he is granted eight months time to vacate the premises on condition that he files an affidavit agreeing to vacate on or before 31st of August, 2022. Such affidavit shall be filed on or before 07.01.2022. If the affidavit is not filed by 07.01.2022, it will be open to the landlord to execute the order of eviction as if no time has been granted by this Court. It is made clear that the time granted till end of March 2022 by the Appellate Authority is modified and time is granted till 31.08.2022,



subject to the condition that an affidavit of undertaking to vacate by 31.08.2022 shall be filed before this Court on or before 07.01.2022. No costs. Consequently, the connected miscellaneous petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

To:

1.The Rent Control Appellate Authority,
Sub Court, Dharapuram.

2.The District Munsif Judge,
Dharapuram.

3.The Section Officer,
VR Section,
Madras High Court, Chennai.

+1 CC to Mr.S.Kalyanaraman, advocate sr 67806.

CRP No.2890 of 2021 and
CMP.No.20846 of 2021 and
Caveat No.3851 of 2021

AKII (CO)
SP(07/04/2022)