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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP NO.2811 OF 2021 AND
CMP.NO.20372 OF 2021

A.M.Mansoor Refai

... Petitioner

Vs

1.Shafak Hameed Thaika
2.Sadhak Hameed Thaika
3.Shahid Hameed Thaika
(Rep. by their Power agent
Shafak Hameed Thaika)

... Respondents

Prayer:

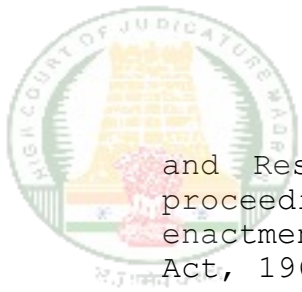
Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.09.2021 passed in M.P.SR.No.25301 of 2021 in R.L.T.O.P.No.373 of 2019 on the file of XVI Small Causes Court, Chennai.

For Petitioner : Mr.G.RM.Palaniappan

O R D E R

The tenant, against whom the proceedings were launched under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is on revision. Challenge is to the order of the Rent Court, rejecting an application filed by the tenant seeking permission to cross-examine the witness, who appeared on the side of the landlords.

2.The original eviction petition was filed in RLTOP.No.373 of 2019 seeking eviction under Section 21(2)(a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tnants Act, contending that the tenant has not entered into an agreement of lease as required under Sub-section 2 of Section 4 of the said Act. The tenant would claim that he was in possession of the property in question, as a tenant, even prior to the coming into force of the Tamil Nadu Regulation of Rights



and Responsibilities of Landlords and Tenants Act. Certain proceedings were launched by the landlords under the predecessor enactment namely, Tamilnadu Buildings (Lease and Rent Control) Act, 1960 seeking eviction.

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3.The landlords failed in their attempts to get an eviction order under the said enactment. It is also stated that the landlords had filed an appeal against dismissal of their eviction petition under the Tamilnadu Buildings (Lease and Rent Control) Act with a delay. Though the delay was condoned, they have not prosecuted the proceedings further. Taking advantage of the enactment of the new act, in the interregnum, the landlords have come up with this application for eviction. Pending these proceedings, the Trial Court namely, the Rent Court examined both the landlord and the tenant under Section 37 of the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act. Thereafter, the landlords filed a proof affidavit and Exs.P1 to P3 were marked. It is at this stage, the tenant filed an instant application seeking permission to cross-examine the witness of the landlords. The said application was rejected by the Rent Court on the ground that it is wholly unnecessary and there is no necessity for examination or cross-examination of the witness.

4.I have heard Mr.G.RM.Palaniappan, learned counsel appearing for the petitioner / tenant.

5.Mr.G.RM.Palaniappan would vehemently contend that the Rent Court is duty bound to give an opportunity to the tenant to cross-examine the witness of the landlords, once a proof affidavit is filed and documents are marked. It is also the contention of the learned counsel that cross-examination on the proceedings under the predecessor enactment namely, Tamilnadu Buildings (Lease and Rent Control) Act is also necessary. I am unable to countenance the submissions of the learned counsel.

6.The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is a self-contained Code. Section 4 of the said Act requires that in case of tenancy created prior to the commencement of said Act, where no agreement in writing was entered into between the parties, the parties are required to enter into an agreement within a period of 575 days from the date of commencement of the new Act. Section 21 of the Act makes non-execution of an agreement itself a ground for eviction. Sub-section 2(a) of Section 21 reads as follows:-

“(2) The Rent Court may, on an application made to it in the manner as may be prescribed, make an order for the recovery of possession of the premises on one or more of the



following grounds, namely:-

(a) that the landlord and tenant have failed to enter into an agreement under sub-section (2) of Section 4;"
The other sub-clauses of Sub-section 2 are not germane for our purposes.

7. From a reading of the above provision, it is clear that if the parties to an existing lease had not entered into an agreement within 575 days as required under Section 2 of Sub-section 4, that by itself will constitute a ground for eviction. Clause (a) of Sub-section 2 of Section 21 does not make a difference as to who was responsible for non-execution of the lease document. The fact that the landlord is unwilling to execute a lease document does not make a difference. If a lease document is not entered within 575 days from the date of coming into force of the new Act, even if the landlord is responsible for such non-execution, the non-execution simpliciter gives a right to the landlord to seek eviction. Therefore, the claim of the tenant that he was willing to execute the lease deed, the landlords were not coming forward to execute the same, even assuming it to be true, does not make any difference.

8. Mr. G. R. M. Palaniappan would invite my attention to Sub-section 2 Section 36, which reads as follows:-

"36(2). In every case, before the Rent Court and the Rent Tribunal the evidence of a witness shall be given by affidavit. However, the Rent Court and the Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination, such witness can be produced and may order attendance for examination or cross-examination of such a witness."

to contend that once that landlord filed an affidavit of evidence, the Rent Court is bound to give the tenant an opportunity of cross-examination. I am unable to read the provision in the way the learned counsel suggests. It is very clear that absolute discretion is vested in the Rent Court to allow cross-examination. The words "where it appears to it that it is necessary in the interest of justice" amplifies the legislative intent that there is no vested right of cross-examination. Therefore, the Rent Court has gone into the question as to whether the cross-examination is necessary or not and has held that considering the ground for eviction and scope of the proceedings before it cross-examination is not necessary. If cross-examination is allowed as a matter of course, then the very object of the enactment namely, speedy eviction would be



destroyed and this enactment will also be rendered useless. I therefore, do not propose to accept the interpretation of the learned counsel, which goes against the legislative intent.

9. This civil revision petition fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed. The Rent Court shall dispose of the eviction proceedings at the earliest. The Rent Court will dispose of the RLTOP.No.373 of 2019 without being influenced by any of the observations made herein above.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To:

1. The XVI Judge,
The XVI Small Causes Court,
Chennai.

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CMP.No.20372 of 2021

PA (CO)
PM/06/01/2022