

C.R.P.(PD) No.3473 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.3473 of 2019

and

C.M.P. No.22851 of 2019

D. Pemaram

... Petitioner

Vs.

P. Leelavathy

... Respondent

Prayer: This Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act, 1960 as amended by Act 23 of 1973, praying to set aside the Fair and Decretal order dated 19.08.2019 made in R.C.A.No.51 of 2018 on the file of the Principal Sub Judge at Coimbatore confirming the Fair and Decretal order dated 22.03.2018 made in R.C.O.P. No.4 of 2012 on the file of I Additional District Munsif Cum Rent Controller, Coimbatore (Munsif Cum Rent Controller, Coimbatore.

For Petitioner ... Mr.S. Mukunth

For Respondent ... Mr. Ma.P. Thangavel

ORDER

This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act, 1960 as amended by Act 23 of 1973, praying to set aside the Fair and Decretal order dated 19.08.2019 made in R.C.A.No.51 of 2018 on the file of the Principal Sub Judge at Coimbatore confirming the Fair and Decretal order dated 22.03.2018 made in R.C.O.P. No.4 of 2012 on the file of I Additional District Munsif Cum Rent Controller, Coimbatore (Munsif Cum Rent Controller, Coimbatore).

2.The case of the petitioner is that the petitioner is the tenant and the respondent is the landlady who has filed R.C.O.P.No.4 of 2012 under Section 10(2)(i) & 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act for directing the tenant/petitioner herein to vacate and handover the vacant possession of the petition mentioned property to the landlady/respondent herein. The landlady/respondent herein is an absolute owner of the schedule mentioned property consisting of ground floor, 1st floor and 2nd floor. The landlady/respondent herein is residing in

the 1st and 2nd floors and she entered into an tenancy agreement with the tenant/petitioner herein with respect to the ground floor in the year 2000 and the monthly rent was fixed as Rs.5,200/- with advance being Rs.5,00,000/-. The lease period was only for 11 months and it is non-residential for running the tenant's textile business, ie. Rajkumar Enterprises. After completion of tenancy period of 11 months, the tenant/petitioner herein never came forward to renew the lease agreement. After the expiry of the lease period, the tenant/petitioner herein did not vacate the said premises and so the landlady/respondent herein issued legal notice on 3.12.2011 on the ground that the petition premises is needed for the landlady's grand daughter for running her tuition centre. As there was no response from the tenant/petitioner herein, the landlady/respondent herein has filed RCOP No.4 of 2012 on the file of the Rent Controller cum I Addl. District Munsif, Coimbatore. Pending the RCOP, the petition has been amended and it has also been claimed that the petition premises is required for the landlady's husband and widowed daughter for running their own business "Padmanabha Watch Works. Their business was being run for the past 53 years in the premises owned by the Corporation and the Corporation has drastically enhanced

rent to Rs.8714/- per month. Hence, the petition mentioned premises is required for the own use and occupation for the business of the landlady's husband. A Counter was filed by the tenant/petitioner herein stating that the rent for the demised premises was originally fixed at Rs.5200/- per month and it has been enhanced periodically and as per the last lease deed dated 20.6.2010, the present rent payable by the tenant/petitioner herein is Rs.9001/-. Lastly, the tenant/petitioner herein has paid the rent for the month of November on 2.12.2011 and the landlady/respondent herein has failed to issue receipt for the month of November 2011. The tenant/petitioner herein has been sending the rent by way of cheque for which the landlady/respondent herein has provided rent receipt for the same. The tenant/petitioner herein has paid a substantial advance of Rs.5 lakhs for the demises premises. The tenant/petitioner herein has been paying the rent regularly without any default and there is no arrears against the rent. The landlady/respondent herein to claim exorbitant rent and to harass the respondent has invented a ground for eviction and come forward with the notice and present RCOP for eviction of the respondent from the petition mentioned property. The learned rent controller after considering the oral and documentary evidence let in by both the parties

has found that the tenant/petitioner herein himself has admitted that the landlady's husband is running his business in the building owned by the Corporation and in fact the tenant/petitioner herein is sending the monthly rents only to that address. Further, the tenant/petitioner herein has examined one Hakam Singh as R.W.2 who has also deposed that the petitioner's family is running a watch shop in the name and style of Padmanabhan Watch Works opposite to the petition mentioned property. It has also been found that the Commercial Tax Officer who has been examined as R.W.3 has deposed that the shop namely Padmanabhan Watch Works was started on 29.4.1968 and its certificate was cancelled on 30.6.2014 and it was not renewed thereafter. But he has clearly spoken that as per the new GST Act, there is no need for registration with the Commercial Tax Department, if the turn over is below Rs.10,00,000/. He has also deposed that the said business of turn over need not to be intimated to the Commercial Tax Department. Further, official of the Corporation of Coimbatore, has deposed that the Padmanabhan Watch Works is running till date. Hence, the rent controller comes to the conclusion that the landlady's family business is being run by her husband in the name and style of Padmanabhan Watch Works at a rental

shop till date and allowed the petition by order dated 22.03.2018 directing the tenant/petitioner herein to vacate the petition mentioned property within 2 months from the date of the passing of the order and handover the possession of petition mentioned property to the landlady/respondent herein. Against the Fair and Decretal order dated 22.03.2018 made in R.C.O.P. No.4 of 2012 on the file of I Additional District Munsif Cum Rent Controller, Coimbatore (Munsif Cum Rent Controller, Coimbatore, the tenant/petitioner herein filed RCA No.51 of 2018 before the Principal Sub Judge at Coimbatore. The first appellate Court, by its fair and decretal order dated 19.08.2019 made in R.C.A.No.51 of 2018, comes to the conclusion that the requirement of the petition premises for the use of the landlady's husband for doing his business is a bona-fide one and the finding of the learned rent controller needs no interference and dismissed the RCA holding that the tenant is liable to be evicted on the ground that the landlady requires the premises for her husband's own use and occupation for carrying on his business. Being aggrieved over the aforesaid order, the tenant/petitioner has filed the present Civil Revision Petition to set aside the aforesaid order.

3.The learned counsel appearing for the petitioner submitted that there is no bona fide reason on the part of the landlady/respondent herein to seek eviction on the ground of additional accommodation. The Courts below failed to consider the factum that the landlady's/respondent's husband can conduct his business in the first or the second floor of the demised premises and the respondent seeking the demised premises would show her mala-fide intention to put the tenant/petitioner herein out of business.

4.He further submitted that the Courts below failed to consider the fact that Section 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act 1960 requires the respondent/landlady not to be carrying on business in the city or town for seeking eviction on the ground of additional accommodation. In the present case, the respondent's husband is in occupation of the premises belonging to the Corporation which is situated opposite to the demised premises and is carrying on his business even during the time tenant/petitioner herein came in as a tenant in the said premises.

5.He further submitted that the respondent's requirement of property for her husband is not true and she has filed the eviction petition only with a mala-fide intention to evict the petitioner for not acceding her request for higher rent. Thus, the present petition prima facie is not maintainable and the Courts below ought to have dismissed the petition on this ground alone.

6. The learned counsel for the respondent submitted that the Courts below after considering the entire oral and documentary evidence let in by both parties, passed the eviction order against the tenant/petitioner herein. Further, the petition mentioned property is required for their own purpose to carry out their business since her husband was in rental premises. Hence, as there is no infirmity in the orders passed by the Courts below, the present Civil Revision petition is liable to be dismissed.

7. Heard, the learned counsel on either side and perused the material available on record.

8. On a perusal of the records, it is clear that the lease period was only for 11 months and it is non-residential for running the petitioner/tenant's textile business, Rajkumar Enterprises. After completion of the 11 month tenancy period, the petitioner/tenant never came forward to renew the lease agreement. When there is no lease agreement entered into between the tenant and the landlady, the respondent/landlady has chosen to file a eviction petition against the tenant/petitioner herein on the ground that the landlady requires the premises for her husband's own use and occupation for carrying on his business.

9. Further, respondent/landlady has initially claimed that she requires the petition mentioned premises for running tuition centre for her grand daughter. Pending the RCOP, the petition has been amended and it has also been claimed that the petition mentioned premises is required for the landlady's husband and widowed daughter for running their own business "Padmanabha Watch Works. Their business was being run for the past 53 years in the premises owned by the Corporation and the Corporation has drastically enhanced rent to Rs.8714/- per

month. Hence, the premises is required for their own use and occupation for the business of the landlady's husband. Further, the petitioner/tenant himself admitted that he has been sending the monthly rents by way of cheque to the shop namely “Padmanabhan Watch Works” which was said to have been run by the petitioner's husband. Further, the petitioner/tenant has examined one Hakam Singh on his side as R.W.2, who has also deposed that the petitioner's family is running a watch shop in the name and style of Padmanabhan Watch Works opposite to the petition mentioned property. The Commercial Tax Officer, who has been examined as R.W.3 has also deposed that as per the new GST Act, there is no need for registration of the shop “Padmanabhan Watch Works” with the Commercial Tax Department, if the turn over of the business is below Rs.10,00,000/-. Further, R.W.4 who is the Bill Collector of Corporation of Coimbatore, has deposed that the shop namely, Padmabhan Watch Works, is running till date. Hence, the requirement of the petition mentioned premises for the use of the landlady's husband for doing his business is a bona-fide one and the landlady has a right to choose the premises which suites her and so even if the 1st floor is vacant, the petitioner/tenant cannot compel the landlady to occupy that premises.

Hence, the findings of the Court belows does not warrant any interference.

10. In the result, the petitioner/tenant is liable to be evicted on the ground that the landlady requires the premises for her husband's own use and occupation for carrying on his business. Hence, though the Court below has given time to the petitioner/tenant to vacate the petition mentioned property within 2 months from the date of the passing of the order and handover the possession of petition mentioned property to the petitioner, this Court is of the view that time given to the petitioner/tenant extends till 31.9.2021 to vacate the petition mentioned premises and deliver the possession to the landlady/respondent herein and if they failed to do so, the respondent/landlady is at liberty to seek police protection for vacating the tenant/petitioner herein.

11. In the result, this Civil Revision Petition is dismissed confirming the the Fair and Decreetal order dated 19.08.2019 made in R.C.A.No.51 of 2018 on the file of the Principal Sub Judge at Coimbatore confirming the Fair and Decreetal order dated 22.03.2018

V.BHAVANI SUBBAROYAN, J.,

lbm

made in R.C.O.P. No.4 of 2012 on the file of I Additional District Munsif Cum Rent Controller, Coimbatore (Munsif Cum Rent Controller, Coimbatore. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

09.03.2021

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

Note: Issue order copy on 06.07.2021

To:

1. The Principal Sub Judge at Coimbatore
2. I Additional District Munsif Cum Rent Controller, Coimbatore (Munsif Cum Rent Controller, Coimbatore.