

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.02.2021

Pronounced on : 08.03.2021

CORAM

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

CRP.PD.No.4316 of 2017
and CMP.Nos.26587 of 2019 & 20296 of 2017

1.Naazmeen Riaz Ahmed
2.Zakir Ahmed
3.Zulfikar Ali
4.Shama Semy

..Petitioners

Vs.

Dr.Nalini Zaman

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order passed in RCA.SR.No.10904 of 2017 against MP.No.316 of 2015 in RCOP.No.1337 of 2013 dated 21.09.2017 on the file of the VII Judge, Court of Small Causes (Rent Control Appellate Authority), Chennai.

For Petitioners : Mr.R.Thiagarajan

For Respondent : Mr.N.R.R.Arun Natarajan

ORDER

This civil revision petition is directed as against the order passed in RCA.SR.No.10904 of 2017 thereby dismissing the appeal as not maintainable and confirmed the order passed in MP.No.316 of 2015 in RCOP.No.1337 of 2013 dated 21.09.2017 on the file of the VII Judge, Court of Small Causes (Rent Control Appellate Authority), Chennai thereby dismissing the petition for appointment of Advocate Commissioner.

2. The petitioners are the tenants and the respondent is the landlord. The respondent filed petition for eviction on the ground of owner's occupation, act of waste and different uses. While pending the petition, the petitioners herein filed petition to appoint an advocate commissioner to note down the physical features of the petition premises with the assistance of the architect or civil engineer and submit a report. That was dismissed by the learned Rent Controller and aggrieved by the same, the petitioners preferred civil revision petition before this Court in CRP.PD.No.311 of 2017. This court dismissed the same as not maintainable and only appeal is maintainable as against the order passed by the learned Rent Controller. As observed by this Court, the petitioners filed appeal before the learned Rent Control Appellate Authority and the same was also

dismissed as not maintainable for the reason that the order passed in MP.No.316 of 2015 does not come under the purview of Section 23 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Aggrieved by the same, the present civil revision petition is filed.

3. Mr.R.Thiagarajan, the learned counsel for the petitioners would submit that this Court observed in CRP.PD.No.311 of 2017 that under 23 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, only appeal shall lie as against the order passed by the learned Rent Controller and directed the petitioners to file appeal before the Rent Control Appellate Authority. When there is a specific direction issued by this Court, the learned Rent Control Appellate Authority without even numbering the appeal dismissed the same as not maintainable in the SR stage itself. He further submitted that the respondent made specific allegation that the petition premises used for different purpose other than originally it was let out and also made allegation of act of waste. Therefore, appointment of Advocate Commissioner is absolutely necessary to note down the physical features of the petition premises. In fact, the second, third and fourth floors are occupied by other tenants and they are

reason for any damage to the petition premises and as such the advocate commissioner is very much necessary to note down the physical features of the petition premises. In fact, the respondent failed to produce any sanctioned plan or planning permission or permit for starting a medical centre / foundation in the petition premises and therefore, the petition premises is not feasible for having medical centre and this location is not opt for using same as medical centre have to be found out. Therefore, necessary architect or civil engineer has to inspect the suit property with the Advocate Commissioner and file a report and it would be useful for the learned Rent Controller to decide the issues arising in eviction petition.

3.1 The learned counsel for the petitioners further submitted that as against the order passed under Section 18(a) of Tamil Nadu Buildings (Lease and Rent control) Act, 1960 to appoint advocate commissioner, appeal under Section 23(1) of Tamil Nadu Buildings (Lease and Rent control) Act is very much applicable since this Court also reiterated the same and dismissed the civil revision petition filed by the petitioners before this Court and directed to file appeal. Without considering the same, the learned Rent Control Appellate Authority without

even numbering the appeal dismissed the same as not maintainable on its threshold.

4. Per contra, Mr.N.R.R.Arun Natarajan, the learned counsel for the respondent would submit that after dismissal of the petition to appoint advocate commissioner, the respondent examined PW1, civil engineer. In fact he was also cross examined in detail and he explained the entire nature of the building and its feasibility. Therefore, no need to appoint another civil engineer to inspect the petition premises to note down its physical features. Therefore, the civil revision petition itself has become infructuous. His report and plan were marked as Ex.P1 and P2. He further submitted that though the learned Rent Control Appellate Authority dismissed in the SR stage of the appeal as not maintainable, he passed detailed order on merits and concluded that the appointment of advocate commissioner would not serve any purpose to decide the grounds involved in the eviction petition and it would amount to collection of evidence and as such it does not require any interference by this Court.

5. Heard, Mr.R.Thiagarajan, the learned counsel for the

petitioners and Mr.N.R.R.Arun Natarajan, the learned counsel for the respondent.

6. The respondent is the landlord. The petition premises consisting of five floors in which the basement, ground floor and first floor are rented out to the petitioners' father. The entire petition premises is covered complex and the petitioners are permitted to run their business selling ornamental lights and fixtures. The petition premises is located in the prime locality at No.244, Annasalai, Teynampet, Chennai. The respondent filed petition for eviction on the ground of owner's occupation, act of waste and different uses. While pending the eviction petition, the petitioners filed petition to appoint advocate commissioner to note down the physical features of the petition premises with the assistance of architect or civil engineer to disprove the ground of different uses as well as act of waste. Further whether the petition premises is feasible to run the medical centre, the respondent examined PW1 and the respondent's evidence was closed. When the matter was posted for petitioners' evidence, the petitioners filed this petition to appoint advocate commissioner. The petitioners ought to have disproved the case of the

respondent by let in evidence. Therefore, the appointment of advocate commissioner amounts to collection of evidence and nothing else, that too in the eviction petition on the ground of owner's occupation, act of waste and different uses.

7. Further the requirement is bonafide and act of waste cannot be proved by way of appointment of advocate commissioner and it can be decided only on the basis of evidence. Moreover, the respondent examined his engineer as PW1 and marked his report and plan as Ex.P1 and P2. Therefore, no need to appoint another advocate commissioner to note down the physical features with the help of the civil engineer. Moreover, the tenant cannot dictate terms on the requirement of the landlord and also tenant cannot choose the place where to run the business by the landlord.

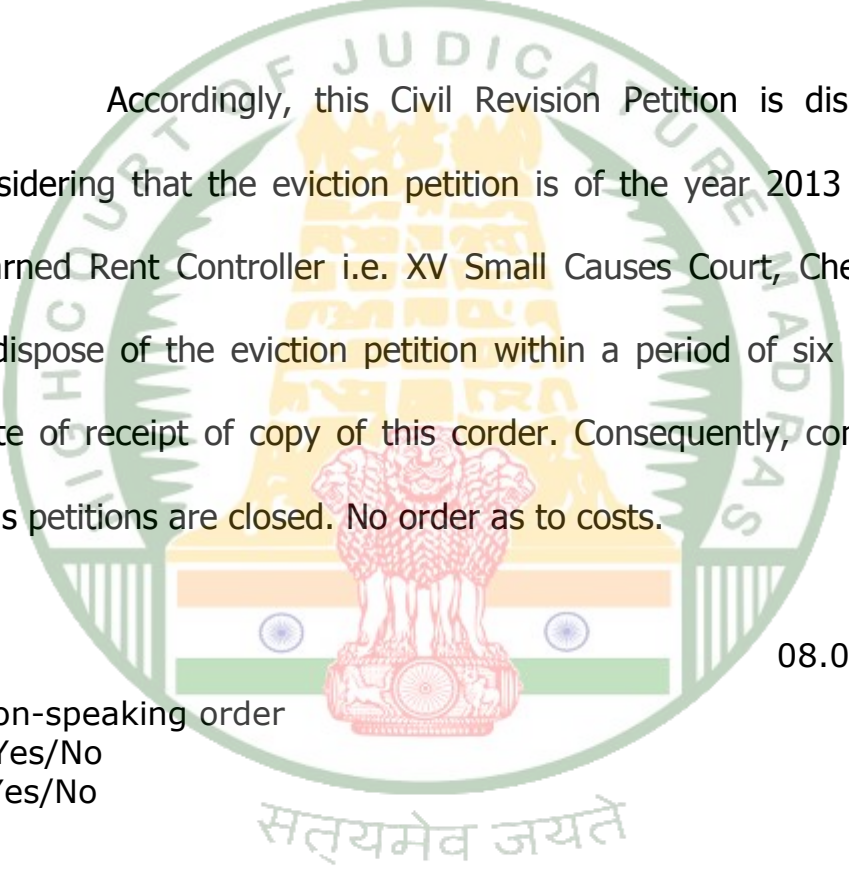
8. Further, though appeal is maintainable under Section 23 (1) of Tamil Nadu Buildings (Lease and Rent control) Act as against the order passed under Section 18(a) of Tamil Nadu Buildings (Lease and Rent control) Act, the learned Rent Control Appellate Authority dismissed as not

maintainable. Though the learned Rent Control Appellate Authority dismissed as not maintainable, order was passed on merits in detailed manner. Therefore, this Court finds no irregularity or infirmity in the order passed by the court below.

9. Accordingly, this Civil Revision Petition is dismissed. Further, considering that the eviction petition is of the year 2013 and as such the learned Rent Controller i.e. XV Small Causes Court, Chennai is directed to dispose of the eviction petition within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. No order as to costs.

08.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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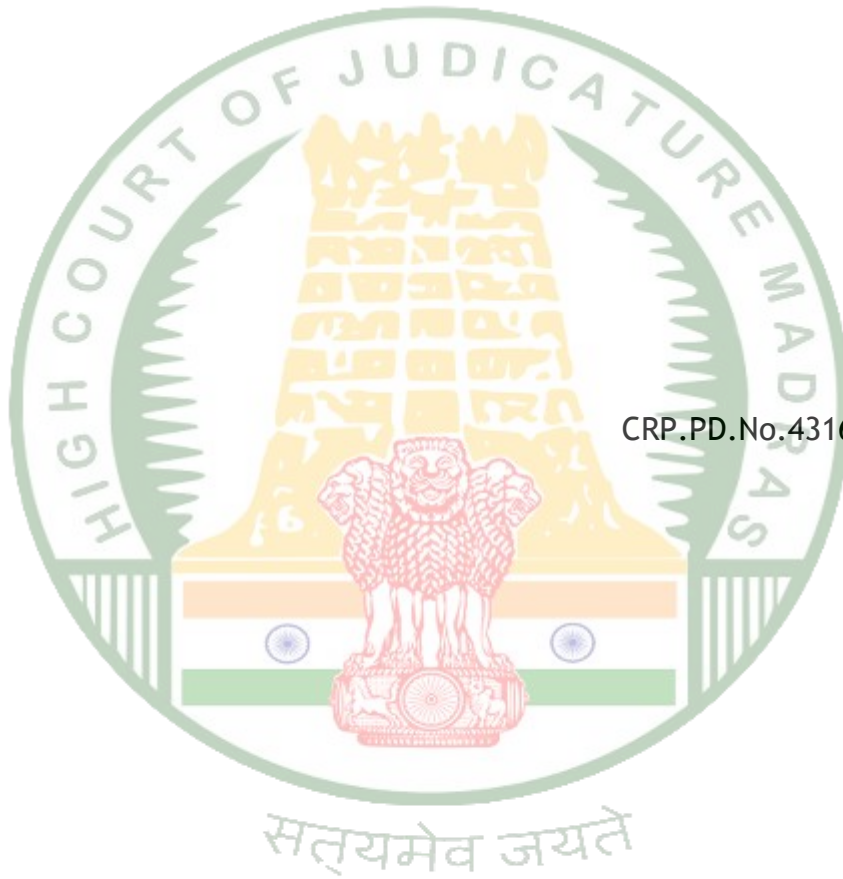
1. The VII Judge, Court of Small Causes
(Rent Control Appellate Authority),
Chennai.
- 2.The XV Judge, Small Causes Court,
Chennai



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G.K.ILANTHIRAIYAN,J.

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