

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :	30.07.2021
Pronounced on :	17.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

**CRP(NPD) No.4694 of 2017
and
CMP No.1445 of 2021**

R.Mahalakshmi

Petitioner

Vs.

B.Sukumar

Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamilnadu Building (Lease and Rent Control) Act 1960 seeking to set aside the Judgment and decree dated 01.10.2017 made in R.C.A.No.4 of 2016 passed by the learned IX Small Cause Judge cum Rent Control Appellate Authority at Chennai by reversing the Judgment and Decree dated 28.10.2015 made in R.C.O.P.No.904 of 2014 passed by the learned XVI Small Causes Judge cum Rent Controller at Chennai.

For Petitioner : Mr.V.Lakshminarayanan
for Mr.P.A.Kumaraguru

For Respondent : Mr.Seshadri
for M/s.Dhanusu

ORDER

(This case has been heard through video conference)

The revision has been filed seeking to set aside the Judgment and decree dated 01.10.2017 made in R.C.A.No.4 of 2016 passed by the learned IX Small Cause Judge cum Rent Control Appellate Authority, Chennai by reversing the Judgment and Decree dated 28.10.2015

made in R.C.O.P.No.904 of 2014 passed by the learned XVI Small Causes Judge cum Rent Controller, Chennai.

2. For the sake of convenience, the parties are herein after referred to as landlord and tenant.

3. The revision petitioner is the tenant. The respondent is the landlord. The landlord had filed R.C.O.P.No.904 of 2014 before the Rent Controller under Section 10(2)(1) of Tamil Nadu Building (Lease and Rent Control) Act stating that the father of the landlord was a hereditary Trustee of Siddi Buddi Sundara Vinayagar Sri Lakshmi Amman Devasthanam and absolute owner of two shops bearing Old Nos.158 and 159, New Nos.198/2 and 198/3, Strahans Road, Pattalam, Chennai-600 012 and the tenancy was in respect of petition premises on a monthly rent of Rs.7000/- for each shop for commercial purpose and that the tenant was a chronic defaulter in payment of rents and that he had lastly paid the rent for March 2012 and thereafter she failed and neglected to pay the rents from April 2012 to April 2014 aggregating to Rs.2,80,000/-. Thereafter, the landlord had sent a notice claiming the rents. But the tenant received the same, however, not replied.

4. The tenant filed a counter stating that the petitioner in the R.C.O.P. is neither landlord nor the owner of the petition premises and there is no landlord-tenant relationship between them and as such, she

is not liable to pay any rent to the petitioner. It was further contended in the counter that the petition premises was bought by her late father R.Rajendran from the erstwhile owner for a valid sale consideration and thereby, the tenant's father became the absolute owner of the two shops namely the petition premises.

5. On the side of the landlord, he was examined as P.W.1 and Ex.P.1 to P7 were marked. On the side of the tenant, her mother was examined as R.W.1 and Exs.R1 to R8 were marked.

6. The Rent Controller, after hearing both the parties, finding that there was no jural relationship of landlord and tenant between the parties, had dismissed the petition. Against the dismissal of R.C.O.P., the landlord had filed R.C.A.No.4 of 2016. Since, the tenant was not present before the Court, the Rent Control Appellate Authority allowed the appeal by non-speaking order dated 25.10.2016.

7. Against the order dated 25.10.2016, the tenant filed C.R.P.(NPD) No.60 of 2017 before this Court and this Court, by order dated 22.03.2017, allowed the revision petition and remitted the matter back to decide the matter on merits.

8. Thereafter, the Appeal was taken on file. During the pendency of the Appeal, the landlord filed a petition under Order 41 Rule 27 read with Rule 11 of the Tamil Nadu Building (Lease and Rent Control) Act to receive the Corporation Assessment in respect of the petition premises

dated 1.2.2016 as additional document. The petition was numbered as M.P.No.345 of 2017. Thereafter, without any orders being passed on the Miscellaneous Petition, the matter was adjourned and on 05.10.2017 and the learned Judge had posted matter to be decided along with the main R.C.A. Thereafter, it had been adjourned to several days and that on 01.11.2017, the Appellate Authority allowed M.P.No.345 of 2017 and on the same day, placing reliance of the additional document, allowed the Appeal and set aside the order passed by the Rent Controller in R.C.A.No.4 of 2014. Against which the present revision has been filed.

9. Mr.Lakhsminarayanan, learned Counsel appearing for the petitioner/tenant would submit that the revision petitioner is the respondent in R.C.O.P.No.904 of 2014 and the R.C.O.P. was filed on the ground willful default. He would further submit that the revision petitioner had filed a counter denying the jural relationship of landlord and tenant between them and the Rent Controller, finding that the respondent herein has not proved that he is the landlord, had dismissed the R.C.O.P.

10. It is pertinent to mention here that the Rent controller had taken into consideration the evidence of landlord as well as the tenant and also based on the admission of the landlord, had dismissed the petition and against the dismissal of the petition, the landlord filed a petition in RCA No.4 of 2014 and in the RCA, the landlord had filed a

petition seeking to file additional document namely the Corporation Assessment dated 1.2.2016.

11. The learned counsel for the petitioner would submit that the Appellate Authority, without following the procedure as contemplated under Order XLI Rule 27 and 28 CPC and without hearing the parties and without passing orders in accordance with law, allowed the petition and on the same day passed the impugned order allowing the appeal and had set aside the order passed by the Rent Controller. He would further submit that Order XLI Rule 27 deals with production of additional evidence and Rule 28 speaks about the manner in which the additional evidence can be taken whereas, the Appellate Authority has committed a grave error in not following the procedure regarding production of additional evidence and accepting the additional evidence and passing orders in the main Appeal on the same day. He would further submit that the endorsement of the Appellate Authority in the adjudication notes will go to show that procedure was not followed properly and without giving any opportunity to the revision petitioner, the Appellate Authority had passed the order and thereby, the erroneous Judgment has to be necessarily set aside and the matter has to be remitted back to the Appellate Authority for taking evidence in accordance with law and thereafter to pass orders based on the additional evidence let in by the parties. He would further submit that the R.C.O.P. is of the year 2014 whereas, the document relied on by the

landlord at the appellate stage pertains to the year 2016 and that the Appellate Authority has erred in relying the said document for passing the impugned order.

12. In support of his contention, the learned counsel for the revision petitioner would rely on the following decisions:-

(1) Judgment of this Court in **Selvaraj v. Ravichandran and 2 others** (S.A.(MD)No.653 of 2014 dated 28.04.2014.)

(2) **North Eastern Railway Administration, Gorakhpur Vs. Bhagwandas (Died) By LRS.** (2008) 8 SCC 511

(3) **Shalimar Chemical Works Limited Vs. S. Surendra Oil and Dal Mills (Refineries) and Others** (2010) 8 SCC 423

(4) **Corporation of Madras and Another Vs. M.Parthasarathy and Others** (2018) 9 SCC 445

(5) **G.Shashikala vs. G.Kalawati Bai** (2019) 15 SCC 201.

13. Mr.Seshadhri, learned Counsel appearing for the respondent/landlord would submit that there was no error or infirmity in the order passed by the Appellate Authority. He would submit that the Rent Controller had passed an erroneous order stating that there was no jural relationship as landlord and tenant existing between the parties. He would submit that in order to prove that the respondent herein is the owner of the premises, he had filed an additional

document viz., the Corporation Tax Assessment pertaining to the year 2016 relating to the building. The landlord had filed M.P.No.345 of 2017 to let in the same as additional evidence and it was not objected by the tenant and thereby, the Appellate Authority deemed it fit to decide the relevance of the document along with the main R.C.A. and by rightly placing reliance on the document, had allowed the R.C.A. He would also submit that the landlord, by filing the Corporation Receipt in his name, has proved that he is the owner and landlord of the petition premises. The learned counsel would further submit that the learned Rent Controller did not take into consideration Exs.P1 and P2 which are registered sale deeds and Ex.P3 which is a settlement deed in favour of the predecessors of the landlord whereas the Tenant has not filed even a scrap of paper to prove her purchase and thereby she has become the owners of the property. He would also submit that admittedly, the alleged predecessors of the tenants were themselves tenants under the landlord and though the tenants claim that the land belongs to the temple, the tenants did not take any steps to implead the temple to prove that they purchased the property.

14. In reply, Mr. Lakshmi Narayanan, learned counsel appearing for the revision petitioner would submit that Order XLI Rules 27 and 28 prescribes about the manner in which the additional evidence has to be let in before the Appellate Authority. The Appellate Authority has followed a wrong procedure. The miscellaneous Petition was not posted

to any date for filing of counter and without even passing any orders on the miscellaneous petition, behind the back of the petitioner, allowed the petition and without even marking the document, had placed reliance on the document and allowed the Appeal. He would also submit that the order of the Appellate Authority is self-contradictory in nature. At the fag end of the paragraph 4 of the order, the Appellate Authority has stated that M.P. 345 of 2017 is allowed whereas, in paragraph 8, the learned Appellate Authority has stated that connected M.P.No.345 of 2017 is closed and therefore, in any manner, the procedure adopted by the Rent Control Appellate Authority is illegal and erroneous. He would also submit that the admission of PW1 itself during his cross examination would prove that he is not the landlord.

15. Heard the learned Counsels on either side and perused the materials on record.

16. The landlord had filed R.C.O.P.No.904 of 2017 to evict the tenant on the ground of wilful default. Before the learned Rent Controller, the landlord had examined himself as PW1 and filed Exs.P1 to P7. On behalf of the respondent, Mrs.Angaiyarkanni was examined as RW1 and Exs.R1 to R8 were marked.

17. The learned Rent Controller taking into consideration the oral and documentary evidence, had rejected the claim of the landlord holding that parties were not having a jural relationship of landlord and

tenant and thereby dismissed the R.C.O.P. against which the landlord had filed R.C.A.No.4 of 2016 and during the proceedings, the landlord filed M.P.No.345 of 2017 under Order XLI Rule 47 CPC read with Rule 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act to receive additional evidence viz., Tax Assessment dated 1.12.2016. The petition was filed on 23rd August 2017. The case had been initially posted to 4.9.2017.

18. It is the contention of the revision petitioner/tenant that no notice was ordered in the petition and the procedure to be followed by the Appellate Authority for receiving additional evidence has not been followed resulting in jurisdictional error by the Appellate Authority. Further, it is the case of the petitioner/tenant that the procedure contemplated under Rule 28 of Order XLI was not followed with regard to the mode of taking additional evidence. It is also further case of the petitioner that the Appellate Authority had not only omitted to follow the procedure contemplated under Order XLI Rules 27 and 28, but, it also passed a self-contradictory order as it had allowed the Application on 1.11.2017 and while passing the final orders in the R.C.A. though it had observed in para 4 that C.M.P.No.345 of 2017 was allowed but, a para 8, it had been stated as if C.M.P.No.345 of 2017 was closed. Further, placing reliance on the additional documents, it allowed the Appeal and set aside the order passed by the learned Rent Controller in contravention of the procedure and thereby committed jurisdictional

error.

19. At this stage, it is relevant to refer to the adjudication notes
of the appellate authority:-

*"Put up 23.8.17 12.15 PM Petition filed after passing
the order hence to be decided alongwith main RCA.*

4/9/17 JOCL Respdt. Present C/o. 11.9.17.

11/9/17 JOML Both side present For C/o. 21.9.17.

*21.9.17 Applt. Present Res.CA No rep. C/o. 5.10.17.
S/d- 21.9.17*

*5/10/17 Both present to be decided alongwith Main
RCA C/o.11.10.17 Sd/- 05.10.17*

*Received copy on 11.10.17 Sd/- Counsel for
respondent*

*11.10.17 Both present to be decided along with Main
RCA C/o.25.10.17 Sd/- 11.10.17*

*25.10.17 Both present to be decided alongwith Main
RCA C/o.30.10.17 Sd/- 25.10.17*

30.10.17 JOCL Call on 31.10.2017

31.10.17 JOCL Call on 01.11.2017

*01.11.17 Heard. Perused. M.P. allowed no costs Sd/-
1.11.17"*

20. A perusal of the above shows that no notice was directed in M.P.No.345 of 2017. Further the adjudication notes also show that there was no adjudication in M.P.No.345 of 2017 whereas on 1.11.2017, the Appellate Authority, placing reliance on the additional documents, had allowed the appeal.

21. It is relevant to refer to the Judgment of the Apex Court in **Corporation of Madras and Another Vs. M.Parthasarathy and Others** (2018) 9 SCC 445, wherein it has been held as under:-

" 11. It is an admitted fact that the respondents (plaintiffs) had filed an application under Order 41 Rule 27 of the Code in their first appeals before the first Appellate Court (CMP No.1559/93) praying therein for production of additional evidence in appeals. It is also an admitted fact that this application was allowed and the additional evidence was not only taken on record but also relied on by the Appellate Court as Exs.P16 to P20 for allowing the appeals filed by the respondents which, in consequence, resulted in decreeing all the four civil suits.

12. In our considered opinion, the first Appellate Court committed two jurisdictional errors in allowing the appeals.

13. First, it took into consideration the additional piece of evidence while deciding the appeals on merits without affording any opportunity to the appellants herein (who were respondents in the first appeals) to file any rebuttal evidence to counter the additional evidence adduced by the respondents (appellants before the first Appellate Court). This caused prejudice to the appellants herein because they suffered the adverse order from the Appellate Court on the basis of additional evidence adduced by the respondents for the first time in appeal against them. (See Land Acquisition Officer, City Improvement Trust Board vs. H. Narayanaiah & Ors., (1976) 4 SCC 9, Shalimar Chemical Works Ltd. vs. Surendra Oil & Dal Mills (Refineries) & Ors., (2010) 8 SCC 423 and Akhilesh Singh vs. Lal Babu Singh & Ors., (2018) 4 SCC 659).

14. Second error was of a procedure which the first Appellate Court failed to resort in disposing of the appeals. This also involved a question of jurisdiction.

15. Having allowed the CMP No.1559/1993 and, in our opinion rightly, the first Appellate Court had two options, first it could have either set aside the entire judgment/decreed of the Trial Court by taking recourse to the provisions of Order 41 Rule 23A of the Code and remanded the case to the Trial Court for retrial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or second, it had an option to invoke powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the Trial Court for limited trial on particular issues arising in the case in the light of additional evidence which was taken on record and invite findings of the Trial Court on such limited issues to enable the first Appellate Court to decide the appeals on merits.

16. The first Appellate Court failed to take note of both the above mentioned provisions and proceeded to allow it wrongly.

17. Due to these two jurisdictional errors committed by the first Appellate Court causing prejudice to the appellants herein while opposing the first appeals,

the judgment rendered by the first Appellate Court, in our opinion, cannot be sustained legally on merits."

22. The view of the Apex Court in **Corporation of Madras and another** (2018) 9 SCC 445 referred supra has been upheld by the Apex Court in **G.Shashikala vs. G.Kalawati Bai** (2019) 15 SCC 201.

23. Further, this court in **Selvaraj v. Ravichandran and 2 others** (S.A.(MD)No.653 of 2014 dated 28.04.2014) had discussed about the procedure while dealing with an application filed under Order XLI Rule 27 regarding production of additional evidence in appellate court wherein it has been held as under:-

"10. The principle laid down therein is to the effect that an Appellate Court dealing with an application under Order 41 Rule 27 C.P.C should hear the application along with the appeal and consider the same together with the entire evidence adduced before the Court below to find out whether the case falls under sub clause (b) of Rule 27 (1) under Order 41 C.P.C.

11. Of course, the learned lower Appellate Judge has adopted the correct procedure in hearing the application with the Appeal. But it shall not be

desirable to incorporate the order allowing such an application in the judgment itself. There cannot be any quarrel over the proposition that, if the Court comes to the conclusion that an application under Order 10 41 Rule 27 C.P.C deserves to be dismissed, the same can be incorporated in the judgment and the judgment in the appeal on merits may be pronounced. When the Court comes to the conclusion that such an application is to be allowed, the normal procedure is to pass a separate order, follow the procedure for recording additional evidence and thereafter decide the appeal after giving an opportunity to the parties to advance arguments based on the evidence already available and the additional evidence recorded in the appeal. This procedure can be dispensed with under only one circumstance, that is when the parties consent for not only allowing the application but also for marking those documents, without there being any necessity to examine any witness in proof or disproof of such document. In such cases alone, the additional documents can be marked as additional evidence and the Appellate Court can proceed with

the pronouncement of the judgment incorporating the order allowing the application under Order 41 Rule 27 C.P.C and also the factum of marking those documents by consent and of hearing the arguments advanced on both sides on the basis of the additional documents also.

12. In the case on hand, though the appellants in the appeal before the lower Appellate Court have chosen to prefer application seeking leave of the Appellate Court to adduce additional evidence, it is brought to the notice of this Court that the application was resisted by the respondent in the appeal and still the lower Appellate Court chose to allow the application filed by the appellants under Order 47 Rule 27 C.P.C. It is also an admitted fact that the respondent in the appeal before the lower Appellate Court did not give consent for marking the documents without the necessity of examining the witnesses to prove those documents or establish the relevancy of those documents. Under such circumstances, the lower Appellate Court ought not to have ventured to incorporate the order allowing the applications in the judgment

itself. The lower Appellate Court ought to have passed an order in the applications under Order 41 Rule 27 C.P.C separately and thereafter, followed the procedure contemplated under Rule 28 C.P.C for recording additional evidence. Rule 28 under Order 41 C.P.C. reads as follows:-

*"28. Mode of taking additional evidence. -
Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court."*

13. As per Rule 28, such additional evidence can be recorded either by the Appellate Court itself or it can direct the Court from which the appeal has arisen to record the additional evidence and transmit the same. Apart from the trial Court, any Court subordinate to the Appellate Court may also be directed to record the additional evidence and transmit the same to the Appellate Court. While directing the trial Court or any other subordinate

Court to do the job of recording the additional evidence, the lower Appellate Court has to specify the points to which the additional evidence is to be confined (vide Rule 29)."

24. No doubt that the Appellate Authority dealing with an application under Order XLI Rule 27 CPC has to find out whether the case falls under Sub Clause (b) of Rule 21 under Order XLI. Though the order passed by the Appellate Authority says that both the Miscellaneous Petition and the Appeal were heard together, in the opinion of this court, the procedure adopted by the Appellate Authority is not in consonance with the Code of Civil Procedure.

25. The Appellate Authority has not followed the procedure contemplated under the Code of Civil Procedure for reception of additional evidence and for recording of additional evidence. The Appellate Authority has chosen to reverse the findings of the Rent Controller. While coming to the conclusion to reverse the findings of the Rent Controller, the learned Appellate Authority had taken into consideration the additional evidence.

26. In this case, the learned Rent Controller after perusal of evidence and the documents filed, had dismissed the R.C.O.P. on the

ground that there was no jural relationship. The Appellate Authority, relying upon the additional evidence adduced, had allowed the Appeal and set aside the order passed by the Rent Controller. At the cost of repetition, this court intends to reiterate that the procedure has not been followed properly.

27. In the result, the revision is partly allowed. The judgment and decree of the Appellate Authority is set aside and the matter is remitted back to the Appellate Authority and the Appellate Authority shall afford opportunity to both parties in M.P.No.345 of 2017 and decide it in accordance with the procedure contemplated under order 41 Rule 27 and 28 of the Civil Procedure Code and thereafter decide the appeal afresh and pass orders within a period of four months from the date of receipt of a copy of this order. It is made clear that the Appellate Court shall not be influenced by any of the observations made by this court. No order as to costs. The connected Miscellaneous Petition is closed.

सत्यमेव जयते

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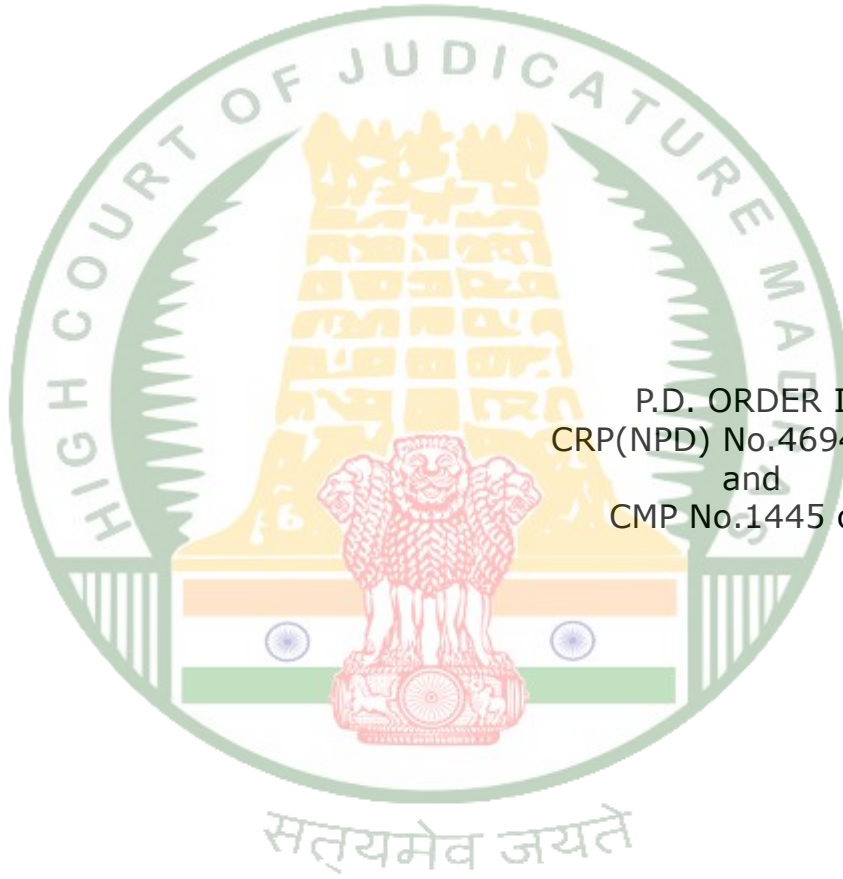
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Index: Yes/No.
Internet/: Yes/No.

To

1. The IX Small Cause Judge cum
Rent Control Appellate Authority, Chennai.
2. The XVI Small Causes Judge cum
Rent Controller, Chennai.

A.D.JAGADISH CHANDIRA,J.

Ksa-2/ssk.



P.D. ORDER IN
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and
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Delivered on
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