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C.R.P. (NPD) .No.477 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.477 of 2017

and

C.M.P.Nos.2324 & 2325 of 2017

Hirachand

.. Petitioner

Vs.

1.V.M.Muthukumar

2.Jayanthilal

.. Respondents

Prayer in C.R.P.(NPD).No.477 of 2017: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the order dated 30.11.2016 passed in R.C.A.No.1043 of 2006 by the Appellate Authority namely the VIII Judge, Small Causes Court, Chennai, confirming the order dated 14.09.2006 passed by the Rent Controller namely the XIII Judge, Small Causes Court, Chennai, in R.C.O.P.No.249 of 2006.

Prayer in C.M.P.No.2325 of 2017: This Civil Miscellaneous Petition is filed under Order 41 Rule 27 of AS Rules R/W Section 151 of the Civil Procedure Code to receive the duplicate copy of the lease deed dated 01.07.1999 as additional evidence in this Civil Revision Petition.



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For Petitioner : Mr.R.Madanagopaal

For R1 : Mr.K.Bijai Sundar

ORDER

This Civil Revision Petition is filed against the order dated 30.11.2016 passed in R.C.A.No.1043 of 2006 by the Appellate Authority namely the VIII Judge, Small Causes Court, Chennai, confirming the order dated 14.09.2006 passed by the Rent Controller namely the XIII Judge, Small Causes Court, Chennai, in R.C.O.P.No.249 of 2006.

2.The petitioner is the 1st respondent in R.C.O.P.No.249 of 2006 on the file of the XIII Small Causes Court, Chennai. The 1st respondent is the petitioner in the said R.C.O.P. The 1st respondent filed the said R.C.O.P. against the petitioner, 2nd respondent and one Ramesh for eviction of petitioner and two others on the ground of subletting. According to 1st respondent, he is the owner of petition premises and he leased out the petition premises to the petitioner on 01.07.1999 for three years on a monthly rent of Rs.8,625/-. In the year 1999, the petitioner was permitted to sublease the back portion of the petition premises. The petitioner sublet the back portion of petition premises to one Ramesh and 2nd respondent herein. The 2nd



respondent and the said Ramesh are partners of S.K.Metals. They were inducted as sub tenants by the petitioner. There is no privity of contract between the 1st respondent and 2nd respondent and the said Ramesh. The contract is between the petitioner and 2nd respondent and the said Ramesh. The 1st respondent is unaware of the rent collected from the sub tenants, who are carrying on business on the rear side of the petition premises. The term of tenancy was entered on 01.07.1999 for three years. The 1st respondent did not execute any fresh lease deed. The erstwhile rent of Rs.8,625/- alone is paid even on the date of filing of the petition. The 1st respondent is entitled to get possession from the petitioner and sub tenants. The 1st respondent through his counsel issued notice dated 18.12.2005 to the petitioner expressing his willingness to continue the petitioner as tenant in front portion of the petition premises on terms and conditions to be agreed upon and called upon the petitioner to surrender the vacant portion of petition premises occupied by sub tenants. The petitioner through his advocate sent a reply dated 13.01.2006, expressing his willingness to pay 15% enhanced rent alleging that sub tenancy continues and called upon the 1st respondent to give consent and execute the lease deed within 7 days. The 1st respondent did not give any consent. When there is no right to continue in the petition premises, the sub tenants, the 2nd respondent and the said Ramesh, who have no privity of



contract are liable to be vacated as claimed in the notice. The 2nd respondent and the said Ramesh are unauthorized occupants not only under the 1st respondent, but also under the petitioner and prayed for ordering eviction.

3.The petitioner and 2nd respondent filed counter statement and denied all the averments in the petition. The petitioner and 2nd respondent have stated that initially the petitioner was inducted as tenant for the entire ground floor with permission of subletting. The petitioner sublet the back portion of the petition premises to the 2nd respondent, who is the proprietor of S.K.Metals. The 2nd respondent in R.C.O.P. is not a partner and he has nothing to do with tenancy. During lease period, the 2nd respondent was inducted lawfully as sub tenant. The 1st respondent cannot split the tenancy. By issuing of notice, the permission granted for subletting cannot be withdrawn and the sub tenant is not an unauthorized occupant and prayed for dismissal of R.C.O.P.

4.Before the learned Rent Controller, the 1st respondent examined himself as P.W.1 and marked three documents as Exs.P1 to P3. The petitioner examined himself as R.W.1 and marked four documents as Exs.R1 to R4. The learned Rent Controller considering the pleadings, oral and documentary evidence, held that petitioner inducted the sub tenants without permission of



the 1st respondent and hence, the petitioner and 2nd respondent and said Ramesh are liable to be vacated.

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5. Against the said order dated 14.09.2006 made in R.C.O.P.No.249 of 2006, the petitioner and 2nd respondent filed R.C.A.No.1043 of 2006.

6. Before the Appellate Authority, the petitioner and 2nd respondent filed M.P.No.746 of 2012 under Rule 11 & 16(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, read with Section 151 of C.P.C. to mark the rental receipts as additional documents. The learned Appellate Authority heard both the Miscellaneous Petition and R.C.A. and allowed M.P.No.746 of 2012 and marked the documents filed by the petitioner and 2nd respondent as Exs.R5 to R8. The learned Appellate Authority considering the pleadings, oral and documentary evidence and the order of the learned Rent Controller, dismissed the R.C.A., holding that the petitioner did not obtain any written consent from the 1st respondent for subletting after expiry of three years as mentioned in the lease agreement and confirmed the order of the learned Rent Controller.

7. Against the said judgment dated 30.11.2016 passed in



R.C.A.No.1043 of 2006 by the Appellate Authority namely the VIII Judge, Small Causes Court, Chennai, confirming the order dated 14.09.2006 passed by the Rent Controller namely the XIII Judge, Small Causes Court, Chennai, in R.C.O.P.No.249 of 2006, the petitioner has come out with the present Civil Revision Petition.

8.The learned counsel appearing for the petitioner contended that the Courts below failed to consider that as per lease deed dated 01.07.1999, the 1st respondent gave permission to the petitioner to sublet the petition premises. The permission given to the petitioner is not for any particular period. On expiry of lease period, the sub tenant will not automatically become unauthorized occupant. After expiry of lease period, the petitioner as per the provisions of Rent Control Act, has become statutory tenant. The Act protects the rights of statutory tenant. By deliberately not extending the lease period, the 1st respondent / land lord is not entitled to ask the petitioner, who is the chief tenant to hand over the petition premises. The Courts below failed to see that as per lease deed dated 01.07.1999, the petitioner was inducted as tenant with permission of sub lease and even after expiry of lease period, the 1st respondent issued notice only in the year 2005, which shows that lease period was extended. The Courts below caused an injustice by not marking



the lease deed dated 01.07.1999 on the objection of 1st respondent that lease deed is not stamped and registered. The Courts below erroneously held that no written consent was given to the 1st respondent. The judgment of the learned Appellate Authority is only non-speaking order and the learned Appellate Authority has not independently applied his mind, merely endorsed the order of the learned Rent Controller. In support of his contention, the learned counsel relied on the following judgments and prayed for allowing the Civil Revision Petition.

(i) Judgment of the Hon'ble Apex Court reported in **(1979) 4 SCC 214, [V.Dhanapal Chettiar Vs. Yesodai Ammal]**, wherein the Hon'ble Apex Court at paragraph No.8, has held as follows:

"...8.Before we embark upon a review of some of the decisions of this Court we think it necessary and advisable to briefly refer to the provisions of some of the State Rent Acts in support of the observations made by us above that on the question of notice no different result is possible on the language of any State Act. Section 10 of The Tamil Nadu Rent Act says :- "A tenant shall not be evicted whether in execution of a



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decree or otherwise except in accordance with the provisions of this section or [sections 14 to 16](#)." In other words if a case is made out for his eviction in accordance with the provisions aforesaid, he can be evicted. Even after the termination of the contractual tenancy under the definition of the landlord in clause (6) and of the tenant under clause (8) of [section 2](#) the landlord remains a landlord and the tenant remains a tenant as clause (8) expressly says that tenant means "a person continuing in possession after the termination of the tenancy in his favour." [Section 3](#) indicated that no landlord can treat the building to have become vacant by merely terminating the contractual tenancy as the tenant still lawfully continues in possession of the premises. The tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. The giving of the notice, therefore, is a mere surplusage and unlike the law under the [Transfer of Property Act](#) it does not entitle the landlord to evict the tenant."

(ii) Judgment of the Hon'ble Apex Court reported in **(2000) 1 SCC 74, [Habibunnisa Begum and others Vs. G.Doraikannu Chettiar (dead) by Lrs. and others]**, wherein the Hon'ble Apex Court at paragraph No.2, has held as



follows:

“... 2. ... Law, therefore, is that where there is a single indivisible contract of tenancy, it cannot be split by a Court unless there is a statutory provision to that effect. In the present case it is not disputed that the contract of tenancy is a single indivisible contract for Doors Nos.27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Buildings (Lease and Rent Control) Act empowering the Court to order partial ejectment of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to the High Court to split the tenancy and order for partial ejectment of the tenant from the premises.”

9.The petitioner filed C.M.P.No.2325 of 2017 to file the lease deed dated 01.07.1999. The petitioner has stated that the petitioner called upon the counsel for respondents to produce the lease deed dated 01.07.1999. The learned counsel appearing for the petitioner filed a copy of the lease deed before the learned Rent Controller but the same was not marked. As per the terms of lease deed, the petitioner is permitted to sublet and no period of sublease was fixed. The learned counsel appearing for the petitioner prayed



for allowing the application and mark the document as additional Exhibit.

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10. The learned counsel appearing for the 1st respondent submitted that the document which was not marked before the learned Rent Controller and Appellate Authority cannot be marked before this Court in the Revision Petition. The C.M.P. filed by the petitioner is not maintainable. He further submitted that the petitioner has not filed any statement of account and receipt relied on by the counsel for petitioner is not acceptable. Provisions of Order XLI Rule 27 is not applicable to the rent control proceedings and hence, additional evidence cannot be permitted to be marked before this Court. The 1st respondent after the expiry of lease period withdrew the permission given to the petitioner to sublet. In the notice dated 18.12.2005 issued through his counsel, the 1st respondent specifically withdrew the permission given to the petitioner to sublet and called upon the petitioner to surrender the vacant possession of the portion under the sub tenant / the 2nd respondent herein. The petitioner after the expiry of lease period as a statutory tenant can sublet only after obtaining written consent from 1st respondent and relied on the following judgments and prayed for dismissal of the Civil Revision Petition.

(i) Order of this Court reported in *(1997) 1 MLJ 376, [Sundaram Steel*



Co. and Ors. Vs. S.Lakshmi], wherein this Court at paragraph Nos.5 & 8, has held as follows:

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“... 5. No doubt, *Babu Syed v. Zubaida Bee*, a learned single Judge of this Court, after pointing out *Krishnamurthi v. Jagat Textiles* (1981) 1 M.L.J. 384 and *Arya Vaidya Samajam v. Murugesu Mudaliar* 1990 T.L.N.J. 82 (D.B.), has held that Order 41, Rule 27, C.P.C. is applicable to a revision under Section 25 of the Act. But even assuming Order 41, Rule 27, C.P.C. is applicable to the proceedings under the Act, the said Rule 27 of Order 41, C.P.C. can be, if at all, applied only to appeals under the Act and not to revisions under the Act since-the said Rule applied only to appeals. Further, as already noted, regarding appeals, under the Act, there is a specific provision in the abovesaid Rule 16 of the Rules framed under the Act itself. When such is the case, normally, only the said Rule 16 will govern, and not Order 41, Rule 27, C.P.C. No doubt, the principles behind Order 41, Rule 27, C.P.C, may be applicable when additional evidence is sought to be let in appeals under the Act. Anyway, I am unable to see how Order 41, Rule 27, C.P.C. could be applied to revisions. In fact in *Voora Mahalakshamma v. C. Veera Reddy* (1995) 1



L.W.82, another learned Judge of this Court has held thus:

It is well settled that no additional evidence can be let in at the stage of revision. Even though the wordings of Section 25 of the Act is wider than Section 15 of the Civil Procedure Code, yet I am of the view that no additional evidence can be let in at revision stage.

8.In the above circumstances, there is no case for admission of this civil revision petition and hence it is dismissed. Consequently, C.M.P. Nos. 15891 and 15892 of 1996 are dismissed. No costs.”

(ii) Order of this Court reported in **2001 (1) RCR (Rent) 550, [R.Sambandan Vs. S.Krishnaveni]**, wherein this Court at paragraph Nos.10, 19 & 21, has held as follows:

“... 10. The learned senior counsel for the respondent contends that this High Court, while exercising revisional jurisdiction under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act cannot reassess the evidence at the



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time of examining the correctness of the findings of fact and in support of such contention relied on the decision reported in [Ramdoss v. K. Thangavelu](#), 2000 (2) CTC 303 : 2000 (2) L.W.310. The Apex Court, in the said decision, has held that the High Court was not justified in interfering with the finding of fact recorded by the courts below by reassessing the evidence as if it is a second appeal. Therefore, this Court concurs with the concurrent finding of the courts below in holding that the respondent herein is the owner of the demised premises and the revision petitioner has no right to the said premises except the fact that he is in possession of the demised premises.

19. The learned counsel for the revision petitioner has filed a petition in C.M.P.No.9325 of 2000 under Order 41, Rule 27(1) (b) CPC seeking permission of this Court to permit him to file additional documents viz. copies of the plaint, written statement, deposition of P.W.I and judgment and decree in O.S.No.545 of 1991 on the file of the City Civil Court, Madras, filed by the respondent herein as plaintiff against the revision petitioner, seeking for permanent injunction restraining the revision petitioner from in any way interfering with the peaceful possession and



enjoyment of the property bearing No.37, Perumal Koil St, Choolaimedu, Madras-94 and also from changing or causing damage to the existing superstructure in the property described in the plaint schedule. The respondent has resisted the petition on the ground that the petitioner has no locus stand: to file the above said petition in view of several decisions rendered by this Court that a petition to receive additional evidence cannot be entertained by the court sitting in revisional jurisdiction and that, therefore, the petition filed for receiving additional documents has to be dismissed.

21. The learned senior counsel for the respondent has brought to the notice of this Court a decision reported in [M/s The Calcutta Chemicals and Limited v.Taiyeb Yusujbhat Vakhria and another](#), and would contend that the documents produced as additional evidence cannot be received at the stage of revision. A learned single Judge of this Court, after referring to various judgments, including judgments of this High Court on this point, has held in the said decision that the High Court will not be justified in receiving additional evidence while sitting in its



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revisional jurisdiction. This Court agrees with this decision in the circumstances of this case and held that the petition filed by the revision petitioner for reception of additional documents cannot be entertained by this Court, while sitting in its revisional jurisdiction. Accordingly, the petition in C.M.P.No. 92325 of 2000 is dismissed,”

(iii) Order of this Court reported in **(2005) 3 MLJ 132, [R.Ramachandra Raja Vs. M.Nanda Govind]**, wherein this Court at paragraph Nos.6 & 37, has held as follows:

“... 6. C.M.P.No. 2491 of 2004 is filed under Order 41 Rule 27 C.P.C. for permitting the petitioner to produce additional evidence. C.M.P.No. 2670 of 2004 is filed for appointment of an Advocate Commissioner to note down the new construction put up by the respondent.

...

37. In view of the pronouncement of the legal principle in the decisions [SUNDARAM STEEL CO v. LAKSHMI](#) (1997 (I) M.L.J. 376) and [VOORA MAHALAKSHMAMMA v. C. VERRA](#)



REDDY (1995-1-L.W. 82) that no additional evidence can be let in at the stage of revision under Section 25 of the Tamil Nadu Act 18 of 1960, this Court is of the view that the additional evidence sought to be adduced in this revision (vide) C.M.P.No. 2491 of 2004 cannot be received at this stage.”

(iv) Order of this Court reported in **2019 (I) LW 555, [The Canara Bank, Premises and Estate Section, Circle Office, Teynampet, Chennai – 600 018 Vs. G.Meerabai]** and submitted that even for collateral purpose, unregistered document cannot be marked.

11.The learned counsel appearing for the petitioner in reply submitted that there is no absolute Rule that document cannot be received in Revision Petition. In support of his contention, he relied on the following judgments:

(i) Order of this Court reported in **(1981) I MLJ 394, (T.N.Krishnamoorthy Vs. M/s.Jagat Textiles, represented by its partner Lalji Bhujpunia, No.16, Manjanakara Street and No.51, Mahal 6th Street, Madurai Town)**, wherein this Court has held as follows:



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“... The power of revision conferred under Section 25 of the Act XVIII of 1960 is on the High Court and while entertaining the revision it exercises the power of a Court created under the Constitution. It is not a 'persona designata'. When power is conferred on a Court, and no other special procedure is prescribed for disposal of matters under a particular statute, as held in P.N.Thakershi V. Pradyumansinghji A.I.R. 1970 S.C. 1273, by such conferment 358.”

(ii) Order of this Court reported in **2000 (I) CTC 386, [Raja Mohammed Vs. V.D.Murugesan]**, wherein this Court at paragraph No.14, has held as follows:

“... 14. This aspect of the matter can be disposed of on the reasoning that what is sought to be filed as additional evidence is the petitioner's own pleadings in the proceedings between the same parties in respect of the same property and which came up to this Court by way of revision and this vital admission by the revision petitioner that he had received Rs.390 as advance for the property is also not disputed on behalf of the revision petitioner. There can be no absolute



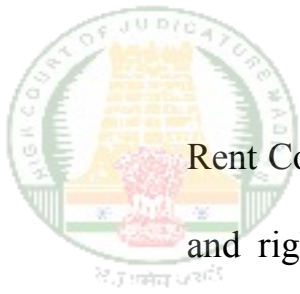
rule that the document cannot be received as evidence in the revision filed under Section 25 of the Act though a case has to be made out under Order XLI Rule 27 of the Code of Civil Procedure, Now a case has been made out for reception of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, particularly, when the document sought to be marked is the petitioner's own admission regarding the receipt of advance of three months rent from the respondent. The petition stands allowed and the document is received as additional evidence and it will be marked as Ex.R.1 on the side of the respondent.”

12.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials on record, it is seen that the 1st respondent is the landlord of petition premises and leased out the petition premises to the petitioner as per the lease deed dated 01.07.1999 entered into between the 1st respondent and petitioner. The lease deed is for a period of three years. In the lease deed, the 1st respondent gave permission to the petitioner to sublet the



petition premises. The petitioner sublet the back portion of the petition premises to 2nd respondent. After expiry of lease period, there was no fresh lease deed entered into between the 1st respondent and petitioner extending the lease period. In the year 2005, the 1st respondent issued a notice dated 18.12.2005 through his counsel withdrawing the permission given to the petitioner to sublet and called upon the petitioner to surrender the vacant portion of petition premises sublet to the 2nd respondent. The 1st respondent also called upon the petitioner to negotiate with regard to his tenancy alone. The petitioner sent a reply stating that he is willing to pay 15% enhanced rent and did not comply with the other demand made by the 1st respondent. In the notice dated 18.12.2005 issued by the 1st respondent, he has specifically withdrew the consent given to the petitioner for subletting. When the lease period expired and no fresh lease deed was entered into or lease period was not extended, the petitioner becomes statutory tenant. As a statutory tenant, he cannot sublet the petition premises without written consent by the 1st respondent / landlord. In the present case, admittedly no fresh lease deed was entered into between the petitioner and 1st respondent and the lease deed was not extended. Further, the 1st respondent has specifically withdrawn the consent given to the petitioner for subletting. In view of the same, the petitioner has committed illegality by continuing the sub tenancy. The learned



Rent Controller has considered the pleadings, oral and documentary evidence and rightly held that without written consent from the 1st respondent, the petitioner has sublet the back portion of petition premises and is liable to be evicted. The learned Appellate Authority considering the pleadings, oral and documentary evidence, order of the learned Rent Controller and also the petition in C.M.P.No.746 of 2012 filed by the petitioner and 2nd respondent to file additional documents, held that from the documents Exs.P1 to P4 and R1 to R8, it is proved that no written consent was obtained by the petitioner from the 1st respondent after expiry of three years mentioned in the lease agreement and dismissed the R.C.A.No.1043 of 2006 confirming the order of the learned Rent Controller. The contention of the learned counsel appearing for the petitioner that the learned Appellate Authority merely endorsed the order of the learned Rent Controller without independently applying the mind is contrary to the judgment of the learned Appellate Authority. A reading of the said judgment shows that the learned Appellate Authority has considered the entire materials placed and dismissed the R.C.A. by giving valid reason for confirming the order of the learned Rent Controller.



14.As far as not marking of lease deed dated 01.07.1999 is concerned, marking of the same was objected by the 1st respondent on the ground that it was not registered. The said document was produced by the petitioner. If really he wanted to rely on the terms of lease deed to substantiate his case, he ought to have filed the same in time without default as he was also a party to the said lease deed. The petitioner is not entitled to rely on the document which was not marked.

15.A party can produce additional evidence in Appellate Court if he satisfies the conditions in Order XLI Rule 27 C.P.C. In Civil Procedure Code there is no provision to produce additional evidence in Revision. The petitioner filed C.M.P.No.746 of 2012 to mark additional documents namely Rent receipts in the appeal filed by him. At that time, the petitioner did not seek to mark the lease deed dated 01.07.1999, now sought to be marked. The petitioner has not given any reason for not seeking permission to mark the said document. A party is not entitled to seek permission to file additional documents in Revision Petition. The judgements and orders relied on by the learned counsel appearing for 1st respondent are squarely applicable to the facts of the present case. The orders relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner.



16.Considering the materials in its entirety, this Court is of the view that both the learned Rent Controller and the learned Appellate Authority has given valid reason for ordering eviction on the ground of subletting. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

17.In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.10.2021

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Internet : Yes / No



To

1.The learned VIII Judge,
Small Causes Court,
Chennai,

2.The learned XIII Judge,
Small Causes Court,
Chennai .

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