

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2021
Pronounced on : 21.09.2021
CORAM

THE HON'BLE MR. JUSTICE MRS.S.KANNAMMAL

C.R.P.(NPD) No.746 of 2017

and

C.M.P.No.3685 of 2017

Mr.R.Vijayakumar Petitioner

-VS-

Mrs.Manjula Rajendran ... Respondent

Prayer: Civil Revision petition is filed against the fair and decreetal order dated 17.06.2016 passed by the IX Judge, Small Causes Court, Chennai in R.C.A.No.397 of 2013, reversing the order dated 11.03.2013 in R.C.O.P.No.686 of 2010 passed by the XIII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.N.Balasubramanian

For Respondent : Mr.S.Kamalaeshkannan

ORDER

This Civil Revision Petition has been filed by the petitioner, against the order dated 17.06.2016 passed by the IX Judge, Small Causes Court, Chennai in R.C.A.No.397 of 2013, reversing the order dated 11.03.2013

in R.C.O.P.No.686 of 2010 passed by the XIII Judge, Small Causes Court, Chennai.

2. The petitioner herein is the tenant and the respondent is the landlady in respect of a shop at No.5, Sindhur Paradise, No.175, Medavakkam Tank Road, Kilpauk, Chennai-10. According to the respondent/landlady, the petitioner was inducted as a tenant on rental basis at Rs.8,000/- p.m., in terms of rental agreement dated 10.12.2000. The petitioner/tenant was carrying on business under the name and style "D.K.Wheel Care". Since he was not prompt in making payment of rent and was in due of Rs.1,36,000/- for the period from October-2008 till the date of filing the petition, which prompted the respondent/landlady to lodge a police complaint before G5 Police Station, where the petitioner/tenant promised to clear the arrears and to pay the rent regularly, but till the date of filing the petition, he has not kept up his promise.

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3. According to the respondent/landlady, her husband is a Mechanical Engineer and had a plan to open an auto-mobile business in the demised premises, she requested the petitioner/tenant to vacate and

hand over the possession. Therefore, both on the ground of willful default in payment of rent and personal occupation, the respondent/landlady approached the Rent Controller and filed a petition in R.C.O.P.No.686 of 2010 under Section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, seeking eviction of the petitioner/tenant.

4.Resisting the above petition, the petitioner/tenant filed a counter, stating that he is regular in paying the rents and there is no rental agreement between him and the landlady to pay the rent at Rs.8,000/-, but he entered into agreement with landlady on 06.10.2003 agreeing to pay the rent as Rs.7,500/- p.m., only and paid a sum of Rs.1,00,000/- as advance. It is further stated that the respondent/landlady refused to receive the rent, but filed R.C.O.P, wherein, he filed a Memo, to the effect that after adjusting the excess amount of advance of Rs.92,500/- retaining one month rent as advance, rent due for the month of May-2010 and the balance of Rs.42,500/- was paid by way of D.D on 24.06.2010 before the Rent Controller, and therefore, he has not committed any default. He also denied the requirement of the premises by the respondent/landlady for her personal occupation since she is not carrying on any business. With these averments, the petitioner/tenant sought for dismissal of the petition.

5.In order to prove their respective cases, on behalf of the respondent/landlady, P.Ws.1 and 2 were examined and Exs.P1 to P8 were marked and on behalf of the petitioner/tenant, R.W.1 was examined and Exs.R1 to R7 were marked.

6.The Rent Controller, having considered rival claims and on analyzing the evidence adduced by both parties, by order dated 11.03.2013, allowed the petition on the ground of willful default and dismissed on the ground of owner's occupation. Aggrieved by the findings of the Rent Controller, in respect of willful default, the petitioner/tenant preferred appeal in R.C.A.No.184 of 2013, while in respect of rejecting the petition for owner's occupation, the respondent/landlady filed R.C.A.No.397 of 2013.

7.The Rent Control Appellate Authority, on appreciation of the findings of the Rent Controller and upon considering the facts and circumstances of the case, by Common Judgment dated 17.06.2016 allowed both the appeals. Now, aggrieved by the eviction on the ground of owner's occupation, the petitioner/tenant has come forward with the

present revision.

8.The learned counsel appearing for the revision petitioner/tenant would contend that absolutely, there is no requirement of the premises for the respondent/landlady towards her personal occupation since her husband is in abroad on employment earning Rs.1,20,000/- p.m., and he passed Diploma in Mechanical Engineering from Polytechnic and he has not made any plans to start any business in the demised premises. He would further contend that it is the bounden duty of the respondent/landlady to prove her claim of bonafide requirement of the premises towards her personal occupation, while so, contrary to the same, the Rent Controller has erroneously shifted the onus on the petitioner/tenant to prove that requirement is not bonafide. He also contended that P.W.2, the husband of the landlady, in his cross-examination, admitted that he has not filed any document to show his bonafide towards preparations to start business in the premises. Therefore, the learned counsel sought for setting aside the order of the Rent Control Appellate Authority.

9.On the other hand, the learned counsel appearing for the respondent/landlady would contend that having considered the fact that

the respondent/landlady requires the premises for carrying on auto-mobile business by her husband and the deposition of P.W.2 who is the husband of the respondent/landlady, the Rent Control Appellate Authority has rightly come to the conclusion that the requirement of demises premises by the landlady is bonafide and therefore, no interference is required.

10.It is the specific case of the respondent/landlady apart from default in payment of rents, that she requires the demised premises for the purpose of carrying out auto-mobile business by her husband who was examined as P.W.2. According to her, her husband is a Mechanical Engineer and even in his evidence, P.W.2 has deposed that he was proposing to start auto-mobile shop in the shop. The learned counsel for the appellant/tenant would draw the attention of this Court to the categorical admission made by P.W.2 that he is in abroad and earning Rs.1,20,000/- per month and also that he has not filed any document to show his bonafide towards preparations to start business in the premises. By referring these, the learned counsel pointed out that the requirement of the premises by the owner is not bonafide. This Court is unable to accept the same since mere P.W.2 admitted that he is in abroad and earning, it does not mean that he continues to work in abroad life long without any

future plans. According to him, he is proposing to carry out the automobile business in the demised premises. Therefore, the landlady has proved by examining P.W.2 that the requirement of the premises is bonafide. It is not for the petitioner/tenant to suggest or presume that there is no requirement of the premises by the landlady. It is settled that a landlord can seek eviction of the tenant for the benefit of a member of his family. Therefore, when the intention to start business by her husband was proved by the landlady by examining her husband P.W.2, it is sufficient to hold that the requirement of the premises for the landlady's occupation, is bonafide. In this regard, it is worthwhile to refer a decision of this Court reported in ***"T.V.Jagatrakshagan and others versus N.Futaree Bai & others"*** reported in (2003) 3 LW 195, wherein, this Court has observed as under:

"17.The words "carrying on business" have been interpreted in so many decisions rendered by this Court, because these words have got certain legal import. Carrying on need not mean that the landlord must be already actually and actively carrying on the business. If the matter has already passed the stage of a bare intention or desire, and some steps towards its execution have been taken, it is sufficient for the purpose of the provisions. It is not possible to lay down a hard and fast rule as to what that step should be. It would all depend upon the nature of the business, nature of the effort to be

employed upon and other relevant factors, which could enable the carrying on such business.

18. In other words, "carrying on business" may consist of series of steps. It cannot be said that if only all the steps have been taken, the requirement of the section would be satisfied. In other words, even if one step is taken and proved, in my view, the essential requirement of section is satisfied. But, if the matter is only in the stage of intention or desire and there is no step at all whatever, then it can certainly be said that it would not bring such a case under the said section. Short of any tangible concrete indication of commencement of a business, mere desire to carry on business would not enable the landlord to resort to Section 10(3)(a)(iii)".

11. In the present case, the husband of landlady was having intention to carry on the auto mobile business and it does not mean that must be already actually and actively carrying on the business. Therefore the admission made by P.W.2 that he has not filed any document to show his bonafide towards preparations to start business in the premises would not render that the requirement of the premises was not bonafide. Therefore, on consideration of the entire facts and circumstances and the evidence, the Rent Control Appellate Authority has rightly ordered eviction on the ground of owner's occupation, which this Court does not find any infirmity in order to interfere with the same.

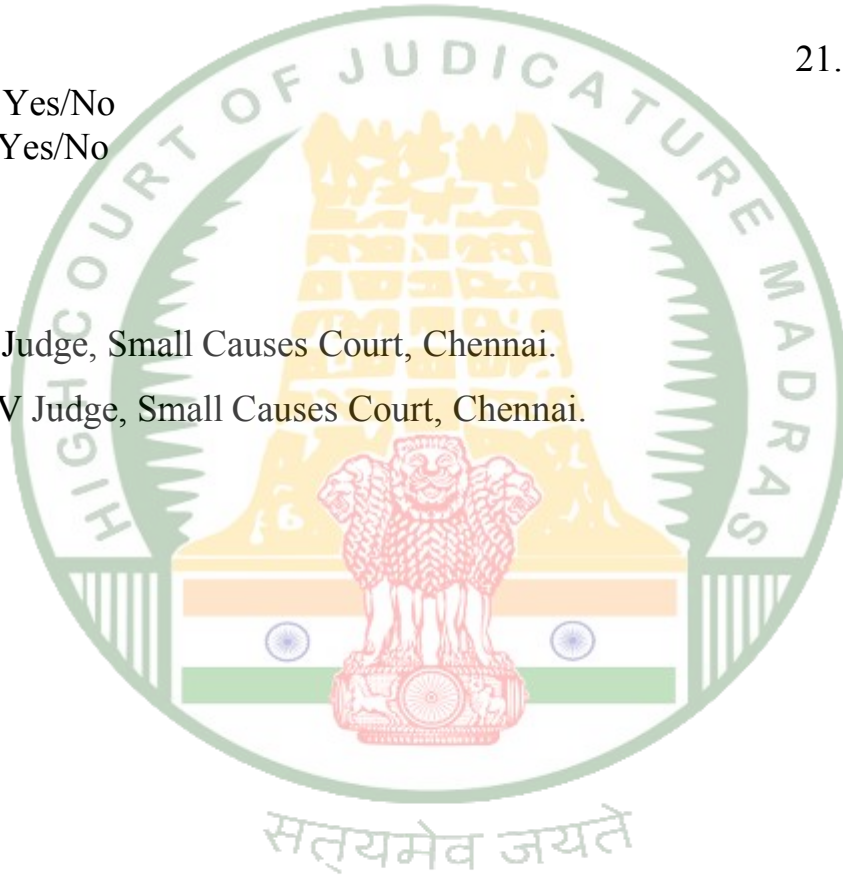
12. Accordingly, the Revision Petition fails and it is dismissed and the petitioner is directed to hand over the vacant possession within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

21.09.2021

Index : Yes/No
Internet: Yes/No
mpa

To:

1. The III Judge, Small Causes Court, Chennai.
2. The XIV Judge, Small Causes Court, Chennai.



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S.KANNAMMAL,J.

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Pre-delivery order in
C.R.P.(NPD) No.746 of 2017 and
C.M.P.No.3685 of 2017



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