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C.R.P.(PD) No.708 of 2022
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.708 of 2022
and C.M.P.No.4163 of 2022

Mrs.Mohana

... Petitioner / Respondent

Vs.

1.:Mrs.Rameesa Beevi
2.Mrs.Wadoodiya Begum
3.Mrs.Hyrun Marliya
4.Mr.Mohammed Hussain Ul Asif
5.Mr.Fouzil Ameen
6.Mr.Aysath Barika
7.Mr.M.Babu

... Respondents / Petitioner

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the order dated 10.01.2022 in M.P.No.1 of 2021 in RLTOP No.3 of 2020 passed by the learned XII Small Causes Court, Chennai.

For Petitioner : Mr.Revathi Manivannan



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ORDER

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The tenant in RLTOP No.3 of 2020 has come forward with this revision petition, challenging an order of the Rent Court passed in M.P.No.1 of 2021, rejecting his plea on the issue of the very maintainability of RLTOP. To provide the factual backdrop, the respondents/landlords have earlier instituted RCOP No.286 of 2018 on the ground of wilful default in payment of rent under Section 10(2)(i) of the ***Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960*** (hence forth will be referred to as Old Act). Besides this, there are other suit/proceedings between the parties, which are not very germane for the current purpose. On 05.09.2019, RCOP No.286 of 2018 came to be dismissed for default. In between, on 22.02.2019, the old Act was replaced by the ***Tamil Nadu Regulations of Rights and Responsibilities of Landlords and Tenants Act 2019*** (hereinafter would be referred to as the New Act). Subsequently, the landlords have laid the present RLTOP No.3 of 2020 seeking eviction of the tenant that there is no the rent agreement between the landlords and the tenant registered with the Rent Authority is available, a ground provided under Sec.21(2)(a) of the Act.



2. The contention of the revision petitioner /tenant is that in terms of Section 47(2) of the New Act, in all situations where an eviction proceedings under the old Act was dismissed for default, the only option open to the landlord is to restore the said proceedings, and seek the leave of the Rent Controller for a switch over to the New Act. In the context of this case it would mean that the landlords, if they are keen to invoke the provisions of the new Act, should first engage in reviving RCOP No.286 of 2018, and then go through the switch-over route as provided under Sec.47(2) of the New Act. To state it differently, a landlord who does not follow Sec.47(2) route is barred from invoking the provisions of the New Act. This argument was rejected by the learned Rent Court. This has brought the tenant before this Court with this revision petition.

3. The learned counsel for the revision petitioner was seen in her relentless best in emphasising the sustainability of the very contention which the tenant had advanced before the Rent Court. The efforts of the learned counsel however, struggled to persuade this Court, as it, in the view of this Court, roamed outside the borders of the legislative space which Sec.47(2) of the new Act has created. Sec. 47 of the new Act reads:

“47. Repeal and savings :

(1) The Tamil Nadu Buildings (Lease and Rent Control)



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Act, 1960 (Tamil Nadu Act 18 of 1960) is hereby repealed.

(2) Notwithstanding such repeal and subject to the provisions of this Act, all cases and other proceedings under the said Act pending, at the commencement of this Act, shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed:

*(1)
Provided that the plaintiff within a period of 180 days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding **pending** under the repealed Act with liberty to file fresh application in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act, and for the purposes of limitation, such application if it is filed within a period of 270 days from the commencement of this Act be deemed to have been filed on the date of filing of the suit which was withdrawn and in case of withdrawal of appeal or other proceedings on the date on which the suit was filed out of which such appeal or proceeding originated."*

If Sec.47 is analysed for its content, it declares that the old Act was repealed, but also provides a window for switch-over from the old to the New Act. This provides for three situations:

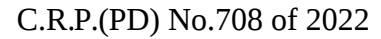


(a) After the coming into force of the New Act, recourse to old Act is not available. [Sec.41(1) of the new Act]

(b) If any proceedings under the old Act is pending on the date on which the new Act came into force, then they will continue under the old Act. [Sec.41(2) of the New Act]

(c) If however, any landlord in a pending proceeding under the old Act wishes to invoke the New Act, then a window is provided under the proviso to Sec.47(2) which now enables the landlord to withdraw a pending proceeding with a leave to invoke the new Act and this option is available only for 270 days from the date of commencement of the new Act.

4.1 It is not indicated anywhere in Sec.47(2) of the new Act that a proceeding initiated under the old Act which is not pending should necessarily be revived or restored to enable the landlord to invoke the new Act. That never appears to be the legislative intent. In terms of the proviso to Sec.47(2) switch over from the old Act to the new Act contemplates, (a) existence of a pending proceeding under the old Act; (b) that intent to switch over to new act; and (c) exercising the switch over option within 270 days from the date on which the new Act came into force.



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landlord should not resort to both the old and new Acts simultaneously vis a vis pending proceedings, and Sec.47 of the New Act must therefore be understood thus.

5. In the present case, RCOP No.286 of 2018 was not on record on the date on which the landlord invoked the New Act and filed the present RLTOP 3/2020. The only ground of the revision petitioner is that RCOP No.286 of 2018 was dismissed for default after the coming into force of the New Act. In view of the line of reasoning of this Court indicated above, this Court may not be able to appreciate it. As rightly pointed out by the Rent Court, the landlord has filed the present RLTOP No.3 of 2020, not on the same ground that provided cause of action for RCOP No.286 of 2018, but on an entirely different ground in Sec.21(2)(a) which as already indicated has no parallel provision in the old Act. This Court therefore does not find that there exists a circumstance for this court to warrant an interference with the order of the Rent Court.

6. The learned counsel for the revision petitioner / tenant submitted that the Rent Court has proceeded with the eviction proceedings in RLTOP No.3 of 2020 without giving an opportunity for the tenant to adduce evidence. The



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learned counsel submitted that while the new Act has made it clear that the enquiry into a dispute would be summary in nature and that evidence has to be received by the Rent Court through affidavits of parties, still it does not exclude right of cross examination exclusively. A party who is keen to cross examine another party or witness, as the case may be can still do it but only with the leave of the Rent Court, argued the counsel. Therefore, the right of the tenant/revision petitioner to participate in the ongoing enquiry effectively should not be denied to him. This Court is in agreement with this part of the submissions of the learned counsel. This Court hence directs the Rent Court to give optimum opportunity within the frame work of the new Act to the revision petitioner to participate effectively in the enquiry.

7. Subject to the observations made in the last preceding paragraph, this Court dismisses the revision. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order



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Note : Issue order copy on 16.03.2022

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N.SESHASAYEE.J.,

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