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C.R.P.(PD).No.2408 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD).No.2408 of 2022

Dr.T.Parthasarathy

... Petitioner

Vs.

Mrs.K.Sarala

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed in M.P.No.3 of 2021 in RLTOP.348 of 2021 pending on the file of learned X Judge, Small Causes Court, at Chennai.

For Petitioner	: Mr.T.Mohan For Mr.P.Munusamy
For Respondent	: M/s.Gayathri Harish For Mr.S.Venkatesan

ORDER

The Civil Revision Petition has been instituted, challenging the order passed in M.P.No.3 of 2021 in RLTOP.No.348 of 2021.



2. The Revision Petitioner is the tenant and respondent in RLTOP.No.348 of 2021. The respondent/Landlord filed an application for eviction and for delivery of possession. The revision petitioner has taken a portion of the property belongs to the respondent/Landlord for running his clinic. The allegation against the revision petitioner is that he has not paid the rent properly and at one point of time, he stopped paying the rent. As and when the demand is made, the revision petitioner assured payment, but not actually paid. It is further contended by the respondent that the building is 100 years old and in a dilapidated condition. Thus, he has taken a decision to demolish the 100 years old building and reconstruct the same. It was the case of the respondent that the building is in bad condition and unfit for dwelling.

3. Pending RLTOP.No.348 of 2021, the revision petitioner filed M.P.No.3 of 2021 to recall the P.W.1 for Cross-examination. The contention of the revision petitioner is that he filed counter in the RLTOP.No.348 of 2021 on 12.08.2021 and the case was adjourned for filing re-joinder on three occasions. The revision petitioner states that there was an earlier litigation between the petitioner and the respondent, which went up to RCA and recently he was able to trace the papers in RCA, which



he had not filed the same along with the counter. Therefore, the Miscellaneous Petition to recall the P.W.1 for Cross-examination is to be permitted. The Trial Court adjudicated the issues with reference to the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (hereinafter referred to as 'The Act'). The Trial Court considered the procedures for Rent Court and Rent Tribunal under Section 36 of the Act. By elaborately considering the provisions of the Act and based on the judgment of this Court on the issue, made a finding that the revision petitioner/tenant filed the Miscellaneous Petition for Cross-examination on the only reason that he has to prove as to who is the reason of failure to enter into an agreement. The said issue is inadequate for the purpose of recalling P.W.1 and therefore, the Trial Court dismissed the petition.

4. The learned counsel for the petitioner mainly contended that the provisions of the new Act, shall not curtail the rights of the tenants from cross-examining the witnesses, which is otherwise contemplated under the Code of Civil Procedure. The new Act is a substitution and the procedures, which is substantial under the Code of Civil Procedure is to be followed for the purpose of examination and cross-examination of witnesses and to recall



the witnesses. When the Code of Civil Procedure permits such procedures for the tenants, it cannot be dispensed with merely based on the new Act, which has come into force in the year 2017. Thus, the view of the Trial Court in this regard is perverse and opportunity to be provided to the tenant is falling under the rules of natural justice, which is to be complied with all circumstances with reference to the Code of Civil Procedure. Therefore, rejection of Miscellaneous Petition is in violation of the procedures as contemplated under the Code of Civil Procedure.

5. The learned counsel for the revision petitioner contended that the evidence was closed on 08.12.2021 and miscellaneous petition was filed on 07.03.2022 and therefore, the trial Court ought to have considered the miscellaneous petition for the purpose of providing an opportunity to the revision petitioner to cross-examine P.W.1 with reference to the reason of failure to enter into a lease agreement.

6. (a) In support of the case of the petitioner, the learned counsel for the petitioner relied on the judgment of this Court in the case of *A.M.Mansoor Refai Vs. Shafak Hameed Thaika & 2 others made in C.R.P.No.2811 of 2021 dated 20.02.2021*, wherein the following



observations are made:

“8.Mr.G.RM.Palaniappan would invite my attention to Sub-section 2 Section 36, which reads as follows:-

“36(2). In every case, before the Rent Court and the Rent Tribunal the evidence of a witness shall be given by affidavit.”

However, the Rent Court and the Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination, such witness can be produced and may order attendance for examination or cross-examination of such a witness to contend that once that landlord filed an affidavit of evidence, the Rent Court is bound to give the tenant an opportunity of cross~examination. I am unable to read the provision in the way the learned counsel suggests. It is very clear that absolute discretion is vested in the Rent Court to allow cross~examination. The words ? where it appears to it that it is necessary in the interest of justice? amplifies the legislative intent that there is no vested right of cross~examination. Therefore, the Rent Court has gone into the question as to whether the cross~examination is necessary or not and has held that considering the ground for eviction and scope of the proceedings before it cross~examination is not necessary. If cross~examination is allowed as a matter of course, then the very object of the enactment namely, speedy eviction would be destroyed and this enactment will also be rendered useless. I therefore, do not propose to accept the interpretation of the learned counsel, which goes against the legislative intent.”



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(b) In the case of *J.Thennarasu Vs. Anita Nalliah made in C.R.P.(PD).No.2532 of 2021 and C.R.P.(NPD).Nos.2372 & 2373 of 2021*, this Court pronounced orders on **05.08.2022**, wherein elaborate discussions are made with reference to the scope of the Act and even as per the judgment, the principles of natural justice and the opportunity to be provided to the tenant to cross-examine the witnesses cannot be denied.

7. The learned counsel for the respondent objected the contentions raised by the petitioner by stating that as admitted by the petitioner, the earlier litigation itself went up to RCA and the respondent/Landlord is unable to vacate the revision petitioner, who is a tenant. The present petition is also filed mainly on the ground of default in payment of rent and further the building is 100 years old and the respondent/Landlord has taken a decision to demolish and reconstruct the building since the building is not fit for dwelling purposes. Petitioner being a chronic defaulter in payment of rent, has no *locus standi* to question the decision taken by the respondent/Landlord.



8. The learned counsel for the respondent relied on the judgment in the case of ***S.Krushnan Vs. R.Kalaivani made in C.R.P.(PD).No.3070 of 2021 dated 06.01.2022***, wherein this Court has considered the scope of Section 36 of the New Act as follows:

“8. Section 36 of the new Act enables the Rent Court to device its own procedure and the procedure laid down in the Code of Civil Procedure is not applicable to the Rent Court constituted under the new Act. Sub~Section 2 of Section 36 of the new Act provides that the evidence shall be by way of affidavits and absolute discretion is conferred on the Rent Court to call the witness for examination or cross~examination. Therefore, a party to the proceedings under the new Act cannot insist upon either examination or cross~examination of the evidence.”

9. The learned counsel for the respondent relied on the judgment in the case of ***J.Thennarasu (cited supra)*** and contended that the scheme of the Act was elaborately considered by this Court in the said judgment and as per the said scheme, the Code of Civil Procedure cannot be applied in the matter of examination of witnesses and therefore, the very arguments advanced on behalf of the petitioner is liable to be rejected.



10. In the context of the cross-examination, with reference to Section 21 (2) (a), Section 21 (2) (d), Section 21 (2) (f) and Section 24 of the Act, this Court has considered the scope of the provisions of the Act as follows:

<i>Provisions of law & Head of Dispute</i>	<i>Content of possible dispute</i>	<i>How far can be proved without cross examination</i>	<i>If cross examination will be required</i>
Sec. 21(2)(a)	Eviction sought on ground of failure to enter into a tenancy agreement. Here, a dispute can arise, (a) if the tenant denies tenancy; or (b) The tenant setting up a tenancy which the landlord denies.	Ordinarily not necessary unless the case falls in category (a) or (b) which cannot be proved through written document.	Cross examination may be necessary only if the case falls in category (a) or (b) The Rent Court should take care to see that cross examination seeking to establish reasons for not entering into lease agreement etc cannot be entertained. See : A.M Mansoor Refai Vs Shafak Hameed Thaika, [C.R.P.2811 of 2021 order dt. 20.12.2021]
Sec. 21(2)(d)	Misuse of the tenanted premises after landlord's notice to stop misuse.	'Misuse' has been statutorily defined in a narrow sense to mean encroachment of additional space and also acts involving public nuisance. The whole facts required to be established may not be easily established	Cross examination may be necessary, but the Rent Court may have to appreciate the need for it on the basis of facts involved in a particular case.



<i>Provisions of law & Head of Dispute</i>	<i>Content of possible dispute</i>	<i>How far can be proved without cross examination</i>	<i>If cross examination will be required</i>
		by documentary evidence of parties. Commissioner's Report may be necessary. And, it leaves free space for dispute on facts not easily provable by documents.	
Sec. 21(2)(f)	For alteration etc. for converting the use of the building based on change of land used by the competent authority.	Can be proved by documentary evidence of competent authority.	Cross examination may be required if there is any ambiguity in ascertaining if a particular building falls within any zone whose land-use is converted by the competent authority.
Sec. 24	Refund of advance/default regarding the same.	It can be proved by the documents. First, the Rent agreement registered with the authority itself would provide the advance amount paid; And receipts ought to be issued for the rent paid; And defaulted rent may have to be calculated based on this. And adjustment	Space available for cross examination is narrow. Again the Rent Court needs to appreciate the facts before it.



<i>Provisions of law & Head of Dispute</i>	<i>Content of possible dispute</i>	<i>How far can be proved without cross examination</i>	<i>If cross examination will be required</i>
		of any arrears of rent in the advance amount is merely a matter of arithmetic.	

11. Considering the arguments as advanced between the parties to the *lis* on hand, the Hon'ble Division Bench of this Court in W.P.No.26344 of 2022 passed an order, upholding the validity of proviso to Section 4 (2) read with Section 21 (2) (a) of the Act. Since the Act being enacted recently, several other Public Interest Litigations are also pending, which may not have any impact as far as the present scenario is concerned. The very purpose and object of the Act is to ensure abuse of process or otherwise either on the part of the Landlord or tenant is thwarted. Summary procedures are contemplated to ensure striking balance between the rights of the parties. The rules of principles of natural justice have been defined by the Constitutional Courts on numerous occasions, to ensure fair procedures being adopted, while deciding the issues. Therefore, the rules of natural justice cannot be defined with reference to the Code of Civil Procedure. The principles of natural justice are to be defined in the context and to ensure fair opportunity is afforded to the parties, approaching the Courts. The



extent of compliance of rules of natural justice are also depending on various factors. Rigid applications will lead to impracticality and result in miscarriage or delayed justice. Justice being the ultimate aim in a litigation, rules of natural justice is the principle to be followed for the purpose of affording opportunity to the parties to establish their own case. The extent of principles of 'natural justice' cannot be elaborated, so as to defeat the principles of 'justice'. Any litigant, taking undue advantage of the rules of natural justice, at no circumstances, be encouraged by the Courts. Therefore, the extent of compliance of rules of natural justice in the interest of justice is paramount and to be considered by the Courts at the time of dealing with the compliance or violations of the principles of natural justice.

12. In the present case, the contention of the revision petitioner is that he is denied of an opportunity for cross-examining P.W.1 for the purpose of establishing the reason for failure to enter into an agreement between the landlord and the tenant. The application of Code of Civil Procedure has been considered by the legislature and they found that such a procedure will frustrate the Rent Control Proceedings and accordingly, contemplated for adopting the fair procedure for the purpose of effective dispensation of relief for the litigants, approaching the Court. Section 36(1) of the Act



enumerates that subject to any rules that may be made under this Act, the Rent Court and the Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act V of 1908), but shall be guided by the principles of natural justice and **shall have the power to regulate their own procedure**, and the Rent Court shall follow the procedures enumerated under Section 36 of the Act.

13. Any attempt by any party to the litigation to prolong and protract the litigation are to be thwarted by the Rent Courts and Rent Tribunals, since the procedures under the Code of Civil Procedure are dispensed with under Section 36 of the Act. The rules of natural justice is to be adopted for the purpose of providing opportunity to all the parties to establish and defend their respective cases. Under the guise of the principles of natural justice, no one be allowed to frustrate the proceedings or to increase the longevity. Time limit for disposal has been contemplated under the provisions of the Act. Courts are expected to be conscious about the limitation prescribed under the Act. Prolonging the litigation for long years is impermissible. If it is allowed, the purpose and object of the Act would be defeated.



14. Conducting the case on the date of hearing is the rule.

Adjournment is an exception. No adjournment is to be granted on flimsy grounds. Genuine reasons for adjournment may be considered, but recording the reasons. Adjournments are to be avoided for long duration. Adjourning the Rent Control Petition for three months is unacceptable, since the period of its disposal contemplated under the Act itself is 90 days. After service of summons or notice, the case is to be heard as expeditiously as possible and on day-to-day basis. On account of unavoidable circumstances, if the litigations are prolonged beyond the time limit prescribed under the Act, any further longevity of such litigations are to be avoided by the Courts. The summary procedures contemplated under the Act must be meaningfully exercised for the benefit of the litigants.

15. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. There is no rigid formula for the compliance of the rules of natural justice.

16. Equally, the Courts would not permit the litigants to prolong and protract the matter. Tenants may be tempted to prolong the matter with a



motive to increase longevity of the litigation or to frustrate the litigation for unjust gains. Courts cannot aid such litigants and them to succeed. Soon after the ground on which miscellaneous petitions are filed and if the Court formed an opinion that such applications are filed to increase the longevity of the litigation or to frustrate the litigation, then the said petitions are to be dealt with as expeditiously as possible. Court cannot further prolong such issues, which would indirectly assist either of the parties to achieve their ill motives.

17. Simple facts in the present case reveals that the revision petitioner is continuing as a tenant for about 25 years. The respondent, who is the Landlord, failed in her earlier attempt to evict the revision petitioner. Again, the respondent filed the present petition on the ground of default in payment of rent and for the purpose of demolition and reconstruction of the 100 years old building belongs to her. The respondent being an aged women, may not be in a position to litigate the issues for an indefinite period. Larger question involved with reference to the facts of the case on hand is concerned, if a tenant, who is residing in the premises for more than 25 years and the Landlord is unable to evict such a tenant even after 25 years, this Court is afraid of the repercussions in implementing the law of the land.



If the law is unable to reach the ends of justice, then the application of law is to be tightened for the purpose of meeting out the ends of justice.

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18. Few legal brains, no doubt, attempt to frustrate the proceedings. But, the Courts are expected to be more vigilant, whenever such ill-motives or otherwise has been visibly identified. No doubt, the rights of the tenants are to be protected. However, to what extent, is the question, which is to be considered with reference to the facts and circumstances of each case. If the tenant, who is continuing in the building for 25 years and if the Landlord is struggling to evict him for years together, then justice delivery system in this Country is to be looked into seriously and to be tightened, so as to ensure that the citizen of our great Nation gets justice within a reasonable period of time, to have trust on the judicial system.

19. Longevity of the litigation results in frustration and consequently people are loosing faith on the justice delivery system. Courts shall not allow to reach such a situation. People-friendly judicial delivery system is warranted in the new technologically advanced world. Citizen are getting everything in a speedy manner due to advanced technology. The justice system should cope up with the current day scenario for the purpose of



delivering justice to the litigants. Thus, the work discipline, pattern, method of dealing with the applications, simplification of orders and judgments are need of the hour and therefore, the idea of the litigation for prolonging and protracting the issues must be seriously looked into and whenever such unnecessary miscellaneous petitions or otherwise is filed, with an idea to protract the issues, then exemplary or maximum costs should be awarded on such parties.

20. Curiously, a tenant, who is residing in the premises for more than 25 years and attempting to prolong the issues and the Landlord is unable to evict him even after several years, what will be the end, is the question to be considered by the Courts. Admittedly, Landlord is the owner of the property. One day or other, the owner should takes possession of the property for the purpose of dealing with his /her own property. It is needless to state that the property right is the Constitutional right.

21. The concept of justice with reference to the constitutional perception is important. Property right is a Constitutional right. The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is enacted for the purpose of regulating the contracts between the



Landlord and the tenants and to ensure that no party is deprived of their right, and more specifically for speedy reliefs.

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22. Article 300-A of the Constitution of India enumerates that “*No person shall be deprived of his property save by authority of law.*”

Therefore, a Landlord cannot be deprived of his property and property right being a Constitutional right, the tenant, at last, has to vacate one or the other day and therefore, the longevity tactics adopted, if any to be thwarted by the Courts without any hesitation.

23. A tenant can be evicted by authority of law, in order to protect the Constitutional right of a person on his property right. Thus, the Constitutional right under Article 300-A co-exists with the authority of law. Thus, the authority of law must be implemented in its letter and spirit, so as to protect the Constitutional right of property of the citizen. If the authority of law is not implemented or inefficiently implemented, it would result infringement of the Constitutional right to such extent. Thus, two spectrum under Article 300-A of the Constitution is to be implemented, so as to save the right of the citizen. The new Act and its spirit to protect the Constitutional right of a citizen must be scrupulously implemented by the



Rent Authority, Rent Court and the Rent Tribunals. Any lapses, inefficient implementation or otherwise would result in infringement of the Constitutional right of a person under Article 300-A of the Indian Constitution. Thus, the importance of implementation part of an Act is to be monitored by all the Courts concerned and even if the Courts are overburdened, it should regulate the litigations in such a manner, so as to avoid enormous delay or undue delay in granting the relief to the litigants.

24. No doubt, tenants also have rights. Question arises, to what extent, the rights of the tenants can be expanded. No Landlord shall take undue advantage of their position as landlord or attempt to exploit the tenant. The rights of the tenants are to be protected by the Courts. Ultimately, striking balance is to be adopted by the Courts. Thus, if any tenant attempts to take undue advantage of the procedures, or the Landlord attempts to exploit the tenants, the Courts have to act accordingly and during the process, if any ill-motive or attempt for unjust gains are traced out, the same cannot be encouraged even indirectly.

25. In the present case, the trial Court elaborately considered the scope of the new Act and also considered the fact that the miscellaneous



petition is filed to prove as to who is the reason for failure to enter into an agreement. It is an admitted fact between the parties that there is no agreement in existence. The revision petitioner is continuing as a tenant for 25 years. The revision petitioner being a Medical Practitioner and performing a noble profession, is expected to act as a good citizen in such circumstances. A Medical Practitioner, who is giving life to humans, is bound by his oath taken before the Medical Council of India. A Medical Practitioner is not only expected to maintain good conduct, while performing his medical profession, but also expected to be a good citizen in the society.

26. This Court found that the reason for filing the miscellaneous petition is to prolong the litigation, so as to take unjust gain for the purpose of continuing in the premises belongs to the respondent/Landlord. Such an idea was rightly dealt with by the trial Court and therefore, this Court do not find any perversity or infirmity in dismissing the miscellaneous petition filed by the revision petitioner.

27. Taking note of the facts and circumstances, the trial Court is directed to dispose of the RLTOP.No.348 of 2021 as expeditiously as



possible, preferably within a period of two months from the date of receipt
of a copy of this order.

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28. Accordingly, the Civil Revision Petition stands dismissed. No
costs.

12.12.2022

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Index : Yes / No

Speaking order / Non-speaking order



To
The X Judge,
Small Causes Court,
Chennai.

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S.M.SUBRAMANIAM, J.

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