



C.R.P. (NPD) .No.2913 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2913 of 2021

and

C.M.P.No.20950 of 2021

A.Nasirabanu

.. Petitioner

Vs.

S.Sugunavathy

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, praying to set aside the fair and final order dated 01.09.2021 made in RCA.No.12 of 2014 on the file of the Principal Subordinate Judge, Coimbatore confirming the fair and final order dated 17.01.2013 made in RCOP.No.224 of 2005 on the file of the I Additional District Court, Coimbatore.

For Petitioner : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

Page No.1/9



C.R.P. (NPD) .No.2913 of 2021

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ORDER

The tenant challenges the concurrent orders of eviction passed by the Authorities under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

2. The eviction was sought for by the landlord on the grounds of willful default in payment of rent, commission of act to waste and for own use and occupation. The tenancy is for non-residential purpose and the petitioner is carrying on business in the premises.

3. The landlord claim that the tenant defaulted in payment of rent for the period between July 2005 and October 2005 for a period of 4 months. The landlord would claim that though the extent that was leased out was only 750 sq.ft the tenant put up additional construction to an extent of 1228 sq ft and expanded the place of business without the consent and knowledge of landlord. Therefore, according to the landlord the tenant had committed act of



C.R.P. (NPD) .No.2913 of 2021

waste which would impair the utility of the building. It was also claimed that the landlord's family has grown in size and she requires the premises for own use and occupation.

4. The application for eviction was resisted by the tenant contending that the application lacks *bona fide*. It was also claimed that the rent was paid regularly. It was the landlord who did not receive the rent for the months of July to October 2005. It was also claimed that the additional construction to an extent of 1228 sq.ft was made with the permission of the landlord and the claim for own use and occupation was dubbed as not *bona fide*.

5. Before the Rent Controller one Purushothaman was examined as PW1 and Exs.P1 to P8 were marked. The husband of the tenant R.Abdul Rayuf was examined as RW1 and no documentary evidence was produced.

6. The learned Rent Controller upon consideration of the evidence particularly the evidence in the cross-examination of RW1 came to the



C.R.P. (NPD) .No.2913 of 2021

conclusion that the tenant had committed default in payment of rent. The Rent

Controller found that the tenant had put up the construction without the consent of the landlord and held that such construction would materially impair the value and utility of the building. On the third ground viz., own use and occupation also, agreeing with the claim of the landlord, the Rent Controller ordered eviction on all the three grounds.

7. Aggrieved, the tenant preferred appeal in RCA.No.12 of 2014 on the file of Appellate Authority. The learned Appellate Authority on a consideration of the evidence on record concurred with the findings of the Rent Controller and dismissed the appeal.

8. Mr.K.Venkatasubban, learned counsel appearing for the petitioner would vehemently contend that both the Authorities have not adverted to the requirements of the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. He would point out that as far as the willful default is concerned, the default is only for a period of four months. Therefore, in the absence of any evidence to the effect that the default is willful and there is supine indifference in the payment of rent, the tenant cannot be held to have



C.R.P. (NPD) .No.2913 of 2021

committed willful default in payment of rent.

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9. As far as the additional construction put up, Mr.K.Venkatasubban, would contend that the additional construction would enhance the value of the property and therefore it cannot be said to be an act of waste. On the claim of own use and occupation by the petitioner, he would contend that the premises which is let out for non-residential purpose cannot be sought for residential purpose.

10. I am unable to countenance the submissions of the counsel for the petitioner. As far as the default is concerned, the husband of the tenant who was examined as RW1 had very clearly admitted that he has not paid rents from June 2005. He also stated that he has not produced receipts for payment of rents from June 2005. On the basis of the above said admission and the further admission that the rent for August to September 2005 was sent only in January 2006, the Authorities under the Act had come to the conclusion that there is supine indifference on the part of the tenant. The duty to pay the rent is the paramount duty of the tenant. The tenant having failed to pay the rent and having admitted the default in payment of rent cannot be allowed to

Page No.5/9



C.R.P. (NPD) .No.2913 of 2021

contend that there was no supine indifference.

WEB COPY 11. As regards the additional construction it is claimed that the additional construction was put up with the permission of the landlord. The tenant has singularly failed to produce any document to show that permission was granted for putting up additional construction. The built up area is only about 750 sq ft and the tenant has admittedly put up construction with zinc sheet roof to an extent of 1400 sq ft which is nearly double the area that was leased out. This would definitely impair the utility of the building. Hence, I am unable to fault the Authorities for having come to the conclusion that the tenant has committed act of waste.

12. As regards the owner's occupation, the Appellate Authority as well as the Original Authority have come to the conclusion that the need is *bona fide* and sitting in Revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, I do not think, I can disturb the concurrent findings on a re-appreciation of the evidence. Since the scope of the Revision is restricted to examination of correctness and the legality of the



C.R.P. (NPD) .No.2913 of 2021

orders passed by the Tribunals constituted under the Act.

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13. In view of the above, I do not see any merit in this Revision, the Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

14. Mr.K.Venkatasubban, would seek time to vacate. Considering the fact that the petitioner has been carrying on business since 2000, the petitioner is granted a years time, to vacate and handover possession, subject to the condition, the petitioner pays the rent regularly and files an affidavit undertaking to vacate and handover vacant possession, without driving the landlord to execution proceedings, on or before 31.12.2022. Such an affidavit shall be filed into this Court before 12.01.2022. If the affidavit is not filed by 12.01.2022, the landlord will be at liberty to execute the order, as if no time was granted by this Court.

03.01.2022

Page No. 7/9



C.R.P. (NPD) .No.2913 of 2021

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Index : No

Speaking order

R.SUBRAMANIAN, J.

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To

- 1.The Principal Subordinate Judge, Coimbatore.
- 2.The I Additional District Court, Coimbatore.

C.R.P.(NPD).No.2913 of 2021

Page No.8/9



WEB COPY



C.R.P. (NPD) .No.2913 of 2021

03.01.2022