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CRP (NPD) No. 3021 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.01.2022**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No. 3021 of 2021

and

CMP No. 21428 of 2021

PremNazir

... Petitioner/Appellant/Respondent

Vs

Madhavan

... Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act 18 of 1960) as amended by Act 23 of 1973 and Act 1 of 1980), to set aside the fair and decreetal order passed in RCA.No. 5 of 2019 dated 24.09.2021 on the file of Rent Control Appellate Authority (Subordinate Judge), Pollachi confirming the order of allowing the petition dated 07.12.2018 in R.C.O.P.No. 6 of 2016 on the file of the District Munsif and Rent Controller, Pollachi, Coimbatore District.

For Petitioner : Mr. C. Veera Raghavan



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ORDER

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The unsuccessful tenant having suffered an order of eviction at the hands of the authorities constituted under the Tamil Nadu Buildings (Lease and Rent Control Act, 1960 has come up with this Civil Revision Petition.

2. The Landlord sought eviction on the ground that the tenant has committed default in payment of rent and on the ground of additional accommodation claiming that the Landlord is running a grocery shop in the name and style of "Thangam Stores" in adjacent shop and he needs the petition premises for expansion of the said business. According to the Landlord, the period of default was from March 2014 till date of filing of the petition i.e., for a period of 26 months.

3. The tenant resisted the eviction proceedings contending that the rent was deposited in the suit in O.S.No. 127 of 2014 filed by him before the District Munsif, Pollachi and therefore, there is no default. On the requirement of the Landlord for additional accommodation, while admitting the fact that the Landlord is carrying on business. The tenant would



contend that hardship caused to him by eviction would outweigh the advantage that would accrue the Landlord.

4. The tenant also claimed that he had paid certain amount as advance. The learned Rent Controller upon consideration of the evidence on record found that there is no evidence to prove the payment of advance of Rs.25,000/-. He also found that apart from Rs.9,300/- shown to have been deposited to the credit of the suit, no rent has been paid. Therefore, the learned Rent Controller concluded that the tenant has committed wilful default in payment of rent.

5. The learned Rent Controller also relied upon the evidence of the tenant to come to the conclusion that the Landlord is carrying on business in the adjacent shop and there is only a 4 inches wall which separates the petition premises from the premises in which the Landlord is carrying on business. Therefore, the learned Rent Controller accepted the claim of the Landlord as *bona fide*. On the question of hardship also, the learned Rent Controller held that the advantage that would accre to the



Landlord would outweigh the hardship that would be caused to the tenant by order of eviction. On the above conclusion, the learned Rent Controller ordered eviction.

6. Aggrieved by the same, the tenant preferred an Appeal in R.C.A.No. 5 of 2019 on the file of the Appellate Authority. The learned Appellate Authority upon reconsideration of the evidence on record agreed with the conclusion of the learned Rent Controller and dismissed the Appeal.

7. Mr. C.Veeraraghavan, learned counsel for the petitioner/tenant would vehemently contend that the entire arrears has been paid and as on date, there is no arrears and therefore the conclusion of the authorities under the Act, the tenant has committed wilful default is erroneous. He would also contend that the Landlord is carrying on business in a sufficiently larger area and therefore the additional space in the petition premises which measures only 32 sq.ft., will not be of any significant use to the landlord.

8. I am unable to accept the contentions of the learned counsel for



the petitioner. Once it is found that there is a default on the inception of the proceedings, subsequent payment of rent will not absolve the tenant from the consequences of default. The tenant had taken a specific plea that he had paid an advance of Rs.25,000/- and he has not supported the said plea by evidence.

9. The tenant also claimed that he has deposited the rents in Court in the Civil Suit filed by him. The said claim was also found to be false. In view of the above, I do not think the authorities could be faulted for coming to the conclusion that the tenant has committed default.

10. As regards additional accommodation, the tenant has admitted that the petition premises is separated from the premises in which the Landlord is carrying on business by 4 inches wall and if the wall is removed both the premises could be integrated. He also admitted that he agreed to vacate the building and hand over possession to the Landlord within a year sometime in 2013. He would also state that he did not vacate as agreed to and filed a Civil Suit seeking permanent injunction.



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11. On the basis of the said evidence, the Courts below have come to the conclusion that the tenant has admitted the need of the Landlord. I do not see any reason to differ from the said conclusion and hence, this Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12. Mr. C.Veera Raghavan, learned counsel appearing for the petitioner would seek time. Considering the fact that the petitioner is carrying on business in the petition premise, time is granted till 31.12.2022 to the petitioner to vacate the premise subject to the condition that the petitioner files an affidavit undertaking to vacate and handover possession without driving the Landlord to execution proceedings. The said affidavit is to be filed before this Court on 21.01.2022. If the affidavit is not filed by 21.01.2022, the Landlord will be free to execute eviction order as if no time has been granted. The learned counsel is permitted to produce copy of the affidavit before the Executing Court also.



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vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Rent Controller, Subordinate Court,
Pollachi.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

R.SUBRAMANIAN, J.

Vsg



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