



C.R.P(PD)No.1502 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.1502 of 2017

and

CMP.No.7007 of 2017

1.S.Kaliyaperumal

2.Kalyanasundaram

3.Ramasami

4.Ramalingam

5.Shanmuga Mudaliar Javuli Store,
Rep. By its Managing Partner,
S.Ramalingam, S/o.Shanmuga Mudaliar

..Petitioners

Vs.

Muthukumar

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.6 of 2016 in RCOP.No.6 of 2011 dated 30.01.2017 on the file of the Principal District Munsif Court(Rent Controller), Chidambaram.

For Petitioners : Mr.A.Muthukumar

For Respondent : Mr.N.Sankaravadivel



C.R.P(PD)No.1502 of 2017

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ORDER

The revision petitioners were the respondents in RCOP.No.6 of 2011 on the file of the Principal District Munsif Court / Rent Controller at Chidambaram. They are aggrieved by an order dated 30.01.2017 passed in I.A.No.6 of 2016.

2.R.C.O.P.No.6 of 2011 has been filed by the respondent herein in his capacity as a landlord, taking advantage of Section 10(2)(i) and also Section 10(3)(c) of the TamilNadu Buildings (Lease and Rent Control) Act, 1960 as amended.

3.The issues in the Revision Petition arise out of the averments made with respect to seeking eviction under Section 10(3)(c) of the aforementioned act alone. No reference had been made with respect to the averments relating to Section 10(2)(i) of the Rent Control Act. Let me make it clear that this revision petition is confined only to the averments relating to 10(3)(c) of the Rent Control Act / seeking eviction on the ground of additional accommodation.



C.R.P(PD)No.1502 of 2017

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4.The respondent is the owner of Door Nos.140-144, West Car Street, Chidambaram. The petition premises however, is in Door No.145, West Car Street, Chidambaram. The petitioners are carrying on business in textiles in the ground floor of Door No.145. That ground floor is sought as additional accomodation by the respondent / landlord.

5.It is the claim of the respondent that he is already carrying on business in Door Nos.140-144 and that Door No.145 has a ground floor, 1st and 2nd floor and that he requires the ground floor also for additional accomodation. It is also contended that he is doing busines in the 1st and 2nd floors also and therefore, it would be convenient to him to have the ground floor also under his occupation. All these aspects had been denied by the revision petitioners in their counter. It was specifically denied that the respondent / landlord was carrying on a similar nature of business as is being carried on in D.Nos.140-144 or any business at all in the 1st floor and in the 2nd floor portions of Door No.145, West Car Street, Chidambaram.



C.R.P(PD)No.1502 of 2017

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6.On the basis of the rival contentions, the parties were invited to graze the witness box.

7.The parties also adduced evidence. After adducing evidence, and there is no complaint that there was denial of opportunity to adduce evidence, the respondent / landlord had filed an application under Section 18A of the Rent Control Act to appoint an Advocate Commissioner. It was claimed that the Advocate Commissioner should visit the premises namely, the 1st and 2nd floor premises of Door No.145, West Car Street and also Door Nos.140-144, West Car Street and ascertain whether the respondent / landlord is carrying on business as stated by him in the 1st floor and in the 2nd floor of Door No.145. This application came to be resisted by the revision petitioners herein.

8.Finally, the Rent Controller passed an order on 30.01.2017, which order is the subject matter of the present revision petition.



C.R.P(PD)No.1502 of 2017

9.It is contended by the learned counsel for the revision petitioners, Mr.A.Muthukumar placing particular reference to Exs.P7, P8 and P9, Income Tax Returns relating to the properties in Door Nos.140-144 that according to the said documents, business is being carrying on only in Door Nos.140-144, West Car Street, Chidambaram. It is therefore, contended that no documents had been produced to establish that business is actually been run by the respondent in Door No.145, West Car Street.

10.It is also pointed out by the learned counsel that the affidavit filed in support of I.A.No.6 of 2016 contains further averments which go beyond the pleadings in the petition in RCOP.No.6 of 2011 and therefore, it is stated that the said averments, which go beyond the pleading should not have been taken note of by the learned Rent Controller and should not have been considered. It is therefore, contended that since evidence is available, a duty is now cast on the Rent Controller to analyze such evidence and thereafter, come to a conclusion whether the ground floor portion of Door No.145, West Car Street is actually required as additional accommodation by the respondent. That is the limited scope of the enquiry to be made by



C.R.P(PD)No.1502 of 2017

the Rent Controller and the Rent Controller cannot seek further assistance by appointment of an Advocate Commissioner with respect to the 1st and 2nd Floor portions and it is contended that such exercise can only be termed as gathering evidence and that adducing evidence or producing evidence is the burden on the respondent / landlord and they also cannot lean on the shoulders of an Advocate Commissioner to produce a report with respect to nature of the usage to which the 1st and the 2nd floor portion of Door No.145 were put to.

11.Mr.N.Sankaravadivel, learned counsel for the respondent however, disputed all these contentions raised by Mr.A.Muthukumar. It is the contention of Mr.N.Sankaravadivel that the documents filed namely, Exs.P7, P8 and P9 contain further sheets filed along with the Income Tax Returns. It is contended that the Balance Sheet had also been enclosed and the fixed assets of the respondent / landlord had been given and it had been very clearly stated that shop buildings are located at Door Nos.140 – 145, West Car Street. It is therefore, contended that Door No.145 is a shop building listed as an asset of the respondent and it is also stated that



therefore, a natural presumption should be drawn that the said particular shop building is utilized for commercial activity by the respondent / landlord.

12.Further reliance is made by Mr.N.Sankaravadivel, learned counsel on the evidence of R.W.1 wherein, it is contended that he had stated in the witness box that he has no objection for an Advocate Commissioner to inspect the premises. It is therefore, contended that when the present revision petitioners had no objection for appointment of an Advocate Commissioner, to actually visit the premises in Door No.145, West Car Street, it would not be proper for this Court, to over ride such an admission and place its own views with respect to the necessity or otherwise of the appointment of an Advocate Commissioner. It is also stated that an Advocate Commissioner is required to inspect the premises at Door No.145 to find out whether in the 1st floor and the 2nd floor, stocks of the respondent / landlord are available and if such stocks can be used for commercial activity of the respondent / landlord. It is therefore, contended that the order under revision should not be interfered with by this Court.



C.R.P(PD)No.1502 of 2017

13.It is also stated that there was a necessity for the respondent / landlord to take another premises on tenancy owing to the only fact that the area available to them is not sufficient. I must however also point out, as stated above, that the averments in the affidavit filed in support of I.A.No.6 of 2016 have gone far beyond the pleadings in RCOP.No.6 of 2011 and the fact that another premises had been taken out on tenancy by the respondent had not been sated in the Rent Control Original Petition.

14.I have carefully considered the arguments advanced.

15.The one fact which bothers me is that both the landlord and the tenants had been granted more than sufficient opportunity to adduce oral evidence and to produce documentary evidence. They have taken up that opportunity and have also tendered evidence. Witnesses have been examined. Documents have been produced. Oral testimony of the witnesses have been put to test during cross-examination. The documents have also been scrutinized. The trial process has been completed. It is now the onerous duty of the learned Rent Controller to analyze the evidence, sift



C.R.P(PD)No.1502 of 2017

the necessary parts and deliver a judgment whether the stipulations under Section 10(3)(c) of the Act have been complied and whether an eviction order has to be passed on that particular ground or whether the relief of eviction has to be denied.

16. Passing either order is the prerogative of the Rent Controller. I would leave it to the wisdom of the Rent Controller to proceed on the basis of the evidence already recorded. After recording evidence, if the Rent Controller is of the opinion that clarifications are required then, he / she could very well invoke the provisions under Section 18A of the Rent Control Act and can appoint a Commissioner.

17. In the instant case, it is the respondent / landlord, who had filed an application after the evidence had been recorded, calling upon the Court to appoint an Advocate Commissioner to inspect the premises. The necessity to inspect is to find out whether any business is being carried on in the 1st and 2nd floors of Door No.145. Whether any business is carried on Door No.145, West Car Street is an aspect to the exclusive knowledge of the



C.R.P(PD)No.1502 of 2017

respondent / landlord. That fact should have been first stated in the petition and should have been stated in evidence. If such pleading and evidence is available, and also tested during cross-examination and a counter filed, then on the basis of the rival contentions in the pleadings and on the basis of the evidence recorded, the Rent Controller is under an obligation to give a finding. Extending the evidence further by appointing an Advocate Commissioner to multiply what the witnesses had already stated may not be a proper approach. An Advocate Commissioner could have been appointed at an earlier stage, but again, the burden is on the landlord to establish that the 1st and 2nd floor premises are actually used by him for commercial purposes. That evidence can be let in only by the landlord and by none other.

18. An Advocate Commissioner is a third party to the proceedings and he cannot visit the particular premises to gather evidence, even in the nature of determining whether stocks of the landlord are available. Availability of stocks can otherwise be proved by the landlord by letting in evidence regarding the stock available on the basis of the books of accounts,



C.R.P(PD)No.1502 of 2017

to reflect the availability of stocks. Again, an Advocate Commissioner cannot be used for that purpose. I would therefore, leave this issue open and direct the Rent Controller to proceed further to analyse the evidence already on record.

19. Section 18-A of the Rent Control Act is as follows:-

18-A. Power of Controller to appoint Commissioner:- The Controller shall have powers to appoint Commissioner in any proceeding pending before him and for this purpose, he shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act V of 1908).

20. This provision actually follows Section 18 of the Act which provision relates to execution and 18A had been introduced only subsequently. The Rent Controller can also exercise such power after analyzing the evidence by coming to a conclusion that such appointment is actually required to give a just decision on the case. It cannot be the basis of an application filed of by either side because that will also give home to a lurking suspicion that a gap in the evidence is sought to be filled up by



C.R.P(PD)No.1502 of 2017

seeking appointment of an Advocate Commissioner. This may actually touch upon the judgment of the Rent Controller when it is actually delivered which should be avoided.

21.This Revision Petition is therefore allowed with the above observations, retaining the liberty of the Rent Controller to, after analysing the evidence, if it is deemed that an Advocate Commissioner is required, then to proceed further in accordance with Section 18-A of the Rent Control Act. Otherwise, the Rent Controller may proceed and deliver judgment on the basis of the evidence recorded. The order dated 30.01.2017 in I.A.No.6 of 2016 is set aside.

22.With the above observations, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2022

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Index:Yes/No

12/14



C.R.P(PD)No.1502 of 2017

Internet: Yes/No
Speaking/Non-speaking order

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To:-

The Rent Controller / Principal District Munsif Court,
Chidambaram.



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C.R.P(PD)No.1502 of 2017

C.V.KARTHIKEYAN, J.

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C.R.P(PD).No.1502 of 2017
and
CMP.No.7007 of 2017

16.03.2022