



C.R.P (MD) No. 655 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD) No. 655 of 2021

and

CMP (MD) No. 3559 of 2021

S.Gopalakrishnan

... Petitioner

Vs

Maragatham

... Respondent

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Lease and Rent Control Act, to call for the records relating to the fair and decreetal order datd 14.08.2020 made in RCA.No.15 of 2019 on the file of the Rent Control Appellate Authority / Principal Subordinate Judge, Trichy setting aside the fair and decreetal order made in IA.No.52 of 2018 in RC.OP.No.35 of 2005 on the file of the Rent Controller/ II Additional District Munsif, Tiruchirappalli by setting aside the same and allow this civil revision petition.

For Petitioner : Mr.S.Karthikeyan

Respondent : Ms.Maragatham, Party- in person

ORDER

This civil revision petition is filed as against the fair and decreetal order dated 14.08.2020 made in



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RCA.No.15 of 2019 on the file of the Rent Control Appellate Authority / Principal Subordinate Judge, Trichy.

2.The respondent / landlord filed an eviction petition as against the petitioner in RCOP.No.35 of 2005 before the learned Rent Controller / II Additional District Munsif, Tiruchirappalli. It was posted for further evidence. The respondent's husband one Mariyappan was examined as PW1 on behalf of the landlady. After his examination, the respondent landlady submitted her chief by filing proof affidavit as PW2. Therefore, the petitioner/ tenant has filed IA.No.52 of 2018 to eschew the evidence of PW2 that there is no procedure contemplated to substitute the evidence of PW1 by this respondent. The said application was dismissed by the Rent Controller and therefore, he has filed an appeal before the Rent Control Appellate Authority in RCA.No.15 of 2019. The appellate authority has accepted the case of the petitioner, set aside the fair and decreetal order passed in IA.No.52 of 2018, however, permitted the respondent to file an application under Order 18 Rule 3A of CPC to get leave and to examine herself as PW2. The petitioner has filed this petition



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challenging the permission / liberty granted by the appellate authority to the respondent.

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3.The learned Counsel for the petitioner submits that the respondent's husband was examined as PW1 and this petitioner has obtained several valid admissions from him and therefore, his cross examination would nullify the case of the respondent. Only in order to overcome the same, the respondent filed proof affidavit as PW2 and filed her chief and the Rent Controller has also received the proof affidavit and recorded the same without any procedure, which enables the same. The respondent cannot be allowed to fill-up the lacuna and to correct the mistakes committed by her husband, by substituting her evidence. Such an approach will not only hamper the sanctity of examination but would also cause serious prejudice to this petitioner, who had already obtained valid admissions from PW1. The appellate Authority has also granted liberty to the respondent to invoke the provisions of Order 18 Rule 3A of CPC and the same would not be applicable to the Rent Control proceedings.



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4.The respondent/ landlady has appeared as party-in person and submits that she is aged about 71 years and the petitioner/ tenant is dragging on the RCOP proceedings for the past 17 years. She however filed her written statement along with the order passed by the Hon'ble Supreme Court in SLP No.21480 of 2019, dated 13.09.2019.

5.This Court considered the rival submissions and perused the materials placed on record.

6.The respondent/ landlady has initiated the above RCOP proceedings before the learned Rent Controller/ II Additional District Munsif, Tiruchirappalli in the year 2005. When the case was posted for evidence, the respondent's husband was examined as PW1 and thereafter the respondent/ landlady has filed the proof affidavit, which was also accepted by the rent controller. As against the same, the tenant is adjudicating the issue and the appellate authority has also granted liberty to the landlady to get leave under Order 18 Rule 3A of CPC to examine herself as PW2. As against this liberty,



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the present civil revision petition is filed. No doubt when there is specific remedy available under Special Law, CPC will not be applicable. As per Section 120 of the Indian Evidence Act, the petitioner can be substituted for her spouse and spouse can be permitted to adduce evidence and there need be any separate application under Section 120 of the Indian Evidence Act to permit a spouse as witness. Therefore, it is for the Court to permit and appreciate the credibility of the testimony of the wife / husband as the case may be. Therefore, there is no reason to interfere with the orders challenged herein.

7. In the result, the civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed. However since the RCOP is of the year 2005, it shall be disposed of within a period of two months from the date of receipt of a copy of this order.

10.08.2022

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To
The District Munsif,
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B. PUGALENDHI , J.

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