



CRP.No.504 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP.No.504 of 2023 and
CMP.No.4124 of 2023

A.Jalaluddin

... Petitioner

Vs.

Bilal Abdullah

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 23.11.2022 passed by the learned XII Small Causes Judge, Chennai in MP.No.2 of 2022 in RLTOP.No.792 of 2021.

For Petitioner : Mr.J.T.Rajasurya

For Respondent : Mr.L.Rajasekar
for Mr.M.Kumar

ORDER

This civil revision petition has been filed to set aside the order and decree dated 23.11.2022 passed by the learned XII Small Causes Judge, Chennai in MP.No.2 of 2022 in RLTOP.No.792 of 2021.



CRP.No.504 of 2023

2. The revision petitioner is the tenant in RLTOP.No.792 of 2021 pending before XII Small Causes Judge, Chennai. The respondent herein is the landlord. He filed application for eviction on the ground that tenancy agreement has not been registered. The tenant appeared through his counsel and also filed objection stating that he is ready to register the tenancy agreement provided it was on the acceptable terms. When the matter was pending before the Rent Controller, the tenant filed MP.No.2 of 2022 praying to cross examine the landlord and the said application was dismissed by the Rent Controller holding that cross examination should not be permitted to establish the reason for non entering into a written tenancy agreement. During the examination both parties were admitted that they had not entered into a written tenancy agreement in compliance of mandatory requirement under Section 4(2) of the TNRRRLT Act. Further, in the present case either parties were not examined as witness in the present case. The parties to the proceedings cannot seek as a matter of right even for examination themselves as witness. Challenging the said finding, the tenant filed the present petition.

3. Notice served to the caveator and respondent counsel also appeared.



CRP.No.504 of 2023

4. The learned counsel for the revision petitioner argues that the tenant has every right to cross examine the landlord in order to prove his bonafide and also the reason for non entering into lease agreement as claimed by the landlord, because he fixed onerous condition with regard to enhanced rent as well as the advance. Hence, he seeks permission of the court to cross examine the landlord. But the learned Rent Controller without appreciating the legal requirement made by the petitioner erroneously dismissed the application. Hence, he prayed to set aside the said findings. To support his arguments, he relied upon the judgment of this Court rendered in CRP.PD.No.2532 of 2021 and CRP.NPD.Nos.2372 & 2373 of 2021 dated 20.04.2022, wherein it is held as follows:

8. Statements are broadly made as they should be, since the statute has opted for expressions or phrases with immense elasticity, conferring the Rent Court with enormous discretion. Here the expression '*in the interest of justice*' as a factor provided to guide the need for allowing cross examination needs to be balanced along with few other phrases. And, this balancing act may have to be worked within the parameters



CRP.No.504 of 2023

laid down by the Hon'ble Supreme Court in ***K.L. Tripathi's***

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case. The principles enunciated by the Supreme Court reads:

32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or give some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanations of the circumstances there is no requirement of cross examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly."

The following propositions can be deduced from the above decision:

- Right of cross examination is inevitable when credibility of a person who has testified or given information is in doubt or the version or the statement of the person who



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has testified is in dispute.

- Where there is no lis regarding the facts but only certain explanation of circumstances then there is no requirement of cross examination. Where there is no dispute as to facts or the weight to be attached on disputed facts but only an explanation of the acts, then also absence of opportunity of cross examination does not create any prejudice.
- On facts, if no real prejudice is caused to a party by denying the opportunity of cross examination, even then it would not vitiate the decision.
- A party who does not choose to controvert the veracity of the evidence or testimony cannot subsequently claim that there was no opportunity of cross examination.
- Whether the principles of natural justice stands complied would depend upon the facts and circumstances of each particular case.

9. This Court does not intend to lay down any straight jacket as that may interfere with the discretion of the Rent Court. However, the present attempt is to provide certain illustrative circumstances to the Rent Court to aid it in managing its discretionary power in considering a plea for cross examination on a plane of '*interest of justice*' provided by the statute. For ease of reference it is tabulated below:



CRP.No.504 of 2023

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
Sec.14 Deposit of Rent		Can be proved by documentary evidence regarding the compliance of pre-requisites for invoking Sec.14(1)	If a genuine dispute is raised regarding the mode and manner of compliance.
	14(1) If landlord refuse to receive rent.	If the dispute pertains to rate of Rent, that can be proved by the Rent Agreement registered under Sec.4	May not be necessary.
	14(2) If a Tenant has a bonafide doubt about the person to whom rent has to be paid	It may relate both to the identity of the landlord and documentary evidence properly authenticated would be sufficient.	If a bonafide dispute arises as to the authenticity of the documents produced by the Landlord, cross examination may be necessary. But the Tribunal must satisfy before hand that the objection to the authenticity of the documents is bonafide and that the tenant has made out a prima facie case for suspecting the authenticity of such documentary evidence so produced by the landlord.
		If it relates to right	Where a third party



CRP.No.504 of 2023

<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 the person who is alleged to be the landlord, then the Rent Agreement registered in terms of Sec.4 will take care.	claim arises, which lead to a genuine doubt about the right of the landlord, and if the landlord disputes it, then to that extent tenant may be permitted to cross examine the landlord. And, if the tenant produce any materials to project his case of a third party claim to rent, then to that extent landlord may be cross examined. Here again, the Tribunal must satisfy itself before hand that the materials produced before it prima facie is capable of tilting the balance.
		If the tenant takes up a defence in terms of Sec.15(4) and claims deduction for maintenance, then the procedural compliance for invoking it can be proved by the documentary	If there is any dispute raised by the landlord as to the actual expenditure incurred by the tenant, and if any of the documentary evidence provided to prove the actual



CRP.No.504 of 2023

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
		evidence.	expenditure prima facie is found suspicious, then to that limited extent, cross examination may be necessary.
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 : <i>A.M Mansoor Refai Vs Shafak Hameed Thaika</i>, [C.R.P.2811 of 2021 order dt. 20.12.2021]
Sec. 21(2)(b)	Eviction sought on ground of defaults in payment of rent.	Since rent agreement is registered, it settles the quantum of rent payable. If receipt is not given for the entire rent paid, then the tenant is required to invoke Sec.13. Both these can be	If the receipt produced by the tenant is alleged to be a fabrication, or if any correction or interlineation is seen made in the receipt issued for payment of rent, then cross examination to that



CRP.No.504 of 2023

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
		proved by documentary evidence.	limited extent may be necessary.
Sec. 21(2)(c)	Eviction sought on ground of subletting without landlord's written consent.	If the tenant denies and shows a consent letter, that may settle the issue.	If the genuineness of any written consent produced by the tenant is denied by the landlord, then cross examination may be necessary.
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 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.	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.
Sec. 21(2)(e)	Repairs, demolitions, rebuilding with additions or alteration etc.,	Similar to the circumstance in Sec.21(2)(d) above	- do -



CRP.No.504 of 2023

<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)(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. 21(2)(g)	Requirement for own use and occupation.	With the Act getting rid of the need for establishing bonfide need for seeking demolition and reconstruction as was required in the earlier Act, a mere declaration of landlord's intent is sufficient.	Hardly any space is available for cross examination. The Rent Court must address the issue with a mind of the facts before it and if it throws any peculiarity that may warrant a cross examination.
Sec. 21(2)(h)	Tenant himself issued a notice in writing to vacate and handover possession, based on which the landlord contracts to sell the tenanted property.	Can be proved by the notice of the tenant.	Cross examination may be necessary if the tenant denies the very notice and alleges fraud with prima facie material to support it.
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	Space available for cross examination is narrow. Again the Rent Court needs to appreciate the facts before it.



CRP.No.504 of 2023

<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>
		paid; And receipts ought to be issued for the rent paid; And defaulted rent may have to be calculated based on this. And adjustment of any arrears of rent in the advance amount is merely a matter of arithmetic.	
Sec. 25	Order directing payment of rent and other charges pending eviction proceedings under clauses (e) to (h) of sub-section of Section 21.	It is proceeding of the Rent Court, where there will be an enquiry. It is essentially an ancillary proceeding to eviction proceedings.	A need for cross examination may not arise since quantum of rent will be notified in the Rental Agreement itself.
Sec.26	Landlord proposing to construct additional structure/improvements and declares his readiness and willingness to put up additional construction.	Can be substantially proved by documentary evidence	Readiness and willingness of the landlord can be tested in cross examination. But the Rent Court may have to weigh it in the context of sufficiency of documentary evidence made available by the landlord.
Sec.27	Landlord seeking to sever vacant land from the rest of the premises for the	- do-	- do-



CRP.No.504 of 2023

<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>
	purposes of putting up new constructions.		

It is reiterated that what is provided hereinabove is merely illustrative and not exhaustive.

10. Turning to specifics of the cases now before this Court, there are two aspects: Firstly none of the applications seeking leave of the Rent Court to cross examine were taken on record. The Rent court may have considered this practice as expedient, but it may not be appreciated. See: ***Selvaraj Vs Koodankulam Nuclear Power Plant India Limited*** [(2021) 4 CTC 539]. The second aspect is on the merit of the orders rejecting leave to the applicant/tenant to cross examine. Facts of the cases and the grounds on which the Rent Court has dismissed each of the applications have already been tabulated in the opening paragraph, and they may be referred to.

5. He also relied upon the judgment in the case of ***Aasandas Vs. State of Rajasthan and others*** reported in ***RLW 2005 (2) Rai 1281***, wherein it is held as follows:

15. It may further be noticed that Sub-section (3) of



CRP.No.504 of 2023

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Section 21, on the one hand clearly provides that the Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but on the other hand, it clearly ordains that they shall be guided by the principle of natural justice and subject to other provisions of this Act. It inheres into it that ordinarily, statement of any witness ought not to be accepted unless he being cross-examined, if such cross-examination is demanded.

6. Based on the above proposition laid on above cases, the learned counsel for the petitioner argues that the tenant is having every right to cross examine the landlord and if not permitted, it is also amount to violation of natural justice and he is also having valid ground to prove that why he has not entered into tenancy agreement with the landlord.

7. But on seeing the facts of the case, RLTOP was filed by invoking Section 21(2)(a) of Tamilnadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017, which describes as follows:

“21(2)(a) – that the landlord and tenant have failed to agree to the rent payable under Section 8”

Before filing RLTOP, the landlord issued notice calling upon the tenant on



CRP.No.504 of 2023

02.11.2021 to execute the lease agreement with the new terms and conditions.

Though the said notice was received, but the tenant not given any reply to the landlord. The learned counsel for the revision petitioner submits that the tenant approached the landlord in person and requested and submitted his terms, but the same was not accepted. Admittedly, no reply was given on the side of the tenant. Thereafter, RLTOP was filed for eviction for non execution of the new lease agreement as per the new amended Act.

8. Furthermore, as rightly pointed out by the learned counsel for the landlord, for nearly about two years, admitted rent also not paid by the tenant which comes around Rs.6,96,000/-. As per the notice issued by the landlord, the present rent is Rs.14,500/- and the same is not denied by the tenant, but there is no proof on the side of the tenant that he paid rent till date. So the conduct of the tenant also shows that he is irregular in payment of rent and he is not entitled to proceed with the matter as he is not approached with good faith. Furthermore, the authorities relied upon by the petitioner do not apply to the facts of the case for the reason that already he committed default in payment of rent for the past two years and also not given any reply to the notice issued by the landlord for execution of the new lease agreement, in such circumstance, if tenant is permitted to cross-examine, the very object of the



CRP.No.504 of 2023

Amended Act will become diluted.

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9. Admittedly granting permission to cross examine the party is the discretion of the court as per Section 36 sub-clause (2) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, 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.

10. As discussed above, the petitioner/ tenant not only defaulter of rent but also not approached court with good faith. Hence, the authorities relied by the petitioner not apply to the facts of this case. Therefore, the petition in RLTOP No.792 of 2021 filed by invoking Section 21 (2) (a) of the said Act does not require any cross examination of the witness for the aforesaid reason and the same was rightly concluded by the trial judge, which needs no interference by this Court. Hence, this civil revision petition is dismissed.



CRP.No.504 of 2023

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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CRP.No.504 of 2023

T.V.THAMILSELVI, J.



CRP.No.504 of 2023

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To

XII Small Causes Judge,

Chennai

CRP.No.504 of 2023

08.03.2023