



C.R.P.No.445 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.03.2022

Delivered On : 06.04.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.445 of 2023

and

C.M.P.No.3702 of 2023

M/s.Top Kapi,
Rep. by its Partners Mr. S. Jayachandran & Mr. S. Murali,
Shop No.1, No.110,
Ranga Complex, Pondy Bazar,
T.Nagar, Chennai – 600 017.

.. Petitioner

Versus

S.Sarath Babu

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the judgment and decree dated 20.12.2022 passed in R.L.T.A. No.104 of 2022 by the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai [Rent Tribunal, Chennai], confirming the fair and decretal order passed in R.L.T.O.P. No.91 of 2019, dated 18.07.2022 by the learned XVI Judge, Court of Small Causes at Chennai [Rent Court, Chennai].

For Petitioner : Mr. Ashok Menon

For Respondent : Mr. S. Shaminath

ORDER



C.R.P.No.445 of 2023

This Civil Revision Petition had been filed seeking to set aside the judgment and decree dated 20.12.2022 passed in R.L.T.A. No.104 of 2022 by the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai [Rent Tribunal, Chennai], confirming the fair and decretal order passed in R.L.T.O.P. No.91 of 2019, dated 18.07.2022 by the learned XVI Judge, Court of Small Causes at Chennai [Rent Court, Chennai].

2. The Tenant in the revision petitioner. The landlord is the respondent in this Civil Revision Petition.

3. For the sake of convenience, the parties to this Civil Revision Petition can be referred to as "Tenant" and "Landlord".

4. The landlord, invoking Section 21 (2) (a) and 23 of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (in short The Act), has approached the learned Rent Controller and filed RLTOP No. 91 of 2019 for eviction and/or possession of the premises in occupation of the tenant with double the rental amount as compensation from the date on which the tenancy was terminated by the landlord.

5. As per the averments in RLTOP No. 91 of 2019, the premises in



C.R.P.No.445 of 2023

question was let out to the tenant in ground floor for a monthly rent of Rs.46,375/- and at the time when the tenant was inducted, he paid a sum of Rs.25,000/- as advance. It is further stated that the tenant is running a toy shop in the name and style of M/s. Top Kapi in the premises in question. According to the landlord, after the coming into force of The Act, he issued a notice dated 28.03.2019 calling upon the tenant to enter into a rental agreement. Since it was not responded, the landlord sent another notice on 19.04.2019 intimating that the tenancy stands terminated and called upon the tenant to handover the vacant possession of the premises. It is further stated by the landlord that he is entitled to double the rent as per Section 23 of the Act from 16.04.2019. As the tenant failed to vacate the premises, he has filed RLTOP No. 91 of 2019 as mentioned above.

6. The Original Petition was contested by the tenant by specifically stating that he has received the notice dated 28.03.2019 from the landlord and immediately he had sent a reply on 04.04.2019 by stating that Mr. Jayachandran and S. Murali were the partners of the business M/s. Top Kapi and that the notice sent to Suresh had got nothing to do with the entering into agreement with the landlord. In the reply, the tenant also requested the landlord to send a draft of the rental agreement for his perusal. In spite of the



C.R.P.No.445 of 2023

reply, the landlord had issued the notice dated 19.04.2019 terminating the tenancy from 13.04.2019 *inter alia* claiming Rs.92,750/- as rent together with Goods and Service Tax. Therefore, the tenant sent a letter to the Revenue Divisional Officer seeking his intervention to call upon the landlord and tenant to appear before him to finalise the rental agreement at the earliest. It is also stated that the time for entering into a rental agreement has been extended by the Government from time to time by amending the Act and therefore, Original Petition itself is not maintainable.

7. Before the Rent Controller, Mr. Sharath Babu, Petitioner in RLTOP No. 91 of 2019 examined himself as PW1 and Exs. P1 to P12 were marked. On behalf of the respondent, one Mr. S. Jeyachandra was examined as RW1 and Exs. R1 and R2 was marked. The learned Rent Controller, on appreciation of the oral and documentary evidence held that the parties have failed to enter into an agreement of tenancy within 575 days as required under Section 4 (2) of the Act and it will be a ground for eviction of the tenant. In other words, it was held that the failure to enter into a tenancy agreement is attributable on the part of the tenant and therefore, held that the landlord is entitled to possession of the premises in question from the tenant. As far as applicability of Section 23 of the Act, it was held by the learned Rent



C.R.P.No.445 of 2023

Controller that there was no written agreement between the parties prior to the coming into force of the Act, while so the quantum of rent payable by the tenant cannot be determined under Section 23 of the Act. Accordingly, the learned Rent Controller allowed the Original Petition on the grounds enumerated under Section 21 (2) (a) of the Act and directed the tenant to vacate and handover vacant possession of the premises in question within one month. However, the rent Controller dismissed the Original Petition in so far as it relates to the prayer to direct the tenant to pay double the rent as contemplated under Section 23 of the Act.

8. Aggrieved by the order dated 18.07.2022 passed in RLTOP No. 91 of 2019, the Tenant has filed RLTA No. 104 of 2022 before the learned Rent Controller Appellate Authority. The Appellate Authority dismissed the appeal and confirmed the order passed by the learned Rent Controller on 20.12.2022. This has prompted the tenant to prefer the present Civil Revision Petition.

9. Mr. Ashok Menon, learned counsel appearing for the revision petitioner submitted that before the enactment of the new Act, there was no written agreement between the parties. However, when the new Act came into



C.R.P.No.445 of 2023

force, the landlord issued a notice dated 28.03.2019 calling upon the tenant to enter into a rental agreement, as required under the Act. The tenant also sent a reply dated 04.04.2019. However, in the Original Petition, it was stated as though no reply at all was sent by the tenant. The reply dated 04.04.2019 was also marked as Ex.R1 along with postal acknowledgment card. Therefore, it is evident that the landlord, suppressing the reply sent under Ex.R1 has approached the Rent Control Court, but it was not appreciated by the Courts below.

10. According to the learned counsel for the petitioner, the new Act came into force on 22.02.2019 and Section 4 of the Act mandated the landlord and tenant in the State to enter into a written agreement within 90 days therefrom. However, the time stipulated thereof was subsequently extended to 210 days and further extended to 575 days. In the present case, the RLTOP No. 91 of 2019 was filed on 17.09.2019, it was numbered on 20.09.2019 and on notice, the tenant/revision petitioner entered appearance on 22.11.2019 through their counsel. When the time for compliance of Section 4 of the Act was extended and it was in force as on the date of filing RLTOP No. 91 of 2019, it cannot be said that the tenant failed to comply with the requirements under Section 4 of the Act. Even otherwise, the tenant in the reply notice dated



C.R.P.No.445 of 2023

04.04.2019, Ex.R1 has categorically expressed their inclination to enter into a written agreement of tenancy. However, in quick succession, the landlord had sent the notice dated 19.04.2019 terminating the tenancy from 13.04.2019 *inter alia* claiming Rs.92,750/- as rent together with Goods and Service Tax. Therefore, at the time when the tenant had sent the reply dated 04.04.2019, Ex.R1, the time limit provided under the Act was very much in force. Even otherwise, under Ex.R1, the tenant had requested to furnish a draft tenancy agreement to enable them to proceed further. However, by suppressing the receipt of Ex.R1, the landlord has filed the RLTOP No. 91 of 2019. Therefore, when the time limit extended under the Act was available, the RLTOP No. 91 of 2019 itself is not maintainable, which was overlooked by the Courts below. Therefore, the learned counsel for the petitioner prayed for allowing this Civil Revision Petition.

11. Per contra, Mr. Shaminath, the learned counsel for the respondent-landlord would submit that as required under the Act, the respondent issued the notice dated 28.03.2019, but as demanded in the notice, the tenant has not come forward to sign the agreement. Even though the tenant said to have sent a reply dated 04.04.2019, during the cross-examination, it was categorically admitted that the reply dated 04.04.2019 was sent only on



C.R.P.No.445 of 2023

22.04.2019 through post i.e., after 25 days delay. In the meantime, the subsequent notice dated 19.04.2019 was sent terminating the tenancy and it is valid. Therefore, the averments that the landlord had suppressed the receipt of reply under Ex.R1 cannot be countenanced. Further, the tenant was given time upto 23.05.2019 (90 days) within which time, he failed to enter into agreement. Even after the time was extended by 210 days, there was no sign of the tenant coming forward to enter into an agreement. On the other hand, in the counter filed before the Rent Controller, the tenant has stated that he has time upto 575 days as per the amendments brought under Act 3 of 2020. In any event, there was failure on the part of the tenant in complying with the mandatory provisions contained under the Act and therefore, the courts below are wholly justified in passing the orders, which are impugned in this civil Revision Petition. Accordingly, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

12. Heard the counsel for both sides and perused the materials placed on record. Before proceeding further, it must be stated that the RLTOP No. 91 of 2019 was filed by the landlord, invoking Section 21 (2) (a) as well as Section 23 of The Act. The rent Controller refused to grant any relief under Section 23 of the Act against which the landlord has not preferred any appeal.



C.R.P.No.445 of 2023

The tenant alone has filed the appeal in RLTA No. 104 of 2022 before the Appellate Court as against the findings in relation to Section 21 (2) (a) of the Act. Therefore, in this Civil Revision Petition, this Court is not dealing with the averments made in the RLTOP No. 91 of 2019 with reference to Section 23 of the Act and this Court confines this order only in respect of the correctness or otherwise of the order passed by the Courts below in relation to Section 21 (2) (a) of the Act.

13. Before dealing further, it is necessary to look into Section 21 (2) (a) of the Act which deals with repossession of the premises by the landlord.

"21. Repossession of the premises by the landlord

(1) A tenant shall not be evicted during the continuance of tenancy except in accordance with the provisions of sub-section (2)

(2) The Rent Court may, on an application made to it in the manner as may be prescribed, make an order for the recovery of possession of the premises on one or more of the following grounds, namely:-

(a) that the landlord and tenant have failed to enter into an agreement under sub-section (2) of Section 4

(b)"

14. Thus, it is evident that one of the grounds available to a landlord to repossess the tenanted premises is the failure of the tenant to come forward to enter into a written agreement within the time stipulated under the Act.

15. In the present case, admittedly, there was no written agreement



C.R.P.No.445 of 2023

entered into between the parties before the advent of the Act. Admittedly, the tenant was inducted in the petition mentioned premises 40 years ago where he is carrying on non-residential business. The landlord has also admitted that the tenant has been paying a sum of Rs.46,375/- as rent during the year 2015. At this stage, contending that the rent paid by the tenant is not befitting the locational advantage and other features the tenanted premises enjoys, the landlord has earlier filed RCOP No. 795 of 2015 for fixation of fair rent before the XIV Small Causes Court, Chennai invoking the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. By order dated 20.04.2022, RCOP No. 795 of 2015 was allowed fixing the fair rent at Rs.93,511/- per month. The appeal preferred against the order of the learned Rent Controller was dismissed confirming the order fixing the fair rent by the learned Rent Controller.

16. Thus, admittedly, the landlord has earlier filed RCOP No. 795 of 2015 for fixation of fair rent. On consideration of the earlier proceedings in RCOP No. 795 of 2015, it is evident that the parties to this case did not enter into any written agreement even during the pendency of RCOP No. 795 of 2015 and the tenancy was oral. In other words, the tenant is in occupation of the premises in question atleast for four decades and is paying the admitted



C.R.P.No.445 of 2023

rent based on an oral agreement. Further, during the pendency of RCOP No. 795 of 2015 filed under the repealed Act namely the Tamil Nadu Buildings (Lease and Rent Control) Act, in the form of appeal against the Original Order passed by the Rent Controller fixing the fair rent, the present Original Petition was filed by the landlord before the Rent Controller. Therefore, the present Original Petition filed by the landlord is not maintainable.

17. As far as non-compliance of Section 21 is concerned, admittedly, after the enactment of the Act, the landlord issued the notice dated 28.03.2019 requiring compliance of Section 4 of the Act. Though it was stated that the tenant issued reply on 04.04.2019 by stating that Mr. Jayachandran and S. Murali were the partners of the business of M/s. Top Kapi and that the notice sent to Suresh had got nothing to do with the entering into agreement with the landlord, admittedly, the reply notice was sent only on 22.04.2019. In the meantime, the landlord had issued the subsequent notice dated 19.04.2019 terminating the tenancy from 13.04.2019 *inter alia* claiming Rs.92,750/- as rent together with Goods and Service Tax. Thereafter, taking advantage of the advent of the new Act, the landlord has filed the Original Petition alleging non-compliance of demand for execution of tenancy agreement.

18. In this background, it must be stated that the Act was amended



C.R.P.No.445 of 2023

successively from time to time. Initially, under Section 21 of the Act, 90 days time was provided for the landlord and tenant to enter into an agreement from 22.02.2019, the date on which it was enacted. The time was subsequently amended giving 575 days to the parties, as per amended Act 3 of 2020. Such extension of time was given keeping in mind that a landlord or tenant, who did not enter into any written agreement, must be given sufficient time to sit, deliberate and agree upon mutual terms and conditions in relation to the tenancy. To be put it in other words, the Act came into force on 22.02.2019. After successive amendments, it provides 575 days for the parties to enter into a written agreement setting out the terms and conditions of tenancy. However, notwithstanding the extension of time under the Act, by invoking the provisions contained under Section 21, the landlord has filed the RLTOP No. 91 of 2019 on 17.09.2019, before the Rent Controller. Even as on that date, as per the amended Act 3 of 2010, time was very much available for the tenant to enter into an agreement with the landlord. While so, it cannot be construed, at any stretch of imagination, that for non-compliance of time limit set out under Section 4 of the Act, the tenant has to be evicted or the landlord is entitled for repossession. Even otherwise, the tenant, under Ex.R1, has categorically stated that they are ready and willing to enter into an agreement and required the landlord to furnish a copy of the draft agreement of tenancy. Though Ex.R1



C.R.P.No.445 of 2023

dated 22.04.2019 was sent by the tenant in response to the notice dated 28.03.2019, even before receipt of the reply dated 22.04.2019, the landlord terminated the tenancy, by a notice dated 19.04.2019, from 13.04.2019. It is needless to mention that when once the landlord terminated the tenancy, the tenant cannot, thereafter, be expected to seek the landlord to come forward to execute an agreement, rather, he will only seek to question the manner in which the tenancy was terminated. In the present case, the tenant did not question the termination, but approached the Revenue Divisional Officer concerned by sending a letter under Ex.R2, seeking indulgence. In the meantime, the landlord has swiftly preferred the Original Petition before the Rent Controller, claiming re-possession. In any event, when the time limit for executing a written agreement was very much available as on the date when the termination notice was sent by the landlord or when he filed the RLTOP No. 91 of 2019, this Court is of the view that the *gay-abandon* with which the landlord has rushed to the Rent Controller Court cannot be countenanced. Therefore, this Court holds that repossession of the tenanted premises is not warranted for non-compliance of Section 4 of the Act by the Tenant.

19. It is also seen that the tenant has filed Ex.R2 before the Rent Controller, a letter dated 09.05.2019 sent to the Revenue Divisional Officer,

South Chennai Division, who is the competent authority under Section 30 of



C.R.P.No.445 of 2023

the Act. In the letter dated 09.05.2019, the tenant sought the indulgence of the Revenue Divisional Officer to direct the landlord to appear for an enquiry, so as to finalise the rental agreement and to register it in accordance with the Act. This letter dated 09.05.2019 also indicates the readiness and willingness of the tenant to get the agreement executed. In any event, the tenant is in possession of the premises in question for a period of 40 years without any rental agreement. Now, as per the Act, he is also willing to enter into an agreement. While so, it may not be justified in directing the tenant to vacate the tenanted premises for non-compliance of Section 4 of the Act. This is more so that the extension of the time limit upto 595 days would enure to the benefit of the tenant in this case.

20. In the decision of the Hon'ble Supreme Court in **(2014) 10 SCC 713 [Yogendra Pratap Singh -vs- Savitri Pandey and another]** it was held that a complaint under Section 138 of the Negotiable Instruments Act, 1881 cannot be filed before the expiry of 15 days, after receipt of notice issued by the complainant to the proposed Accused. It was held that the Accused should be given a chance to repay the amount or arrange the amount for which time has to be granted. It was specifically held only when the accused failed to repay the cheque amount, a cause of action will arise to the complainant for



C.R.P.No.445 of 2023

filing a complaint under Section 138 of Negotiable Instruments Act and not before. The said ratio laid down in that case can be applied to the facts of the present case. In the present case, originally, time for entering into an agreement was provided upto 90 days but it was successively extended to 575 days. Therefore, if the tenant fails or refuse to enter into a written lease agreement within the time provided under the Act, a cause of action will arise to the landlord to proceed with the Original Petition under Section 21 of the Act. In the present case, there is no refusal on the part of the Tenant to execute a written agreement and he had always exhibited readiness and willingness to do so. Therefore, this Court is of the view that there is adequate force in the submissions of the learned counsel for the petitioner/tenant that the Original Petition filed by the landlord before the Rent Controller is not maintainable. In other words, as on the date when the Original Petition in RLTOP No. 91 of 2019 was filed by the landlord in this case, complaining non-compliance of Section 4 of the Act by the tenant, time was very much available to the tenant to enter into an agreement with the landlord. While so, Section 21 of the Act cannot be pressed into service in the present case to evict the tenant from the tenanted premises and consequently, the Original Petition is not maintainable.

21. In the light of the above, the orders, which are impugned in these Civil Revision Petition are set aside. **The Civil Revision Petition is allowed.**



C.R.P.No.445 of 2023

No costs. The petitioner as well as the respondent are directed to enter into a fresh lease agreement on mutually agreed terms and conditions within a period one year from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

06.04.2023

SRM/DNA

Index : Yes / No

Internet : Yes / No



C.R.P.No.445 of 2023

To

WEB COPY

1. The XXII Additional Judge,
City Civil Court at Allikulam,
[Rent Tribunal, Chennai]
Chennai.
2. The learned XVI Judge,
Court of Small Causes at Chennai [Rent Court],
Chennai.
3. The Section,
VR Section,
High Court, Madras



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C.R.P.No.445 of 2023

SATHI KUMAR SUKUMARA KURUP, J

SRM

**Order made in
C.R.P.No.445 of 2023**

06.04.2023