IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on	25/4/2023
Pronounced on	11/9/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD Nos.1012 and 1022 of 2023
a n d
C.M.P.Nos.7362 and 7390 of 2023

South India Metal Industries
rep. By its Partners
Mr.Ashok Kumar Mehta
Kapil A.Mehta
Siddharth A.Mehta
No.223 Linghi Chetty Street
Mannady, George Town
Chennai 600 001. ... Petitioner in
C.R.P.No.1012 of 2023

Naresh Steel Centre
rep. By its Proprietor
Mr.Montu N.Shah
No.223 Linghi Chetty Street
Mannady, George Town
Chennai 600 001. ... Petitioner in
C.R.P.No.1022 of 2023

Vs

1. Brijesh Kumar Yadav
2. Umesh Kumar Yadav
3. Mukul Kumar Yadav. ... Respondents in both the petitions

Common Prayer: Petitions filed under Article 227 of the Constitution of India to set aside the impugned order dated 25/1/2023 in M.P.No.2 of 2022 in R.L.T.O.P.Nos.820 and 821 of 2021 on the file of XIII Court of Small Causes at Chennai and consequently, allow the applications filed by the revision petitioners, as prayed for.

For Petitioners	...	Mr.Anish Gopi
For respondents	...	Mr.A.Vinupradha

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COMMON ORDER

Feeling aggrieved by the orders passed by the learned XIII Court of Small Causes, Chennai, on 25/1/2023 in M.P.No.2 of 2022 in R.L.T.O.P.Nos.820 and 821 of 2021, respectively, dismissing the applications filed by the petitioners, under Section 40 (2) r/w. 37 (i) (j) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017.

2. The facts in brief as could be gathered from the records are as under:-

The property bearing No.223 Linghi Chetty Street, Chennai, was originally leased out in favour of the petitioners by the predecessor in title of the respondents/land lords, as per the lease agreement, dated 1/12/2017. Subsequently, the property belonging to petitioner, original land lord to an extent of 1455 sq.ft in R.S.No.4652/1 was purchased by the respondents through a registered sale deed, dated 12/9/2019.

3. The respondents/landlords have been running the business in the name of M.R.Bearing Company at No.224 Linghi Chetty Street, Mannady, George Town, Chennai 600 001. The said tenanted property is the adjacent property to the premises in which the respondents are running their business and with an intention to expand the business, the schedule of property was purchased.

4. The petitioner in C.R.P.No.1012 of 2023 had entered into a lease agreement for a period of three years, i.e., from 1/12/2017 to 30/11/2020 with the previous owner and paid an advance amount of Rs.90,000/-. The petitioner in C.R.P.No.1022 of 2023 entered into a lease agreement, for a period of one year, i.e., from 1/10/2018 to 31/8/2019 and it was

further extended upto 31/8/2020 and paid an advance amount of Rs.60,000/-. After the lease agreement comes to an end, the petitioners did not vacate the premises, in spite of the demands made by the respondents/landlords.

5. A legal notice dated 4/8/2021 was issued by the respondents for which the petitioner in C.R.P.No.1012 of 2023 sent a reply notice, dated 26/8/2021, wherein he has admitted that he is a tenant and is paying a monthly rent of Rs.12,000/-. Whereas, the petitioner in C.R.P.No.1022 of 2023 has not sent any reply to the legal notice dated 4/8/2021, but he has been paying a monthly rent of Rs.10,000/-.

6. After the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, came into force, rental agreement has to be executed between both the respondents/land lord, under Section 4 (2) of the Act, failing which the landlords will be at liberty to seek for eviction of the tenant, as per Section 21 (2) (a) of the Act. No agreement was entered into between the petitioners/tenants and the respondents/landlords, thereby, the petitioners have filed RLTOP Nos.820 and 821 of 2021, seeking eviction and also sought for double

the monthly rent as compensation, under Section 21 (2) (a) and 21 (2) (g) and 23 of the Act.

7. The petitioners/tenants have filed M.P.Nos.2 and 2 of 2022, seeking for rejection of the petition filed by the respondents/tenants under Section 40 (2) r/w. 37 (1) (j) of the TNRRRLT Act, 2017. The respondents/landlords have filed a detailed counter and on hearing both sides, the learned trial Court has dismissed the M.Ps. Aggrieved by the same, the petitioners are before this Court.

8. Heard Mr.Anish Gopi, learned counsel for the petitioners and Mr.A.Vinu Pradha, learned counsel for the respondents.

9. On going through the affidavits filed by the petitioners/tenants in M.P.Nos.2 and 2 of 2022, the petitioners have sought for dismissing the petitions filed by the respondents in R.L.T.O.P.Nos.820 and 821 as not maintainable, on the following grounds:-

(i). The lease agreement dated 1/10/2018 is insufficiently stamped and unregistered and that since the agreement was for three years ought to have been registered under Section 17 of the Registration Act and that they cannot be admitted in evidence under Section 47 of the Registration Act, 1908.

(ii). There is no valid tenancy as on the date of commencement of the new Act, thereby, the provision under Section 4 (1) r/w. 4 (3) of the Act are not applicable.

(iii). As per the decision of this Court in C.R.P.NPD.No.3056 of 2021 between S.Muruganandam Vs. J.Joseph, petition filed by the respondents is not maintainable.

10. There is no dispute with the lease agreements dated 1/12/2017 and 1/10/2018, respectively, entered into between the petitioners and respondents and predecessor in title of the respondent in respect of schedule of property in an unregistered and insufficiently stamped document. Any lease agreement if it is more than eleven months required to be registered compulsorily under Section 17 of the Registration Act and it cannot be admitted, as per Section 49 of the Registration Act. Similarly since it is not sufficiently stamped, it cannot be also

admitted, as per the provisions of the Indian Stamp Act, 1899. Therefore, the question to be considered is "whether an application for eviction under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, can be admitted without filing the registered sale deed."

11. According to the learned counsel for the petitioners, since the landlords have filed R.L.T.O.P.Nos.820 and 821 of 2021, without enclosing the registered sale deed, the petitions should not have been admitted by the trial Court.

12. Section 4 (2) of the Act, provides that in case if there is no agreement in writing, between the land lord and tenant as on the date of coming into force of the TNRRRL Act, within a period of 575 days, the lease agreement has to be executed, failing which the landlord is at liberty to evict the tenant under Section 21 (2) (a) of the Act. Therefore, in case, if there is no written lease agreement, after commencement of the new Act, the landlords are at liberty to evict the tenants by way of filing a petition under Section 21 (2) (a) r/w. 4 (2) (j) of the Act. That means, as per Section 21 (2) (a) r/w. 4 (2) (j) of the Act will provide for filing an

application for eviction of a tenant from the tenant premises, in case, if there is no written agreement. In fact, not having the registered lease agreement is the ground for filing petition for eviction, in which case, the petitioners/tenants cannot contend in this case that since there is no written lease agreement, the respondents/land lords cannot maintain a petition for eviction of the petitioners. Therefore, on this account, the contention of the petitioners cannot be accepted.

13. It is relevant to extract sub-Section 2 (a) of Section 21, and the same reads as follows:

> "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;

14. From a reading of the above provision, it is clear that if the parties to an existing lease have not entered into an agreement as requierd under Section 2 of Sub-section 4, that by itself will constitute a ground for eviction. Clause(a) of Sub-section 2 of Section 21 does not make a difference as to who was responsible for non-execution of the lease document. The fact that the landlord is unwilling to execute a lease document does not make a difference. If a lease document is not entered within 575 days from the date of coming into force of the new Act, even if the landlord is responsible for such non-execution, the non-execution simplicitor gives a right to the landlord to seek eviction. Therefore, the claim of the tenant that he was willing to execute the lease deed, the landlords were not coming forward to execute the same, even assuming it to be true, does not make any difference.

15. The other ground on which the petitioners intend to dismiss the petitions is that there was no valid tenancy attracting the petitioners and respondents. It is true that there is no written agreement between the petitioners/tenants and the respondents/landlords.

16. As already observed, the petitioners have entered into lease agreement with predecessor in title of the existing property. In C.R.P.No.1022 of 2023, though the lease agreement was was for one year, it was extended for another year. Even after the agreement was over, the petitioner was continued in the same premises. It is the settled legal position that merely because ownership has been changed, the relationship between the land lords and tenants will not get extinguished. In the case on hand, after execution of registered sale deed in favour of the respondents/landlords by the persons who have leased out the property in favour of the petitioners, the lease was also attorned in favour of the respondents. The land lords/respondents, prior to filing of a petition for eviction have demanded the petitioners/tenants to evict the premises orally. Since the petitioners have not obliged to them, the respondents have issued a legal notice, demanding the petitioners/tenants to evict the premises. In the said notice, it is mentioned clearly that originally lease agreement was entered between the petitioners and predecessor of title of the respondents and thereby, the property was purchased by the respondents on 12/9/2019 under the registered sale deed, thereby they have become the landlords and therefore, sought for eviction. For the reasons known to the petitioner, in

C.R.P.No.1022 of 2023, no reply was given. If at all the petitioner is not recognising the respondents as landlords, he should have given a reply to that extent. Further, according to the respondents/landlords, the petitioners are paying the monthly rent at Rs.12,000/- and Rs.10,000/-, respectively to them. However, the petitioners did not dispute the same, that means, the petitioners are recognising them as the land lords. Further the petitioner in R.L.T.O.P.No.821 of 2021 has mentioned clearly that he is the tenant of the schedule premises and that he has never disputed that respondent is the owner of the suit property.

17. Therefore, when the petitioners have not disputed the transfer of property in favour of the respondent and when the petitioners themselves admit that that they are the tenant of the schedule premises, when they do not dispute that they are paying the rents to the respondents as landlords, it cannot be canvassed that no relationship was established between the petitioners and respondents as tenants and landlords.

18. Learned counsel for the petitioners submitted that as per the orders of this Court in C.R.P.NPD.No.3056 of 2021, etc., batch, in S.MURUGANANDAM Vs. JOSEPH, the respondents as land lords

cannot approach the Rent Court/Tribunal for eviction and they were expected to approach the Civil Court.

19. Learned counsel for the respondents on the other hand submit that the judgment cited by the petitioners is rather helpful to the respondents/landlords and not to the petitioners/tenants. The relevant portion of the judgment in C.R.P., is extracted hereunder:-

> "13. From the instances that had arisen in these six revisions, the different types of cases that may arise before the Rent Court can be broadly classified as follows:
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> i. Written tenancy created prior to and expired prior to the commencement of the Act (Tenant holding over under an oral tenancy);
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> ii. Oral tenancies created prior to the New Act and no written agreement entered into;
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> iii. Written tenancies created prior to the New Act and the period expired after the commencement of the Act;

iv. Written tenancies entered after the commencement of the New Act not registered but subsisting;

v. Written tenancies created after the commencement of the New Act and had presently expired (either registered or unregistered)

vi. Oral tenancies created after the New Act."

20. As seen from the above, the facts of the case will attract (iii) of para 13, wherein the written agreement was created prior to the new Act and it was expired after the commencement of the Act. So far as this item No.iii is concerned, Reference is made under the judgment at para 16, and the same runs as under:-

"16. I have enumerated the six possible contingencies that would arise in respect of either execution of a written agreement or registration thereof under the provisions of the New Act. As far as the first three contingencies are concerned, it can straight away be concluded without much difficulty that all of them will be covered by Section 4(2) and its proviso. Thus the landlord would have the right to invoke Section 21(2)(a) of the New Act, in respect of contingencies 1 & 2 and all other clauses of Section 21(2) in the respect of the third contingency to seek eviction of such tenants where the agreement expired after the commencement of the New Act. This is for the reason that the predecessor enactment recognised oral tenancies and the general law namely the Transfer of Property Act also recognised oral tenancies. Section 107 of the Transfer of Property Act, which deals with creation of a tenancy, reads as follows:

> 107. Leases how made.— A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”

21. On reading of the above cited paragraphs, viz., 10 and 16, it is clear that the contingencies that arose in the case on hand, squarely applicable to the facts of the case and thereby, the landlord is at liberty to invoke Section 4 (2) r/w. 21 (2) (a) of the new Act, to seek eviction of the tenant. The petitions filed by the petitioners would go to show that jurisdiction of Civil Court is barred in respect of certain matters and that the Tribunal and Rent Court shall have the powers vested with the Civil Court while deciding their functions under the Act. In the case on hand, as observed above, there is no dispute with regard to title of the schedule of property. The petitioners are not claiming over the schedule of property. The petitioners have admitted that they are the admitted tenants. They have also not disputed about the payment of monthly rent to the respondents. They have also admitted that they have executed lease agreement with the predecessor of title of the schedule of property. Therefore, the dispute is only non-execution of the lease agreement, as required under Section 4 (2) of the Act

22. In view of the above these **Civil Revision Petitions are dismissed.** No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

11/9/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

XIII Court of Small Causes at Chennai

Dr.D.NAGARJUN,J

mvs.

Pre-delivery common judgment in
C.R.P.PD.Nos.1012 and 1022 of 2023

11/9/2023