



C.R.P.No.1508 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1508 of 2019

L.Jayakumar

.. Petitioner

Vs.

M/s.Young Men Christian Association,
represented by its General Secretary,
YMCA Buildings, No.223, NSC Bose Road,
Chennai-600 001.

.. Respondent

Prayer:- Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 as amended by Act 23 of 1973 to allow Civil Revision set aside the Judgment and Decree dated 04.10.2018 in R.C.A.No.574 of 2015, on the file of the VIII Court of Small Causes, Chennai, confirming the order and decree passed in R.C.O.P.No.1074 of 2013 dated 29.04.2015 on the file of XI Court of Small Causes, Chennai on the grounds of ceasing to occupy.

For Petitioner : Mr.P.B.Balaji

For Sole Respondent : Mr.D.Vijay

for Mr.S.Dharmakkan



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ORDER

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This Civil Revision Petition has been filed as against the Judgment and Decree dated 04.10.2018 in R.C.A.No.574 of 2015, on the file of the VIII Court of Small Causes, Chennai, confirming the order and decree passed in R.C.O.P.No.1074 of 2013 dated 29.04.2015 on the file of XI Court of Small Causes, Chennai, thereby ordered eviction, on the ground of ceasing to occupy the petitioner premises.

2. The petitioner is the tenant and the respondent is the landlord. The respondent filed a petition for eviction on the ground of willful default and cease to occupy the petition premises by the petitioner herein. The petitioner was a tenant under the respondent in respect of the petition premises on payment of monthly rent of Rs.2,250/-. While being so, the petitioner failed to pay the rent from May 2012 to April 2013. That apart, the petitioner had sent a letter dated 15.02.2011 intimating that he had opened a branch office at Bangalore and Chennai office will function as and when he comes to Chennai. Therefore, the petitioner had ceased to occupy the petition premises. The petition premises was under lock for nearly 28 months.

3. Resisting the same, the petitioner herein filed a counter stating



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that he had never committed any default in payment of monthly rent. It cannot be construed as willful default on the part of the petitioner. He is a professional Advocate and he had started office at Bangalore. He is 84 years old and as such he used to come to Chennai once in a while. His juniors are looking after his office at Chennai. After permission from the respondent, the petitioner renovated the petition premises by spending Rs.3.18 lakhs for wooden panelling of walls, false ceiling, flooring and air conditioning the premises etc. When he moved to Bangalore, he engaged one Kalaiselvan, to complete the renovation works and for fixing appointments. The petitioner also suffered with age old ailments from 2009. He was admitted in the hospital for renal stone, urinary infection and prostate enlargement. His wife was diagnosed with Tumor in her brain, for which she had undergone operation at Apollo Hospital, Madras. Therefore, due to his medical ailments, he was not there in the petition premises for quite a period of time. Insofar as the rent is concerned, he is very regular on payment of monthly rents. Immediately, after coming to know about the default, he explained the above facts and had sent a demand draft for a sum of Rs.36,000/- dated 01.08.2013. However, the letter was returned with an endorsement



“refused”.
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4. On the side of the respondent, he had examined P.W.1 and marked Exs.P1 to 2. On the side of the petitioner, he had examined R.Ws. 1 to 3 and marked Exs.R1 to 18. On a perusal of oral and documentary evidences, the learned Rent Controller ordered eviction on the ground of cease to occupy the petition premises. Aggrieved by the same, the petitioner preferred an appeal before the learned Rent Controller appellate authority and the same was also dismissed, confirming the fair and decreetal order passed by the learned Rent Controller. Aggrieved by the same, this present Civil Revision Petition.

5. The learned counsel for the petitioner would submit that admittedly, the petitioner suffered with his age old ailments. Therefore, he was not in his office for some period of time. That apart, he had also opened a branch office at Bangalore and he had engaged one care taker to look after the office and also for getting appointments. Unfortunately, the said person's whereabouts were not known and he also failed to pay the rent. The petitioner also marked all the medical documents, discharge



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summaries to prove his ailments and his wife's ailments. His junior was examined as R.W.1. He categorically deposed that the petitioner had opened his branch office at Bangalore and he used to come to Chennai on his appointment. The petitioner is the senior member of the Bar Council and he is also practicing in Supreme Court. He had undergone 13 major surgeries including removal of his larger intestine, prostate gland, gall bladder, stones in kidney and dilation of urinary track.

6. He also relied upon the Judgment of this Court reported in **2007 5 CTC 254** in the case of ***H.J.Siwani and another Vs. U.Ugma Bhai***, in which it was held that there is a clear distinction between carrying on business and occupying the premises. So far as the second limb is concerned, it is a case where persons ceased to occupy the premises. There is nothing to indicate that they ceased to occupy the premises. But, there was a plea that they are not carrying on the business. Therefore, not actually carrying on business in a particular premises is different from ceased to occupy the premises. In the instant case, evidence is available that business was not carried on. But that cannot be termed as “ceased to



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occupy”. In the case on hand also there is no allegations that he is not carrying his profession. He closed his office for some period of time.

7. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2011 5 SCC 778** in the case of ***Dunlop India Limited Vs. A.A.Rahna and another***, in which it was held that initial burden to show that the tenant had ceased to occupy the building continuously for six months is always on the landlord. He has to adduce tangible evidence to prove the fact that as on the date of filing the petition, the tenant was not occupying the building continuously for 6 months. Once such evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 6 months. In the case on hand, the petitioner proved that there was reasonable cause for having ceased to occupy the premises.

8. Per contra, the learned counsel for the respondent would submit



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that admittedly, the petitioner is an Advocate who was practicing at High Court and thereafter he has shifted his practice Bangalore and started his new office. He had engaged one person and his whereabouts were also not known and he failed to pay any rent. The building premises was ceased to be occupied by the petitioner for a long time. The medical records produced by the petitioner would not amount to reasonable cause for ceasure of the petition premises. Therefore, both the Courts below rightly ordered eviction on the ground of ceased to occupy. He further submitted that even before filing the Rent Control Appeal, possession was taken over and the petitioner premises is in possession and custody of the respondent. Therefore, nothing survives in this present revision.

9. Heard, Mr.P.B.Balaji, learned counsel appearing for the petitioner and Mr.D.Vijay, learned counsel appearing for the respondent.

10. Admittedly, the petitioner is an Advocate. He was occupying the petition premises for his office purpose. While being so, the respondent filed an eviction petition on the ground of willful default and ceased to occupy the petition premises. However, the learned Rent



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Controller ordered eviction on the ground of ceased to occupy and dismissed the eviction petition on the ground of willful default. Admittedly, the petitioner shifted his residence to Bangalore. Thereafter, he used to come to Chennai office three to four times per month. The petition premises was handed over to one Kalaiselvan for renovation. However, whereabouts of the said Kalaiselvan was not known and he failed to pay the rent. The petition premises was under lock and key. Therefore, without any reasonable cause, the petition premises was under lock and key.

11. The word "occupy" used in Section 11(4)(v) is not synonymous with legal possession in technical sense. It means actual possession of the tenanted building or use thereof for the purpose for which it is let out. If the building is let out for residential purpose and the tenant is shown to be continuously absent from the building for six months, the Court may presume that he has ceased to occupy the building or abandoned it. If the building is let out for business or commercial purpose, complete cessation of the business/commercial activity may give rise to a presumption that the tenant has ceased to occupy the



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premises. In either case, legal possession of the building by the tenant will, by itself, be not sufficient for refusing an order of eviction unless the tenant proves that there was reasonable cause for his having ceased to occupy the building. The initial burden to show that the tenant has ceased to occupy the building continuously for 6 months is always on the landlord. He has to adduce tangible evidence to prove the fact that as on the date of filing the petition, the tenant was not occupying the building continuously for 6 months. Once such evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 6 months.

12. In this regard, the Hon'ble Supreme Court of India reported in **2011 5 SCC 778** in the case of ***Dunlop India Limited Vs. A.A.Rahna and another***, in which it was held as follows:-

“ 23. No strait- jacket formula can be evolved for determining as to what is the reasonable cause and each case is required to be decided keeping in view the nature of the lease, the purpose for which the premises are let out and the evidence of the parties. If the building, as defined in Section 2(1), is let out for industrial or commercial/business purpose and the same



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is not used for the said purpose continuously for a period of six months, the tenant cannot plead financial crunch as a ground to justify non occupation of the building unless cogent evidence is produced by him to prove that he could not carry on the industrial or commercial/business activity due to fiscal reasons which were beyond his control. If the tenant does not use the building for the purpose for which it is let out, he cannot be said to be occupying the building merely because he has put some furniture or articles or machinery under his lock and key.

24. At this stage, we may notice some precedents which throw some light on the true interpretation of the expressions "occupy" and "reasonable cause" used in Section 11(4)(v) of the 1965 Act. In Ram Dass v. Davinder (2004) 3 SCC 684, this Court interpreted Section 13(2)(v) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 in terms of which an order of eviction could be passed against the tenant if he is shown to have ceased to occupy the premises continuously for a period of 4 months without reasonable cause. Respondent Davinder was tenant in the shop belonging to appellant-Ram Dass. The appellant filed a petition for eviction of the respondent on the ground that he had ceased to occupy the shop for a continuous period of 4 months without any reasonable cause. The Rent Controller analysed the pleadings of the parties and evidence produced by them and held that the appellant has been able to prove that the respondent had ceased to occupy the premises for a continuous period of more than 4 months and there was no reasonable cause for doing so. The plea of the respondent that he had kept the shop closed intermittently due to sickness was not accepted by the Rent Controller. The Appellate Authority, on an independent evaluation of the evidence, confirmed the finding of the Rent Controller. The High Court allowed the revision filed by the respondent and set aside the orders of the Rent Controller and the Appellate Authority. This Court reversed the order of the High Court and restored the one passed by the Rent Controller."

13. In the case on hand, the petitioner himself categorically



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admitted that he was not occupying the petition premises for a long period. Though, he produced medical records and submitted that due to his sickness he could not occupy the petition premises, it would not amount to reasonable cause and as such the Courts below rightly ordered for eviction on the ground of ceased to occupy the petition premises. That apart, already vacant possession of the petition premises was taken over by the respondent and this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed.

14. Accordingly, this Civil Revision Petition is dismissed. No costs.

15. The learned counsel for the petitioner would submit that though possession was taken over in respect of the petition premises by the respondent, the articles which are kept in the petition premises are not returned to the petitioner so far.

16. The learned counsel for the respondent would submit that



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when the petition premises was taken over by the respondent, there was no article found in the petition premises. If anything is found in the inventories, they are ready and willing to return the same.

17. Considering the above submission, if any inventories is made or found in the petition premises, the respondent is directed to return the same.

04.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The VIII Court of Small Causes, Chennai.
2. The XI Court of Small Causes, Chennai.

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