



CRP No.2515 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.2515 of 2023 and
C.M.P.No.15558 of 2023**

K.Lokanatha Rao

...Petitioner

Vs.

E.N.Harinath Singh

...Respondent

Civil Revision Petition filed under Article 227 of the Consitution of India to allow the present Revision and set aside the Judgment and Decree dated 23.11.2022 passed in R.L.T.A.No.26 of 2022 by the learned VI Additional District Judge, City Civil Court, Chennai [Rent Tribunal, Chennai] confirming the fair and decreetal order passed in R.L.T.O.P. No. 454 of 2020 dated 09.12.2021 by the learned XII Judge, Court of Small Causes at Chennai [Rent Court, Chennai]

For Petitioner : Mr.Ashok Menon

For Respondent : Mr.V.Sivakumar for
M/s.P.B.Ramanujam Associates

ORDER

The present petition has been filed to set aside the Judgment and Decree dated 23.11.2022 passed in R.L.T.A. No.26 of 2022 by the learned



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VI Additional District Judge, City Civil Court, Chennai [Rent Tribunal, Chennai] confirming the fair and decreetal order passed in R.L.T.O.P. No. 454 of 2020 dated 09.12.2021 by the learned XII Judge, Court of Small Causes at Chennai [Rent Court, Chennai]

2. The brief facts of the case are as follows:-

Originally a petition in R.L.T.O.P. No.454 of 2020 has been filed by the respondent/landlord under Sections 21(2)(a), 21(2)(b), 21(2)(d) and 21 (2) (g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 [for brevity, hereinafter referred to as Act] for repossession of the tenanted premises on the ground of failure to enter into an agreement, default in payment of rent, misuse of premises and own use and occupation against the petitioner / tenant. Before the trial court, on either side, no witness was examined and no exhibit was marked. Upon hearing the arguments on both sides and upon perusing the documents, the Rent Court allowed the application under Section 21(2)(a) of the Act and the petitioner was directed to vacate the premises and handover the same to the respondent within one month from the date of order passed in the said RLTOP. Aggrieved by the same, the petitioner/tenant had filed an appeal in R.L.T.A.No.26 of 2022 before the appellate authority. After considering the agreements the appellate authority had dismissed the appeal. Challenging the same, the petitioner/tenant had filed the present



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Revision before this Court.

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3. The learned counsel for the petitioner would submit that the petitioner is the tenant originally under the father of the respondent, namely, Mr.Nara Singh in the year 1986 in respect of a small building consisting of ground and first floor on a monthly rent of Rs.3,500/-. After the death of the said Nara Singh, the petitioner is paying monthly rent to the respondent. The present monthly rent is Rs.1,00,000/- p.m. apart from electricity charges. The respondent and his family informed the petitioner that there is no need to enter into lease agreement as the same is not required under the old law and thus petitioner continued the tenancy by paying the rent to them. Even after the commencement of this Act, the respondent did not issue any notice, letter or orally, calling upon the petitioner to enter into agreement. The petitioner is always willing to enter into agreement and he has never evaded to enter into agreement.

4. The main contention of the learned counsel for the petitioner before this Court is that petitioner/tenant is running a hotel business in the petition premises and the term 'Hotel' is exempted from the definition of premises defined under Section 2(f) of the Act. Further, taking shelter of Biswas Encyclopaedic Law Dictionary, he would contend that '*Hotel*' includes a refreshment room, a boarding-house, a lodging-house, a coffee-house and a cafe.



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5. Lastly, the learned counsel for the petitioner relies on the following Judgments to substantiate his case and pleaded to set aside the orders passed by the trial court and the appellate court as well.

(i) Judgment of Hon'ble Supreme Court [Sushil Kumar Metha Vs. Gobind Ram Bohra] on 10.11.1989 in Civil Appeal No.4599 of 1989.

(ii) Judgment of Hon'ble Supreme Court [A.V.G.P. Chettiar & sons and Others vs. T.Palanisamy Gounder] reported in (2002) 5 Supreme Court cases 337.

6. Per contra, the learned counsel for the respondent would submit that the respondent is the absolute owner of the property situated at No.13/8, 4th Avenue, Ashok Nagar Main Road, Kodambakkam, Chennai 600 024 and the petitioner is a tenant in respect of the entire property on a contractual monthly rent of Rs.1,00,000/-. The purpose of tenancy is non residential in nature and according to the English Calendar month, the respondent has been paying monthly rent at the rate of Rs.25,000/- during the year 2011. Thereafter, with periodic increase, the monthly rent was enhanced to Rs.1,00,000/- during October 2019. Since there is no written agreement on the date of commencement of the Act and considering the conduct of the Petitioner in discharging his legal obligations and a clear



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failure to enter into an agreement as contemplated under Section 4(2) r/w Section 21(2)(a) of the Act, the respondent/landlord had filed RLTOP for recovery of possession on the ground of failure to enter into a tenancy agreement.

7. That apart, the learned counsel for the respondent/landlord would submit that the petitioner is running only a cafe in the petition premises and hence it is not exempted from the Act and the petitioner himself agreed to vacate the premises before the court below on or before 30.06.2023, however, failed to honour his commitment and preferred the Revision. The learned counsel for the respondent seeks in aid of the following judgments and pleaded to dismiss the present Revision.

(i) Judgment of the Hon'ble Supreme Court [Babu Ram Gupta Vs.Sudhir Bhasin & Anr.,] reported in (1980) 3 SCC 47.

(ii) Judgment of the Hon'ble Supreme Court [P.B.Nayak and Ors. Vs. Managing Director, Shilai Steel Plant and Ors.] reported in MANU/SC/0982/2021.

(iii) Judgment of this Court [M.S.Mohd., Arif Vs. M.Devadoss] reported in (2013) 4 LW 60.

8. Heard the learned counsel on either side and perused the documents placed on record.



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9. Now, the First Point which arise for consideration before this Court is, 'Whether the term 'Hotel' under Section 2(f)(ii) of the Act includes a restaurant or eating house?

The word 'Premises' is defined under Section 2(f) of the Act, which is as follows:-

'Premises' means any building or part of a building which is, or is intended to be, let separately for the purpose of residence or for commercial or for educational use, except for industrial use and includes— (i) the garden, grounds and out-houses, if any, appertaining to such building or part of the building; (ii) any fitting to such building or part of the building for the more beneficial enjoyment thereof, but does not include Hotel, lodging house, dharamshala or inn, or the like;'

But, the learned counsel for the petitioner by relying on the above said definition submitted that the petitioner / tenant is running a hotel in the petition mentioned premises and the same is exempted from the Act.

10. It is relevant to note that the word 'Hotel' is nowhere defined in the Act. However, the **Hon'ble Apex Court in the case of Associated Hotels of India Ltd. Vs. R.N. Kapoor (19.05.1959 -SC) : reported in MANU/SC/0168/1959** had interpreted the word 'Hotel' and held as follows:

"The word 'Hotel' is not defined in the Rent Control Act. It is defined in a cognate Act called the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. 57 of 47). The definition therein

says that a hotel or lodging house means a building or a part of a



building where lodging with or without board or other service is provided for a monetary consideration. I do not pause here to decide whether that definition should be adopted for the purpose of interpreting s. 2(b) of the rent Control Act. It is sufficient to state that in its ordinary connotation the word 'Hotel', means a house for entertaining strangers or travellers : a place where lodging is furnished to transient guests as well as one where both lodging and food or other amenities are furnished.”

11. Further Section 2 in the Delhi Rent Act, 1995 defines 'Hotel' as follows:-

(d) “hotel or lodging house” means a building or a part of a building where lodging, with or without board or other services, is provided for a monetary consideration;

12. Also, Section 2(14) and 2(15) of the Tamilnadu Shops and Establishments Act, 1947 defines ‘Residential Hotel’ and ‘Restaurant’ as follows:

“(14) ‘Residential Hotel’ means any premises in which business is carried on bona fide for the supply of dwelling accommodation and meals on payment of a sum of money to a traveller or any member of the public or class of the public;

(15) ‘Restaurant’ or ‘Eating House’ means any premises in which is carried on wholly or principally the business of the supply of refreshments or meals to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre.”



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13. Besides the above, Section 2(f) of the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981 Act defines 'Hotel' as follows:-

“2(f) “Hotel” means a building or part of a building where residential accommodation with or without board is by way of business provided for a monetary consideration and includes a lodging house.”

14. On a perusal of all the above definitions it could be construed that the 'Hotel' is a place where accommodation is to be provided with or without a eating house. Further, the petitioner had relied on the Biswas Encyclopaedic Law Dictionary, for the definition of 'Hotel', which is nothing but the definition of Hotel under the Protection of Civil Rights Act, 1955, which is as follows:

“Hotel” includes a refreshment room, a boarding house, a lodging house, a coffee house and a cafe”

15. At this juncture, it would be relevant to apply the principles of '*noscitur a sociis*', which stipulates that a word is to be understood in the light of the company it keeps. Under Section 2(f) of Act, the word 'Hotel' is accompanied by the words lodging house, dharamshala or inn, or the like, where every other word would mean a place where an accommodation is provided. Hence the term 'Hotel' must also be construed in the same



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manner.

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16. From the above, it is clear that a 'Restaurant' or a 'Eating house' does not fall under the ambit of the term 'Hotel' under Section 2(f)(ii) of the Act. Further, the 'Trade Licence' obtained by the petitioner from the Greater Chennai Corporation would reveal that the petitioner is running a cafe/restaurant in the petition mentioned premises. The first point is answered accordingly. That apart, it is pertinent to mention here that the petitioner has never raised the above said contention before the court below.

17. The Second Point which arise for consideration before this Court is, 'Whether the order of trial court is liable to be rejected on the ground that the petitioner / tenant was ready to execute the rental agreement?

18. As far as the contention with regard to the fact that the petitioner/tenant was ready and willing to execute the agreement is concerned, it was the respondent/ landlord who had not entered into the agreement, it has been already decided by this Court in S.Muruganandam Vs. J.Joseph, in Civil Revision Petition (NPD) Nos.3056, 3061, 3062, 3063, 3067 and 3094 of 2021 dated 04.02.2022 wherein this Court held as follows:-



"8. Let us now examine the effect of the provisions of the New Act, in the light of the above principles of statutory interpretation. The definition of tenant under Section 2(n) includes a person who continuous in possession after termination of the tenancy, whether before or after the commencement of the Act. Sub Section (3) of Section 5 restricts renewal of tenancy which has expired to a maximum period of six months. Section 21(2) (a) makes failure on the part of the tenant or the landlord to enter into a written agreement of tenancy a ground for repossession by the landlord. Section 21(2) (a) does not specify as to the reason for failure to enter into an agreement in writing.

9. It gives the right to the landlord to sue for repossession de hors the fact that the landlord may be at fault and he may be the reason for non-renewal or failure to enter into an agreement in writing. It is not open to a tenant to contend that despite his request, the landlord did not execute an agreement in writing and therefore, the landlord cannot invoke Section 21(2)(a) seeking repossession. This anomaly or the deficiency throws up several new challenges, before the Rent Courts. Various situations emerge under which the Rent Court has to consider the effect of absence of an agreement in writing.

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:

i. Written tenancy created prior to and expired prior to the commencement of the Act (Tenant holding over under an oral tenancy);

ii. Oral tenancies created prior to the New Act and no written agreement entered into;

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.

.....
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 and 2 and all other clauses of Section 21(2) in the respect of the third



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contingency to seek eviction of such tenants where the agreement expired after the commencement of the New Act.....”

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From the above it is clear that when there is no valid agreement between the landlord and tenant, the respondent / landlord has right in invoking Section 21(2)(a) of the New Act. The trial court as well as the appellate court are right in rendering the order and Judgment respectively, which cannot be found fault with. The second point is answered accordingly and the present Revision is liable to be dismissed.

19. Before parting with the case, considering the submission of the learned counsel for the petitioner that with the consent of the respondent, the petitioner has put up construction in the vacant land abutting the smaller building initially let out to him on its backside, put up compound walls, sump, overhead tank on all four sides, besides the 2nd floor, this Court is inclined to grant a period of three months to the petitioner to vacate and handover the subject property to the respondent / landlord.

In the result, the present Revision is dismissed. Consequently, connected miscellaneous petition is closed. No costs. Accordingly, the petitioner is directed to vacate and handover the key of the subject property to the respondent on or before 31.12.2023 and the respondent shall take possession on 01.01.2024.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

To

1. The VI Additional District Judge,
City Civil Court, Chennai [Rent Tribunal, Chennai]
2. The XII Judge,
Court of Small Causes at Chennai [Rent Court, Chennai]



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V.BHAVANI SUBBAROYAN J.

ssd

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