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C.R.P.No.3281 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.01.2023

PRONOUNCED ON : 11.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.3281 of 2022

and

C.M.P.No.17418 of 2022

Mrs.Mital Surendira

... Petitioner

Vs.

1.Miss Malack Safaa Fathima

2.Miss Malack Samha Fathima (Minor)

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside Judgement and Decree dated 25.10.2021 of the Rent Court / XVI Small Causes Court, Chennai in R.L.T.O.P.No.380 of 2020 as confirmed by the Judgement and Decree dated 01.09.2022 of the IV Additional City Civil Judge (Appellate Court) Chennai in R.L.T.A.No.46 of 2021.

For Petitioner

: Mr.T.R.Rajagopalan

Senior Advocate

For Mr.S.Haja Mohideen Gisthi

For Respondents

: Mr.K.M.Aasim Shehzad

For BFS Legal



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ORDER

The Civil Revision Petition has been instituted, challenging the judgment and decree dated 01.09.2022 passed in R.L.T.A.No.46 of 2021 by the Rent Appellate Court, confirming the judgement and decree dated 25.10.2021 passed by the Rent Court in R.L.T.O.P.No.380 of 2020.

2. The revision petitioner is the tenant and the respondents / landlord initiated proceedings for eviction under the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 [hereinafter referred to as 'TNRRLT/New Act']. The respondents / landlord filed R.L.T.O.P.No.380 of 2020 before the Rent Court to evict the revision petitioner under Section 21(2)(a) and 21(2)(b) of the TNRRLT Act. The Rent Court adjudicated the issues by following the summary proceedings as contemplated under the New Act and allowed the R.L.T.O.P.No.380 of 2020 and ordered for eviction. The revision petitioner preferred R.L.T.A.No.46 of 2021 and the Appellate Court confirmed the judgment and decree passed in R.L.T.O.P.No.380 of 2020. Thus, the revision petitioner is constrained to move the present civil revision petition.



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3. The application was allowed by the Rent Court under Section 4(2) and 21(2)(a) of the New Act and in respect of other grounds raised by the respondent under Section 21(2)(b) of the New Act was dismissed.

4. The learned Senior Counsel appearing on behalf of the revision petitioner mainly contended that the application under Section 21(2)(a) of the New Act is not maintainable, which was not considered by the Rent Court and the Appellate Court. It is the case of 'no evidence' and without even examining the witnesses and without marking any document in support of the case pleaded by the respondents / landlord, both the Rent Court and Appellate Court passed an order of eviction, which are in violation of the provisions of the New Act.

5. The learned Senior Counsel appearing on behalf of the revision petitioner contended that landlord had come forward to enter into a new rental agreement as per the provisions of the New Act and therefore, Section 21(2)(a) of the New Act is not at all applicable to the case of the revision petitioner. Though the ground was raised in the reply statement by the revision petitioner, the Rent Court and the Appellate Court failed to consider the ground raised by the revision petitioner.



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6. It is contended that the revision petitioner has spent huge amount for renovation and towards miscellaneous expenditures. The revision petitioner has obtained building plan and therefore, the Rent Court and the Appellate Court ought to have considered the mitigating factors presented by the revision petitioner before the Courts. It was pleaded before the Rent Court that the revision petitioner had spent about Rs.45 Lakhs and other expenses are also met out. The facts are stated in the reply notice dated 31.07.2018 and those factors were not considered by the Rent Court and the Appellate Court. The subject premises is a commercial building and let out to the revision petitioner without any basic amenities and the petitioner invested huge amount for development of the commercial premises.

7. The learned Senior Counsel appearing on behalf of the revision petitioner relied on Section 5(3) of the New Act and contended that the tenancy is determined and not mutually renewed by the parties. Admittedly the tenancy expired on 21.02.2019 and thus, the Statutory tenancy shall be considered on a monthly basis for a maximum period of six months. Thus, the landlord, in such circumstances, can approach the Court only after the expiry of six months period and could not invoke the jurisdiction of the Rent



Court under the New Act. There was no subsisting tenancy. Thus, the six months period had commenced under the TNRRRLT Act and ended only on 21.08.2019. However, the RLTOP was filed on 06.09.2019 and the said date is clearly well after the six months period as described under Section 5(3) of the New Act. Therefore, the eviction order passed by the Rent Court and confirmed by the Appellate Court are without jurisdiction. The option let out to the landlord is to approach the Civil Court.

8. The learned Senior counsel appearing on behalf of the revision petitioner further urged this Court by stating that as per Section 4(2) of the New Act, 575 days time was granted to the landlord and tenant to enter into a written agreement for tenancyship. Therefore, the respondents/landlord could not have filed a case for eviction before the Rent Court within the period of 575 days contemplated under Section 4(2) of the New Act.

9. The learned counsel appearing on behalf of the respondents strenuously objected the contentions raised on behalf of the petitioner by stating that the Rent Court and the Appellate Court considered the facts and circumstances elaborately including the provisions of the New Act and ordered for an eviction. The respondents/landlord admittedly not entered



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into a written agreement of tenancy, which was established before the Rent Court and thus, there is no infirmity in respect of the order of eviction passed by the Rent Court, which was confirmed by the Appellate Court.

10. The learned counsel for the respondents further contended that the time limit contemplated under Section 4(2) of the New Act is an enabling provision, facilitating the landlord and tenant to enter into an agreement in writing after the commencement of the New Act and the said enabling provision would not be a bar for the landlord to approach the Rent Court for eviction under the provisions of the New Act. Section 5(3) of the TNRRRLT Act has no application in respect of the facts and circumstances of the case. Admittedly, the tenancy expired on 21.02.2019 and thereafter, the TNRRRLT Act came into force. Thus, the option is given to the landlord and the tenant to enter into an agreement and register the same within a period of 575 days and if any of the party is not willing to enter into an agreement in writing or renew the same, then any one of the party is at liberty to approach the Rent Court for eviction. Thus, the application of Section 5(3) of the TNRRRLT Act is misconstrued by the petitioner and the Rent Court elaborately considered the said ground also.



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11. The learned counsel for the respondents drew the attention of this Court with reference to the findings of the Rent Court. The findings of the Rent Court would reveal that in spite of sufficient opportunities given to the revision petitioner/tenant, she had not come forward to argue the case. However, she filed a written argument. Further, it is found that despite sufficient opportunities have given, the revision petitioner/tenant has not appeared before the Rent Court and failed to subjected herself for oral examination. It is an admitted fact that there is no written tenancy agreement in force, after the commencement of the TNRRRLT Act on 22.02.2019. As per the documents filed, the tenancy agreement was entered into between the landlord and tenant on 22.02.2016, which is admitted by both the parties. The tenancy was for a period of three years and it is extendable subject to the consent of both the parties, which was not done. Therefore, the agreed tenancy period of three years expired on 21.02.2019, before implementation of TNRRRLT Act.

12. Thus, the Rent Court found that there is no written tenancy agreement between the landlord and the tenant after the commencement of the TNRRRLT Act and accordingly, ordered for eviction under Section 21 (2) (a) read with Section 4 (2) of the TNRRRLT Act.



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13. The findings of the Rent Court further reveals that parties had admitted the relationship of landlord and the tenant, had made a clear admission that in between them, there is no valid written tenancy agreement as per Section 4 (2) of TNRRRLT Act.

14. Considering the facts and circumstances, the Rent Court ordered for an eviction, which was confirmed by the Appellate Court and therefore, the present revision petition is to be rejected.

15. The scope of powers of the High Court under Article 227 of the Constitution of India is limited are enumerated as under.

16. In paragraph 14 at page 217 of **Waryam Singh and another Vs. Amarnath and another** reported in [AIR 1954 SC 215], wherein, the Supreme Court neatly formulated the ambit of High Court's power under Article 227 in the following words:

“The power of superintendence conferred by Article 227 is, as pointed out by Harries C.J., in ‘Dalmia Jain Airways Ltd. vs. Sukumar



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Mukherjee’, AIR 1951 Calcutta 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

17. The Chief Justice Harries in the Full Bench decision in **Dalmia case (cited supra)** stated that the principles on which the High Court can exercise its power under Article 227 very succinctly which would better, quote : “Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that the right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in **Manmathanath Vs. Emperor [AIR 1933 Calcutta 132]**. In that case a Bench over which Sir George Rankin C. J. presided held that Section 107, Government of India Act (which roughly 2 corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power, which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is



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a power to keep Subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.”

18. The power of the High Court under Article 227 to be plenary and unfettered, but at the same time, the High Court should be cautious in its exercise. No doubt, when there is gross abuse of jurisdiction, the High Court can interfere under Article 227, whether there is gross abuse or not, is the factual aspect, which is to be considered in each case. Every case cannot be brought under the principles of gross abuse of jurisdiction.

19. The ground mainly raised by the revision petitioner is that the Rent Court has no jurisdiction to entertain an application for eviction under Section 21(1)(a) of the New Act.

20. Let us consider the scope of Section 4(2) of the TNRRRLT Act. Section 4(2) of the said Act reads as under:

“4 (1).....

(2) *Where, in relation to a tenancy created before the commencement of this Act, no agreement in writing was*



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entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy within a period of five hundred and seventy five days from the date of commencement of this Act:

Provided that where the landlord or tenant, fails to enter into an agreement under this sub-section, the landlord or tenant shall have the right to apply for termination of the tenancy under clause (a) of sub-section (2) of Section 21.”

21. With reference to Section 4(2) of the TNRRRLT Act, the tenancy in the present case admittedly expired on 21.02.2019. The New Act came into force thereafter. Thus, the landlord and tenant shall enter into an agreement in writing with regard to the tenancy within a period of 575 days from the date of commencement of the Act.

22. In the present case, there is no written agreement between the landlord and the tenant admittedly and thus, the landlord has chosen to file an application under Section 21(2)(a) of the New Act, seeking eviction. The proviso clause stipulates that where the landlord or tenant fails to enter into an agreement under Section 4(2), then any one of the party shall have the right to apply for termination of tenancy.



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23. Section 4(2) of the New Act unambiguously stipulates that in the absence of any written agreement of tenancy between the landlord and tenant within a period of 575 days from the date of commencement of the Act, then either the landlord or the tenant shall file an application for termination of the tenancy under Section 21(2)(a) of the New Act.

24. Question arises, whether the landlord or tenant has to wait for the expiry of the period of 575 days for filing an application for termination of tenancy. In this context, Section 4(2) of the New Act is an enabling provision, facilitating the landlord and tenant to enter into a written agreement for tenancy, which is to be registered in order to protect their rights and liabilities. Such an enabling provision is an option provided to the landlord and tenant. Therefore, such an option must be jointly exercised by the landlord and the tenant for the purpose of entering into a written agreement of tenancy.

25. If the landlord or the tenant has chosen not to enter into a written agreement, they are at liberty to terminate the tenancy and in the event of not vacating the premises by the tenant, then the landlord gets a right to file an



application for termination of tenancy under Section 21(2)(a) of the TNRRRLT Act. Thus, the right to take a decision is conferred on the tenant and the landlord, who in turn, are at liberty to enter into a written agreement. However, no party has got any enforceable right to compel the other party to enter into a written agreement.

26. Let us now consider the rights of the tenants and the landlord. Right of a tenant is confined with reference to the terms and conditions agreed between the landlord and the tenant. It is a Statutory right conferred under the provisions of the New Act. Such right of a tenant is protected from any kind of exploitation from the hands of the landlord. However, the tenant cannot have any enforceable right to compel the landlord to enter into an agreement of tenancy in writing. Every party has got a right to take a decision independently and no one has got a right to interfere with the right to be exercised by the other person.

27. Regarding the right of the landlord, Property Right is a Constitutional right under Article 300-A of the Constitution of India. The Right of Property cannot be taken away, except with the authority of law. Thus, the landlord has got a Constitutional right to take a decision



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independently and such right cannot be infringed by any other person. Thus, the tenant cannot compel the landlord to enter into a written agreement of tenancy. If the landlord agreed to enter into an agreement, then alone, the offer if any made by the tenant is to be taken into consideration. Mere offer made by the tenant would not confer any right on him to claim that he was ready and willing to enter into a written agreement and the landlord refused to enter into an agreement and therefore, he has a right to continue in the premises. Such a right if claimed by the tenant is unknown to law. If this right is permitted, then it will result in infringement of the Constitutional right of property to the landlord. Thus, the claim of the tenant that he was ready and willing to enter into a tenancy agreement cannot have any force in the eye of law and all such pleadings by the tenant is to be rejected on the threshold.

28. Thus, with reference to Section 4(2) of the New Act, after commencement of the Act, the landlord and the tenant shall enter into an agreement in writing with regard to the tenancy within a period of 575 days and even within the period of 575 days, if the parties have not chosen to enter into a written agreement, any one of the party is at liberty to approach the Rent Court for termination of tenancy under Clause (a) of Sub-Section



(2) of Section 21 of the TNRRRLT Act.

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29. Section 5 of the New Act deals with Period of Tenancy. Section 5(1) of the said Act contemplates *“All tenancies entered into after the commencement of this Act shall be for a period as agreed between the landlord and the tenant and as specified in the tenancy agreement.”*

30. Section 5 (3) of the New Act would have an application only if an agreement in writing was entered into between the landlord and the tenant under Section 4 (2) of the Act, after commencement of the New Act. Section 5(3) of the New Act cannot have any application with reference to the tenancy agreements, which were expired prior to the commencement of the New Act. Thus, Section 5(3) of the New Act can be applied only when the tenancy agreement was entered into between the landlord and tenant in writing and registered under Section 4(2) of the New Act.

31. In the present case, the tenancy expired prior to the tenancy of the Act on 21.02.2019 and therefore, Section 5(3) of the New Act have no application at all. Therefore, if the tenancy was renewed under Section 4(2) of the New Act, then alone, the question of applying Section 5(3) of the Act



would arise. Thus, in the present case, the period of six months as contemplated cannot have any application, since there is no written tenancy agreement between the petitioner and the respondent under Section 4(2) of the New Act, more specifically, after the commencement of the New Act.

32. In the present case, admittedly, there is no written agreement between the petitioner and the respondent under the New Act and the Rent Court in its finding, categorically stated that the revision petitioner/tenant has admitted the fact that there is no written agreement of tenancy between the petitioner and the respondent. Thus, the petitioner is not entitled for any protection under Section 4(2) or under Section 5(3) of the TNRRRLT Act. Thus, the petitioner has not made out any acceptable ground for the purpose of interfering with the judgment and decree passed by the Rent Court, which was confirmed by the Appellate Court.

33. Accordingly, the Judgement and Decree passed in R.L.T.O.P.No.380 of 2020 dated 25.10.2021 on the file of the Rent Court / XVI Small Causes Court, Chennai, which was confirmed by the Judgement and Decree dated 01.09.2022 of the IV Additional City Civil Judge (Appellate Court), Chennai in R.L.T.A.No.46 of 2021 are confirmed and



consequently, the Civil Revision Petition stands dismissed. The revision petitioner is directed to vacate the premises and hand over the vacant possession to the respondent/landlord within a period of one month from today.

However, there shall be no orders as to costs. Connected miscellaneous petition is closed.

11.01.2023

Jeni/Kak
Index : Yes
Neutral Citation : Yes
Speaking order

To

- 1.The Judge,
XVI Small Causes Court,
Chennai.
- 2.The Judge,
IV Additional City Civil Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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