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C.R.P. No.326 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

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

**Civil Revision Petition No.326 of 2023 &
C.M.P.No.2740 of 2023**

Banusekar

...Petitioner

Vs.

Mahendar A.Chellani

...Respondent

Civil Revision Petition filed under Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act, 1960 to set aside the order and decree passed in R.C.A.No.1 of 2017 dated 26.08.2022 on the file of the Rent Controller Appellate Authority / In the Court of Subordinate Judge, Madurantakam confirming the order and decreetal order dated 29.09.2016 in R.C.O.P.No.2 of 2014 on the file of Rent Controller / District Munsif, Madurantakam.

For Petitioner : Ms.K.Anu Sarala for
Mr.J.Abdul Hadi

For Respondent : Mr.D.Nagesh Babu

ORDER

The present petition has been filed to set aside the order and decree passed in R.C.A.No.1 of 2017 dated 26.08.2022 on the file of the Rent Controller Appellate Authority / In the Court of Subordinate Judge, Madurantakam confirming the order and decreetal order dated 29.09.2016



C.R.P. No.326 of 2023

in R.C.O.P.No.2 of 2014 on the file of Rent Controller / District Munsif,
Madurantakam.

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

The respondent / landlord filed R.C.O.P. No.2 of 2014 as against the petitioner / tenant seeking a direction to vacate and handover the possession of the scheduled premises and the court below upon hearing the submissions on either side and perusing the documents, allowed the petition on 29.09.2016, thereby three months time was granted. Aggrieved over the same, the petitioner has preferred R.C.A.No.1 of 2017 to set aside the order passed by the court below. The appellate authority upon considering the pleadings, averments and the documents placed on record had dismissed the appeal by judgment dated 26.08.2022. As against the same, the petitioner has come up with this Court by way of present Revision.

3. The learned counsel for the petitioner would submit that the appellate authority has erred by coming to a wrong conclusion that the petitioner committed willful default in paying the monthly rent to the respondent herein and further came to a wrong conclusion that the suit building is bonafidely required to respondent herein for immediate demolition and construction of new building for running automobile shop.



C.R.P. No.326 of 2023

Also there is no bonafideness in the claim of the respondent and grave error has been committed, thereby pleaded to set aside the said order passed by the court below.

4. Per contra, it is the contention of the learned counsel for the respondent / landlord that the respondent had already obtained permission to demolish the building from Madurantakam Municipality under Na.Ka.No.806/2011/F/1 dated 01.08.2011. Further, the respondent is a dealer of Hero Honda at Kancheepuram and he intends to extend his dealership to Madurantakam also. Since the petitioner has completed the construction of new shop premises with three floors in the last year itself and now started functioning in the new shop, viz., Sri Banu Stores from the schedule premises to own new building (which is situated adjacent to the western side of the schedule premises), the respondent sought to vacate the premises in question. Both the courts have rightly ordered eviction, which does not require any interference, thereby pleaded to dismiss the petition.

5. Heard the learned counsels on either side and perused the documents placed on record.



C.R.P. No.326 of 2023

6. On an earlier occasion, this Court, without going into the merits of the matter, on being satisfied with the submission and the undertaking given by the learned counsel appearing for the petitioner stating that the petitioner would vacate the subject mentioned premises, had disposed of the present Revision on 01.08.2023 and directed the petitioner vacate and hand over the subject mentioned property in question to the respondent on or before 01.09.2023. On 05.09.2023, a memo has been filed by the learned counsel appearing for the respondent stating that instead of vacating the premises the petitioner had misrepresented in lower court that he had no knowledge about the order dated 01.08.2023 and pleaded to take suo moto contempt. This Court, recalled its order dated 01.08.2023 and directed the Registry to post the matter on 07.09.2023 for hearing the case afresh. On 07.09.2023, the case was adjourned to 19.09.2023. Again on 19.09.2023, there was no representation for the petitioner, therefore, this Court directed the Registry to list the matter under the caption 'for dismissal' on 26.09.2023 and on 26.09.2023, the learned counsels on either side were present and arguments on either side were heard in full.

7. It is not in dispute that the petitioner is still occupying the old premises only to harass the respondent / owner by not allowing him to demolish the old structure on the guise that the demolition would affect his



C.R.P. No.326 of 2023

main wall of the building. This Court, earlier, directed the respondent not to damage the new wall to safeguard the interest of the petitioner.

8. On going through the order passed by the court below it is seen that the court below upon considering Ex.P.10, has come to the conclusion that the building is in dilapidated condition and the respondent had obtained permission for demolition of the building, which is evident through Ex.P.5, letter from Madurantakam Municipality dated 01.08.2011. Further, the petitioner has also constructed new building and running the shop in the name and style of 'Banu Sekar Stores', as per Ex.P.11 and the petitioner has also committed wilful default in payment of rent to the respondent, therefore, considering all the said facts, the court below has rightly ordered eviction. As far as the right and title of the petitioner over the mother wall is concerned, the court below stated that the same shall be decided in the original suit for declaration.

9. That apart, the appellate court while passing orders in R.C.A.No.1 of 2017 has considered all the documents, viz., sale deed, dated 27.01.2010, partition deed, photographs of the building and rightly held that the building is about 50 years old and is in dilapidated condition, therefore, demolition and reconstruction is necessary. Moreover, the appellate court has taken note of the order passed by the Hon'ble Supreme Court in Sait



C.R.P. No.326 of 2023

Nagjee Purushotham & Co., Ltd., Vs. Vimalabai Prabhulal and others
reported in 2005(8) SCC 252 and the order passed in CRP (NPD) (MD)
No.2427 of 2018, etc., and stated that the respondent / landlord
established willful default committed by the petitioner / tenant in paying
rents and the respondent / landlord established bonafide requirement for
the purpose of demolition and reconstruction, which does not require any
interference in the hands of this Court.

In view of the above, this Court does not find any reason to interfere
with the well considered judgment passed by the appellate court and the
order passed by the court below and the present Revision is hereby
dismissed. The Revision Petitioner is directed to vacate the subject
premises on or before 31.12.2023. Consequently, connected
miscellaneous petition is closed. No costs.

09.11.2023

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

To

1. The Subordinate Judge,
Madurantakam
2. The Rent Controller / District Munsif,
Madurantakam.



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C.R.P. No.326 of 2023

V.BHAVANI SUBBAROYAN J.

ssd

Civil Revision Petition No.326 of 2023

09.11.2023