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CRP.No.4368 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRA

Reserved On : 13.02.2023

Delivered On : 24.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.4368 of 2022

and

C.M.P.No.23030 of 2022

M.Durairaj ... Respondent/Respondent/Petitioner

Vs.

G.Asiya Begum ... Petitioner/Appellant/Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the Order of eviction passed by the learned VIII Judge, Court of Small Causes, Chennai (Appellate Authority) and made in RCA.No.565 of 2017 dated 30.09.2022 reversing the Order of dismissal dated 22.02.2017 and made in RCOP.No.304 of 2013 on the file of the learned XV Judge, Court of Small Causes, Chennai (Rent Controller).

For Petitioner : Mr.A.Chidambaram

For Respondent : Mr.M.Arunkumar
For M/s.Sampathkumaar and Associates



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ORDER

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This Petition has been filed against the Order of eviction passed by the learned VIII Judge, Court of Small Causes, Chennai (Appellate Authority) and made in RCA.No.565 of 2017 dated 30.09.2022 reversing the Order of dismissal dated 22.02.2017 and made in RCOP.No.304 of 2013 on the file of the learned XV Judge, Court of Small Causes, Chennai (Rent Controller).

2. The learned counsel for the Petitioner submitted that the Petitioner in this Revision Petition is the Tenant/Respondent before the Court of the learned Rent Controller, learned XV Judge, Court of small causes, Chennai in RCOP.No.304/2013. The Respondent in this Revision Petition was the Landlady/Petitioner in RCOP.No.304/2013.

2.1. It is the contention of the learned Counsel for the Petitioner that the Landlady had filed RCOP.No.304/2013 for eviction of the Tenant from the leased out premises on the ground of (i) willful default and (ii) for owner's occupation. The Respondent in RCOP/Tenant had filed counter and disputed both the grounds. After due enquiry, on the basis of the



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appreciation of evidence, the learned Rent Controller/XV Judge, Court of Small Causes, Chennai had dismissed the RCOP.No.304/2013 as per the Order dated 22.02.2017. Aggrieved by the same, the Landlady filed RCA.No.565/2017. The learned 8th Judge, Court of Small Causes, Chennai/Rent Control Appellate Authority had partly allowed the Appeal thereby dismissing the RCA regarding willful default and confirming the Order of the learned XV Judge, Court of Small Causes, Chennai and reversing the finding of the learned XV Judge, Court of Small Causes regarding the owner's occupation as per Order in RCA.No.565/2017 dated 30.09.2022. In the Order passed by the learned Rent Control Appellate Authority, the eviction is ordered under Section 10(3) (a) (i) of the Act and time for eviction granted is two months. Aggrieved by the same, the Tenant/Respondent in RCOP.No.304/2013 and RCA.No.565/2017 had preferred this Civil Revision Petition under Section 25 of the Tamil Nadu Buildings(Lease and Rent) Control Act.

2.2. It is the submission of the learned Counsel for the Revision Petitioner/Tenant that the Landlady is a resident of Trichy. She had sought the leased out premises for her own house on the ground for owner's



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occupation stating that she had been undergoing treatment for Thyroid at Chennai and she has to travel frequently from Trichy to Chennai and reside outside for their stay. Also, her son is employed in Chennai and for his employment opportunities, he had been staying in rental premises and attending his job. If the Tenant vacates the premises, they can use it for their own occupation. The learned Counsel for the Revision Petitioner invited the attention of this Court to the well-reasoned Order of the Rent Controller in RCOP.No.304/2013 in the typed set filed along with the Revision Petitioner stating that the son of the Landlady as P.W-1, in his cross-examination had admitted that the brother of the P.W-1 (younger son of the Landlady) was in Chennai between 2010 and 2011. Subsequently, he had returned to Trichy after the contract employment. In the year 2014, he was married. In the cross-examination, he had admitted neither himself nor his younger brother is employed in Chennai. He had stated that it is false to claim that his brother was residing in Chennai. The mother of P.W-1/Landlady was treated at Lifeline Hospital at Perungudi, Chennai and she had undergone surgery. After surgery, she used to come for review 3 or 4 times and she has to come over. She had come to Hospital at Chennai three months prior to examination of P.W-1. Relying on those aspects in the



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cross-examination, the learned Rent Controller had dismissed the RCOP seeking eviction of the Tenant on the ground of owner's occupation. Also, in the Appeal, the learned Rent Control Appellate Authority instead of relying on the evidence that is available before the Court had given a finding which reads thus:

“To establish her claim the Landlady has filed her medical records to show that she had been taking treatment at Lifeline Multi Speciality Hospital, Chennai as Ex.P-6. Further, the copy of the appointment letter issued by Contech Informatics Private Limited, Chennai to her son G.Mohammed Mubarak has been marked as Ex.P-4. She has also produced Ex.P-5 series namely the receipt issued by the mansion in which her son was accommodated during his time of employment in Chennai. The said documents are sufficient to show that the requirement of the Landlady is bonafide. Further, the legal position in this regard has long been settled by the Hon'ble High Court, Madras in the case of M.Mathew Philips (deceased) and others Vs. S.Rm.S.Narayana Chettiar reported in (2006) 4 MLJ 1385 wherein it is held as follows:

“Tamil Nadu Buildings(Lease and Rent Control) Act, 1960, Section 10(3)(a)(i) – Even if the landlord requires the premises for own use only intermittently, the landlord cannot be denied the relief sought for – Tenant cannot dictate how often or how well the premises should be used by the landlord.”

The learned Rent Controller has considered the oral evidence of P.W-1 wherein he has deposed that at present the Landlady and her family members are residing at Trichy, that the sons of the Landlady are married and at present employed at Trichy and that the Landlady has been taking treatment at Trichy also and concluded that the requirement of the Landlady is not bonafide. Such a conclusion does not stand to reasoning since the Tenant has not alleged malafides against the Landlady except stating that the requirement of the Landlady is not



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bonafide. When it is shown by documentary evidence namely Ex.R-4 to Ex.R-6 that the Landlady's requirement is bonafide, in view of the citation referred supra, the learned Rent Controller ought to have held the issue in favour of the Landlady. It is equally settled law that the Tenant cannot dictate terms to the Landlady if she wants to occupy her property. Therefore, the finding of the learned Rent Controller in denying relief to the Landlady under Section 10(3)(a)(i) of the Act requires interference of this Authority. Accordingly, the finding rendered by the learned Rent Controller is reversed and eviction is ordered under Section 10(3) (a) (i) of the Act.”

2.3. The findings of the learned Rent Control Appellate Authority is not as per law. Therefore, the same is to be set aside. When the evidence before the Court is otherwise the finding of the learned Rent Control Appellate Authority that are not considered as evidence and the same is perverse. Therefore, the same is to be set aside and the Order of the learned Rent Controller in RCOP is to be upheld.

3. The learned Counsel for the Respondent/Landlady objected to the line of the arguments stating that the Husband of the Landlady sufferings from heart ailment. At the time, the Landlady had sought the Tenant to vacate the premises to hand over possession, to enable her and her Husband to undergo treatment at Chennai. Due to the delay caused by the Tenant/Revision Petitioner herein, Husband of the Landlady could not be



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shifted to Chennai and undergone treatment at Chennai. The Husband of the Landlady died. Due to her ailment at Trichy, only after his death, the Landlady was able to issue notice to the Tenant seeking eviction of the Tenant through the Orders of the learned Rent Controller. Prior to proceedings with the learned Rent Controller, the Landlady had caused notice to the Tenant/Revision Petitioner herein and Respondent before the learned Rent Controller as well as learned Rent Control Appellate Authority that he had committed willful default and there is huge arrears of rent along with that she needed the premises for her own use and occupation. Her sons had studied B.E degree and seeking employment. Therefore, the son can stay along with his mother at Chennai and if he is getting job. Already he was in Chennai in a rented premises. The Tenant vehemently objected by sending reply notice and still he did not vacate. Therefore, the Landlady was forced to file RCOP.No.304/2013. The appointment letter of her son was marked in the evidence under Ex.P-4. Ex.P-6 is the medical reports of the Landlady. Further, in the Rent Control Appeal, the learned Rent Control Appellate Authority had observed that the Tenant cannot dictate terms to the landlord regarding the bona-fide of the landlord for his/her own occupation. The learned Rent Control Appellate Authority relied on the



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ruling of the very same High Court to reverse the finding of the learned Rent Controller regarding the dismissal of the RCOP and reverse the finding thereby setting aside the order dismissing the RCOP seeking eviction of the Tenant for owner's use and occupation.

3.1. In support of the contention of the learned Counsel for the Respondent relied on the judgment of the learned Rent Control Appellate Authority in RCA.No.565/2017. Therefore, the learned Counsel for the Respondent sought dismissal of the Civil Revision Petition as it is not maintainable.

3.2. The learned Counsel for the Respondent also invited the attention of this Court to the adjudication of the Civil Revision Petition wherein it came up for hearing before the learned Single Judge of this Court on 02.02.2023 which reads thus:

“Learned Counsel for the Petitioner argued the matter for getting instructions as to whether the Petitioner is willing to vacate the premises or not?

Post the matter for passing Orders on 09.02.2023.”

3.3. Today, when the case came up for hearing, the learned Counsel



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for the Revision Petitioner was about to proceed with the arguments. The learned Counsel for the Respondent objected stating that the learned single Judge of this Court had sought reply from the learned Counsel for the Revision Petitioner that when he is to hand over possession to the Landlady? for which the learned Counsel for the Revision Petitioner sought time to get instructions from his clients. Only on that ground, the case was adjourned to 09.02.2023.

3.4.Now, when the case is posted in another Bench, the learned Counsel for the revision Petitioner suppressing those facts and seeking to argue the case is not acceptable.

4. Based on the submission of the learned counsel for the Respondent/Landlady, this Court had raised the query with regard to the same query as put up by the learned Single Judge of this Court on 02.02.2023. The learned Counsel for the Revision Petitioner submitted that he was unable to contact the Revision Petitioner. Also, he would state that they are senior citizen and ailing. Call for records, from the trial Court in one or two days.



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5.Heard both sides and perused the records.

6.On consideration of the rival submissions and on perusal of the original records received from the Court of Small Causes, Chennai through the Registry, the contention of the learned Counsel for the Respondent/Landlady is found acceptable that the records of the medical report were marked as Ex.P-6, Medical report of Landlady issued from Lifeline Hospital, Perungudi, Chennai, wherein it is stated as Hyper Thyroidism. In due course of the arguments, the learned Counsel for the Revision Petitioner submitted that thyroid is not a serious ailments and life threatening ailments. Regarding the treatment, this is only made with an intention to evict the Tenant and the claim is not bona fide. The said submission of the learned Counsel for the revision Petitioner/Respondent before the learned Rent Controller as well as learned Rent Control Appellate Authority is unreasonable and unacceptable. Particularly, in the light of the observation made by the learned Rent Control Appellate Authority stating that the Tenant cannot dictate terms to the Landlady is found acceptable. Whether the thyroid is a life threatening ailment or not?



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That cannot be a ground to reject the contention of the Landlady who is undergoing treatment for thyroid (Hyper Thyroidism as per Ex.P-6). It is for the Doctors to decide. It is understood from news report regarding health issues that thyroid is a life threatening dangerous ailment if not treated properly, thyroid problem results in health issues particularly to the person becoming, obese and resulting in heart ailments, Kidney failure, Liver complications etc. Therefore, the submissions of the learned Counsel for the Revision Petitioner that the thyroid is not a serious health issue, cannot at all be accepted. This contention of the learned Counsel for the Revision Petitioner itself attracts the observation of the learned Rent Control Appellate Authority that the Tenant cannot dictate terms to the Landlady is squarely applicable to the facts of this case. In the above stated circumstances, the submission of the learned Counsel for the Revision Petitioner that without evidence, the learned Rent Control Appellate Authority had on the basis of rulings given a finding thereby setting aside the Order of the learned Rent Controller dismissing the RCOP.No.304/2013 on the ground of owner's occupation and the same was perverse, cannot at all be accepted. There is specific evidence through the P.W-1 who is none other than the elder son of the Landlady Shahul Hameed. His



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mother/Landlady had undergone treatment at Lifeline Hospital, Perungudi, Chennai and she had undergone surgery and she had visited Chennai for review 3 or 4 times. Lastly, she visited Chennai three months prior to P.W-1 deposing evidence. Instead the learned Rent Controller had stated in the Order discussing the evidence that there was exchange of legal notice between Landlady and Tenant. The Landlady had received the notice sent on behalf of the Respondent/Tenant only at her Trichy address. Her son who was in Chennai had returned to Trichy. It is to be noted that the learned Rent Control Original Petition was filed in the year 2013. Only after the death of her Husband, she was able to issue notice. Her sons had studied Engineering and the younger son Mohammed Mubarak was already in Chennai. The evidence was recorded on 23.02.2016. Therefore, by the time, the Rent Control Original Petition came up for enquiry, the younger son of the Landlady (Mohammed Mubarak) who was in Chennai returned to Trichy. It is not the case of the Landlady that she is permanently residing in Trichy. If the Landlady is at Chennai, she can attend her treatment in Chennai without the trouble of travelling from Trichy to Chennai. One of her son will stay with their mother in their own residential premises for her moral and financial support. The sons who had studied B.E can take up a



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job at Chennai. Under those circumstances, the finding of the learned Rent Control Appellate Authority reversing the finding of the learned Rent Controller dismissing the RCOP is found justified. Under those circumstances, placing reliance on the reported ruling of the Hon'ble High Court that the Tenant cannot dictate terms to the Landlady is found justified. There is *prima facie* evidence that the Landlady was treated at Lifeline Hospital in Chennai. That cannot be rejected as not having a bona fide claim. “Bona fide reason *prima facie* made out” under Ex.P-4-appointment letter of her son (Mohammed Mubarak) dated 18.10.2010 from Contech Informatics Pvt., Limited, Admin Office, No.3/36, First Floor, Velacherry Main Road, Medavakkam, Chennai – 600 100 and Ex.P-6-Medical reports. That will be sufficient to the learned Rent Control Appellate Authority who had arrived at the finding that the bona fide claim is made out. Instead, that was lost sight by the learned Rent Controller. Therefore, the finding of the learned Rent Control Appellate Authority is found acceptable. The contention of the learned Counsel for the Revision Petitioner seeking to set aside the order of the learned Rent Control Appellate Authority reversing the finding of the learned Rent Controller dismissing the bona fide claim for owner's occupation, cannot at all be



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acceptable. The request of the Revision Petitioner to uphold the Order of the Rent Controller dismissing the RCOP on both the grounds to set aside the order of the RCA in granting the relief of Landlady's request for owner's occupation cannot be accepted in the light of the clear finding of the learned Rent Control Appellate Authority. Therefore, this ***Civil Revision is dismissed*** as having no merits with costs throughout. Consequently, connected Miscellaneous Petition is closed.

24.03.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The VIII Judge,
Court of Small Causes,
Chennai.
2. The XV Judge,
Court of Small Causes,
Chennai (Rent Controller)
3. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

After pronouncing the order, the learned Counsel appearing for the Revision Petitioner sought time to vacate the premises which was objected by the learned Counsel appearing for the Respondent stating that the Petitioner/Tenant had successfully protracted the proceedings all these years.

Anyhow, one month time from today is granted to the Petitioner/Tenant for vacating the premises.

24.03.2023

SRM



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dh

Order made in
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