



C.R.P.No.4355 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4355 of 2022 and
C.M.P.No.22912 of 2022

T.Muthuraj .. Petitioner

vs

1. K.Saroja
2. K.Saravanan
3. K.Srinivasan
4. Maheshwari
5. L.Padmini .. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to set side the order passed by the XVI Small Causes Court at Chennai passed in M.P.No.4 of 2022 in R.L.T.O.P.No.338 of 2020 dated 29.11.2022.

For Petitioner : Mr.S.Shunmuga Velayutham
Senior Advocate
for Ms.S.Thankira



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ORDER

The civil revision petition has been instituted challenging the order passed in M.P.No.4 of 2022 in R.L.T.O.P.No.338 of 2020 dated 29.11.2022.

2. The revision petitioner is a tenant and the respondents instituted proceedings under Section 21(2)(a) and 21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017 (for brevity, “the Act”).

3. During the pendency of the R.L.T.O.P, the revision petitioner / tenant filed a miscellaneous petition in M.P.No.4 of 2022 under Section 36(1)(e) and 36(2) of the Act seeking cross examination of the respondents in R.L.T.O.P.No.338 of 2020. The said miscellaneous petition was adjudicated and dismissed by the Rent Court on the ground that the scope of cross examination is limited in the New Rent Act and in respect of ground of



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eviction under Section 21(2)(a) of the Act, the tenancy is admitted by both the petitioner and the respondents in R.L.T.O.P, leaving no scope for cross examination for the said ground. In respect of Section 21(2)(g) of the Act, it is enough that the landlord states that the petition premises is needed for own occupation. As mere declaration of landlord's intention is sufficient, there is no scope for cross examination in the present case. Based on the above reasonings, the miscellaneous petition filed by the revision petitioner was dismissed.

4. Learned Senior Counsel appearing on behalf of the revision petitioner mainly contended that the petitioner set out certain facts and circumstances, which are all to be established for the purpose of disputing the ground raised by the landlord in his application and therefore, cross examination became necessary, which was declined by the Rent Court and thus, the petitioner is constrained to move the revision petition. He would also submit that an opportunity of cross examination is a valuable opportunity and the Rent Court ought to have provided the opportunity,



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enabling the revision petitioner to establish his case in the manner known to law. The reasons stated in the order impugned is not convincing and therefore, the civil revision petition is to be considered.

5. Let us consider the scope of Section 36(1)(e) and Section 36(2) of the Act. Section 36(1) of the Act contemplates that the Rent Court and the Rent Tribunal shall not be bound by the procedure laid down by the Civil Procedure Code, 1908. Thus, any interlocutory application / miscellaneous petition filed under the Civil Procedure Code is not entertainable, since, summary procedure has been contemplated under the Act, with reference to the miscellaneous petition filed by the revision petitioner under Section 36(1)(e) of the Act. The Sub-clause contemplates that “the Rent Court shall, then, fix a date of hearing and may hold such summary inquiry as it deems necessary”. Thus, summary inquiry has been contemplated and the Rent Court is not bound by the Civil Procedure Code. Under those circumstances, this Court has to examine the scope of Sub-section (2) of Section 36 of the Act.



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WEB COPY 6. The Sub-section (2) of Section 36 of the Act enumerates that “ in every case, before the Rent Court and the Rent Tribunal, the evidence of a witness shall be given by affidavit. However, the Rent Court and the Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross examination, such witness can be produced and may order attendance for examination or cross examination of such a witness”.

7. In the context of Section 4(2) of the Act, in the event of no written agreement between the tenant and the landlord, the landlord or the tenant shall have the right to apply for termination of tenancy under Clause (a) to Sub Section (1) of Section 21. Once such an application is filed, then the Rent Court and the Rent Tribunal have to follow the procedures as contemplated under Section 36 of the Act. Section 36 (1) of the Act, unambiguously stipulates that the Rent Court and the Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure,



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1908, but shall be guided by the Principles of Natural Justice.

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8. Accordingly, the landlord or the tenant may file an application before the Rent Court or the Rent Tribunal, accompanied by the affidavits and documents, if any, under Clause (a) to Sub Section (1) of Section 36. As per Clause (b), the Rent Court, then, shall issue notice to the opposite party. Under Clause (c), the opposite party shall file a reply accompanied by affidavits and documents, if any. Clause (d) stipulates that the applicant may file a rejoinder, if any. Clause (e) denotes that the Rent Court shall, then, fix a date of hearing and may hold such summary enquiry as it deems necessary.

9. In the context of Clause (e) to Sub Section (1) of Section 36, after completion of the pleading between the parties, the Rent Court shall fix the date of hearing and may hold such summary enquiry as it deems necessary.

10. A careful reading of Clause (e) to Sub Section (1) of Section 36



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would indicate that the Rent Court may hold such summary enquiry as it deems necessary. Thus the summary proceedings to be conducted by the Rent Court shall be regulated by the Rent Court as well as by the Rent Tribunal itself. However, the Court should ensure that opportunities are afforded to both the landlord and the tenant. Such an opportunity need not be elaborate, so as to prolong and protract the issues. Under the guise of Rules of natural justice, no party shall be allowed to take unnecessary adjournments or allowed to file miscellaneous petition after miscellaneous petition with reference to the grounds raised in their pleadings in the application.

11. The Rent Court and the Rent Tribunal are expected to be cautious, while dealing with such miscellaneous applications or otherwise filed by any one of the parties. No application under the Code of Civil Procedure is entertainable. Thus the summary enquiry must be conducted in compliance with the Rules of Natural Justice and the Principles of Natural Justice is to be regulated by the Rent Court as well as by the Rent Tribunal, so as to



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ensure equal opportunity to the landlord and the tenant to establish their cases. Any attempt to prolong and protract the application should be thwarted. The Rent Court and the Rent Tribunal, at no circumstances, shall pave way for the parties to drag on the matter, since Sub Section (6) of Section 36 contemplates the time limit for disposal of the applications.

12. Section 36(2) contemplates that “in every case, before the Rent Court and the Rent Tribunal, the evidence of a witness shall be given by affidavit. However, the Rent Court and the Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination, such witness can be produced and may order attendance for examination or cross-examination of such a witness”.

13. With reference to Sub Section (2) of Section 36, the first phrase in Sub Section (2) indicates that “the evidence of a witness shall be given by affidavit”. If an affidavit is filed, then the Rent Court or the Rent Tribunal is empowered to proceed and dispose of the application. If no affidavit is filed,



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then also there is no impediment for the Rent Court or the Tribunal to proceed with the case on merits.

14. However, the Rent Court and the Rent Tribunal, where it appears to it that it is necessary in the interest of justice, then alone the Rent Court or the Rent Tribunal may call a witness for examination or cross-examination. Thus it is unambiguous that calling for a witness for examination or cross-examination is not mandatory and the Rent Court in this regard is empowered to take a decision based on the pleadings made between the parties. No party can claim examination of witness or cross-examination of witness as mandatory. It is only discretionary and the Rent Court or the Rent Tribunal finds it necessary in the interest of justice, then alone the witnesses are to be called for examination or cross-examination.

15. In view of the above provisions, the revision petitioner cannot claim the cross examination of witnesses as a right. It is for the Rent Court to form an opinion and if the Rent Court is able to form an opinion that such



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examination became unnecessary, then, the parties cannot insist upon the same. In this context, this Court, in the present revision petition has to consider whether the reasons stated for dismissing the miscellaneous petition is in consonance with the Rules of natural justice or not.

16. As far as Section 21(2)(a) read with Section 4(2) of the Act is concerned, once the tenant or landlord is unable to establish that there is a written agreement in force, then the examination of witness become unnecessary under Section 36(2) of the Act and therefore, this Court do not find any infirmity in the order passed by the Rent Court in the miscellaneous petition.

17. In respect of Civil Revision Petition filed under Article 227 of the Constitution of India, the scope cannot be extended for the purpose of adjudicating the disputed facts between the parties since there is an appeal remedy available under TN Act 42 of 2017 against the order passed by the Rent Court. In short, against the final order passed in R.L.T.O.P, R.L.T.A is

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available and therefore, the High Court cannot adjudicate such factual disputes in Civil Revision Petition filed under Article 227 of the Constitution of India with reference to provisions of TN Act 42 of 2017. Regarding the scope of Article 227 of the Constitution of India, it is relevant to consider the judgment of the Supreme Court in *Waryam Singh and another vs. Amarnath and another [AIR 1954 SC 215]*, where, in paragraph 14 at page 217, 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 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.”

18. The Chief Justice Harries in the Full Bench decision in *Dalmia* case (supra) stated the principles on which the High Court can exercise its power under Article 227 very succinctly which would better, quote : “Though this

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Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that that 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 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.”

19. 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



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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.

20. The parties to the R.L.T.O.P are at liberty to raise all their grounds for the final disposal of R.L.T.O.P, which is expected to be done by adhering to the time limit contemplated under Section 36(6) of the Act.

21. Accordingly, this revision petition is dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Speaking Order/Non-Speaking Order.

05.01.2023

Internet : Yes/No

Neutral Citation: Yes/No

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To

1. The XVI Small Causes Court, Chennai.



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S.M.SUBRAMANIAM, J.
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