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C.R.P.No.4332 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2023

PRONOUNCED ON : 10.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4332 of 2022

and

C.M.P.No.22767 of 2022

Jata Shankar Mishra

... Petitioner

vs.

Mrs.Chembadevi

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside docket order in RLTOP No.784 of 2021 dated 06.12.2022 on the file of XI Small Causes Court at Chennai.

For Petitioner

: Mr.D.S.Ramesh



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ORDER

The Docket Order dated 06.12.2022 passed in RLTOP No.784 of 2021 pending on the file of XI Small Causes Court at Chennai, is under challenge in the present Civil Revision Petition.

2. The revision petitioner is the tenant and the respondent herein filed RLTOP No.784 of 2021 for eviction under Sections 21(2)(a), 21(2)(b) and 21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 [hereinafter referred as 'TNRRLT Act', in short]. During the pendency of the RLTOP the respondent / landlord has not pressed the grounds raised under Sections 21(2)(b) and 21(2)(g) of the TNRRLT Act. Thus, the eviction petition is pending on the sole ground between the tenant and the landlord.

3. The grievance of the petitioner is that the Rent Court in the name of summary enquiry examined the landlord as PW-1 with regard to the mandatory compliance of Section 4(2) of the TNRRLT Act. No cross-



examination was allowed by the Rent Court and the Rent Court is proceeding to pass an order based on the mandatory compliance of Section 4(2) of the TNRRRLT Act and accordingly, the case was posted for enquiry of the tenant. In this regard, the Docket order passed on 06.12.2022 in RLTOP No.784 of 2021 on the file of the XI Small Causes Court at Chennai and the said order is under challenge in the present Civil Revision Petition.

4. The learned counsel for the petitioner reiterated that in the name of summary trial, the Court is proceeding for inquiry without insisting for an affidavit to be filed by the landlord. The failure in this regard was considered as procedural irregularity and not an illegality. Accordingly, the case was listed for examination of the tenant with regard to the mandatory compliance under Section 4(2) of the TNRRRLT Act. Thus, the said Docket order is to be set aside.

5. Section 4(2) of the TNRRRLT Act stipulates that “Where, in relation to a tenancy created before the commencement of this Act, no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy within a



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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.”

6. Thus, the spirit of provision is unambiguous that the tenant and the landlord have to enter into an agreement in writing with regard to the tenancy within a period of 575 days from the date of commencement of this Act. If no such agreement in writing has been entered into between the parties, then anyone of the party has got a right to apply for termination of the tenancy under Clause (a) of Sub-Section (2) of Section 21.

7. The intention of the legislature with reference to Section 4(2) of the TNRRRLT Act is that the tenancyship is to be regulated and no party shall take undue advantage of the lengthy procedures contemplated under the old Act or abuse the process of law. The untold agony were experienced by the tenant and the landlord, in view of the lengthy and complicated procedures, which were prevailing prior to the New Act. Tenants were



allowed to stay for decades without any agreement and without paying rent and merely based on the litigious continuance. The parties have experienced that the litigations were going on for several years and in some cases more than 20, 25 years, the tenant-landlord disputes were going on in this Country.

8. The lengthy procedures and longevity of litigation in evicting the tenant or settling tenancyship between the landlord and the tenant, the parties have indulged in criminal activities and the hard fact is that many rowdy groups were formed for the purpose of eviction of tenants in an illegal manner, which resulted in registration of criminal cases.

9. In Urban areas and Metropolitan cities, such rowdy elements are rampant and operating for the purpose of dealing with the tenant-landlord relationship and this prompted the legislatures to enact the T.N. Act 42 of 2017 for the purpose of simplifying the procedures and facilitate the tenants and the landlords to resolve the disputes through summary proceedings and without causing any undue delay. Thus, the spirit of the provisions of the Act, at no circumstances, be diluted or compromised by



the Courts.

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10. The Courts cannot compromise the intent of the legislature, which is unambiguous. After the introduction of the New Act, namely, TN Act 42 of 2017, on some occasion, the parties are feeling it inconvenient, since they are unable to drag on the proceedings at their whims and fancies. Few legal brains are attempting to thwart the spirit of the proceedings by instigating the litigant to file miscellaneous petition after miscellaneous petition or insisting the Courts to adopt the procedures contemplated under the Code of Civil Procedure, which is inapplicable as far as the New Act is concerned.

11. Principles of Natural Justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. There is no rigid formula for the compliance of the rules of natural justice.

12. The principles of natural justice is not a straitjacket formula. The Hon'ble Supreme Court of India comprehensively considered



various judgments regarding the principles of natural justice, in the case of

State of U.P. vs. Sudhir Kumar Singh and Others in Civil Appeal

No.3498 of 2020 dated 16.10.2020, wherein all the earlier important

judgments of Hon'ble Supreme Court on the principles of natural justice

have been considered by Hon'ble Mr. Justice R.F.Nariman and the

principles are summarised as under:

“39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case



against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."



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13. 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, 1908, but shall be guided by the Principles of Natural Justice.

14. 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.

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15. 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.

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



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17. 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 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.

18. 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”.



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19. 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 an affidavit is not filed, there is no impediment for the Rent Court or the Tribunal to proceed with the case on merits.

20. 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.



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21. Let us now examine in the context of the above procedures, whether the examination of witnesses or cross-examination of witnesses are necessary. Whenever an application is filed under Section 21(2)(a) of the Act, where the landlord and the tenant have failed to enter into an agreement under sub-section (2) of Section 4.

22. Sub Section (2) of Section 4 provides an opportunity to the landlord and the tenant to enter into a written agreement, within a period of 575 days from the date of commencement of the Act. If they have failed to enter into a written agreement, then any one can make an application for termination of tenancy under Section 21(2)(a) of the Act. Once the tenant or the landlord file an application under Section 21(2)(a) of the Act, the only point to be considered by the Rent Court and the Rent Tribunal is that whether any registered written agreement has been entered into between the tenant and the landlord or not. If the parties are unable to establish the same or no document has been filed regarding the written agreement between the tenant and the landlord, then examination of witnesses or cross-examination of witnesses may not be required.



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23. Under those circumstances, neither the tenant nor the landlord can insist the Rent Court and the Rent Tribunal to examine the witnesses or cross-examine the witnesses. This exactly is the reason why the power of discretion is conferred on the Rent Court and the Rent Tribunal to take a decision whether it is necessary in the interest of justice to call the witness for examination or for cross-examination.

24. When the tenant or the landlord is unable to establish that there is a written agreement of tenancy between them and if the Rent Court finds that there is no such document has been filed, then there is no necessity to call a witness for examination or for cross-examination. In such circumstances, the Rent Court and the Rent Tribunal are empowered to decide the issues with reference to the grounds raised under Section 21(2)(a) of the Act.

25. Section 36(5) of the Act, denotes that the Rent Court shall not ordinarily allow more than three adjournments at the request of a party throughout the proceedings and in case it decides to do so, it shall record the



reasons for the same in writing and order the party requesting adjournment to pay the reasonable cost.

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26. Conducting the case on the hearing date is the Rule. Adjournment is an exception. Exception cannot be made as a Rule. Thus, adjournments cannot be granted by the Rent Court and the Rent Tribunal in violation of Sub Section (5) of Section 36 of the Act. Any attempt made by the parties to prolong the case cannot be appreciated and the Rent Court and the Rent Tribunal shall deal with such attempts appropriately by imposing maximum cost.

27. Section 36(6) stipulates time limit for disposal of the applications. The sanctity of the time limit fixed under Sub Section (6) of Section 36 along with the summary proceedings contemplated must be adhered to at all circumstances and the Rent Court and the Rent Tribunal are expected to be conscious about the purpose and the object of the Act, so as to ensure that it is achieved.



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28. In the present Civil Revision Petition, the procedure adopted by the Rent Court is in consonance with the provisions of the Act and the landlord in the present case, confined his ground for eviction under Section 21(2)(a) of the Act and therefore, the Rent Court has rightly posted the matter for inquiry.

29. Once the Rent Court and the Rent Tribunal ascertain that there is no written agreement between the tenant and the landlord with reference to Section 4(2) of the Act, then there is no necessity to call a witness for examination or for cross-examination. Any party attempting to prolong and protract the proceedings under the guise of examination of witnesses, the same cannot be granted by the Rent Court and the procedures as contemplated in compliance with the Rules of Natural Justice are to be followed.

30. Thus this Court do not find any infirmity in respect of the Docket Order in RLTOP No.784 of 2021 dated 06.12.2022 on the file of the XI Small Causes Court at Chennai, which is impugned in the present Civil



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31. Accordingly, the present Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

10.01.2023

Jeni/Svn

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

To

The Judge,
XI Small Causes Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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