



C.R.P.(MD)No.2492 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.10.2023

PRONOUNCED ON: 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2492 of 2023

and

C.M.P.(MD)No.12975 of 2023

M.Khader Moideen

: Petitioner/Petitioner/
Respondent/ Tenant

Vs.

V.Pandiyarajan

: Respondent/Respondent/
Petitioner/Landlord

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order in I.A.No.138 of 2022 in R.L.T.O.P.No.84 of 2021, passed by the learned Principal District Munsif, Madurai.

For Petitioner : Mr.K.Navaneetharaja
for Mr.S.M.A.Jinnah

For Respondent :Mr.G.Aravinthan
Caveator



C.R.P.(MD)No.2492 of 2023

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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.138 of 2022 in R.L.T.O.P.No.84 of 2021, dated 13.06.2023, on the file of the Principal District Munsif Court, Madurai Town, dismissing the petition filed under Order 7 Rule 11 C.P.C.

2. The respondent/landlord has filed the main petition in R.L.T.O.P.No.84 of 2021 against the petitioner/tenant seeking eviction on the grounds contemplated under Section 21(2)(a) and 21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act. The respondent/tenant has filed a counter statement raising objections that the main petition itself is not maintainable, but also raised a stand that he is willing to extend the lease for further period of two years. Pending the main petition, the tenant has filed the petition in I.A.No.138 of 2022 under Order 7 Rule 11 C.P.C., to reject the main petition.



C.R.P.(MD)No.2492 of 2023

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3. The case of the petitioner/tenant is that the main petition discloses that the written tenancy agreement was created on 02.08.2019 for the period of two years from 02.08.2019 to 02.08.2021 and the same was created after the commencement of new Act with effect from 22.02.2019, that the tenancy agreement is not registered as per the requirement of the New Act and the tenancy agreement has expired before the filing of the case, that in the cases where the tenancy is created after the enactment of the New Act, which are not covered by the registered instruments, the remedy of the landlord will be a civil suit and not a petition before the Rent Court under the New Act, that the Rent Court has no jurisdiction to try the above case and that therefore, the tenant was constrained to file the petition to reject the same as the main petition is barred by law.

4. The respondent/landlord has filed the counter statement stating that the Act 42 of 2017 as amended by the Act 22 of 2019 and Act 3 of 2020 is a self contained Code and the Rent Courts and the Rent Tribunals constituted under the said Act have to function within the powers conferred on them, that there is no provision expressly or impliedly so



C.R.P.(MD)No.2492 of 2023

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as to invoke the provisions of Order 7 Rule 11 C.P.C., that the Rent Courts and the Tribunals shall not be bound by C.P.C., and shall be guided by the principles of natural justice, that the petitioner himself has admitted to be the tenant under the respondent and as such, he comes within the ambit or definition of tenant under the New Act, that a conjoint reading of legal notice issued by the landlord and the reply notice issued by the tenant, it is crystal clear that he comes within the ambit of the New Act 42 of 2017, that the allegations made in the affidavit filed in support of the above petition are made with the sole intention to protract the proceedings endlessly and to avoid facing of the trial, that even after the lapse of one year, the tenant had been protracting the proceedings endlessly and he is always ready to proceed with the trial of the case and that therefore, the above petition is liable to be dismissed.

5. The learned Judge of the Rent Court, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned order dated 13.06.2023, dismissing the said petition. Aggrieved by the order of dismissal, the tenant has come forward with the present Civil Revision Petition.



C.R.P.(MD)No.2492 of 2023

WEB COPY

6. In the case on hand, according to the parties, the tenancy is for the period of two years from 02.08.2019 till 02.08.2021. It is also not in dispute that the landlord has sent a legal notice dated 16.07.2021 to the tenant informing his intention not to extend the tenancy and directed the tenant to vacate the premises and hand over the possession of the same, on the expiry of the tenancy period and that the tenant has sent a reply notice dated 22.07.2021 stating that he he has been doing business for the past 27 years, that the agreement has been periodically renewed and that the tenant is willing to extend the tenancy for the next two more years. It is also not in dispute that after sending the legal notice dated 16.07.2021 and after waiting for the expiry of the tenancy period on 02.08.2021, the landlord has filed the above eviction petition on 03.08.2021.

7. The learned Counsel for the revision petitioner/tenant would rely on the judgment of the learned Judge of this Court in ***S.Muruganandam Vs. J.Joseph*** reported in **2022(2) CTC 291**, passed in C.R.P.(NPD)Nos.3056 of 2021 and batch cases, dated 04.02.2022 and argued that the eviction petition is not maintainable before the Rent



C.R.P.(MD)No.2492 of 2023

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Court and the remedy available to the landlord is to file a civil suit invoking the provisions of the Transfer of Property Act and the relevant portion cited by the learned Counsel for the petitioner is extracted hereunder:

“Insofar as CRP NPD Nos. 3056, 3062 and 3094 are concerned in all these cases, the tenancy has admittedly commenced or has been renewed after coming into force of an Act by way of an unregistered instrument and the tenancy had also expired now. In such cases, it is clear to my mind that in the absence of a written agreement and the tenancy having expired, the landlords cannot invoke the provisions of the New Act, but they will have to resort to the general law.”

8. The learned Counsel for the landlord would rely on the very same judgment reported in **2022(2) CTC 291**, wherein, the learned Judge of this Court has classified six types of cases that may arise before the Rent Court and the same are extracted hereunder:

“i. Written tenancy created prior to and expired prior to the commencement of the Act (Tenant holding over under an oral tenancy);



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C.R.P.(MD)No.2492 of 2023

- ii. Oral tenancies created prior to the new Act and no written agreement entered into;
- iii. Written tenancies created prior to the new Act and the period expired after the commencement of the Act;
- iv. Written tenancies entered after the commencement of the new Act not registered but subsisting;
- v. Written tenancies created after the commencement of the new Act and had presently expired (either registered or unregistered)
- vi. Oral tenancies created after the new Act.”

9. No doubt, the learned Judge has specifically observed that the above situations are not exhaustive and held that the landlord in respect of contingencies 1 and 2 and all other clauses of Section 21(2)(a) of the New Act in respect of the third contingency for seeking eviction, the landlord has a right to invoke Section 21(2)(a) of the New Act and in respect of the fourth contingency, the landlord has to seek eviction only under the Transfer of Property Act and for the fifth contingency, the landlord can invoke all grounds under Section 21(2), except 21(2)(a), if the landlord files an application for eviction under New Act and if the landlord seeks eviction beyond six months, he has to seek eviction only



C.R.P.(MD)No.2492 of 2023

WEB COPY

under the Transfer of Property Act. In respect of sixth contingency, the landlord has no other option, but to seek eviction under the Transfer of Property Act. As rightly observed by the learned trial Judge, in the fifth category shown in the Muruganandam's case above referred, the landlord can invoke all ground under Section 21(2)(a), if the landlord files an application for the eviction under the New Act within a period prescribed under Section 5 of the said Act and if the landlord filed eviction petition beyond the period of six months, he has to seek eviction only under the provisions of the Transfer of Property Act. In the case on hand, as already pointed out, the landlord has filed the eviction application within the period of limitation as contemplated under Section 5(3) of the said Act.

10. The learned Counsel for the landlord would also rely on the judgment of the learned Judge of this Court in *A.A.L.Ramaswamy Vs. Suguna Vilasa Sabha and others* reported in **2022(3) MWN (Civil)612**, wherein also the learned Judge of this Court after referring to the judgment in Muruganandam's case above referred, disposed of the revision, in terms of the observations given in paragraph 44 and the same is extracted hereunder:



C.R.P.(MD)No.2492 of 2023

WEB COPY

“44. Since I only find Section 5(3) is an another enabling provision for seeking eviction, I have no difficulty in answering the Revision Petitioner in C.R.P. (PD) No. 587 of 2022 that a tenant who continues to be in possession beyond the prescribed period of six months under Section 5(3) is still a tenant by holding over within the meaning of Section 116 of the Transfer of Property Act. But he is a tenant at the risk of getting evicted at the instance of his landlord any time after 6 months in view of the regulatory provision of Section 5(3) of the Rent Act. It does not mean that the landlord who had chosen to receive rent without having an intention to renew the agreement, cannot file an Application for eviction immediately after the expiry of the agreement. If a landlord had chosen to receive rent after the expiry of the tenancy agreement, his tenant might take a defence of holding over atleast for a period of 6 months. Even according to Section 116 of the Transfer of Property Act, the effect of holding over of the premises can only be renewed by once in six months or month by month, depending on the purpose and at the option of the landlord to receive rent at every renewal.”

11. Considering the facts and circumstances of the case and also taking note of the legal position above referred, the decision of the Rent



C.R.P.(MD)No.2492 of 2023

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Court that the eviction petition filed under the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is maintainable and the question of rejecting the same does not arise at all, cannot be found fault with.

12. Moreover, this Court in the case of K.Murali Vs. N.Sathish Kumar and another in C.R.P.(PD)No.229 of 2018, dated 08.09.2020 has reiterated the settled legal position that the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is a self contained Code and the provisions of C.P.C., are not applicable to the Rent Control proceedings and that the Act does not provide for a decision on any issue as a preliminary issue.

13. Taking note of the provisions of the new Act also, this Court is in entire agreement with the legal position referred above. Viewed from that angle also, the petition filed under Order 7 Rule 11 C.P.C., to reject the petition is not legally maintainable and as such, the order dismissing the rejection petition is perfectly in order and the same cannot be found fault with. Hence this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



C.R.P.(MD)No.2492 of 2023

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13. In the result, the Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is also dismissed.

There shall be no order as to costs.

10.11.2023

Index : Yes : No

Internet : Yes : No

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To

1. The Principal District Munsif Court, Madurai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2492 of 2023

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.R.P.(MD)No.2492 of 2023

10.11.2023