



C.R.P.No.319 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.06.2023

Delivered on 11.03.2024

CORAM:

The Hon'ble Mr.Justice Sathi Kumar Sukumara Kurup

C.R.P.No.319 of 2021

and

C.M.P.No.2793 of 2021

1.Ravichand Kapoor

2.Rakeshchand Kapoor

... Petitioners/Respondents

-Vs-

Hari Balaji

... Respondent/Petitioner

Prayer:- Petition filed under Article 227 of the Constitution of India, to strike off the Petition in RLTOP.No.65 of 2019 filed under Section 21(2)(g) read with Section 22 of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, on the file of the learned XII Judge Court of Small Causes, Chennai.

For Petitioners : Mr.K.N.Nataraj

For Respondent : Mr.R.Aranganathan

ORDER

This Civil Revision Petition is filed by the Respondents in RLTOP.No.65 of 2019 on the file of the learned XII Judge, Court of Small Causes, Chennai, seeking to strike off the said Petition.



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2.The learned Counsel for the Revision Petitioners contended that the Respondent in this Civil Revision Petition is the Petitioner/landlord in R.L.T.O.P.No.65 of 2019. The learned Counsel for the Revision Petitioners further submitted that R.C.O.P.No.1576 of 2017 was filed by the mother of the landlord against the Revision Petitioners/tenants under Section 14(1)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for the relief of eviction of the tenants from the leased out property on the ground of demolition and re-construction. R.C.O.P.No.706 of 2018 was filed by the landlord/Respondent herein under Section 4(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for the relief of fixation of fair rent of the leased out premises. While so, pending the two Rent Control Original Petitions on the file of the learned XII Judge, Court of Small Causes, Chennai, under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the landlord/Respondent herein had filed R.L.T.O.P.No.65 of 2019 before the learned XII Judge, Court of Small Causes, Chennai, under the new enactment viz., the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. As per the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, any proceeding



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under the old Act, if filed and pending, had to be withdrawn or the same had to be continued, and a Petition under the new Act cannot be filed during the pendency of the Petition filed under the old Act. In this case, R.C.O.P.No.1576 of 2017 was filed by the mother of the landlord against the tenants/Revision Petitioners in this Revision Petition and R.C.O.P.No.706 of 2018 was filed by the landlord/Respondent herein against the tenants/Revision Petitioners herein. The Revision Petitioners are the Respondents in R.C.O.P.No.1576 of 2017 and R.C.O.P.No.706 of 2018, before the learned XII Judge, Court of Small Causes, Chennai. While so, a Petition under Section 21 read with Section 22 of the new enactment viz., the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, cannot be filed and the same is not maintainable.

3.The learned Counsel for the Revision Petitioners invited the attention of this Court to Section 47 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, which reads as follows:-

“47. Repeal and savings.- (1) The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu



Act 18 of 1960) is hereby repealed.

(2) Notwithstanding such repeal and subject to the provisions of this Act, all cases and other proceedings under the said Act pending, at the commencement of this Act, shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed:

Provided that the plaintiff within a period of 180 days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh application in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act, and for the purposes of limitation, such application if it is filed within a period of 270 days from the commencement of this Act be deemed to have been filed on the date of filing of the suit which was withdrawn and in case of withdrawal of appeal or other proceedings on the date on which the suit was filed out of which such appeal or proceeding originated.”

4.Also, the learned Counsel for the Revision Petitioners invited the attention of this Court to paragraph 5 of the order passed by the learned XII Judge, Court of Small Causes, Chennai, in R.L.T.O.P.No.65 of 2019 filed by the Respondent, which reads as follows:-

“5.Matters not previously filed or pending with any other Court:

The Applicant further declares that he/she had previously filed any Application, Petition, Writ Petition or suit regarding the matter in respect of which grounds this Application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such Application, Writ Petition or suit is pending before any of them.”



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5.The learned Counsel for the Respondent submitted that the earlier Petition in R.C.O.P.No.1576 of 2017 filed by the mother of the landlord/Respondent herein is for the relief of eviction of the tenants on the ground of demolition and re-construction. R.C.O.P.No.706 of 2018 filed by the landlord/Respondent herein is for the relief of fixation of fair rent. While so, R.L.T.O.P.No.65 of 2019 had also been filed by the landlord under the new enactment viz., the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, for the relief of eviction of the tenants on the ground of owners use and occupation. Therefore, the tenants, who are the Respondents in R.L.T.O.P.No.65 of 2019 had preferred this Civil Revision Petition under Article 227 of the Constitution of India, seeking to strike off the Petition in R.L.T.O.P.No.65 of 2019 filed under Section 21(2)(g) read with Section 22 of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, pending on the file of the learned XII Judge, Court of Small Causes, Chennai, is not maintainable. The Petition in R.L.T.O.P.No.65 of 2019 is maintainable.

Point for consideration:

Whether the Petition filed by the Respondent in this Civil Revision Petition as Petitioner in R.L.T.O.P.No.65 of



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2019 pending on the file of the learned XII Judge, Court of Small Causes, Chennai is maintainable as per Section 47 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017?

6. On perusal of R.C.O.P.No.706 of 2018 filed by the Respondent herein as Petitioner in R.C.O.P.No.706 of 2018 under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and pending before the XIII Judge, Court of Small Causes, for fixation of fair rent. Pending the said Rent Control Original Petition, the same Petitioner the Respondent herein had also filed R.L.T.O.P.No.65 of 2019 for eviction of the tenants on the ground of demolition and re-construction.

7. On perusal of R.L.T.O.P.No.65 of 2019, it is found that under Form-IV, Column No.5 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, before the learned XII Judge, Court of Small Causes, where there is an undertaking of the Petitioner as follows:

“5.Matters not previously filed or pending with any other Court:

The Applicant further declares that he/she had previously filed any Application, Petition, Writ Petition or suit regarding the matter in respect of which grounds this



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Application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such Application, Writ Petition or suit is pending before any of them.”

8. During arguments, the learned Counsel for the Revision Petitioners the Respondents before the learned XIII Judge, Court of Small Causes and before the learned XII Judge, Court of Small Causes had pointed out that the Petitioner in RLTOP No.65 of 2019 had given false undertaking before the learned XII Judge, Court of Small Causes, Chennai stating that there is no cases pending either before the learned Rent Controller or any other proceedings connected with the same property in RLTOP No.65 of 2019, as per the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. This is found objectionable, unacceptable, condemnable and unfair before a court of law.

9. When the learned Counsel for the Revision Petitioners made his submissions, the learned Counsel for the Respondent had by way of reply only pointed out the order passed by the learned XII Judge, Court of Small Causes, Chennai in RLTOP No.65 of 2019 which reads as under:

“Docket order

27.01.2021

*Respondent counsel present. PW1 (not present) present.
Respondent counsel not ready for cross examination. Hence, cross
of PW1 is closed. Petitioner counsel reported no further PWs.*



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Respondents witness evidence affidavit by 10.02.2021.

02.02.2021

Today the case not posted for hearing. The respondent filed copy application for adjudication dated 27.01.2021. Then only it came to my knowledge that, instead of recording PW1 present on 27.01.2021 mistakenly recorded as PW1 not present. PW1 in this case also examined as PW1 in RLTOP No.64/2019 and that day PW1 was present before this Court. Hence, the above error in 27.01.2021 dated adjudication is ordered to be rectified as PW1 present."

10.The said submission of the learned Counsel for the Respondent is found unacceptable, as per the provisions of Tamil Nadu Regulation of Rights and Responsibilities of the Landlords and Tenants Act, 2017. In the new enactment, it is clearly stated that any proceedings as per the earlier Act [Tamil Nadu Buildings (Lease and Rent Control) Act, 1960] are pending before any Court of law either as RCOP or appeal or Writ Petition or Civil Revision Petition, then those proceedings had to be withdrawn only then petition under RLTOP has to be filed. The submission of the learned Counsel for the Respondent by way of reply to the submission of the learned Counsel for the Revision Petitioners is found unacceptable in the specific provision under Section 47 of the Tamil Nadu Regulation of Rights and Responsibilities of the Landlord and Tenants Act, 2017. Further, the provisions under Form IV under Rule 8 of the Tamil Nadu Regulation of Rights and Responsibilities of the Landlord and Tenants Act, 2017 is not an empty formality. It has some sanctity as the



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undertaking given by the litigant before the Court of law as a sworn affidavit before a judicial forum. Therefore, the submission of the learned Counsel for the Respondent is rejected. It is found to be an abuse of process of Court attracting the exercise of supervisory jurisdiction by the High Court under Article 227 of the Constitution of India. Therefore, in the light of the above submission and in the light of above discussion and in the light of the provisions under the Tamil Nadu Regulation of Rights and Responsibilities of the Landlords and Tenants Act, 2017, the R.L.T.O.P.No.65 of 2019 filed by the very same Petitioner who is the Petitioner in R.C.O.P.No.706 of 2018 is not at all maintainable.

11.In an earlier order passed by this Court in **C.R.P.No.445 of 2023 dated 06.04.2023 (M/s.Top Kapi, Rep. by its Partners Mr. S. Jayachandran & Mr. S. Murali -vs- S.Sarath Babu)** this Court had set aside the order passed by the learned XVI Judge, Court of Small Causes at Chennai in R.L.T.O.P.No.91 of 2019 in which the Respondent therein raised the same issue which was ignored by the learned Judge who had disposed of the RLTOP favouring the landlord. The Respondent in RLTOP No.91 of 2019 who is the tenant had raised RLTA No.104 of 2022



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before the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai [Rent Tribunal, Chennai] where the Appellate Authority also ignored the valuable point raised by the tenant and dismissed the appeal. Aggrieved by the same, the tenant had approached this Court by filing C.R.P.No.445 of 2023. This Court after hearing both parties had allowed the said Civil Revision Petition and set aside the order of the learned Rent Controller as well as the learned Rent Control Appellate Authority under the Tamil Nadu Regulation of Rights and Responsibilities of the Landlord and Tenants Act, 2017 wherein also the landlord has filed RCOP as per the previous enactment. When that was pending, RLTOP No.91 of 2019 was filed. Therefore, the order in RLTOP No.91 of 2019 which was confirmed in RLTA No.104 of 2022 was set aside in the Civil Revision Petition. Aggrieved by the same the landlord approached the Hon'ble Supreme Court in SLP (Civil) Diary No.50978 of 2023 which was dismissed.

12.In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioners/tenants and against the Respondent/Landlord.



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In the result, **this Civil Revision Petition is allowed.**

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R.L.T.O.P.No.65 of 2019 pending on the file of the learned XII Judge, Court of Small Causes, Chennai, is struck off from the file. No costs. Consequently, connected miscellaneous petition is closed.

11.03.2024

cda/srm

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

1.The XII Judge,
Court of Small Causes,
Chennai.

2.The XIII Judge,
Court of Small Causes,
Chennai.

3.The Section Officer,
VR Section,
High Court, Madras



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SATHI KUMAR SUKUMARA KURUP, J.,

cda/srm

**Order made in
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