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C.R.P.(NPD).492 & 493 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).492 & 493 of 2021

and

C.M.P. No.4295 of 2021

K. Bhoopathy

... Petitioner
(in both cases)

Versus

I. High Court Durai

... Respondent
(in both cases)

Common Prayer : Civil Revision Petitions are filed under Section 25(1) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 18 of 1960 as amend by Act 23 of 1973, pleased to set aside the Fair and Decreetal order dated on 09.03.2020, made in R.C.A.Nos.774 and 775 of 2018 respectively, by the Learned VIII Judge, Small Causes Court, Chennai (Rent Control Appellate Authority) reversing the Fair and Decreetal order passed on 24.09.2018 in M.P.Nos.152 & 153 of 2018 respectively, in R.C.O.P.No.626 of 2012 by the Learned XII Judge, Small Causes Court, Chennai.

For Petitioner : Mr. R. Rajesh
(in both cases)

For Respondent : Mr. T. T. Ravichandran
(in both cases)



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ORDER

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These Civil Revision Petitions are filed challenging the order dated 09.03.2020 passed in R.C.A.Nos.774 and 775 of 2018, by the learned VIII Judge, Small Causes Court, Chennai (Rent Control Appellate Authority). The RCAs were filed challenging the orders in allowing the petitions filed by the respondents in M.P.Nos.152 & 153 of 2018 in R.C.O.P.No.626 of 2012 by the Learned XII Judge, Small Causes Court, Chennai, on 24.09.2018.

2. The petitioner herein filed the Rent Control Petition for eviction against the respondent/tenant on the grounds of wilful default, denial of title and owner's occupation. The enquiry in the petition has already been commenced and the petitioner's side witnesses were examined as P.W.1 and P.W.2. The respondent herein was examined as R.W.1. The petitioner herein has marked Exs.P18 to P25 during the cross-examination of R.W.1. Thereafter, the respondent filed the instant applications seeking to reopen and recall of P.W.1 & P.W.2. In the affidavit filed in support of the applications, it was stated by the respondent that some documents had been marked as exhibits on the side of the petitioner during the cross-



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examination of R.W.1. Therefore, an opportunity shall be given to the respondent to examine P.W.1 and P.W.2, in respect of those documents by recalling. The said application was dismissed by the Rent Controller on the ground that the respondent failed to give sufficient reason for recalling of P.W.1 and P.W.2. Aggrieved by the same, the respondent preferred two appeals in R.C.A.Nos.774 & 775 of 2015. The First Appellate Court allowed the appeals by recording that in order to give fair opportunity to the respondent to ask questions regarding to Exs.P18 to P25 marked by the petitioner during cross of R.W.1, the petitioner's witnesses P.W.1 and P.W.2 shall be recalled. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that some documents were marked during the cross-examination of the respondent's side witness, namely, R.W.1, as he admitted those documents during cross-examination. Hence, it is not open to the respondent to seek recall of the petitioner's side witnesses to examine him with regard to those documents.

4. The learned counsel for the respondent opposed the revision mainly on the ground that the marking of certain documents by the



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petitioner's side during the cross-examination of R.W.1 had taken place subsequent to the examination of P.Ws'. Hence, a fair opportunity shall be given to the respondent to examine P.Ws', with regard to those documents. According to the learned counsel for the respondent, the learned Rent Control Appellate Authority has rightly allowed the applications in order to give fair opportunity to the respondent.

5. From the affidavit filed in support of the applications filed by the respondent seeking to reopen and recall of P.Ws', it is clear that certain documents were marked by the petitioner's counsel during the cross-examination of R.W.1. When the documents are marked through respondent side witness, namely, R.W.1 during his cross-examination, the same may not be a ground for the respondent to recall of petitioner's side witnesses. The petitioner's side evidence is already closed. P.W.1 and P.W.2 were cross-examined by the respondent. Merely because based on the answers given by R.W.1 during his cross-examination certain documents were marked during his cross-examination, the respondent cannot seek recall of petitioner's side witnesses to examine them with regard to the documents which were shown to R.W.1 during the cross-examination. If the



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respondent wanted to clarify anything with regard to the answers given by R.W.1 regarding those documents marked during his cross-examination, the respondent should have clarified the same by re-examining R.W.1 immediately. Hence, the reason assigned by the respondent for recalling P.W.1 and P.W.2 is not acceptable. Hence, the impugned order passed by the Rent Control Appellate Authority is liable to be set aside.

6. Accordingly, the Civil Revision Petitions are allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

15.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

klt

To:

1.The VIII Small Causes Court,
(Rent Control Appellate Authority), Chennai.

2.The XII Small Causes Court, Chennai.



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S. SOUNTHAR. J.,

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