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C.R.P.No.2139 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2139 of 2021 and

C.M.P.No.16219 of 2021

Mr.S.Selvaraj

... Petitioner

Vs.

1.Mrs.M.Mariammal

2.Mr.Dhanasekar

...Respondents

PRAYER: Civil Revision Petition filed under Section-25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, praying to set aside the order dated 14.02.2020 passed in RCA.No.462 of 2018 by the IX-Judge, Small Causes Court, Chennai confirming the order dated 01.03.2018 passed in RCOP.No.1039 of 2016 by the XIV-Judge, Small Causes Court, Chennai.

For Petitioners

: Mr.S.Mohan

For Respondents

:M./S.K.Sukumaran for R2

R1-No appearance

ORDER

The Civil Revision Petition is filed challenging the order of eviction



passed in rent control proceedings.

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2. The petitioner is a tenant under respondent. The respondent filed rent control eviction petition on four grounds namely wilful default, subletting, difference in user and nuisance. The learned Rent Controller ordered eviction only on the ground of subletting. The eviction sought for in respect of other grounds were negatived. Aggrieved by the same, the petitioner preferred an appeal before the Rent Control Appellate Authority and the said appeal was dismissed. Aggrieved by the same, he is before this Court.

3. The learned counsel for the petitioner submitted that the respondent failed to prove the subletting pleaded by him. The learned counsel further submitted that brother-in-law of the petitioner namely one Guna is assisting the petitioner in his business and the same cannot be treated as subletting. It is also submitted by the learned counsel that the Courts below came to the conclusion that respondent proved the allegation of subletting only based on the photographs submitted by him and the said photographs are inadmissible in evidence as the same was not accompanied by certificate as contemplated



under Section 65B of Evidence Act.

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4. The learned counsel for the respondent by drawing the attention of this Court to the evidence of petitioner as R.W.1 submitted the photographs of the demised premises wherein the display board mentioning the name of Guna as proprietor of business run in demised premises was admitted by R.W.1 during the course of examination. Hence, the Courts below correctly came to the conclusion that respondent succeeded in proving his allegation of subletting.

5. It is not in dispute that petitioner is a tenant under the respondent. The Specific case of the respondent is that the petitioner allowed one Guna to carry on the business in the demised premises without any permission from the respondent and hence, he is liable to be evicted on the ground of subletting. Ex.P4 is the photographs of the demised premises. The Courts below relying on the said photographs came to the conclusion that petitioner exhibited the display board in the demised premises mentioning the name of Guna as



proprietor of the business carried on there. If above said Guna is only an assistant of the petitioner, there is no need for the petitioner to mention his name as proprietor of the business carried on in the demised premises. Mentioning Guna's name as proprietor would lead to inevitable conclusion that businesses in the demised premises is carried on by said Guna.

6. When Ex.P4, photographs was shown to petitioner when he was cross-examined as R.W.1. He clearly admitted that in Ex.P4 it was mentioned Ananthi Service Centre and its proprietor as Guna. He also admitted that Ex.P4 is only in respect of demised premises. When R.W.1 was questioned how a display board found in Ex.P4 came to be installed in the demised premises, the petitioner pleaded his ignorance. When petitioner himself as R.W.1 clearly admitted that Ex.P4 is a photograph in respect of demised premises, the objection of the petitioner regarding the absence of certificate under Section 65B of Evidence Act pales into insignificant. The object of Section 65B of Evidence Act is to ensure accuracy of copies from original electronic source. In the case on hand, petitioner as R.W.1 clearly admitted Ex.P4, photograph is relating to demised premises and it contains name of



business carried on in the premises as Ananthi Service Centre and it also mentions Guna is its proprietor. Further, Ex.P4 was marked before the Court without any objection by the petitioner. In such circumstances, the contention raised by the learned counsel for the petitioner that Ex.P4, photographs are inadmissible evidence is not acceptable to this Court. It is too late for petitioner to raise such objection at the time of revision.

7. The display board found in Ex.P4, photographs mentioning Guna as proprietor of the business run in the demised premises coupled with the admissions of the R.W.1 clearly proves that there was subletting of the premises. Guna is the person who is carrying on the business in the demised premises now. The conclusion reached by the Courts below with regard to the subletting is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity. In such circumstances, I do not find anything to interfere with the concurrent findings of the Courts below regarding the fact of subletting and as a consequence, the order of eviction passed by the Court below is liable to be confirmed.



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8. At this juncture, the learned counsel for the petitioner submitted that taking into consideration the demised premises is for non-residential purposes, a time of one year may be given to the petitioner to hand over vacant possession to the respondent. When counsel for the respondent was heard on this aspect, he submitted, on instruction, that petitioner may be given six months time to vacate the premises.

9. Taking into consideration that eviction petition is filed in respect of non-residential building, this Court is inclined to grant a period of one year to petitioner to vacate and hand over the vacant possession to the respondent. However, the same is subject to the following conditions:-

1) the petitioner shall file an affidavit of undertaking, that he will hand over vacant possession of the demised premises to the respondent on or before 31st January 2025, within a period of two weeks from today.

2) the petitioner shall pay a sum of Rs.2783/-(Rupees two thousand seven hundred and eighty three only) per month as rent to the respondent starting from January 2024 to till the date of handing over possession on or



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before 10th of succeeding month.

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3) In case, the petitioner failed to file the undertaking affidavit within the time stipulated or failed to pay the rent as directed above, the respondent is at liberty to proceed with execution of eviction order.

10. With these observations, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

31.01.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The learned IX-Judge, Small Causes Court, Chennai.
2. The learned XIV-Judge, Small Causes Court, Chennai.



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S.SOUNTHAR, J.

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