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C.R.P.(PD).No.782 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.782 of 2023
and C.M.P.No.5986 of 2023

V.S.Mohan

.. Petitioner

Versus

1. Sarath Naseera
2. Nafila Fathima
3. Khadijath Rajeeba
4. Kassim Seyed

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order, dated 02.02.2023 in M.P.No.1 of 2022 in RLTOP No.497 of 2022 on the file of the learned XV Small Causes Judge-cum-Rent Controller, Chennai and permit the petitioner to reopen and cross-examine P.W.1 in the interest of justice.

For Petitioner : Mr.Bijesh Thomas

For Respondents : Mr.Sivakumar,
for M/s.P.B.Ramanujam Associates

ORDER

This Civil Revision Petition arises against the order passed by the learned XV Small Causes Judge-cum-Rent Controller at Chennai in M.P.No.1 of 2022 in R.L.T.O.P.No.497 of 2022, dated 02.02.2023. The



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relationship between the parties is not in dispute. The civil revision petitioner is a tenant of the premises being owned by the respondents/landlords.

2. For the sake of convenience, the parties shall be referred to as landlords and tenant.

3. The landlords initiated R.L.T.O.P.No.497 of 2022 seeking for eviction. The petition was filed invoking the provisions of Section 21(2)(a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (for brevity 'Tamil Nadu Act 42 of 2017'). Their simple case is that a petition was filed for fixation of fair rent in R.C.O.P.No.1812 of 2008 and the said petition was ordered fixing the fair rent at Rs.4,220/- per month. An appeal preferred therefrom in R.C.A.No.559 of 2010 came to be dismissed on 26.10.2017. Despite the fixation of the fair rent having attained finality, the landlords pleaded that the tenant had not paid the same. Therefore, they decided that they did not want the tenant in their premises any more. Treating his conduct as



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unscrupulous, they invoked the provisions of the new legislation under Section 21(2)(a) of the Tamil Nadu Act 42 of 2017.

4. The tenant entered appearance through a Counsel and filed a detailed counter. The tenant admitted the jural relationship of the landlord and tenant, but, pleaded that it is the landlords who refused to enter into an agreement and law should not normally come to the aid of one who seems to take advantage of his own wrong. Hence, the tenant wanted the learned Rent Controller to dismiss the petition on the ground that Section 21(2)(a) of the Tamil Nadu Act 42 of 2017 cannot be invoked by landlords who, in the petition, itself had stated that they are not willing to enter into an agreement.

5. The matter was taken up for trial and the first of the landlords, one Sarath Naseera filed her proof affidavit. At that stage, the tenant filed an application in M.P.No.1 of 2022 seeking for the permission of the Court to reopen the landlords' side evidence and permit the tenant to cross-examine her.



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6. The landlords filed a counter to the said application stating that the cross-examination of a landlord is essential only if there are certain disputed facts involved in the matter. According to them, as they have invoked Section 21(2)(a) of the Tamil Nadu Act 42 of 2017, the question of cross-examination does not arise when the requirements, as laid down in C.R.P.(NPD).No.2372 of 2021 etc., batch, dated 05.08.2022, are not satisfied. The learned Rent Controller, by the impugned order, accepted the contention of the landlords and dismissed the petition seeking for cross-examination of P.W.1. Against which, the present Revision is filed.

7. This Court had ordered notice and interim stay on 16.06.2023. Thereafter, the stay was extended till 17.08.2023. Since there was no interim order restraining the Court from proceeding further, the learned Rent Controller proceeded and passed an order in the main Rent Control Petition itself allowing the same on 07.11.2023. Aggrieved by the same, the tenant also preferred an appeal in R.L.T.A.No.21 of 2024 before the learned XVIII Additional Judge, City Civil Court, Madras. The learned Appellate Authority also confirmed the order of eviction on 25.07.2024.



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8. Heard Mr.Bijesh Thomas, learned Counsel for the petitioner and Mr.Sivakumar, learned Counsel for the respondents.

9. The learned Counsel for the petitioner would argue that when the matter is pending before the High Court and an interim stay had been granted, though not extended, the learned Rent Controller ought not to have proceeded and passed an order on merits. He would state that the learned Rent Controller ought to have waited till the disposal of this Civil Revision Petition and depending on the disposal of the case, he should have proceeded further. He would contend that when certain matters are seized by the Superior Court, the Court Subordinate to this Court should stay their hands and await the result of the proceeding. For this proposition, he would rely upon the judgment of the Aurangabad Bench of Bombay High Court of Hon'ble Mr.Justice B.R.Gavai (as His Lordship then was) in W.P.No.7502 of 2006, dated 07.02.2007 and on the judgment of the Supreme Court in ***Abdul Karim Vs. M.K.Prakash and Ors., AIR 1976 SC 859.***

10. On the merits of the Revision, he would argue that Section 21(2)(a) of the Tamil Nadu Act 42 of 2017 can be invoked only by a person



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who is not responsible for the agreement not being entered into. He would state that where the landlord has deliberately not entered into an agreement, as required under the Tamil Nadu Act 42 of 2017, then, the landlord cannot invoke the said provision. He would hasten to add that if other grounds are made out, it is always open to the landlord to invoke those grounds, but, Section 21(2)(a) of the Tamil Nadu Act 42 of 2017 cannot be invoked by the landlord when the landlord is responsible for creating a situation of not entering into an agreement.

11. Per *contra*, Mr.Sivakumar, learned Counsel for the respondents would submit that in terms of the judgment of this Court in ***J.Thennarasu Vs. Anita Nalliah*** in ***C.R.P.(PD).No.2532 of 2021***, dated 05.08.2022, Hon'ble Mr.Justice N.Seshasayee, in clear and categorical terms, held that cross-examination is not a right in terms of the new Act, but, can be invoked only when two circumstances exist under Section 21(2)(a) of the Tamil Nadu Act 42 of 2017 i.e., in case of denial of relationship between the landlord and tenant or when a written agreement cannot be proved in terms of the Act.



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12. In addition, Mr.Sivakumar would urge that the very same issue had been gone into by Hon'ble Mr.Justice R.Subramanian in ***S.Muruganandam Vs. J.Joseph, 2022 SCC OnLine Mad 375***, and the learned Judge had settled the issue once and for all stating that it matters not whether the landlord is the person responsible for tenancy agreement not coming into force, once there is no agreement, Section 21(2)(a) of the Tamil Nadu Act 42 of 2017 is automatically attracted and eviction order should follow. He would add that since the interim order granted by this Court had not been extended, there was no impediment for the learned Trial Judge to proceed further and pass orders. Hence, he would plead that the Revision does not deserve acceptance and it must be dismissed.

13. I have carefully considered the arguments of both the sides and have gone through the records.

14. At the outset, I should state that, as pointed out by the Supreme Court, it is ideal that a Court subordinate to this Court or to any superior Court should postpone the making of any final order when the interlocutory order passed by the Trial Court is being tested before the High Court or a



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Superior Court. This is only a rule of prudence because in case the Superior Court or this Court were to reverse the interlocutory order, it will have consequences which will affect the final disposal of the case itself. A subordinate Court is normally not expected to present a *fait accompli* to the High Court. Yet, as pointed out by the Supreme Court itself, it is an ideal case scenario. I would respectfully agree with the view taken by Hon'ble Mr.Justice B.R.Gavai in W.P.No.7502 of 2006 wherein he points out that it is a matter of propriety when a Trial Judge is aware about the pendency of the Revision before the High Court, the Trial Judge ought to keep his hands away and wait till final orders are passed. This is also on account of the fact that if any order is passed in the Revision, it would have consequences in the pending proceedings. To give an example, if I were to agree with the civil revision petitioner that his client has a right to cross-examine the landlord, then, the order of eviction which has been passed would obviously have to be interfered with and set aside and fresh proceedings would have to be initiated. This would not only result in wastage of precious judicial time, but, would also have the unwanted effect of prolonging the litigation before the Trial Court.



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15. I should also point out here that the Civil Procedure Code was amended in 1999, inserting Section 115(3). By this provision, it was made clear that pending of a revision will not operate as a stay for the proceedings before the Courts subordinate to this Court. There are no such limitations for revisions pending under Article 227 of the Constitution of India. Having said this, I should add that the learned Counsel for the civil revision petitioner always had the option of bringing up the matter before this Court by way of mentioning to the learned Judge who is exercising the portfolio over the matter. Be that as it may, since I have heard the matter on merits, I am going to decide the issue presented.

16. Under Section 4(1) of the Tamil Nadu Act 42 of 2017, the concept of oral tenancy has been abolished. The new Act demands that any person taking possession of the property as a tenant or any person giving the property under tenancy as a landlord, should do so only by way of an agreement in writing. In case, tenancy agreement in writing is not entered into between the parties, then Section 4(2) proviso makes it clear that the landlord or the tenant can apply for termination of tenancy under Clause (a) of sub-section 2 of Section 21 of the Tamil Nadu Act 42 of 2017. The effect



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of Section 21(2)(a) is also clear. Under the said provision, if an application is made to the learned Rent Controller and the learned Rent Controller finds that the landlord and tenant have failed to enter into an agreement, then, he shall pass an order of recovery. Reading Section 4(2) proviso along with Section 21(2)(a), I am able to see that a right is given to the landlord/tenant to seek for termination of tenancy if no agreement has been entered into. If that is the situation which prevails, then, the learned Rent Controller merely passes an order recognising the existence of such situation and orders recovery of possession.

17. The argument of Mr.Bijesh Thomas, learned Counsel for the petitioner that in case, the landlord is responsible for having brought about the situation, he is not entitled to seek for eviction, though tantalizing, I am not in a position to agree with the same. The first and easy way to reject this argument is by referring to the judgment in ***S.Muruganandam Vs. J.Joseph, 2022 SCC OnLine Mad 375.*** The Hon'ble Mr.Justice R.Subramanian had clearly held that:

"Section 21(2)(a) makes failure on part of the tenant or landlord to enter into a written agreement of tenancy a ground of repossession by the landlord. Section 21(2)(a) does not specify as



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to the reason for failure to enter into an agreement in writing. It gives the right to the landlord to sue for repossession de hors the fact that the landlord may be at fault and he may be the reason for non-renewal or failure to enter into an agreement in writing. It is open to a tenant to contend that despite his request, the landlord did not execute an agreement in writing and therefore, the landlord cannot invoke Section 21(2)(a) seeking repossession".

This clear and categorical finding given by the learned Judge has to be merely applied to the facts of the present case.

18. This view taken by the learned Judge has been amplified by Hon'ble Mr.Justice N.Seshasayee in ***J.Thennarasu Vs. Anita Nalliah, (2022) 6 Mad LJ 271***. In paragraph No.9 of the said judgment, the learned Judge has set forth the categories when cross-examination can be permitted. No doubt the learned Judge has very clearly stated that the illustrations given by him are not exhaustive but merely illustrative. The learned Counsel for the petitioner is unable to point out any circumstance which exist in the present case which will operate as an exception to the conditions laid down by Hon'ble Mr.Justice N.Seshasayee.

19. The second point on which I would reject the argument of the civil revision petitioner is on plain construction of Sections 4(1), 4(2)



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proviso and Section 21(2)(a) of the Tamil Nadu Act 42 of 2017. Where the statute is clear that a Court has little or no room to interpret a section which would have a tendency to defeat the purpose for which the legislation has been made, then the Court should not engage in such interpretation. The Tamil Nadu Act 42 of 2017 was brought in in order to balance the rights of the landlord and tenant. The legislature, in its wisdom, has decided that there must be a tenancy agreement in writing and if there is no such agreement in writing, then, either party has a right to terminate the tenancy and on such termination of tenancy, which is by way of filing a petition under Section 21(2)(a) of the Tamil Nadu Act 42 of 2017, the Court has to order eviction. To read the principles of equity that one, who is at mistake, cannot take advantage of such mistake, would amount to re-writing the statute and amending Section 21(2)(a) and Section 4(2) proviso. Unfortunately for this petitioner, the Court does not possess such powers. Therefore, I would have to hold that irrespective of whether the mistake is committed by the landlord or the tenant, if no tenancy agreement exists under Section 4(1), then the tenant or the landlord can file an application before the learned Rent Controller for granting an order of repossession.



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20. Turning to the facts of this case, it is admitted by both the sides that there is no tenancy agreement in terms of Section 4(1). As pointed out by Hon'ble Mr.Justice N.Seshasayee, there is no inherent right of cross-examination under the new Act. Cross-examination would be at the discretion of the learned Rent Controller in order to clarify the pleadings between the parties. The only dispute in the present case was whether there was a written agreement in terms of Section 4(1) or not. The landlord can plead that there is no agreement, and it can be defeated by the tenant if he had pleaded that there is a written agreement and he was in a position to produce it. That situation is not presented in the present case. Therefore, the learned Rent Controller in his discretion felt that no cross-examination is necessary.

21. A reading of Section 36(2) of the Tamil Nadu Act 42 of 2017 makes it clear that it is the discretion of the learned Rent Controller to grant the right to cross-examine on a case by case basis. If he comes to a conclusion that there is no necessity to permit the tenant or the landlord to cross-examine the other party, unless and until, the discretion has been



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exercised in a capricious or arbitrary manner, it is not susceptible to be interfered with by way of Article 227 of the Constitution of India.

22. In the light of the above discussion, since admittedly, there is no written agreement, the learned Controller has correctly exercised his discretion and therefore, while frowning at the act of the learned Rent Controller in proceeding with the matter when this Revision was pending, I am constrained to confirm the same. In fine, this Civil Revision Petition stands dismissed. However, since interesting point was argued between the parties, I am not inclined to impose costs. Consequently, connected miscellaneous petition is closed.

30.07.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
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V.LAKSHMINARAYANAN, J.

grs

To

The XV Small Causes Judge-cum-Rent Controller,
Chennai.

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