



C.R.P.No. 2018 of 2020

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **25.09.2024**

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No. 2018 of 2020

and

C.M.P.No.12592 of 2020

R.Valarmathi

...Petitioner

Vs.

K.Dhanraj

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, set aside the order and decree dated 30.08.2019 passed by the Hon'ble District Munsif Court, Thiruvottiyur in M.P.No.31 of 2019 in M.P.No.1 of 2019 in RCOP.No.29 of 2014.

For Petitioner : Mr.D.Nandhagopal

For Respondent : Mr.P.Jagadeesan

ORDER

The revision has been filed seeking to set aside the order and decree dated 30.08.2019 passed by the District Munsif, Thiruvottiyur in M.P.No.31 of 2019 in M.P.No.1 of 2019 in RCOP.No.29 of 2014.



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Brief facts of the case:-

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2. The petitioner is the tenant and the respondent is the landlord. The respondent/landlord has filed an eviction petition against the revision petitioner's father and mother before the District Munsif, Thiruvottiyur in RCOP.No.29 of 2014, on the ground of willful default and owners occupation. During the pendency of the said RCOP, the mother of the revision petitioner/tenant passed away and the revision petitioner/tenant was impleaded as the legal heirs of her mother in M.P.No.42 of 2016 in RCOP No.29 of 2014, as the third respondent, vide order dated 29.01.2018. During the pendency of the RCOP, since the revision petitioner/tenant and her father had not paid the monthly rent, the respondent/landlord had taken out an application in MP.No.86/2018 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as the “Act”) and pending enquiry, the revision petitioner/tenant was set ex parte on 16.08.2018.

3. On 04.02.2019, the revision petitioner/tenant had filed an application in M.P.No.1 of 2019 in RCOP.No.29 of 2014 to set aside the ex parte order. The learned District Munsif by an order dated 04.03.2019 had

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allowed M.P.No.1/2019 and directed the revision petitioner/tenant to pay Rs.1,000/- as costs to the respondent/landlord on or before 11.03.2019.

Since the revision petitioner/tenant had failed to comply with the conditional order, M.P.No.1/2019 was dismissed on 12.03.2019. Thereafter, on 26.03.2019, the District Munsif had passed an order under Section 11(4) of the Act, directing the revision petitioner/tenant to pay the arrears of rent of Rs.1,70,800/- on or before 26.04.2019. Since the revision petitioner/tenant had failed to comply with the conditional order, the District Munsif, by an order dated 27.04.2019 had allowed RCOP.No.29 of 2014 and directed the revision petitioner/tenant to hand over the vacant possession of the premises to the respondent/landlord within a period of two months. Subsequently, on 18.06.2019, the revision petitioner/tenant had filed an application in M.P.No.31 of 2019, to condone the delay of 15 days in filing the petition to restore M.P.No.1 of 2019 in RCOP.No.29/2014. The Trial Court, finding that no sufficient cause had been shown by the petitioner to condone the delay, had dismissed the application in M.P.No.31 of 2019 vide order dated 30.08.2019. Aggrieved over the same, the present revision petition has been filed by the revision petitioner/tenant.



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4. The learned counsel for the revision petitioner/tenant would submit that initially the revision petitioner's father and mother were the respondents in RCOP No.29/2014. The mother of the revision petitioner passed away during 2016 and the respondent/landlord without impleading the other legal heirs of the deceased tenant had only impleaded the revision petitioner which is in violation of Section 2(8) of the Act. He would also submit that the order passed by the learned District Munsif without impleading the other legal heirs is a nullity and thereby the order has to be set aside. In support of his contention the learned counsel for the revision petitioner/tenant would rely on the judgment of this Court reported in **(2014) 1 MLJ 428 - K.Rajendran Vs. State of Tamil Nadu**. The relevant paragraphs of the judgment relied on by the learned counsel for the revision petitioner/tenant are extracted hereunder:-

44. It may not be out of place for this Court to make a relevant mention that Section 208) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 means



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"Tenant' as any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who-

(i) in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant."

45. However, Section 2(6) of the Act 18 of 1960 defines "landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and Others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant.



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46. *From the definition of Section 2(8) of the Tamil*

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Nadu Buildings (Lease and Rent Control), Act, 1960, this Court opines that the said definition would include within its ambit not only a tenant during the 'subsistence of contractual tenancy and also a tenant "continuing in possession after the termination of tenancy". As a matter of fact, the said definition of tenant in wider prospective includes any individual by whom or of whose account rent is payable for a building and even includes the surviving spouse or any son or daughter and any person continuing in possession after the termination of tenancy in his favour. An individual who claims to be a tenant must fulfill two requisites: (a) That he or she is the surviving spouse or any son or daughter or the legal representative of the deceased tenant; (b) The aforesaid individual ought to have been living with the tenant in the building as a member of the tenant's family till the death of tenant.



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47. Indeed, the definition in Section 2(8) of the Tamil

Nadu Buildings (Lease and Rent Control), Act will only take in sons or daughters or the legal representatives of the tenant only after the demise of the tenant and not when the tenant herself as alive. Even the definition of 'tenant' under Section 2(8) of the Act, 18 of 1960 relates to matters not only pertaining to heritable relationship but also his or her association with the business carried out on by the deceased tenant in the petition mentioned premises till demise. Also that, the condition precedent for a legal representative of the deceased tenant to be accepted as a tenant for the purpose of the Rent Control Act is that he/she should have been living with the deceased tenant in the building as member of the tenant's family till the death of the tenant.

48. In regard to the language of Section 2(6) and Section 2(8) of the Tamil Nadu Buildings (Lease and Rent



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*Control) Act, 1960 one can safely say that so far as the legal representatives of a tenant is concerned, such of those members of the chief tenant's family who are living with him up to the date of his death would be the only proper legal representatives who ought to be brought on record for the purpose of further process to be undertaken by such legal representatives of the deceased chief tenant in proceedings by the chief tenant against the sub-tenant as per the decision **Guruswamy Nadar v. Natesu Nadar, (1969) 2 MLJ 488 at 490.***

5. Per contra, the learned counsel appearing for the respondent/landlord would submit that admittedly the schedule premises is a residential building and the revision petitioner was the only daughter living with the tenant in the building as a member of the tenant's family up to the death of the tenant. He would submit that even in the memo filed by the petitioner/tenant before the EP Court, the petitioner/tenant has stated that her mother died in the year 2016 and that the other legal heirs of her



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deceased mother, i.e; one male legal heir, namely, Mohanasundaram had passed away in the year 2009 and another three female legal heirs namely, (i) Mrs.Gowri, who is aged about 44 years, settled at Ratnagiri, Vellore after marriage, (ii) Mrs.Ramalakshmi, who is aged about 39 years, residing at Paranambedu village in Ponneri Taluk and (iii) Mrs.Rajalakshmi, who is aged about 38 years, residing at Chinnambedu Village in Ponneri Taluk.

6. The learned counsel for the respondent/landlord would further submit that as per Section 2(8)(i) of the Act, in the case of a residential building, persons who were living with the tenant in the building as a member of the tenant's family up to the death of the tenant can only be impleaded as legal heirs. Since in the instant case, the other legal heirs of the deceased tenant were already married and they were admittedly living elsewhere, the respondent/landlord had not impleaded them as legal heirs of the deceased tenant.

7. The learned counsel for the respondent/landlord would submit that the petitioner's father passed away in the year 2021 and thereafter the



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petitioner has not paid rents till date and as on date an amount of Rs.3,08,000/- is pending towards rents. The revision petitioner is a chronic defaulter of rent and the Trial Court finding that no sufficient cause had been shown by the revision petitioner/tenant to condone the delay, had dismissed the application in M.P.No.31 of 2019 in M.P.No.1 of 2019 in RCOP.No.29 of 2014. Hence, he prayed for dismissal of this revision petition.

8. Heard both sides and perused the materials available on record.

9. No doubt, Section 2(8) of the Act states that all the legal heirs of the deceased tenant have to be impleaded as necessary parties. However, Section 2(8)(i) of the Act specifies that in the case of a residential building, the person to be impleaded should have been living as a member of the tenant's family upto the death of the tenant/Chief Tenant. In this case, the petitioner has admitted in her memo filed before the EP court that her brother pre-deceased her parents and the other 3 sisters are married and they are living elsewhere. Therefore, there is no necessity to implead the other legal heirs of the deceased tenant in RCOP.No.29 of 2014. Further, the



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judgment relied on by the petitioner's counsel also insists that the members of the Chief Tenant's family who are living with him upto the date of his death would be the only proper legal representatives who should be brought on record for further process. In this case as stated above admittedly other than the present petitioner no other legal heir was living with the Chief Tenant upto his death.

10. Further, in this case, the petitioner was set ex parte on 16.08.2018 and she had filed an application in M.P.No.1 of 2019 to set aside the ex parte order and the same was allowed on 04.03.2019 with the condition to pay costs of Rs.1,000/- to the respondent/landlord on or before 11.03.2019. The petitioner apart from being a chronic defaulter in rent had also not paid the costs of Rs.1,000/- imposed by the Trial Court within the time frame fixed. The petitioner had contended that since she was taking native treatment for Jaundice, she was unable to pay the costs of Rs.1,000/- on or before 11.03.2019. The Trial Court finding that the petitioner had not provided specific details regarding the treatment which she had undergone and the date of recovery had dismissed the petition stating that the petitioner



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had not shown any sufficient cause to condone the delay of 15 days for filing the restoration petition in M.P.No.1 of 2019 in RCOP.No.29 of 2014. The learned Trial Judge, rightly finding that the petitioner is a chronic defaulter and that she had not provided specific details of the date of her ailment and her recovery, dismissed the petition.

11. In view of the above, this Court does not find any illegality or infirmity in the order passed by the learned District Munsif, Thiruvottiyur in M.P.No.31/2019 in MP.No.1/2019 in RCOP.No.29/2014. Accordingly, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

To:-

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A.D.JAGADISH CHANDIRA, J.

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