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C.R.P.(PD)No.3014 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3014 of 2024

and

C.M.P.No.16212 of 2024

D.Padmanabhan

.. Petitioner

Vs.

J.A.Nemichand

.. Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decretal order passed in M.P.No.2 of 2023 in R.L.T.O.P.No.102 of 2023 on the file of the learned XV Judge, Court of Small Causes, Chennai, dated 19.06.2024, dismissing the above application is manifestly erroneous, unjust, illegal and contrary to the settled principles of law, and the abovesaid M.P.No.2 of 2023 has to be allowed as not maintainable.

For Petitioner : Mr.A.C.Chandrasekar

ORDER

The present Civil Revision Petition arises against an order passed by the learned XV Judge, Court of Small Causes, Chennai in dismissing the petition in M.P.No.2 of 2023 in R.L.T.O.P.No.102 of 2023.

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2. There is no dispute between the relationship between the parties.

The civil revision petitioner is the tenant and the respondent is the landlord.

3. The respondent/landlord invoked Section 21(2)(a) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 [Tamil Nadu Act 42 of 2017], and presented a petition for eviction.

4. On being served with the notice, the petitioner/tenant moved an application in M.P.No.2 of 2023 pleading that the said petition is not maintainable. The Rent Court dismissed the said petition, against which the present Civil Revision Petition has been filed before this Court.

5. Heard Mr.A.C.Chandrasekar, appearing on behalf of the civil revision petitioner.

6. According to Mr.A.C.Chandrasekar, the RLTOP itself is not



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maintainable on account of the following positions :

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(1) the respondent/landlord had filed R.C.O.P.No.991 of 2014 seeking eviction. He would state that the said RCOP was dismissed, against which an appeal was preferred in R.C.A.No.657 of 2017 and as against the said dismissal, a civil revision petition is pending in C.R.P.No.2790 of 2023. He would state that since the proceeding initiated under the old act is pending, Section 47 of the Code of Civil Procedure bars the presentation of a fresh petition under the new Act.

(2) Under Section 24 of the Tamil Nadu Act 42 of 2017, prior to taking possession of the property, the respondent/landlord will have to return the advance amount that has been received by him from the tenant. Since, in this particular case, the landlord has not returned the advance amount, he is not entitled to maintain the eviction petition. Finally, he would state that Section 21(2)(a) of the said Act is so one sided that the tenant has no other option than to surrender possession, which he would state that is unfair on the tenant.



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7. I have carefully considered the arguments made by Mr.A.C.Chandrasekar.

8. The submissions of Mr.A.C.Chandrasekar is that the landlord is not permitted to proceed with eviction simultaneously under both the legislations.

9. A careful perusal of the proviso attached to Section 47(2) of the Code of Civil Procedure would show that the petitioner within a period of 270 days, for the time Tamil Nadu Act 42 of 2017 came into force, is entitled to withdraw any suit or other proceeding with respect to the subject matter of the present suit with liberty to file a fresh application under the new Act.

10. According to Mr.A.C.Chandrasekar, in case, the withdrawal is not done, the landlord cannot ride two horses at the same time, one under Tamil Nadu Act 18 of 1960 and another under Tamil Nadu Act 42 of 2017. I am unable to understand how the said provisions apply to the facts of this case.



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The landlord had filed RCOP.No.991 of 2014. The said RCOP was dismissed. The landlord has not preferred an appeal. It was the tenant who preferred RCA No.657 of 2017. As against the dismissal of RCA.No.657 of 2017, it was the tenant who preferred C.R.P.No.2790 of 2023. By no stretch of imagination can a landlord withdrawn the revision that has been preferred by the tenant. If the landlord were to attempt such a withdrawal, in fact, he is opening himself to proceeded for perjury and for contempt. An adversary party cannot withdraw the proceeding preferred by his opponent before this Court or any other Court. Therefore, the argument under Section 47 of the Code of Civil Procedure deserves rejection for a simple reason it is not the landlord's revision before this Court, but the revision at the instance of the tenant.

11. Insofar as the plea under Section 24 of the Tamil Nadu Act 42 of 2017 is concerned, the Act declares that the landlord cannot retain the advance amount once he takes possession of the property. But this Section does not bar the landlord to file a petition under Section 21(2)(a) of the Tamil Nadu Act 42 of 2017, which has been done by the landlord in the



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present case. In case, the landlord refuses to refund the advance amount, then as per Section 24(2) of the Tamil Nadu Act 42 of 2017, he is liable to return the same together with interest as may be fixed by the Court from time to time. Therefore, Section 24 of the Tamil Nadu Act 42 of 2017 is also not a bar for the purpose of maintaining a petition under Section 21(2)(a) of the said Act.

12. The last argument of Mr.A.C.Chandrasekar is that Section 21(2)(a) of the said Act is arbitrary, and it also need not detain me. The constitutional validity of Tamil Nadu Act 42 of 2017 was put in test before the Division Bench of this Court. The Bench consisting of *Hon'ble the Chief Justice* and *Hon'ble Mr.Justice D.Bharatha Chakravarthy* has upheld the constitutional validity. See, Balaji vs. Principal Secretary to the Government & Others, W.P.No.3985 of 2020 etc., dated 23.04.2024. The validity having been upheld, the Rent Court has to apply the law as it is.

13. Apart from that, interpreting Section 21(2)(a) of the Tamil Nadu Act 42 of 2017, *Hon'ble Mr.Justice R.Subramanian* in the judgment of



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S.Muruganandam vs J.Joseph [(2022) 1 LW 752 = Manu/TN/1366/2022]

has held that even if the landlord is unreasonable and refuses to enter into an agreement with the tenant, by virtue of Section 4(2) read with Section 21(1)(a) of Tamil Nadu Act 42 of 2017, the tenant will have to vacate, if there is no written agreement. That being the position of law consistently declared by the Court, and all the pleas raised by Mr.A.C.Chandrasekar failing, I have no reasons to admit the present revision.

14. The learned Rent Controller is requested to expedite the proceeding and pass final orders in R.L.T.O.P.No.102 of 2023 within a period of four months from the date of receipt of a copy of this order. Accordingly, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN, J.

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To

The learned XV Judge, Court of Small Causes,
Chennai

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