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C.R.P.(NPD) Nos.3485 and 4470 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) Nos.3485 and 4470 of 2024 and
C.M.P.Nos.18559, 24953 & 24956 of 2024

C.R.P.(NPD) No.3485 of 2024

Naresh Prashad Agarwal

... Petitioner/Petitioner/Petitioner/1st Respondent

-VS-

1. P.P.Jai Ganesh
2. P.S.Saravanan
3. P.Panchacharam
4. Mrs.P.Ushranai
5. Vinod Jain

... R1 to R4/R1 to R4/R1 to R4/Petitioners
... 5th Respondent/R5/R5/2nd Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal orders dated 15.04.2024 made in M.P.No.7 of 2024 in R.L.T.O.P.No.264 of 2020 on the file of the XV Small Causes Court, Chennai and allow this Civil Revision Petition.

For Petitioner	: Mr.N.Murali Kumaran, Senior Counsel For M/s.Mcgan Lw Firm
For R1 to R4	: Mr.V.Sivakumar For M/s.P.B.Ramanujam Associates
For R5	: No Appearance

C.R.P.(NPD) No.4470 of 2024



C.R.P.(NPD) Nos.3485 and 4470 of 2024

Naresh Prashad Agarwal

... Petitioner/Petitioner/1st Respondent

-VS-

1. P.P.Jai Ganesh

2. P.S.Saravanan

3. P.Panchacharam

4. Mrs.P.Ushranai

5. Vinod Jain

... Respondent/Respondent/Landlord

... Respondent/Respondent/2nd Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 23.01.2024 in M.P.No.6 of 2022 in R.L.T.O.P.No.264 of 2020 on the file of the XV Small Causes Court, Chennai and allow this Civil Revision Petition.

For Petitioner : Mr.N.Murali Kumaran, Senior Counsel

For M/s.Megan Lw Firm

For R1 to R4 : Mr.V.Sivakumar

For M/s.P.B.Ramanujam Associates

For R5 : No Appearance

ORDER

A challenge has been made to the orders dated 15.04.2024 and 23.01.224 respectively made in M.P.No.7/2024 & M.P.No.6/2022 in R.L.T.O.P.No.264 of 2020.

2. The revision petitioner herein is a Tenant under R1 to R4, who are landlords and 5th respondent is a sub-tenant. For the sake of brevity, the parties are referred to as 'Landlords, Tenant and Sub-Tenant'.

3. Originally, the Landlords had filed a petition under Section



C.R.P.(NPD) Nos.3485 and 4470 of 2024

21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, (in short 'the Act, 2017') for eviction of the Tenant on the ground of subletting the premises. Admittedly, the Landlords rented their premises to the Tenant on a monthly rent of Rs.21,000/- and the eviction was sought on the ground that written agreement had not been entered into between the parties, after introduction of the Act, 2017.

4. In the petition filed for eviction, no counter had been filed from 29.04.2021 and therefore, the Tenant was set *ex parte* on 29.06.2021. Subsequently, the Tenant had filed M.P.Nos.3 and 4 of 2021 to condone the delay of 50 days in filing the petition to set aside the *ex-parte* order and to set aside the *ex parte* order dated 29.06.2021. Those petitions were allowed on payment of costs of Rs.2,000/- each, which was to be paid on or before 06.03.2022. However, the cost had not been filed as directed by the Court, which had resulted in dismissal of M.P.Nos.3 and 4 of 2021. Thereafter, yet another two applications were filed in M.P.S.R.Nos.23086 and 23087 of 2022 to set aside the dismissal of M.P.Nos.3 and 4 of 2021, which were rejected by the Trial Court without even numbering it and the said order had



C.R.P.(NPD) Nos.3485 and 4470 of 2024

not been challenged.

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5. In the meanwhile, the Landlords filed a petition in M.P.No.5 of 2022 to amend the petition, seeking eviction under Section 21(2)(a) of the Act, 2017 and after amendment, the RLTOP was allowed and eviction ordered by an order dated 11.10.2022. Thereafter, once again another application in M.P.No.6 of 2022 came to be filed by the Tenant for setting aside the *ex parte* decree dated 11.10.2022, which was dismissed by the Rent Court on 23.01.2024. Subsequently, the Tenant had filed one more petition in M.P.No.7 of 2022 to review the order dated 23.01.2024 made in M.P.No.6 of 2022 and the same was also dismissed on 15.04.2024. Challenging both orders passed in M.P.Nos.6 & 7 of 2022, the instant Civil Revision Petitions have been filed.

6. Learned Senior Counsel for the Tenant mainly submitted that eviction had been ordered on a different ground and no notice had been served on the Tenant. Further, the Landlords did not come forward to execute the agreement and the Tenant had all along been paying the monthly



C.R.P.(NPD) Nos.3485 and 4470 of 2024

rent without any default. He further submitted that only for the purpose of eviction, the RLTOP was amended and *ex parte* decree obtained behind the back of the Tenant.

7. Per contra, learned counsel for the Landlords contended that the petition for eviction had been filed as early as in the year 2020 and though the Act, 2017 mandates disposal of the petition within 60 days, the matter had been dragged on for nearly four years by filing petitions one after the other. He further contended that the Tenant was set *ex parte* on 29.06.2021 and despite the opportunity given by the Rent Court to participate in the proceedings on payment of Rs.2,000/- as cost, on account of non payment of cost, the petition was dismissed. Moreover, two petitions filed in M.P.S.R.Nos.23086 and 23087 of 2022 were rejected by the Rent Court, the order of which, had not been challenged and thereafter, M.P.Nos.6 & 7 of 2022 came to be filed. The act of the Tenant is a clear abuse of process of law and now, the Tenant has sublet the premises to a Fashion Jewellery.

8. Heard the learned counsel on either side and perused the



C.R.P.(NPD) Nos.3485 and 4470 of 2024

material documents available on record.

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9. On the last date of hearing, viz., 04.12.2024, this Court passed the following interim order:

“After an elaborate argument, it is brought to the notice of this Court that a jewellery shop is put up in the shop in question. According to the revision petitioner, he is only running the shop, which is highly refuted by the respondents 1 to 4, contending that the revision petitioner is not running the shop and has only sublet the shop.

2. In view of contra submissions, the revision petitioner is directed to produce relevant documents, such as, details of staff members employed therein, nature of payment of salary to them, PF deductions, GST registration, etc., to show that the shop is run by him only.

3. List these matters on 17.12.2024 for production of documents afore-stated. Interim order already granted by this Court is hereby extended till then.

10. Pursuant to the above order, an affidavit has been filed by the Tenant and the same indicates that the Tenant had stopped his business activities and the shop remained closed from September, 2020 due to medical condition of the Tenant upto April, 2022 and there was no business activities in the tenanted premises and it was under lock till May, 2022. It is further indicated in the affidavit that he is using the tenanted premises as a



C.R.P.(NPD) Nos.3485 and 4470 of 2024

show room and there is no sale activity therein. His son Ganesh Agarwal and grandson Vinay Agarwal are looking after his show room. It is stated in the affidavit that he does not have any staff and therefore, the requirement for PF did not arise. It is further stated that there is a GST registration of his proprietary concern, viz., Shiv Sahai & Sons, functioning at No.60-61, Narasima Dasari Lane, NSC Bose Road, Chennai and the said place is not suitable for a showroom.

11. In the entire affidavit, it is nowhere mentioned about the jewellery shop being run in the shop in question. Though learned Senior Counsel for the Tenant reiterated the running of fashion jewellery, none of the documents, evidencing establishment of shop by the Tenant has been placed before this Court. In the affidavit filed before this Court, it is stated as if Shiv Sahai & Sons is proprietary concern, before the Courts below, it was specifically averred that Shiv Sahai & Sons is a private limited company. These facts in fact fortify the case of the Landlords that petitions have been filed by the Tenant one after the other to drag on the proceedings.

12. The very object of the Act, 2017 is to regulate the rent as



C.R.P.(NPD) Nos.3485 and 4470 of 2024

per the terms and conditions of the agreement entered into between the owner of the premises and the tenant. Section 4 of sub-clause (2) makes it mandatory that if there was no agreement in writing entered into in respect of the old tenancy before commencement of the Act, 2017, the landlord and tenant shall enter into an agreement in writing with regard to the tenancy within a period of 575 days from the date of commencement of the Act, 2017. Proviso to sub-section (2) to Section 4 of the New Act makes it clear that irrespective of the failure on the part of the tenant or the landlord in entering an agreement, the same will give right to either the landlord or the tenant to apply for termination of the tenancy under clause (a) of sub-section (2) of Section 21 of the new Act. In other words, the above proviso makes it clear that non entering of agreement in writing, even on the mistake of both sides, will give rise to cause of action to the landlord for eviction under Section 21 of the New Act.

13. This Court in the case of *S.Muruganandam vs. J.Joseph,* *reported in 2022 SCC OnLine Mad 375,* held as follows:

“Section 21(2)(a) makes failure on part of the tenant or landlord to enter into a written agreement of tenancy a ground



WEB COPY



C.R.P.(NPD) Nos.3485 and 4470 of 2024

of repossession by the landlord. Section 21(2)(a) does not specify as to the reason for failure to enter into an agreement in writing. It gives the right to the landlord to sue for repossession dehors 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".

14. The foremost contention put forth by the learned Senior Counsel for the Tenant is that as the Landlords had not come forward to execute the agreement in respect of the last rent already paid, he cannot be evicted under Section 21(2)(a) of the Act, 2017. It is relevant to note that as already discussed above, the very object of the Act is to regulate the rent between the parties, which must be a reasonable and market rent prevailing at the relevant point of time, agreed between the parties as per the terms agreed in writing. In this regard, this Court in the case of ***Habeeb Hardware and another vs. M.D.Gajarajakumar*** made in ***CRP.Nos.4509 and 4511 of 2024 dated 13.12.2024*** has held as follows:

“7. As far as the contention that the tenant is always ready and willing to execute the agreement, no documents were exhibited by the tenants. Be that as it may, the very New Act came into force on 22.02.2019. The main object of the Act is to regulate the rent as per the terms and conditions of the agreement between the landlord and the tenant. It also aims at balancing the rights and responsibilities of landlords and tenants and



WEB COPY



C.R.P.(NPD) Nos.3485 and 4470 of 2024

*provide regulations of the rent as per the agreement. **The very object of the Act is to regulate the rent between the landlord and the tenant as per the terms agreed between the parties. Only to achieve such terms to be entered between the parties, Section 4 makes it clear that even in respect of the existing tenancy when there is no agreement entered between the parties, the parties were required to enter an agreement in writing within a period of 575 days from the date of commencement of Act, i.e., 22.02.2019. Proviso to sub-section (2) to Section 4 of the New Act makes it clear that irrespective of the failure on the part of the tenant or the landlord in entering an agreement, the same will give right to either the landlord or the tenant to apply for termination of the tenancy under clause (a) of sub-section (2) of Section 21 of the new Act. In other words, the above proviso makes it clear that non entering of agreement in writing, even on the mistake of both sides, will give rise to cause of action to the landlord for eviction under Section 21 of the New Act.***

8. Though, the sub-section (2) to Section 4 of the New Act makes it clear that parties are directed to enter an agreement in writing with regard to the tenancy within a period of 575 days from the date of commencement of Act, i.e., 22.02.2019; directing the parties to enter an agreement in writing is in view of this Court only to regulate the rent as per the market value, since the very object of the New Act is to regulate the rent on the basis of the terms settled between the parties in agreement. This intention of the legislation can be gathered from the subsequent provisions introduced under the New Act. Section 8 of the New Act defines what is rent payable, which reads as follows:

"8. Rent payable.— The rent payable in relation to a premises shall be,—

- (a) in case of new tenancies entered into after the commencement of this Act, the rent agreed to between the landlord and the tenant at the commencement of the tenancy;*
- (b) in case of tenancies entered into before the*



WEB COPY



C.R.P.(NPD) Nos.3485 and 4470 of 2024

commencement of this Act, where no agreement was executed between the parties, the rent agreed to between the landlord and the tenant in the agreement executed between them under sub-section (2) of section 4 ;

(c) in case of tenancies entered into before the commencement of the Act, where an agreement in writing was already entered into, the rent agreed to between the landlord and the tenant in such agreement.”

9. Clause (b) of Section 8 of the Act makes it clear that even in respect of the earlier tenancy, where no written agreement was executed between the parties, the rent payable would be the rent that is agreed upon between the landlord and the tenant in such agreement which is to be duly executed as required under sub-section (2) of section 4. The above mandatory provision requires the parties to enter an agreement in writing only in order to to regulate the rent as per the terms of the parties and not based on old rent. If at all, the intention of the legislation was only to enter an agreement with regard to the existing rent alone, Section 8 (b) would not have been brought under the statute to define what is the rent payable even in respect of the old tenancy.

10. Such view of the matter, this Court is of the view that merely the basis of the submissions that the tenants were ready and willing to execute the agreement will not alone be a ground to resist the eviction. Only when the tenants have bonafidely come forward to execute the agreement in writing with a reasonable market rent prevailing at the relevant point of time, it can be said that the landlord purposely did not agree to enter an agreement only for the purpose of eviction.”

15. It is relevant to note that the eviction petition had been filed originally in the year 2020 and though the Tenant appeared before the Court,



C.R.P.(NPD) Nos.3485 and 4470 of 2024

he had not chosen to file counter and ultimately, he was set *ex parte* on 29.06.2021. Thereafter, as narrated above, the petition to set aside the *ex parte* order was allowed, subject to payment of cost of Rs.2,000/- and since the cost was not paid, the application was dismissed. To restore the application, once again, M.P.S.R.Nos.23086 and 23087 of 2022 were filed and those applications were rejected by the Trial Court and the said rejection order has not been challenged. Thereafter, the Tenant has filed M.P.Nos.6 of 2022 and 7 of 2024 and the same were dismissed, against which, these Civil Revision Petitions have been filed.

16. At this juncture, it was brought to the notice of this Court by the learned counsel for the Landlords that after a lapse of three years, the Tenant had come out with one more petition in M.P.No.8 of 2024 for enlargement of time to pay the cost of Rs.2000/-, which was dismissed.

17. The very Act, 2017 provides for speedy disposal of the matter under the Act, 2017. Section 36(6)(a) of the Act, 2017 stipulates time



C.R.P.(NPD) Nos.3485 and 4470 of 2024

limit for disposal of the application, which means that all applications filed under sub-clause 2 (a) to (h) of Section 21 of the Act, 2017 shall have to be decided by the Rent Court within the stipulated time. The dilatory tactics adopted by the Tenant to drag on the proceedings by filing applications one after the other defeats the very object of the Act, 2017 and therefore, the conduct of the Tenant cannot be countenanced. That apart, despite pointing out that the Tenant had sublet the property, no details have been furnished in the affidavit to disprove the said allegation. Strangely, contra stand has been taken that Shiv Sahai & Sons is a proprietary concern, whereas in the counter, it was stated that it is a Private Limited Company. All these facts clearly indicate that the Tenant did not come to the Court with clean hands and in order to frustrate the mandate of the Act and to drag on the proceedings, the Tenant has resorted to different tactics by filing various petitions, which cannot be permissible.

N.SATHISH KUMAR,J.,

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18. In fine, finding no merits in the argument advanced by the Tenant / revision petitioner herein, these Civil Revision Petitions are



C.R.P.(NPD) Nos.3485 and 4470 of 2024

dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To:

XV Small Causes Court,
Chennai.

C.R.P.(NPD) Nos.3485 and 4470 of 2024