



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.810 of 2022

and

C.M.P.No.4059 of 2022

R.Balasubramaniam

...Petitioner

Vs.

Abdul Azeez

...Respondent

Prayer: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960 as amended by Act 23 of 1973 and by Act 1 of 1980, against the judgment and decree passed in R.C.A.No.35 of 2019 dated 05.10.2021 on the file of the Principal Subordinate Court, Coimbatore, reversing the judgment and decree passed in R.C.O.P.No.3 of 2015 dated 04.01.2019 on the file of the Rent Controller, Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.S.N.Ravichandran

for Mr.R.D.Ashokkumar

For Respondent : Mr.Ramesh Venkatachalapathy



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ORDER

The landlord is on revision. He launched proceedings under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960 in RCOP.No.3 of 2015, claiming that the premises in occupation of the respondent / tenant is required for his son's business.

2.The tenant resisted the application contending that the application lacks bonafides and that there is no immediate requirement by the landlord. It was also contended that the son of the landlord is working as technical head in a Multi National Company and it is rather strange that he would seek to commence a coffee shop, after resigning his job.

3.Before the Rent Controller, the landlord was examined as P.W.1 and his son was examined as P.W.2. Exs.P1 to P4 were marked. The Commissioner's report was marked as Ex.C1. Ex.P4 is the relieving letter dated 10.05.2013, which shows that the landlord's son, P.W.2 has resigned from his job. The tenant was examined as R.W.1.

4.On the appreciation of the evidence placed before it and on a



consideration of the law relating to owner's occupation of a non-residential premises, the learned Rent Controller concluded that the requirement of the landlord is bonafide and ordered eviction. Aggrieved, the tenant preferred an appeal before the Appellate Court in RCA.No.35 of 2019.

5.The learned Appellate Authority concurred with the findings of the Trial Court on merits. It however, took into account the relative hardship and concluded that the hardship caused to the tenant would outweigh the advantage that would accrue to the landlord by ordering eviction. The Appellate Judge also referred to the judgment of this Court reported in **CDJ 2008 MHC 662** in support of his conclusions. On the said conclusion, the Appellate Judge allowed the appeal and dismissed the RCOP. Aggrieved, the landlord is on revision.

6. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.Ramesh Venkatachalapathy, learned counsel for the respondent.

7.Mr.S.N.Ravichandran, learned counsel for the petitioner / landlord would point out that question of relative hardship is not a factor to be considered in a proceeding under 10(3)(a)(iii) . Drawing my attention to the relevant provisions of the Tamil Nadu Buildings (Lease and Rent Control),



Act, 1960, the learned counsel would contend that consideration of relative hardship will arise only in cases where eviction is sought for under Section 10(3)(c) of the Act on the ground of additional accommodation.

8.Mr.Ramesh Venkatachalapathy, learned counsel for the respondent would report no instructions.

9.Section 10(3)(a)(iii) of the Act provides for eviction of a tenant of a non-residential premises on the ground of owner's occupation. The only requirement under that provision is that the landlord or the member of his family for whose business, the premises is sought for should not be in occupation of a non-residential premises in the City, Town or village concern. Section 10(3)(c) provides for eviction on the ground of requirement of additional accommodation by the landlord.

10.Proviso to Section 10(3) requires the Rent Controller to consider the question of relative hardship and imposes an obligation on the part of the Rent Controller to reject the application, if the Controller has satisfied that the hardship that will be caused to the tenant by granting an order will



outweigh the advantage to the landlord. This consideration of relative hardship is confined only to a petition under Section 10(3)(c) and not to a petition under Section 10(3)(a)(iii). The decision relied upon by the learned Appellate Authority was one rendered by this Court when it considered eviction under Section 10(3)(c). Therefore, the Appellate Authority has erred in taking account the question of hardship in a proceeding under Section 10(3)(a)(iii). Hence, I have no hesitation in setting aside the order of the Appellate Court.

11.This Civil Revision Petition is therefore, **allowed**, the order of the Appellate Authority is set aside and the order of eviction granted by the Rent Controller will stand restored.

23.01.2024

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Internet:Yes

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Speaking

Nuetral Citation :No

R.SUBRAMANIAN, J.

KKN



To:-

The Principal Sub-Court,
Coimbatore.

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