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CRP.Nos.4509 & 4511 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.Nos.4509 & 4511 of 2024
and CMP.Nos.25163 & 25168 of 2024

Habeeb Hardware
Represented by its Partner SA Farook

... Petitioner in CRP.No.4509 of 2024

M/s.Noor Hardware
Represented by Owner Mohamed Dhalfikar

... Petitioner in CRP.No.4511 of 2024

Versus

M.D.Gajarajakumar

... Respondent in both CRPs

COMMON PRAYER : Petitions filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 24.07.2024 made in RLTA.Nos.48 and 49 of 2024 by the III Additional Judge, City Civil Court, Chennai by confirming the order and decree dated 06.01.204 passing in RLTOP.Nos.480 & 479 of 2023 by the learned XV Judge, Small Causes Court, Chennai.

For Petitioners : Mr.N.Devarajan in CRP.No.4509 of 2024
Mr.R.Subramanian in CRP.No.4511 of 2024

For Respondent : Mr.V.Deenadayalan



COMMON ORDER

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Challenging the concurrent findings of the Rent Controller as well as the appellate authority confirming the order of eviction under Section 21(2)(a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, the present revisions have been filed.

2. Since the petitioners are the tenants under the respondent/landlord and the impugned orders have been passed against the revision petitioners, these revisions are heard together and disposed of by way of this common order.

3. Brief background of filing these revisions are as follows:

3.a. The landlord/respondent herein had filed an application for eviction of the petitioner/tenant under Section 21(2)(a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 ("New Act" hereinafter) for repossession on the ground that the tenant has not come forward to execute the agreement as mandated under Section 4 of the New Act, i.e., within a period of 575 days.



3.b. It is the case of the landlord that the revision petitioners are the tenants

under the landlord's shop for the last 30 years on a monthly rent of Rs.9000/-.

Despite several requests to enter the agreement in respect of the petition premises, tenant has not come forward to execute the agreement. That apart, the respondents have also decided to demolish and reconstruct the entire building since the same is an old building aged more than 50 years. Hence, filed the eviction petition. The tenants/revision petitioner took a stand before the authorities below that that they were always ready and wiling to execute the tenancy agreement, whereas, the landlord has not come forward to enter into the agreement. After the demise of Mr.M.A.Ethirajulu Naidu, the landlord/respondent claiming to be Kartha of a joint family has not taken any steps to enter into a rental agreement and further, the demolition plea is also not supported. The Rent Controller had ordered eviction of the petitioners/tenants under 21(2)(a) of the New Act and the appellate Court had confirmed the same. Challenging the eviction, the present revisions have been filed.

4. The main contention of the revision petitioners is that when the revision petitioners have taken a plea that they were ready and willing to execute the agreement and when the landlord has failed to execute the agreement, in such case,



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the tenants cannot be vacated automatically. This aspect has not been considered by the both the Courts below. He further submitted that a learned Single Judge in the case of *M/s.Topi Kapi vs. S.Sarath Babu* vide order dated 06.04.2023 made in *CRP.No.445 of 2023* has held that when the tenant has not refused to execute a written agreement and he has always exhibited readiness and willingness to execute the agreement, there cannot be eviction under Section 21 of the New Act.

5. Whereas, the learned counsel for the respondent/landlord submitted that irrespective of the default on either side, as long as there is no agreement entered into between the landlord and the tenant as mandated under the New Act, eviction is automatic. It has held been by this Court in the case of *S.Muruganandam vs. J.Joseph* reported in 2022 (2) CTC 291 (Mad).

6. Heard both sides and perused the materials placed on record.

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 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 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 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.

11. As far as the judgment of this Court in the case of *M/s.Topi Kapi vs.*



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S.Sarath Babu vide order dated 06.04.2023 made in *CRP.No.445 of 2023* holding

that when the tenant has not refused to execute a written agreement and he has always exhibited readiness and willingness to execute the agreement, there cannot be eviction under Section 21 of the New Act is concerned, before the learned Single Judge, Section 8 of the New Act has not been brought to his notice. Section 8 of the New Act makes it clear that even any agreement has to be entered as per the mandate of Section 4(2), rent has to be fixed as per the terms agreed between the parties. Therefore, when the entire Act itself was brought into force only in order to regulate the rent as per the terms of the agreement, mere submission by one of the parties that he was ready and willing to execute the agreement will not have relevance, unless the document itself is executed by themselves. Therefore, the above order of this Court cannot be applied to the present case. Whereas, this Court in the case of *S.Muruganandam vs. J.Joseph* reported in 2022 (2) CTC 291 (Mad) has held as follows:

" 9. 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 not 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 anomaly or the deficiency throws up several new challenges, before the Rent Courts. Various situations emerge under which the Rent Court has to consider the effect of absence of an agreement in writing.

10. The Scheme of the New Act requires tenancies to be in writing or to be converted into writing and in both cases to be registered as specified under the Act. Under the scheme of the Act, the tenancies can be split into two kinds, one the tenancies that were created prior to the enactment and tenancies that were created after the enactment. As far as the tenancies that were created after the enactment, the parties have no other choice but to enter into a written agreement and have it registered as provided under the Act. As regards the tenancies which has been entered into prior to the enactment, the parties are required to reduce the terms of the tenancy into writing and have it registered or if the tenancy is in writing to have it registered under the new Act. Therefore, the Act in effect does away with oral tenancy.

N. SATHISH KUMAR, J.



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12. Considering the above, this Court is of the view that the order of eviction passed by the both the Courts below does not require interference. Accordingly, I do not find any merits in these cases and revision petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

13.12.2024

Index : Yes / No
Speaking/non speaking order
dhk

To

1. The III Additional Judge,
III Additional Court, City Civil Court, Chennai

2. The XV Judge
XV Court, Small Causes Court, Chennai

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