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C.R.P.(PD)No.4074 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(PD)No.4074 of 2024
and C.M.P.No.22411 of 2024**

Ajay Nimani,
M/s.Nimani & Co.,
“Dadha Complex”,
No.365, Mint Street, Sowcarpet,
Chennai-600 079.

.. Petitioner

Vs

1.Apoorva Dadha
2.Nitesh Jagadish Jain
M/s.Nimani & Co.,
“Dadha Complex”,
No.365, Mint Street, Sowcarpet,
Chennai-600 079.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.07.2024 made in M.P.No.3 of 2023 in R.C.O.P.No.347 of 2017 on the file of the XV Small Causes Court, Chennai.



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For Petitioner : Mr.P.Prithvi Chopda
For R1 : Mr.M.Arun Kumar
for M/s.Sampath Kumar Associates

ORDER

This civil revision petition arises against the order passed by the learned XV Judge, Small Causes Court, Chennai, in M.P.No.3 of 2023 in R.C.O.P.No.347 of 2017 dated 08.07.2024.

2. R.C.O.P.No.347 of 2017 is a petition filed under the erstwhile Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The said petition invoked Sections 10(2)(i) alleging that the civil revision petitioner being a tenant, had defaulted in payment of rents amounting to Rs.2,88,620/-. A counter was filed to the said R.C.O.P. and the matter is pending consideration.

3. In the meantime, the landlord came to know that the tenant has sublet the property to the 2nd respondent herein. Therefore, he filed an application to implead the subtenant.



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4. The learned trial Judge came to a conclusion that the subtenant is proper and necessary party to the proceedings and allowed the impleading application. Hence, this revision is at the instance of the tenant.

5. Heard Mr.P.Prithvi Chopda for the civil revision petitioner and Mr.M.Arun Kumar for M/s.Sampathkumar Associates for the 1st respondent.

6. In a proceeding under Section 10(2)(i), the presence of the subtenant is absolutely unnecessary. The issue to be decided in the RCOP is whether there is any default and if there is, whether it is wilful. To answer this issue, the presence of the 2nd respondent is not necessary. In case the petition had been filed invoking the ground for eviction on the ground of subtenancy, then the subtenant could be considered a proper or a necessary party. The provisions of Order I Rule 10 of the Code of Civil Procedure, in any event, did not apply to the rent control proceedings as held by this Court in *Annamalai and another v. The Official Receiver, Tiruvannamalai and another*, (1996) 1 MLJ 47. Therefore, I am constrained to interfere with the order of the learned Rent Controller



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impeading a subtenant in a petition filed under Section 10(2)(i).

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7. After coming into force of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (TNRRLT Act), the appropriate remedy for the landlord is to move the Rent Court invoking the provisions under Section 21(2)(a) and 21(2)(c) of the said legislation.

8. Mr.P.Prithvi Chopda points out that as long as R.C.O.P.No.347 of 2017 is pending, there is a bar under Section 47(2) proviso to file a fresh R.C.O.P.

9. A careful perusal of the proviso would show that a landlord is bound to withdraw the pending proceedings invoked under the provisions of the 1960 Act and file a petition under the new Act, if and only, if the subject matter of the proceedings under the old legislation and the new legislation is one and the same. This is clear from the wordings of the proviso itself. The subject matter of the dispute in R.C.O.P.No.347 of 2017 is the alleged default committed by the tenant. If the landlord were to file a fresh RLTOP invoking Section 21(2)(a) and 21(2)(c), the subject



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matter would obviously be the non entering of an agreement as required under Section 4(2) after commencement of the TNRRRLT Act and unauthorisedly handing over possession of the property in favour of a third party. The subject matters being different, there is no bar for the landlord to file a petition for eviction invoking the new Rent Control Act on account of the pendency of R.C.O.P.No.347 of 2017.

10. Giving the liberty to the landlord to invoke the provisions of Section 21(2)(a) and 21(2)(c) of the TNRRRLT Act, this civil revision petition stands allowed, as the proposed party is neither essential nor necessary for the disposal of R.C.O.P.No.347 of 2017.

11. A rent control petition is a summary proceeding. I notice that the R.C.O.P. has been pending for more than seven years. Hence, there shall be a direction to the learned XV Judge, Small Causes Court at Chennai to proceed with all expedition that the proceeding require and dispose of the R.C.O.P. within a period of three months from the date of receipt of a copy of this order.

12. With the above directions, the civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is



closed.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

XV Judge, Small Causes Court, Chennai.

V. LAKSHMINARAYANAN,J.



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