



C.R.P.(NPD) No.4264 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

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THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4264 of 2024
and C.M.P.No.23713 of 2024

Mr.L.Ashok Kumar Jain ... Petitioner/Appellant/Respondent/Tenant

-vs-

Mrs.N.A.Swarna (Senior Citizen)
... Respondent/Respondent/Petitioner/Landlady

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 18.09.2024 in RLTA No.62 of 2024 on the file of learned II Additional Judge, City Civil Court, Chennai confirming the order dated 18.08.2023 made in RLTOP No.46 of 2020 on the file of XVI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.Samir S.Shah
For M/s.Shah and Shah

For Respondent : Mr.Rishab R.Jain
For M/s.BFS Legal

ORDER

A challenge has been made to the order of the Rent Court and Appellate Court in ordering eviction.



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Brief background of the case:

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2. The revision petitioner is a tenant under the respondent and a monthly rent of Rs.1,728/- had been fixed on 25.08.2012 in R.C.A.No.1364 of 2005 as the fair rent for the premises. After introduction of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (in short 'the Act, 2017'), when the respondent / landlady wanted to enhance the rent, the revision petitioner / tenant was not agreeable for the same and did not come forward for executing an agreement as mandated under law. As there is no written agreement entered into between the parties, eviction was sought under Section 21(2)(a) of the Act, 2017.

3. The tenant, having received the notice, had not chosen to appear before the Court and therefore, he was set *ex parte* on 14.09.2021 and the application filed by the tenant to set aside the *ex parte* order was also dismissed, which has not been challenged. Further, he had filed an appeal against the eviction order, wherein the order of the Rent Court has been upheld and challenging the same, the instant revision petition has been filed.



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4. Learned counsel for the revision petitioner submitted that as far as the old tenancy is concerned, registration of document is not mandatory and it is the duty of both landlord and tenant to enter into an agreement in respect of the tenancy already existed. He further submitted that though the revision petitioner was ready to execute the agreement, it was the landlady, who did not agree for execution, as she was interested only in enhancement of the rent. In that circumstances, the agreement could not be executed and according to him, the Courts below did not consider Section 4(2) of the Act, 2017 in its proper perspective.

5. I have perused the material documents available on record.

6. Admittedly, there was no tenancy agreement between the parties after the Act, 2017, which came into force with effect from 22.02.2019. The main object of the Act, 2017 is to regulate the rent as per the terms agreed between the parties. Therefore, an agreement is mandatory to claim rights under this Act and in order to avail the benefit under the Act, Section 4 directs the parties to enter into an agreement compulsorily, that too even for existing tenancy. Time limit is also set out within which



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agreement should be entered into between the parties. Since the Act itself aims to regulate the rent on the basis of the terms of the contract, the parties have to obligatorily enter into a contract, failing which, it may be one of the grounds for seeking eviction under Section 21(2)(a) of the Act, 2017 in terms of proviso to Section 4(2) of the Act, 2017, which contemplates that irrespective of the failure on the part of either landlord or tenant in entering into an agreement, eviction can be sought on this sole ground.

7. It is relevant to note that the tenant must have shown some evidence to the extent that he was ready to enter into an agreement with a reasonable rent as per the market value and that it was the landlady, who refused to enter into an agreement, in the absence of which, it cannot be said that the order of eviction is bad in the eye of law. However, the revision petitioner / tenant had not taken any such steps to avail the benefit of the Act, 2017, instead, he insisted to pay the old rent only, which is not acceptable and in the absence of any such steps. 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:



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*“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



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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 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



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agree to enter an agreement only for the purpose of eviction.”

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8. Section 4 of the Act, 2017, 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.

9. This Court in the case of ***V.S.Mohan vs. Sarath Naseera and others (CRP (PD) No.782 of 2023) decided on 30.07.2024*** held as follows:



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“16. Under Section 4(1) of the Tamil Nadu Act 42 of 2017, the concept of oral tenancy has been abolished. The new Act demands that any person taking possession of the property as a tenant or any person giving the property under tenancy as a landlord, should do so only by way of an agreement in writing. In case, tenancy agreement in writing is not entered into between the parties, then Section 4(2) proviso makes it clear that the landlord or the tenant can apply for termination of tenancy under Clause (a) of sub-section 2 of Section 21 of the Tamil Nadu Act 42 of 2017. The effect of Section 21(2)(a) is also clear. Under the said provision, if an application is made to the learned Rent Controller and the learned Rent Controller finds that the landlord and tenant have failed to enter into an agreement, then, he shall pass an order of recovery. Reading Section 4(2) proviso along with Section 21(2)(a), I am able to see that a right is given to the landlord/tenant to seek for termination of tenancy if no agreement has been entered into. If that is the situation which prevails, then, the learned Rent Controller merely passes an order recognising the existence of such situation and orders recovery of possession

10. In yet another case involving identical issue, this Court in the case of *S.Muruganandam vs. J.Joseph, reported in 2022 SCC OnLine Mad 375*, eld 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 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 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



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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".

11. Admittedly, the tenant has not established anything before the Rent Court as well as Appellate Court to substantiate that he had taken steps and was ready to execute the agreement. Moreover, the order dated 14.09.2021, by which the revision petitioner was set *ex parte* has not been challenged

12. In view of the above, this Court is of the view that even in respect of the old / existing tenancy, the rent shall be payable only as per the agreement entered into between the parties as agreed in the agreement and executed under Section 4(2) of the Act, 2017. It goes without saying that the agreement should be executed only in respect of the new rent alone, as the Legislature in its wisdom has taken note of the above and clarified under Section 8 (b) of the Act, 2017.



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13. At this juncture, learned counsel for the revision petitioner submitted that the revision petitioner may be given four months' time to vacate and hand over the possession and he has also filed an undertaking to that effect.

14. The undertaking filed by the revision petitioner is taken on file. Time is granted upto 30.04.2025 to surrender / hand over the vacant possession of the premises. It is made clear that in case the revision petitioner refuses to vacate the premises on or before 30.04.2025, he can be proceeded with for violating the undertaking given by him before this Court under the provisions of the Contempt of Courts Act.

15. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2024

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

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To:

1. The II Additional Judge,
City Civil Court,
Chennai.
2. The XVI Judge,
Small Causes Court,
Chennai.



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N.SATHISH KUMAR, J.
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