



C.R.P.(NPD)No.4199 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.4199 of 2022

M/s.Motor Vehicles and Allied Association,
Represented by its Secretary

.. Petitioner

Vs.

J.Paramanandam

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 21.09.2022 passed in R.L.T.A.No.25 of 2021 on the file of the II Additional City Civil Court at Chennai in reversing the fair and decreetal order dated 10.08.2021 passed in R.L.T.O.P.No.214 of 2019 on the file of the XI Court of Small Causes, Chennai.

For Petitioner : Mr.Sivakumar
for Mr.R.V.Gayathri

For Respondent : Mr.T.Viswanatha Rao



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ORDER

The present Civil Revision Petition arises against an order passed in R.L.T.A.No.25 of 2021 dated 21.09.2022 in reversing the order and decreetal order of the XI Court of Small Causes at Chennai in R.L.T.O.P.No.214 of 2019 dated 10.08.2021.

2. The relationship between the landlord and tenant is not in dispute. The tenant, who is the respondent, had entered into a tenancy agreement on 17.06.1970 for a period of five years paying a monthly rent of Rs.700/-. On 01.08.2019, the landlord sent a notice to the tenant calling upon him to enter into a fresh agreement in terms of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. A reply was sent by the tenant on 14.08.2019 stating that he is willing to enter into an agreement but on the same terms as the agreement dated 17.06.1970. In other words, the tenant wanted to continue in possession of the property paying a sum of Rs.700/- as a rent.

3. This is not being agreeable to the landlord and since no agreement



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had been entered into in terms of Section 21(2)(a) and Section 4 of the Act,

WEB COPY R.L.T.O.P.No.214 of 2019 was presented for eviction.

4. Notice was issued to the tenant and a counter was received from him. The stand in the counter was more or less identical as stated in the reply, dated 14.08.2019. It was stated that there is no need to enter into a fresh agreement and if the landlord so requires, a fresh tenancy can be entered into on the same terms as per the old agreement.

5. Before the Rent Court, the landlord examined one S.L.Mohan as P.W.1 and marked Ex.P1 to Ex.P3. The respondent neither entered appearance nor tendered any documents.

6. On the basis of the fact that no agreement had been entered into as required under Section 4(2) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, the Rent Court ordered eviction.

7. As against the said order, an appeal was preferred before the



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learned II Additional Judge, City Civil Court, who is the appellate authority.

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8. The appeal was received as R.L.T.A.No.25 of 2021. The learned Judge referring to the principles laid down in ***Ramesh Salunkhe vs. Pramila Jain*** in ***CRP.(NPD)No.1996 of 2021, dated 25.01.2022*** held that as the petition had been filed before the expiry of 575 days, the petition is premature and therefore, allowed the appeal and dismissed the eviction petition. Aggrieved by the reversing judgment, the present revision has been presented before this Court.

9. Mr.Sivakumar, appearing on behalf of the landlord, would submit that the amendment which gave a window of 575 days to an existing tenant to enter into an agreement with the landlord came into force only on 15.02.2020. He would draw my attention to Act 22 of 2019, whereby, for the period from 26.07.2019 to 15.02.2020, the cooling of period was only 210 days. In other words, 575 days came into effect only on 15.03.2020 and the same cannot be given a retrospective effect.

10. My brother, ***the Hon'ble Mr.Justice S.Sounthar*** interpreted this



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provision in **C.R.P.No.3031 of 2022, dated 11.10.2022** has held as follows :

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" A reading of Section 4(2) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, to makes it clear that the grace period of 575 days has to be calculated from the date of commencement of the Act and not from the day on which the grace period was enhanced from 210 days to 575 days by amending the Act"

11. Mr.T.Viswanatha Rao, appearing on behalf of the respondent, would submit that the revision itself is not maintainable since there is a bar under Section 38(5)(b) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. According to him, Section 38(5)(b) should be read as barring all the revisions including revisions under Article 227 of Constitution of India and therefore, he submits that the revision has to be dismissed as not maintainable.

12. As an issue of maintainability has been raised, I will have to address that issue first and then proceed with the merits of the case.

13. Section 38(5)(b) would reads as follows :

38. Appeal to Rent Tribunal.— (1) From every final order passed by the Rent Court, an appeal shall lie



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to the Rent Tribunal, within the local limits of whose jurisdiction the premises is situated and such an appeal shall be filed within a period of thirty days from the date of final order along with a copy of such final order:

(5)(a) While deciding the appeal, the Rent Tribunal, after recording reasons therefore, confirm, set aside or modify the order passed by a Rent Court;

(b) The decision of the Rent Tribunal shall be final and no further appeal or revision shall lie against the order.

14. A bare reading of Section 38(5)(b) would show that the order passed by the Rent Control Appellate Authority is final. This is a finality fixed under the statute which implies that unless and until the statute itself creates an avenue for setting aside the order, that order cannot be challenged. This only shows the word “final” connotes that the order passed under the Act is conclusive and no further appeal lies against it. See, ***South Asica Industries vs. S.B.Sarup Singh [AIR 1965 SC 1442]***. It only means the order cannot be challenged by resorting to any provision under the Act. Finality does not mean, sitting under Article 227 of Constitution of India, this Court cannot interfere with the same if it is susceptible otherwise for interference.



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15. However, the said statutory bar for revision cannot bind the powers of this Court under Article 227 of the Constitution of India. The power under Article 227 of the Constitution of India is to revise the orders passed by the Tribunals which are subordinate to the High Court is unbridled and unrestricted. The constitutional powers vested in this Court cannot be restricted by a statutory enactment. If I were to use the principle of constitutional jurisprudence that the *grund norm* is the Constitution, then, the statute must answer the Constitution and not vice-versa.

16. The power under Articles 226 and 227 of the Constitution of India as held by the Constitutional Bench of the Supreme Court in ***L.Chandrakumar vs. Union of India and Others [1997 (3) SCC 261]*** cannot be restricted by a legislation. This view has been affirmed by the Supreme Court in the judgment of ***Madhya Pradesh High Court Advocates Bar Association and Another vs. Union of India and Another [2022 SCCOnline SC 639]***. Therefore, I am constrained to reject the otherwise attractive argument of Mr.T.Viswanatha Rao that the revision is not maintainable.



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17. Proceeding on the merits of the case, 575 days grace period is given to the tenant and the landlord to enter into an agreement. In the case before *the Hon'ble Mr.Justice G.Chandrasekharan*, there was still time available to the parties to enter into an agreement. It was in that light, the learned Judge held that since time is always available for the tenant or landlord to make that offer and wait for its acceptance by the other party, the petition for eviction is not maintainable.

18. However, in the case on hand, immediately on coming into force of the legislation, the tenant had infact been given an offer by the landlord on 01.08.2019 and that was not accepted by the tenant. The latter wanted the tenancy to continue on the same terms as it had been entered into in the year 1970. This shows that the landlord had offered for an agreement as contemplated under the Act and the tenant has not accepted the same. Hence, this is case of no agreement.

19. I would still have to deal with the issue whether the R.L.T.O.P.



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can be dismissed as premature since it was presented within 575 days from the date on which the Act came into force. Before, I enter into the case laws, one fact that I have to notice is that this petition was filed before the Amendment was made to the Act extending the grace period for entering into an agreement to 575 days. When the Act was originally notified, the time period was 90 days. Later, Section 4 (2) of the Act was amended and the time period was extended to 210 days. It was only in February 2020, the Act was further amended, extending the time period to 575 days.

20. A perusal of the petition shows that this petition was filed before the Amendment of the Act in 2020, but after the expiry of the grace period of 210 days. Therefore, on the date of filing the petition, the R.L.T.O.P. was not hit by the Amendment.

21. Now, I have to deal with the position of law as to whether R.L.T.O.P. can be dismissed as premature when pending the proceedings, the grace period has expired. This Court had originally taken a view in **(Vaddadi) Butchiraju and Ors vs. Doddi Seetharamayya and Ors, AIR 1926 Mad 377**, that if on the day of presentation of the plaint, the cause of action did not arise and during the pendency of the proceedings, the cause of



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action has fructified, the Court can still pass a decree. This judgment was pronounced on 5th October 1925. Within 2 days of pronouncing this judgment, another learned Judge took a view that if the suit is premature, the suit should be dismissed with costs and with liberty to file a fresh suit. The said view was taken in the case of **Mylavakapu Rangayya Naidu v. Basana Simon and Ors, (1926) 23 LW 367**. However, the judgment in **Butchiraju** was not brought to the notice of Lord Charles Spencer, J. who decided the **Rangayya Naidu** case on 7th October 1925.

22. Finally, the position was settled by a judgment of the Supreme Court which took notice of both the judgments in **Vithalbhai (P) Ltd. v. Union of India, 2005 (4) SCC 315**. The Supreme Court approved the view of Justice Viswanatha Sastri in **Butchiraju** case and held as follows:

“9. In our opinion, a suit based on a plaint which discloses a cause of action is not necessarily to be dismissed on trial solely because it was premature on the date of its institution if by the time the written statement came to be filed or by the time the court is called upon to pass a decree, the plaintiff is found entitled to the relief prayed for in the plaint.

22. *We may now briefly sum up the correct position*



of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the court; the court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the court to grant decree or not. The court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of



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the court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases: (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See Samar Singh v. Kedar Nath [1987 Supp SCC 663] .) One more category of suits which may be added to the above, is: where leave of the court or some authority is mandatorily required to be obtained before the institution of the suit and was not so obtained.”

23. None of the exceptions stated in paragraph 22 apply to R.L.T.O.P.

A careful reading of the judgment in **Ramesh Salunkhe vs. Parimila Jain**,



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2022 SCC OnLine Mad 372 case shows that the judgment in **Vithalbhai** case was not drawn to the attention of the learned Judge.

24. In light of the above discussion, I reach the following conclusion:

i. The benefit of 575 days granted under Section 4(2) will not apply to the facts of the present case since the landlord had offered to the tenant to enter into a fresh agreement and it was the tenant who had refused to enter into the same.

ii. As none of the exceptions as stated in the **Vithalbhai** case apply to the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenant Act, the petition filed within 575 days cannot be dismissed if the time has expired before the counter is filed or if, by the time, the Court is called upon to pass a decree, the landlord is entitled to the relief prayed for in the petition.

25. In the light of the above discussion, I am of the view that as the landlord had offered an agreement and since it had been refused by the tenant, there was no agreement as contemplated under Section 4(2) and the order of the Rent Court ought not to have been set aside by the Appellate



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Authority.

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26. Accordingly, the Civil Revision Petition stands allowed. No costs.

The order of the learned II Additional City Civil Court at Chennai in R.L.T.A.No.25 of 2021 is set aside. The order in R.L.T.O.P.No.214 of 2019 is restored. The petition for eviction stands allowed. The time for eviction is two months from the date of receipt of a copy of this order.

29.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

1.The II Additional City Civil Court,
Chennai

2.The XI Court of Small Causes,
Chennai



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V. LAKSHMINARAYANAN, J.

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