



C.R.P.(MD)No.1539 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 22/03/2024

Date of Pronounced : 06/06/2024

WEB COPY

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.1539 of 2023

C.Dharma Raj
S/o.Mr.Chellaiyan
Represented by his son
D.Darwin Raj
As Power of Attorney Holder,
Saralvilai Veedu, Kaviyaloor Desam,
Valvachagostam Village,
Kattathurai Post,
Kalkulam Taluk,
Kanyakumari District. : Petitioner/Petitioner

Vs.

Sandhiya : Respondent/Respondent

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the judgment/order and decree passed in RLTOP No.2 of 2021, dated 17/02/2023 on the file of the Rent Controller, Padmanabhapuram in the Court of Principal District Munsif, Padmanabhapuram and direct the Rent Controller, Padmanabhapuram to adjudicate the RLTOP No.2 of 2021 and pass such further or other orders.



WEB COPY



C.R.P.(MD)No.1539 of 2023

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondent : Mr.S.C.Herold Singh

O R D E R

This Civil Revision Petition is filed seeking an order to set aside the judgment/order and decree passed in RLTOP No.2 of 2021, dated 17/02/2023 by the Rent Controller/Principal District Munsif, Padmanabhapuram and direct the Rent Controller, Padmanabhapuram to adjudicate the RLTOP No.2 of 2021.

2.The facts in brief:-

The petitioner herein filed a petition in RLTOP No.2 of 2021 before the Rent Controller, Padmanabhapuram seeking an order of eviction of the respondent herein for his own use and occupation of the tenanted premises. That came to be dismissed by the Rent Controller on the ground that since there is no written agreement between the parties as required under the Protection of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, as Amended by Tamil Nadu Act 39 of 2018.



C.R.P.(MD)No.1539 of 2023

WEB COPY

3. Against which, this civil revision petition is preferred on the ground that the Rent Controller on wrong appreciation of the legal issues, dismissed the petition stating that it is not maintainable.

4. For better appreciation of the issue involved, let me briefly extract the petition averments:-

The tenanted premises is situated in Survey No.3-13B/3, which was constructed by the petitioner's father. There was lease agreement in 2017 for a period of 11 months and it was agreed that it must be renewed upto the year 2020. Finally on 04/03/2020, lease was fixed for a period of 11 months. The monthly rent was fixed at 13,000/-. It is an unregistered lease agreement. Rs.1,00,000/- was the advance payment. The lease must end on 03/02/2021.

5. The father of the petitioner did not want to renew the lease. He wanted to start a business and take back the shop for his business. So notice was issued to the respondent herein on 02/11/2020 granting three months time to vacate the premises. Second notice was given on 29/12/2020 granting two months time. Third notice was also issued on 16/03/2021 granting one month time to



WEB COPY



C.R.P.(MD)No.1539 of 2023

vacate the premises. The father of the petitioner is now aged about 60 and working in abroad. The petitioner's son namely D.Darwin Raj, who is the Power of Attorney-Holder of the Landlord is also in abroad. He wanted to start a business on his own in the tenanted premises. So he required the premises for his own use and occupation.

6.An advance amount of Rs.1,00,000/- was adjusted for the Rent for the month of October 2020 and from November 2020 till May 2021, it was adjusted at the rate of Rs.13,000/- per month. So the total amount that was adjusted is Rs.94,000/-. From June 2021, the monthly rent was not paid. Due to Covid-2019, concession was given. From 03/02/2021, the respondent is in illegal occupation. He is entitled for reasonable enhancement till the date of eviction on 03/02/2021.

7.The Rent Controller examined the petitioner as PW1 and 12 documents marked. On the side of the respondent, she was examined as RW1 and no document marked.

8.The Rent Controller without going into the factual aspects, recorded a finding that the petition is not maintainable in view of non-registration of the lease agreement entered between the parties.



C.R.P.(MD)No.1539 of 2023

9.Now the grievance of the petitioner is that since the petition is dismissed on the ground of maintainability itself, civil revision is preferred instead of filing regular appeal before the Appellate Authority.

10.So the question, which arises for consideration is whether the civil revision will lie against the order of dismissal on the question of maintainability.

11.The law on this point is now more or less well settled. When appeal provision is available as per the Special Act, invoking the jurisdiction of the High Court under Article 227 of the Constitution of India came up for discussion at various levels, in various cases, in various circumstances and under various Enactments.

12.The learned counsel appearing for the petitioner would submit that in the absence of any agreement between the parties which is registered, then implied tenancy will come into effect. According to him, only for evicting a Tenant under section 21 of the Act, registration of the agreement is required. Except section 21 of the Act, in other cases, where the registrations were not effected between the parties, the other



WEB COPY



C.R.P.(MD)No.1539 of 2023

provisions can be invoked. He would further submit that as per section 5(3) of the Act, the tenancy between the parties was not renewed or extended, the Tenant has not vacated the premises also. In the absence of any such renewal, as per section 5(3) of the Act, there is deeming extension of tenancy agreement which must be renewed on a monthly basis on the same conditions and terms. So that deeming tenancy agreement will be in force for six months. So according to him, section 23 of the Act will come into operation. When the Tenant has not vacated the premises after the period of six months, then the Landlord is entitled for compensation of double the monthly rent for the use and occupation of the premises. According to him, now the tenancy has been terminated by notice. So, in the circumstances of the case, section 5(3) of the Act will come into operation and he is entitled to evict the Tenant as per section 5(3) of the Act. He would further submit that section 14 of the Act does not require any registration of the agreement. So according to him, registration of the agreement is not per se a disqualification for the Landlord to file a petition against the Tenant for eviction.

13.Per contra, it is contended by the respondent that in the absence of any registered agreement between



C.R.P.(MD)No.1539 of 2023

the parties, then automatically the Landlord cannot sustain a petition under section 21 of the Act.

WEB COPY

14.Per contra, it is contended by the petitioner that now he is not claiming any benefit under section 21 of the Act. He would also refer to some of the judgments that is rendered on this aspect in **V.Manimegalai Vs. Selvaraj Kannan [2019(6) CTC 9]; S.Muruganandam Vs. J.Joseph [2022-1-LW 752] and Primex Healthcare and Research Pvt. Ltd., Vs. A.A.L.Ramaswamy (2022 SCC Online (Madras) 4711)**. Some of the judgments says that a registered tenancy agreement is required for sustaining a petition before the Rent Controller after the commencement of the Act. But the recent judgment of the Coordinate Bench of this court in **Andal Vs. Lawrence Swami Doss (2024-2-LW 167)** has taken a different stand that it is not required. Apart from that, some other judgments are also available to the effect that it is not required in all circumstances. I am not going into that aspect for the time being since as mentioned above the petitioner filed CMP(MD)No.4144 of 2024 seeking amendment of the original petition. In the light of the amendment application, it may not be proper on the part of this court to make any observation or discussion over the merits of the matter.



WEB COPY



C.R.P.(MD)No.1539 of 2023

15.Since the Rent Court dismissed the petition on the question of maintainability, as stated above, even if the petitioner is directed to file appeal against the final order, then in the light of the amendment application filed, the only option available to the Appellate Court is to remand the matter back to the Rent controller Court for fresh consideration.

16.So in the considered view of this court, instead of directing the petitioner to approach the appellate authority, straightaway the matter may be remitted back to the Rent court namely the trial court in the light of the above said development in the form of filing the amendment application in CMP(MD)No.4144 of 2024. So all the questions are left open now to be agitated by the parties before the trial court namely the Rent Court afresh. On that aspect, I am not going to discuss anything about the maintainability of the petition, it is for the trial court to take a call on that issue.

17.In view of the discussion, this civil revision petition stands **allowed**. The matter is remitted back to the Rent Controller and the order of dismissal passed by the Rent Controller is set aside and CMP(MD)No.4144 of 2024 may be taken on file by the Rent Controller. It may



C.R.P.(MD)No.1539 of 2023

be decided on its own merit after affording opportunity
to both sides. No costs.

WEB COPY

06/06/2024

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The Rent Controller/
The Principal District Munsif,
Padmanabhapuram.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.1539 of 2023

G.ILANGO VAN, J

er

C.R.P (MD) No.1539 of 2023

06/06/2024