



CRP.No.2252 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 08.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.2252 of 2024
and CMP.No.11853 of 2024

Babitha Devi

... Petitioner

Versus

1.Rajendra Kumar
2.Suseela Bai

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 28.03.2024 passed in RLTA.No.82 of 2023 by learned XV Additional City Civil Court, Chennai confirming the order dated 02.12.2022 passed in RLTOP.No.268 of 2020 on the file of XI Small Causes Court, Chennai.

For Petitioner : Mr.Om Sai Ram
For Respondents : Mr.Ralph V.Manohar

ORDER

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 revision has been filed.



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2. Brief background of filing this revision is as follows:

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2.a. It is the case of the petitioner that he is a tenant under the respondents' father initially and later under the respondents. The petitioner is running a commercial establishment in the rented premises. Initially, the respondents' father Vasanthraj Khatod executed a Lease Deed in the year 1986 and thereafter in the year 2004, a fresh rental agreement entered after the demise of Vasanthraj Khatod, wherein the rent and security deposit were increased. From November 2010, the respondents claimed huge rental advance, which the petitioner refused to pay. Thereafter, eviction petition filed in R.C.O.P.No.964 of 2010 before the XVI Rent Controller, Small Causes Court, Chennai. The Rent Controller dismissed the eviction petition on the ground of owner's occupation and act of waste, however allowed the petition on the ground of subletting and causing nuisance. Aggrieved over the said order, the petitioner filed R.C.A.No.190 of 2016, which was allowed in favour of the petitioner, against which, the respondents filed a revision in C.R.P.No.2461 of 2017, which is pending before this Court.

2.b. The respondents filed R.C.O.P.No.1232 of 2016 seeking fair rent before the XV Rent Controller, Small Causes Court, Chennai, which is still



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pending. Not stopping with that the respondents issued notice calling upon the petitioner to vacate the premises on or before 27.01.2020. The petitioner caused a reply notice on 23.02.2020 narrating the sequence of events as to how the petitioner came in the tenancy. Thereafter the petitioner called upon the respondents to enter into a registered agreement with the petitioner as per existing law under Section 4 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (hereinafter 'New Act'). Thereafter no rejoinder sent, on the other hand, the respondents filed R.L.T.O.P.No.268 of 2020 before the XI Judge, Small Causes Court, Chennai and the Rent Controller by judgment dated 02.12.2022 allowed the petition directing the petitioner to vacate and handover the vacant possession. Against which, the petitioner filed R.L.T.A.No.82 of 2023 before the Rent Appellate Tribunal/XV Additional City Civil Court, Chennai. The Rent Appellate Tribunal by an order dated 28.03.2024, dismissed the appeal confirming the order passed in R.L.T.O.P.No.268 of 2020 dated 02.12.2022, against which, the present revision has been filed.

3. The primary contention of the learned counsel for petitioner is that the petitioner in her reply notice showed her inclination and willingness to enter into a



written agreement with the respondents, which is marked as Ex.P2 before the Rent Controller. The Rent Controller not considered the same but had given a finding that the petitioner projected her willingness on paper, further referred to a cross examination of the respondents in another proceedings and observed petitioner failed to enter into the witness box and let in evidence, hence, the petitioners contention not considered.

4. The learned counsel for petitioner submitted that as per Section 4(2) of the New Act the landlord and the tenant to enter into a rental agreement in writing, within a period of 575 days from the date of commencement of the Act, i.e., 22.02.2019. Even before expiry of 575 days, notice was issued and eviction petition was filed before the Rent Controller. Hence, on this ground alone, the order passed by the Rent Appellate Tribunal and Rent Court to be set aside. In support of his contention, the learned counsel for petitioner relied upon the judgment of this Court in the case of *Ramesh Salunkhe vs. Pramila Jain* reported in (2022) SCC OnLine Mad 372.



5. Per contra, the learned counsel for respondents submitted that the Hon'ble Supreme Court in the case of *Vithalbhai Pvt Ltd vs. Union Bank of India* reported in (2005) 4 SCC 315 has held that even if the petition is premature on the date of institution, the Court can still grant relief to the petitioner if no manifest injustice or prejudice is caused to the party proceeded against and this judgment was not placed before the Court which decided Ramesh Salunkhe's case (cited supra). Further he also 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. 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



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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.

8. As far as the submission raised by the learned counsel for the petitioner that the petition filed within a period of 575 days from the commencement of the New Act is premature petition, this Court is of the view that originally, when the New Act came into force, 90 days time was given and thereafter, it was enhanced to 210 days and thereafter, on 15.02.2020, it was further enhanced to 575 days, w.e.f. 20.09.2019. Therefore, it cannot be said that the landlord should wait till 575 days. The petitioner ought to have entered an agreement the moment when the Act came into force. Even during the pendency of the application, she could have



made an attempt, whereas, a reply has been sent by her to the effect that the she is prepared to execute an agreement in prevailing rent not as per market value.

9. Though, 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."



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10. 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 subsection (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.

11. It is relevant to note that the Hon'ble Supreme Court in the case of *Vithalbhai Pvt. Ltd. Vs. Union Bank of India* reported in (2005) 4 SCC 315 held as follows:

“ 21. Where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The court may reject the plaint if it does not disclose a cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The



plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, maybe irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the court shall not necessarily dismiss the suit. The court would examine if any prejudice has been caused to the defendant or any manifest injustice would result to the defendant if the suit is to be decreed. The court would also examine if in the facts and circumstances of the case it is necessary to drive the plaintiff to the need of filing a fresh suit or grant a decree in the same suit inasmuch as it would not make any real difference at that stage if the suit would have to be filed again on its having matured for filing.

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 the court to examine and promptly dispose of such a plea.***

Emphasis supplied

12. Further, CMP.No.26018 of 2024 has been filed by the petitioner raising a ground that since the respondents having terminated tenancy, they have no locus to invoke Section 21(2)(a) of the New Act is concerned, it is relevant to note that



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prior to the New Act came into force, there was an agreement entered in the year 2004 for a period of three years which is expired by efflux of time. Merely, because the earlier agreement was terminated by issuing notice that cannot be a ground to hold that eviction petition is not maintainable under New Act. Accordingly, the CMP.No.26018 of 2024 stands dismissed.

13. 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 this case and the revision stands dismissed. No costs. Consequently, connected miscellaneous petition stand closed.

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dhk

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

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

N. SATHISH KUMAR, J.



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