



C.R.P.No. 2823 of 2021 & CRP No. 16 of 2022

IN THE HIGH Court OF JUDICATURE AT MADRAS

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DATED : 17.04.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No. 2823 of 2021
and C.M.P.No.20454 of 2021
and
Civil Revision Petition No. 16 of 2022

C.R.P.No.2823 of 2021

Kantilal Lasaji,
Proprietor of Mahalakshmi Bangle Stores,
No.55, Perumal Mudali Street,
Sowcarpet, Chennai – 600 079.

.. Petitioner

Versus

1.Dinesh Kumar

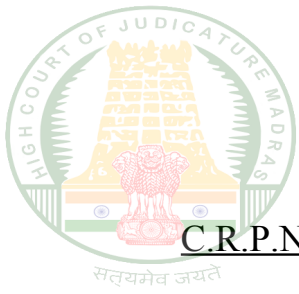
2.Beru Singh,
Proprietor of Manisha Novelty,
No.36/3, Perumal Mudali Street,
“Geetha Complex”,
Sowcarpet, Chennai – 600 079.

... Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Rent Control Act 18 of 1960 as amended by Act 23 of 1973 & 1 of 1980, praying to set aside the order dated 14.09.2018 passed in R.C.O.P.No. 1431 of 2015 by the learned XIV Judge, Court of Small Causes, Chennai, which was confirmed by Judgment dated 24.09.2021 in R.C.A.No.765 of 2018 by the learned VII Judge, Small Causes Court (Appellate Authority) at Chennai.

For Petitioner
For Respondents

: Mr.A.K.Raghavulu
: Mr.S.Ramesh Kumar



C.R.P.No. 2823 of 2021 & CRP No. 16 of 2022

C.R.P.No.16 of 2022

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... Petitioner

Versus

1. Kantilal Lasaji,
Proprietor of Mahalakshmi Bangle Stores,
No.55, Perumal Mudali Street,
Sowcarpet, Chennai – 600 079.

2. Beru Singh,
Proprietor of Manisha Novelty,
No.36/3, Perumal Mudali Street,
“Geetha Complex”,
Sowcarpet,
Chennai – 600 079.

... Respondents

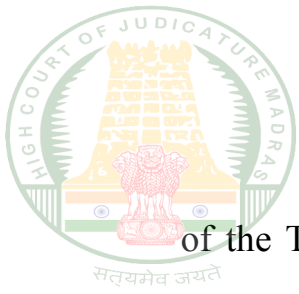
Civil Revision Petition is filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960, praying to set aside the Judgment allowing the Appeal dated 24.09.2021 passed by the learned VII Judge, Small Causes Court, Chennai in R.C.A.No.790 of 2018 confirming the order dated 14.09.2018 passed by the learned XIV Judge, Court of Small Causes, Chennai, in R.C.O.P.No. 1431 of 2015.

For Petitioner	:	Mr. S. Ramesh Kumar
For Respondents	:	Mr. A.K. Raghavalu

COMMON ORDER

Both the Civil Revision Petitions are filed against the common Judgment dated 24.09.2021 passed in R.C.A. Nos. 765 and 790 of 2018 on the file of the learned VII Judge, Small Causes Court (Appellate Authority) at Chennai.

2. The RCOP No. 1431 of 2015 was filed by Dinesh Kumar (hereinafter referred to as Landlord) under Section 10 (2) (i) and 10 (2) (ii) (a)



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of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 praying to pass an order of eviction against the Respondents namely (i) Kantilal Lasaji and (ii) Beru Singh (hereinafter called as Tenants) on the grounds of wilful default and sub-letting.

3. As per the averments in RCOP No. 1431 of 2015, the first Respondent – Kantilal Lasaji was inducted as a tenant in respect of the premises bearing Door No.36/3, Perumal Mudali Street, Sowcarpet, Chennai for non-residential purpose on a monthly rent of Rs.5,577/- per month. The first Respondent-tenant is running a shop in the name and style of Mahalakshmi Bangles Store. According to the landlord, the first Respondent-tenant is in arrears of rent from December 2012 to July 2015 to the tune of Rs.1,78,464/-. When the landlord approached the first Respondent-tenant, he evaded and avoided to pay the rent. Further, the first Respondent-tenant has sub-let the premises to second Respondent without the consent of the landlord whereby the second Respondent is running a business in the name and style of “Manisha Novelty”. The landlord also came to know that the second Respondent, sub-tenant has paid the rent to the first Respondent periodically. It is in those circumstances, the landlord has filed the Original Petition for evicting both the Respondents on the ground of wilful default in payment of rent and for sub-letting.



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On notice, the first Respondent-tenant filed a counter statement stating that in the year 1991, he was inducted as a tenant under one Mr. Jograj Purohit for a monthly rent of Rs.375/- and subsequently, his wife Mrs.K.Suguna Devi has become the owner to whom he has been paying the rents regularly. Subsequently, the said Suguna Devi informed the first Respondent-tenant that her son/landlord will receive the monthly rents. According to the first Respondent-tenant, the rent will be sent annually at the beginning of every year by sending cheques for a consolidated annual rent and sent to the Mumbai address of the landlord by registered post. The landlord has been receiving the annual consolidated rent cheques. However, of late, the landlord has been demanding increase of rent and presently the monthly rent has been increased to Rs.5,577/- from the year 2012. For the year 2012, the landlord has received a consolidated cheque for rent to the tune of Rs.66,924/-. For the period from 01.04.2013 to 31.03.2012, a cheque for Rs.66,924/- was sent and it was encashed. For the period from 01.04.2014 to 31.03.2015 alo, a cheque for Rs.66,924/- was sent. For the year 2015, when rent was sent, the cheque daed 13.07.2105 was withheld without being remitted with a view to evict the tenant. Thus, it is submitted that the first Respondent-tenant has not committed default in payment of rent. As regards sub-letting, it is stated that he used to employ casual workers in his shop and the second Respondent was



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not the person to whom the shop was sub-let. Accordingly, the first

Respondent-tenant prayed for dismissal of the Original Petition.

5. During the pendency of RCOP. No. 1431 of 2015, the tenant/Kantilal Lasaji preferred M.P. No. 149 of 2016 in RCOP. No. 1431 of 2015 seeking permission to deposit the rent into Court from the month of April, 2015 till the disposal of RCOP. No. 1431 of 2015. The landlord objected to the same stating that the tenant has left arrears of rent from December, 2012 onwards and he cannot be permitted to deposit the rent into the Court to fill up the lacuna.

6. The tenant claimed that he used to pay rent through cheque favouring the landlady Mrs. K. Suguna Devi and subsequently the landlord, who succeeded to the estate of the landlady. According to the Tenant, the rent was paid periodically either once in three months or six months or yearly at the request of the landlady Mrs. K. Suguna Devi to pay as bulk amount. However, if the rent is demanded on monthly basis, he is preferred to pay the rent every month.

7. By an order dated 06.08.2016, the learned Rent Controller dismissed MP No. 149 of 2016 by stating that when the landlord has filed the



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Original Petition for eviction on the ground of wilful default in payment of rent, the tenant cannot be permitted to deposit the rent into the Court. It was therefore held that the Miscellaneous Petition itself is not maintainable and accordingly, dismissed MP No. 149 of 2016. As against the order dated 06.08.2016 in MP No. 149 of 2016, the tenant has not preferred any appeal.

8. Before the learned Rent Controller, Mr. Devichand Jograj was examined as PW1 and Ex.P-1 to Ex.P-5 were marked. On behalf of the Respondents, Mr. Kantilal Lasaji, the tenant was examined as R.W-1 and documents were marked as Ex.R-1 to Ex.R-9. The learned Rent Controller taking note of Ex.P-3, subscriber details of the telephone Number of the shop bearing No. 044 2538 0714 stands in the name of the second Respondent, the Rent Controller concluded that the shop was sub-let to the second Respondent for consideration. Even though the first Respondent, in his cross-examination, feigned ignorance that he does not know who the second Respondent is, it was held that the first Respondent made a secret arrangement with the second Respondent and sub-let the premises for pecuniary gain. Accordingly, it was held that even though the landlord did not prove that the tenant has committed wilful default in payment of rent, it was adequately proved that the shop in question was sublet to the second Respondent. Accordingly, on the ground of sub-letting, the learned Rent Controller allowed the Original Petition on



14.09.2018 and directed the first Respondent-tenant to handover the premises in question within a period of two months.

9. Aggrieved by the order dated 14.09.2018 passed in RCOP No. 1431 of 2015, two appeals were preferred before the learned Appellate Authority. The first appeal being R.C.A. No. 765 of 2018 was filed by the Tenant questioning the correctness of the order of eviction passed on the ground of sub-letting. The other appeal in R.C.A. No. 790 of 2018 was filed by the landlord as against the disallowed portion of the order dated 14.09.2018 in so far as it relates to dismissal of RCOP No. 1431 of 2015 relating to wilful default in payment of rent.

10. The first Respondent-tenant has preferred an appeal in R.C.A. No. 765 of 2018 contending that there is no sub-letting of the premises as alleged by the landlord. There was no evidence adduced to show that the second Respondent was a sub-tenant of the first Respondent. The learned Rent Controller, based on Ex.P-3, held that the premises was sub-let. In the telephone directory, a public telephone number was recorded as existing in the premises in question that too in the name of the second Respondent Bher Singh and not in the name of Beru Singh, the alleged unauthorised Sub-tenant. Even if the name of the public telephone number holder is not the second

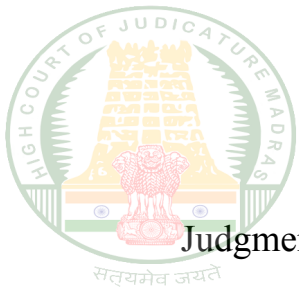


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Respondent but a different person, as no telephone connection can be granted in any other name other than the first Respondent tenant, it cannot be presumed that there is alleged sub-tenancy in favour of the second Respondent. The name of the telephone directory merely bears the name of a stranger and it cannot be construed that it was the second Respondent who is in physical possession of the premises in question.

11. As against the very same order dated 14.09.2018 passed in RCOP No. 1431 of 2015, the landlord has filed R.C.A. No. 790 of 2018 by contending that when admittedly the tenant has paid the rent in one lumpsum every year instead of paying the rent on monthly basis, it amounts to a wilful default in payment of rent. However, the learned Rent Controller has erroneously concluded that there was an arrangement between the landlord and tenant to receive the rent once in a year. In any event, it is the duty of the tenant to pay the rent month after month without any default and the tenant cannot expect the landlord to demand rent every month. Therefore, it was contended that the order passed by the learned Rent Controller dismissing the Original Petition for eviction of the tenant on the ground of wilful default in payment of monthly rent is not proper.

12. The learned Rent Control Appellate Authority, by a common



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Judgment dated 24.09.2021, dismissed both the Appeal, one preferred by the Tenant and the other by the Landlord and confirmed the Order of eviction passed by the learned Rent Controller on the ground of sub-letting. Aggrieved by the same, the present Civil Revision Petitions are filed. While CRP No. 2823 of 2021 was filed by the Tenant, CRP No. 16 of 2022 is filed by the Landlord.

Arguments of the Counsel for Petitioner/Tenant in CRP No. 2823 of 2021

13. The learned Counsel for the Petitioner-Tenant submitted that one of the employees engaged by the Petitioner had obtained BSNL Public Call telephone connection in the same shop/Mahalakshmi Bangles Store and fixed it in the shop for the benefit of public. He had applied for the telephone connection under the name of Proprietor of Manisha Novelty. The landlord claimed that the tenant had inducted Berusingh as a sub-tenant without permission of the landlord and raised this as a ground to evict the tenant. The learned Rent Controller was carried away by the fact that the Counsel who appeared for the first Respondent also undertook to file vakalat for the second Respondent and concluded that the second Respondent is none other than a sub-tenant of the first Respondent-tenant. Merely because the Counsel who appeared for the first Respondent also undertook to file vakalat for the second Respondent, it will not be a ground for the learned Rent Controller to hold that



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the first Respondent-tenant is guilty of sub-letting the premises to the second Respondent. The Courts below did not consider that no one in the name of 'Manisha Novelty' is doing business in the premises in question. The Tenant had engaged casual employees to look after his business. In order to substantiate the same, the landlord himself has produced Ex.R-6, certificate issued by the Assistant Commissioner, Commercial Taxes in support of the contention of the tenant. Ex.R-6 would only show that the Tenant had engaged casual employees to look after his shop and it was presumed to be an act of sub-letting. The Tenant alone is in occupation of the shop and he is bound to pay the rent to the landlord. In fact, to prove the bona fides, the tenant has filed MP No. 149 of 2016 to deposit the rent but it was dismissed by the learned Rent Controller as not maintainable. In any event, there is no evidence made available to show that the second Respondent is the sub-tenant of the demised premises and that he is paying rent to the first Respondent. The tenant, as R.W-1, categorically asserted that he alone is carrying on business in the premises and this was not properly appreciated by the Courts below. In fact, the second Respondent, alleged sub-tenant did not contest the Original Petition and the Tenant was blamed for the second Respondent not contesting the case. Thus, it was submitted by the learned Counsel that the second Respondent is not the sub-tenant. The Tenant is willing to pay the monthly rent, without any default. When the landlord has encashed the cheque for yearly rent without



any objection, the question of default in payment of rent will not arise.

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14. It is further stated by the learned Counsel that the landlord is in Mumbai and the premises in question is in Chennai. The tenant is residing in Rajasthan. The rent is paid in person when both parties meet either in Chennai or at Mumbai. The Rent was paid either once in two months or three months or six months or yearly on request of the original landlady Mrs.K. Suguna Devi and that was the usual practice. While so, the claim of the landlord, son of the landlady contending that there was arrears of rent. Even otherwise, to prove his *bona fides*, the Tenant preferred to deposit the rent every month and filed M.P. No. 149 of 2016 but that was dismissed by the learned Rent Controller. The tenant has taken all steps to ensure that there was no default in payment of rent but that was thwarted by the landlord. Even on the third date of hearing of the Original Petition, the tenant offered rent but the landlord refused it. The landlord had accepted the consolidated payment made by the Tenant. However, in order to enhance the monthly rent, the landlord did not encash the cheque issued for the year 2015. However, the landlord, without issuing any notice demanding payment of rent, straight away filed RCOP. No. 1431 of 2015 for eviction. In such circumstances, it cannot be said that the Tenant has committed wilful default in payment of rent. The Tenant is ready and willing to pay the rent month after month without any default.



WEB COPY15. The learned Counsel for the Revision Petitioner relied on the ruling of the Hon'ble Supreme Court in *[Jagdish Prasad vs. Angoori Devi]* reported in (1984) 2 SCC 590 wherein it was held that merely because a person was seen in the leased out premises of the tenant it cannot be presumed that the tenant had sub-let the premises. In the said order the Hon'ble Supreme Court had observed as follows:

“Having heard Counsel for the parties we are of the view that the High Court was clearly wrong in reversing the decision of the Additional District Judge. The application for eviction was based on the allegation of sub-tenancy. The allegation that the premisses had been sub-let to Pavan Trading Company had to be proved as a fact by the landlord and merely on the basis of photograph showing the presence of the son. Of the proprietor of Pavan Trading Company within the room, sub-letting could not be presumed. We must indicate that the approach of the trial Judge was to tally vitiated. Merely from the presence of a person other than the tenant in the shop sub-letting cannot be presumed. There may be several situations in which a person other than the tenant may be found sitting in the shop for instance, he may be a customer waiting to be attendant a distributor who may have come to deliver his goods at the shop for sale; a creditor coming for collection of the dues; a friend visiting for some social purpose or the like. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require the Court to assume a sub-tenancy merely from the fact of presence of an outsider. Obviously the law has intended and we must assume that the rule in the Abdul Aziz's case (referred to by the trial Court) proceed on the footing A that the person was sitting in the shop in exercise or his own right and not in a situation as indicated by us. The trial Court unwarrantedly drew the presumption and looked at the evidence of the tenant to find out whether the presumption had been rebutted. There is no warrant in law for such a situation. The Additional District Judge rightly took exception to this approach to the matter by the trial Court and since the evidence of the plaintiff had not been scrutinised under the



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erroneous impression of the legal position, the same was looked into to find out whether the claim of the sub-tenancy had been established. This was not an attempt to re-assess evidence but to take into consideration the evidence which had not been looked into by the trial Court. The revisional jurisdiction under [Section 25](#) of the Provincial Small Cause Court Act is not as wide as the appellate jurisdiction under [Section 96](#) of the Code of Civil Procedure; yet in a case of this type we do not think fault could be found with the revisional Court for pointing out the legal error committed by the trial Court in its approach to this material aspect. The legal position having been totally misconceived by the trial Court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority entitled to point out the legal error and rectify the defect. This is all that had been done by the Additional District Judge.”

16. He also relied on the ruling of this Court in **[S.K.Raffudin and others vs. N.Yeswantha Rao and others]** reported in **1997-2-LW 66** wherein it has been observed as under:

“18. It is settled law that to prove sub-lease, initially the landlord will have to prove that the tenant has parted with legal possession and a stranger is in exclusive possession of the building. So long as the exclusive possession is not even spoken to by P.W. 1, there cannot be any question of sub-lease. Both the authorities below have not entered a finding that the second Respondent, Jaleel, is in exclusive possession of any portion of the building. Both the authorities below have come to the conclusion that Jaleel might be in possession on the ground that he is having independent business. According to the Authorities below, from his presence in the premises, such an inference can be had.

19. I do not think, law goes to the extent of saying that a mere presence of a person in a shop will amount to sub-lease.

20. In the decision reported in **Jagdish Prasad v. Smt. Angoori Devi**, their Lordships said thus:

It is only when a person other than the tenant sits in the shop in exercise of his own right that the presumption of sub-letting can arise. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the scope cannot be assumed. [The Act](#) does not require the Court to assume a sub-tenancy



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merely from the fact of presence of an outsider. The allegation that the premises has been sub-let to a person has to be proved as a fact by the landlord and merely on the basis of a photograph showing presence of that person or his son within the premises, sub-letting cannot be presumed.

[Italics supplied] In that case, the only evidence was, the presence of a son in the shop premises.

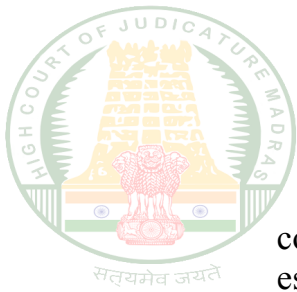
21. What is sub-letting is also defined by the Supreme Court in the decision reported in [Shalimar Tar Products Limited v. H.C. Sharma and Ors.](#) In paragraph 17 of that judgment (at page 78), their Lordships said thus:

...Parting to the legal possession means possession with the right to include and also right to exclude others. That, in our opinion, is the matter of fact....

So, the alleged sub-tenant must be in a position to exclude others from interfering with his enjoyment of the building. The entire premises must be under his control and only under him the other persons can be included within the premises. Evidence in this regard is absolutely lacking in this case.

22. In [Dev Kumar v. Swaran Lata](#), the only evidence that was let in was, a Commissioner's Report. When the Commissioner initially went to the property, he found certain other persons also doing business. When he went for a second time, the Commissioner was shown a rubber stamp having the words as sold selling agent of another person. The other person for whom the agent was doing business was alleged to be the sub-tenant. Apart from the Commissioner's Report, a cash bill under the so-called name of the sub-tenant was also produced. Considering these two evidence, their Lordships of the Supreme Court said thus:

...At the most, the conclusion can be that while the tenant was continuing his own business as well as a business of Commission Agent of M/s. Ram Saran Bhola Nath, Respondents 2 to 4 have also been permitted to continue their business in the name of Ram Saran Rattan Chand. But that does not establish either the exclusive possession of Respondents 2 to 4 or that the tenant has parted with his possession. The exclusive possession of the premises being the first criterion for establishing sub-letting and the same not being established, the conclusion of the High Court about sub-letting is vitiated. In our



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considered opinion the landlady, Respondent No. 1, has utterly failed to establish the plea of sub-letting....

[Italics supplied] In paragraph 9 of the judgment, their Lordships said thus:

...The conclusion on the question of subletting is a conclusion on a question of law derived from the finding on the materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration.

[Italics supplied] Their Lordships reiterated the legal position **laid down in** the decisions reported in **Jagdish Prasad v. Angoori Devi** and held that unless exclusive possession or parting with possession is proved, there cannot be any question of sub-letting. Their Lordships further went on to say that if that is proved, it may not be impermissible for the Court to draw an inference what the transaction was entered into for monetary consideration.

23. Similar is the case reported in **Rajbir Kaur v. S. Chokesiri and Co.**, wherein also, their Lordships reiterated that 'if exclusive possession is established, and the version of the tenant as to the particulars and the incidents of the transaction is found unacceptable in the particular facts and circumstances of the case, as in the present case, it may not be impermissible for the Court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the Respondent to rebut this. Such transactions of subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence. It is not, unoften, a matter for legitimate inference. The burden of making good a case of subletting and establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion, viz., the landlord. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the Weight of the evidence adduced by the party during the trial.[Italics]

24. So, the basic ingredient to prove the case of sublease is 'parting with possession'. The alleged sublessee must have the right to include and exclude others. If evidence on that aspect is lacking, as held in the decisions cited supra, a finding on subletting can only be considered as illegal. Since the conclusion on sub-letting is a question



of law, even though the finding of the authorities below is concurrent, this Court is competent to reverse that finding.”

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17. The learned Counsel further relied on the ruling of this Court in **[Gundalapalli Rangamannar Chetty vs. Desu Rangiah and others]** reported in **1952-65-LW 462** wherein it has been observed as under:

“6. It is clear from the aforesaid decisions that there cannot be a sub-letting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. Section 105 of the Transfer of Property Act defines a lease of immovable property as to transfer of right to enjoy such property. Therefore to create a lease or sub-lease a right, to exclusive possession and enjoyment of the property should be conferred on another. In the present case the exclusive possession of the premises was not given to the second Respondent. The first Respondent continued to be the lessee, though in regard to the business carried on in the premises he had taken in other partners. The, partners are not given any exclusive possession of the premises or a part thereof. The first Respondent continues to be in possession, subject to the liability to pay rent to his landlord. The partnership deed also, as I have already stated, does not confer any such right in the premises on the other partners. If therefore hold that in the circumstances of the case the first Respondent did not sublet the premises to the second Respondent, and therefore he is not liable to be evicted under the provisions of Act No. 23 of 1949.”

18. In this case the learned Rent Controller as well as the Court of learned Rent Control Appellate Authority had on presumption held that the tenant has sub-let the premises to the second Respondent. The landlord had not proved exclusive possession of the premises by the so-called sub-tenant. Merely because some person was in the premises in question at the time when the landlord or his representative visited the premises, it cannot be presumed



that the premises was sub-let to a third party for monetary gain.

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19. The learned Counsel for the Tenant has also relied on the reported ruling in *[Jagdish Prasad vs. Angoori Devi] (1984) 2 SCC 590* wherein it was complained that the tenant had entered into partnership business and for that purpose sub let the premises in question to another Company. It was found that the leased out premises was sublet to M/s.Pavan Trading Company, a soap manufacturing concern. It was the claim of the tenant that he is also a partner of M/s.Pavan Trading Company and he had not sublet the premises to exclusive possession to M/s.Pavan Trading Company. As a partner of M/s.Pavan Trading Company, he is carrying on business in the tenanted premises and that cannot be considered as subletting the premises to the exclusive possession of some other person other than the tenant.

20. By referring to the above decision, the learned Counsel for the Revision Petitioner-tenant contends that the tenant has not sub-let the premises to the second Respondent and he alone is carrying on the business for the purpose for which it was let out. The second Respondent is none other than a casual employee engaged by the tenant. The learned Counsel for the Revision Petitioner/tenant, accordingly, prayed for allowing CRP No. 2823 of 2021 and to dismiss CRP No. 16 of 2022 filed by the landlord.



WEB COUNSEL Submissions of the Counsel for landlord in CRP No. 16 of 2022

21. The learned Counsel for the landlord submitted that during enquiry, the tenant had admitted that he used to pay rent on yearly basis. According to the learned Counsel, even in the absence of a demand by the landlord, it is the statutory duty of a tenant to pay the rent month after month without any default. The fact that rent is being paid annually itself would give rise to a presumption that the tenant has committed wilful default in payment of rent. In such view of the matter, the learned Rent Controller as well as the Appellate Authority committed a grave error in dismissing the Original Petition on the grounds of wilful default in payment of rent. As regards the plea that the premises was sub-let to the second Respondent, the Courts below, based on Ex.P-3 filed by the landlord, has rightly held that the telephone number 044 2538 0714 stands in the name of the second Respondent and the telephone was installed in the premises in question. Thus, on the basis of Ex.P-3 filed by the landlord, the Courts below rightly come to the conclusion that the second Respondent is the sub-tenant and he is paying the rent regularly to the first Respondent-tenant. Such an act of letting out the premises to another for pecuniary gain has been done without the consent of the landlord. Therefore, the Courts below rightly directed the tenant to vacate and handover the premises to the landlord. Such a well considered decision deserve no



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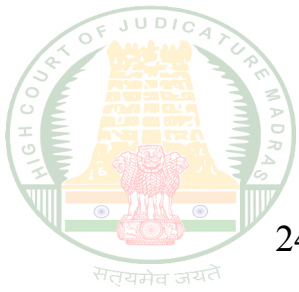
interference by this Court. Accordingly, the learned Counsel for the landlord prayed for dismissal of CRP No. 2823 of 2021 and to allow the CRP No. 16 of 2022. The learned Counsel for the Respondent/landlord also relied on the following rulings:-

22. In the case of ***M.Bhaskar vs. J.Venkatarama Naidu rep. by his Power of Attorney Holder A.Narayanaswamy Naidu*** reported in **(1996) 6 SCC 228** the Hon'ble Supreme Court had held as under:

“Rent Control and Eviction – Arrears of rent – Wilful default – If tenant found that landlord was evading payment of rent by him, he should have followed the procedure prescribed by Section 8 of A.P Rent Act to issue notice to landlord to name the bank and on landlord's failure to name the bank, he should have filed application before Rent Controller for permission to deposit rent – Held, tenant having not followed that procedure landlord entitled to eviction for wilful default – Omission to avail procedure under Section 11 will not disentitle landlord to seek eviction for wilful default – A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, Sections 10(2)(i), 8 & 11”

23. In the case of ***R. Govindhammal vs. A. Nirmala*** reported in **(2002) 3 MLJ 412** it has been observed as under:

“4. The learned Counsel appearing for the petitioners/tenants has submitted that the amount was already deposited on the first hearing itself. This Court in number of decisions has held that mere deposit of arrears of rent on receipt of summons or on the date fixed in the summons for appearance of the tenant would not rectify the disqualification suffered by the tenant already. Both the Authorities below concurrently found that the tenants committed wilful default in payment of rent. In view of the said finding of facts by the Authorities below, I do not incline to interfere with the same. Hence, the Civil Revision Petition is dismissed. Consequently, C.M.P.No.10889 of 2002 is also dismissed.”



24. In ***Sridharan vs. S.Natarajan and two others*** reported in 2007 (3)

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“12. Before invoking Section 8(5) of the Act, certain statutory requirements are to be complied with. If the legal requirements are not complied with, even though there was deposit of rent, the same cannot be construed as valid tender to the landlord and the Tenant must be deemed to be a defaulter in payment of rent. Without issuing any notice to the Revision Petitioner, and without complying with the legal requirements contemplated under Section 8(5) of the Act, Tenant has rushed to the Court and the same is not in accordance with law and he cannot escape from the liability of being evicted.”

Point for consideration:

Whether the common Judgment dated 24.09.2021 passed in R.C.A. No. 765 of 2018 filed by the Tenant and R.C.A. No. 790 of 2018 filed by the landlord are perverse and they warrant interference of this Court?

25. Heard the learned Counsel for both sides and perused the materials placed on record, including the orders passed by the learned Rent Controller as well as the learned Rent Control Appellate Authority.

26. The Tenant was admittedly inducted in the year 1991 in the premises having an extent of 130 sq.ft. Initially, the rent was fixed at Rs.375/-. The landlady was Mrs. K. Suguna Devi, who was receiving the rent of Rs.375/-. It was originally rented out to Kantilal Lasaji, who has been running a shop in the name of Mahalakshmi Bangle Store. Even though the tenant/Kantilal

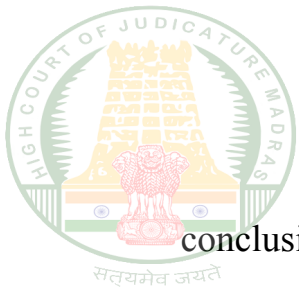


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Lasaji had taken up the leased property to run Mahalakshmi Bangle Store, the Store was run by the employees. The said Kantilal Lasaji is a resident of Rajasthan. The landlord Dinesh Kumar is settled in Mumbai. The tenant, a resident of Rajasthan, is enjoying the property by paying rent regularly to the landlady. Since the landlady is a resident of Mumbai, the tenant is a resident of Rajasthan used to send the rent through Bank transactions. The landlady Mrs. K. Suguna Devi requested the tenant to pay the rent as lumpsum, instead of small amount regularly. The tenant agreed to pay the rent through Bank transactions as lump sum amount in a periodical way, instead paying on monthly basis. It was admittedly an arrangement made between the landlady and the tenant. In the meanwhile, RCOP No.1431 of 2015 was filed by the son of Mrs. K. Suguna Devi on the ground of wilful default and sub-letting. The RCOP No. 1431 of 2014 filed for wilful default was rejected by the learned Rent Controller but it was allowed on the ground of sub-letting. Aggrieved by the Order of the learned Rent Controller, the tenant filed Appeal in R.C.A.No.765 of 2018 before the learned Rent Control Appellate Authority, Small Causes Court, Chennai and the landlord filed Appeal in R.C.A.No.790 of 2018.

27. Both the Courts below concurrently found that the Tenant cannot be presumed to have committed wilful default in payment of rent. Such a



conclusion was reached on the ground that the tenant had paid the rent in one lumpsum and it was also received by the landlady. Subsequently, her son became the landlord. He also received the rent without any objection. According to the tenant, as requested by the landlady, he is paying the rent on a yearly basis. The learned Counsel for the tenant also submitted that the tenant is also willing to pay the rent every month. In fact, the Tenant, in order to prove his bona fides, filed MP No. 149 of 2016 before the learned Rent Controller to deposit the rent into the Court, but that was dismissed by the learned Rent Controller. When the landlord, without any demur, received the rent that was tendered by the Tenant on a yearly basis, it cannot be said that the Tenant has committed wilful default in payment of rent.

28. After Dinesh Kumar, the present landlord stepped into the shoes of the landlady Mrs. K. Suguna Devi, he had raised the monthly rent and it was objected to by the tenant. It is in those circumstances, the landlord filed the petition for eviction on the ground of wilful default and sub-letting the premises.

29. Before the learned Rent Controller, the brother of the landlord Jograj was examined as P.W-1. He is none other than the brother of the present landlord and also the son of the previous landlady Suganadevi. When



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he was confronted with reference to the oral arrangement between the original landlady Mrs.K.Suguna Devi, his mother and also the mother of the landlord in RCOP. No.1431 of 2015 he has deposed that instead of paying a meagre amount every month, his mother had requested the tenant to pay in lump sum either once in three months or six months or once in a year when he met her at Bombay, he had claimed ignorance of the same. Therefore, in the light of categorical admission of P.W-1 that the landlady wanted the rent to be paid only in lumpsum, the tenant cannot be branded as a wilful defaulter or chronic defaulter in payment of rent.

30. As regards sub-letting, the tenant had stated that he is carrying out business by taking up leased out premises to employees, workers and staff who will be dealing with the business on his behalf. It is in those context, one Bheru Singh was engaged. However, it was projected as though the said Bheru Singh was a sub-tenant to whom the Tenant had sub-let the premises. In this regard, Ex.P-5, photograph was marked to show that the person standing in the bangle shop is Bheru Singh to whom the Tenant had sub-let the premises.

31. It is hard to accept Ex.P-5, photograph of a person, to substantiate that the tenant is guilty of sub-letting the premises. As per the claim of the tenant, he has engaged casual employees to look after his shop and one Bheru



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Singh is employed by him. As regards Ex.P-3, relied on by the learned Rent Controller, it was subscriber details copy of BSNL in respect of the premises in question and it stands in the name of Bheru Singh. According to the Tenant, it was a Public Telephone Booth and it was permitted to be installed in the premises in question and it was entered in the name of the employee Bheru Singh. Here again, the installation of a public telephone in the name of Bheru Singh is not a substantial proof to hold that the Tenant has sub-let the premises in question.

32. The ruling cited by the Revision Petitioner/tenant in **(1984) 2 SCC 590 [Jagdish Prasad vs. Angoori Devi]** is found acceptable to the facts of this case. Merely finding Behru Singh in the leased out premises (in the photograph marked as Ex.P-5) cannot be presumed that he is a sub-tenant to whom the tenant had sub-let the premises. Therefore, the conclusion reached by the learned Rent Controller as well as the Appellate Authority with reference to sub-letting the premises is perverse. Therefore, the plea with respect to subletting is rejected.

33. In the light of the above discussion, the point for consideration is answered in favour of the Tenant/Revision Petitioner in C.R.P.No.2823 of 2021 and against the landlord/Petitioner in C.R.P.No.16 of 2022.



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WEB COPY In the result:-

Civil Revision Petition No. 2823 of 2021 is allowed. The order of eviction dated 14.09.2018 passed in R.C.O.P.No. 1431 of 2015 on the file of the learned XIV Judge, Court of Small Causes, Chennai, which was confirmed by Judgment dated 24.09.2021 in R.C.A.No.765 of 2018 on the file of the learned VII Judge, Small Causes Court (Appellate Authority) at Chennai, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

C.R.P. No. 16 of 2022 is dismissed. The judgment dated 24.09.2021 passed by the learned VII Judge, Small Causes Court, Chennai in R.C.A.No.790 of 2018 confirming the order dated 14.09.2018 passed by the learned XIV Judge, Court of Small Causes, Chennai, in R.C.O.P.No. 1431 of 2015 is upheld. No costs.

17-04-2025

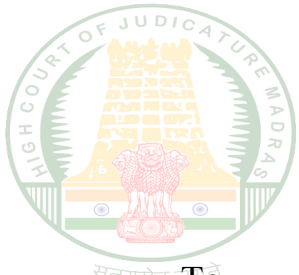
SRM/DH

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking Order

Neutral Citation : Yes / No



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To
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- 1.The Additional Judge,
City Civil Court at Allikulam,
Chennai.
- 2.The XVI Judge,
Court of Small Causes at Chennai.
- 3.The VII Judge,
Court of Small Causes at Chennai.
- 4.The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM/DH

Common Order made in
CRP Nos.2823 of 2021
and
CRP No.16 of 2022

17-04-2025