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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 26.03.2025

CORAM

**THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR**

**C.R.P.(PD)(MD)No.592 of 2025**

**and**

**C.M.P(MD)No.3220 of 2025**

S.Mohammed Abdullah

...Petitioner/Petitioner/Respondent

Vs.

K.Rajagopal

...Respondent/Respondent/Applicant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decreetal order dated 09.12.2024 in IA.No.1/2024 in R.L.T.O.P.No.22/2024 on the file of the Rent Court (Principal District Munsif Court), Tiruchirappalli, and allow the CRP throughout.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : Mr.S.Savarimuthu  
for M/s.Father Savarimuthu

\* \* \* \* \*



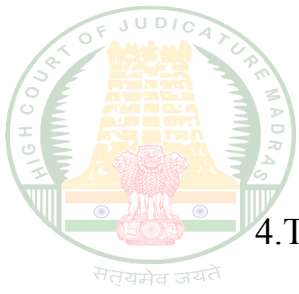
## **ORDER**

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The respondent/tenant in R.L.T.O.P.No.22 of 2024, on the file of the Rent Court(Principal District Munsif Court), Tiruchirappalli, has filed the present revision petition, challenging the dismissal of his application seeking a direction to the landlord to present himself as witness for the purpose of cross examination.

2.A perusal of the records reveal that the respondent herein as landlord has filed the above said application for evicting the tenant on the ground that leave and license period has expired and the tenant has not come forward to enter into a fresh agreement. The landlord has further alleged that the tenant has caused damages to the building.

3.The tenant has filed counter contending that when the agreement is a leave and license agreement, and Clause No.9, has specially pointed out that no tenancy has been created under the agreement, the Rent Control Court does not have any jurisdiction to entertain the eviction petition. It is further contended by the tenant that he has not caused any damages to the building and he has disputed the allegations relating to the requirement of the landlord for his own use and and occupation.



4.The landlord had filed his proof affidavit on 04.10.2024, and he has marked the documents on his side on the same day. Without permitting the tenant to cross examine the landlord, the Court has posted the case to 17.10.2024, for the tenant to let in evidence on his side. In such circumstances, the tenant had filed I.A.No.1 of 2024, under Section 34(2) of the Tamil Nadu Regulation of Rights and Responsibilities of the Landlord and Tenants Act, 2017, seeking a direction as against the landlord to appear as witness, so that the tenant could cross examine him. This application came to be dismissed by the Rent Controller on the ground that whether it is a lease or not, is a legal issue and it can be decided based upon the documents filed on either side. In such circumstances, cross examination of the landlord is not necessary. Challenging the said order, the present revision petition has been filed.

5.According to the learned Counsel appearing for the revision petitioner, he has entered into possession of this property as a lessee in the year 2006. However, when the present agreement was entered into in the year 2013, a conscious decision was taken by the landlord to treat the transaction as a leave and license agreement. In such circumstances, unless the mind of the landlord is been brought before the Court to the effect that it is only a license agreement and not a lease agreement, it would difficult to establish before the Court that it is a only license agreement and not a lease agreement.

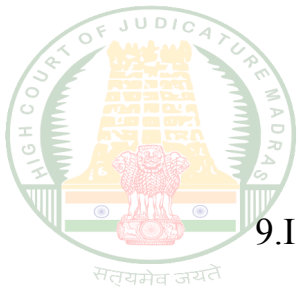


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6. According to the learned Counsel appearing for the revision petitioner, the ground of own use and occupation have been deleted from the Act by way of amendment in the year 2022, and therefore, such a ground is not available to the landlord. It is further contended that the landlord has alleged that the tenant has caused damages to the building. When factual allegations are being made as against the tenant, to the said effect also, the cross examination is required.

7. The learned Counsel appearing for the revision petitioner has relied upon the judgment of this Court reported in **2022 SCC online Mad 5939**, wherein this Court has held that cross examination of the landlord would be necessary, in a case, where the tenant has not entered into a fresh agreement with the landlord, if he wants to establish the reasons for not entering into a fresh agreement.

8. Per contra, the learned Counsel appearing for the respondent herein had contended that the landlord is always ready to subject himself for cross examination provided he is sought to be cross examined in the main case. Only because of the fact that I.A. was filed by the tenant for a direction to present the landlord for cross examination, the said application was resisted by the landlord.



9.I have considered the submissions made on either side and perused the materials available on record.

10.The present application has been filed by the tenant under Section 34(2) of the Act, seeking a direction to the landlord to appear as witness so that he could be cross examined. It could be seen from the records that as soon as the landlord had filed his proof affidavit and marked the documents, the Rent Controller has proceeded to post the case for evidence on the side of the tenant. Therefore, it is clear that Rent Controller had not permitted the tenant to cross examine the landlord which has prompted him to file the present application.

11.A perusal of the agreement between the parties raises some doubts whether it is a lease agreement or a leave and license agreement. According to the tenant, he is under a lease agreement from the year 2006 onwards and the landlord has taken a conscious decision to convert the lease agreement into a leave and license agreement.

12.It is further contented on the side of the tenant that such an agreement has not been registered before the authorities concerned. However, the learned Counsel appearing for the landlord has contended that such an agreement has



already been registered. In such circumstances, it is all the more necessary that the landlord is subjected for cross examination to find out what prompted him to prepare a leave and license agreement.

13. In view of the above said deliberations, the order impugned in the revision petition is hereby set aside and the revision petition stands allowed.

14. It is made clear that the cross examination shall be restricted to the character of the possession of the property as well as with regard to the damages caused to the building.

15. With the above said observations, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

**26.03.2025**

Internet: Yes/No  
Index: Yes/No  
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To

The learned Principal District Munsif,  
Rent Court, Tiruchirappalli.

**Copy to:-**

The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court, Madurai.



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**R.VIJAYAKUMAR, J.**

RJR

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