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**R. Ranga Babu and Others Vs. AR. Devendran Prop. Singer Sewing Machine**

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**SooperKanoon Citation** : sooperkanoon.com/1185905

**Court** : Chennai

**Decided On :** Jan-25-2017

**Judge** : M.V. Muralidaran

**Appeal No.** : CRP (NPD) No. 4412 of 2012

**Appellant** : R. Ranga Babu and Others

**Respondent** : AR. Devendran Prop. Singer Sewing Machine

**Judgement** :

(Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act 1960 as amended by Act 23 of 1973, against the order and decreetal order of Rent Control Appellate Authority (VIII Small Causes Court at Chennai) dated 25.10.2012 made in RCA.No.652 of 2010 reversing the Order and decreetal Order of eviction passed by the Rent Controller (XVI Small Causes Court, Chennai) dated 12.08.2010 in RCOP.No.1128 of 2009.)

1. The Revision Petitioners herein are the petitioners in trial Court has filed R.C.O.P.No. 1128 of 2009 on the file of the Learned Rent Controller/ Court of Small Causes at Chennai has filed the above RCOP.No.1128 of 2009 for the relief of own use and occupation under Section 10 (3) (a) (iii) of Tamil Nadu Buildings (Lease and Rent) Control Act 1960 as amended by Act 23 of 1973 stated that the Revision Petitioners are the absolute owner of the subject property and the Land-lord of the premises bearing Old Door No. 118, New No. 86, Choolai High Road,

Chennai. The Respondent was inducted as tenant and he paid monthly rent of Rs.6300/-. Originally the subject property was purchased by the Petitioners jointly on 16.10.1985 and 23.10.1985 respectively and the petitioners herein are now residing at the above property in 2nd Floor and jointly having a Jewellery Shop at Shop No. 14C, 60 Anna Nagar Plaza of Second Avenue, Chennai-40 in the name and style of Sri Rachaput Jewels. Now the petitioners herein wanted to have their own independent business of their choice and hence two brothers decided to have their independent business with the available 300 sq.ft. building of their own i.e. the scheduled mentioned property. The Petitioners herein are now required the subject matter of premises for their own shop use on bonafide requirement i.e. for his brother namely R.Renga Babu, the first Petitioner herein to start a new jewelry shop.

2. The Revision Petitioners herein contended that neither the petitioners herein nor any of the family members own any other building in Chennai city and the subject building is very much suitable for the business purpose. The Respondent herein filed a counter contended that the respondent herein is not a tenant but only Vijaya Traders is a tenant, because rent is paid in the name of the Company and the respondent herein is having business in the name and style of SINGER SEWING MACHINE and the respondent admitted that the petitioners herein are the owners of the property and the respondent herein has originally paid the monthly rent of Rs.3,000/-. After periodical increments, now he is paying a sum of Rs.6300/- p.m. From the beginning of 2009, the petitioners herein demanded to enhance the rent from Rs.6300/- to Rs.10,000/- per month. But the respondent herein did not agree for such enhanced amount and the first petitioner is doing money lending business having office at home itself. The 2nd Petitioner is carrying Jewelry business in Anna Nagar at Chennai for the past about 15 years. The third petitioner is not living at Madras, but he settled in Hyderabad doing his software business. The 2nd and 3rd Petitioners herein are separately living in the 2nd floor of subject premises. Hence demand for own use and occupation is not bonafide and the respondent herein for the past 30 years is carrying on business in the demised premises and the respondent herein is not having any building nearby the demised premises or in around that locality even on higher rent for his business. The respondent s only alternative is to wind up the business which would affect him and his family.

3. On perusal of the witnesses and records on either side, the Learned Rent Controller ordered eviction by order and decree dated 12.08.2010 on the ground of own use and occupation. As against the order of eviction, the respondent/tenant has filed R.C.A.No. 652 of 2010 before the Rent Control Appellate Court at Chennai (XIII Judge, Small causes Court at Chennai). The Learned Rent Control Appellate Judge has erroneously allowed the R.C.A by Judgment and decree dated 15.10.2010 on the ground that the revision petitioners/landlords have not required the subject premises for own use and occupation and their requirement is not bonafide. It is further held by the Learned Rent Control Appellate Authority that the petitioners in the RCOP Petition stated that the demised premises is required for the 1st petitioner to start Jewelry shop, whereas in the Proof Affidavit filed by the 1st petitioner, it is stated that they required the subject premises for own use and occupation of the 3rd petitioner namely R. Madhu Sudhan Rao. Therefore the learned Appellate Judge hold that the petitioners herein have not proved about their bonafide requirement and allowed the petition in RCA.No.652 of 2010 and set aside the order in RCOP.No.1128 of 2009, dated 12.08.2010. As against the order passed in the above R.C.A.No.652 of 2010, the Revision Petitioners/Landlords have filed this Civil Revision Petition before this Court.

4. Heard Mr.T.V.Ramanujam, learned Senior Counsel, for M/s.R.Thirumalai, learned counsel appearing for the petitioners and Mr.C.Rajan, learned counsel appearing for the respondent. I have gone through the available records and have carefully considered the case on either side.

5. Before the Learned Rent Controller, on the side of the petitioners/Landlords, 6 documents were marked and on the side of the Respondent/Tenant, 9 documents were marked. The respondent herein has produced an additional document before the Learned Rent Control Appellate Authority and it was marked as Ex-R10. A careful reading of the Judgment of the Learned Rent Controller discloses that the Learned Judge on a careful consideration of the bonafide requirement of the landlord and after referring a Judgment of the Hon ble Apex court reported in 1998 (3) CTC 679 (SC) in support of the case of the petitioners herein ordered eviction on the ground of owners occupation.

6. However, the Learned Rent Control Appellate Authority reversed the well considered Judgment of the trial court on the ground that the requirement of the landlord is not bonafide. The Learned Appellate Judge reversed the Judgment of the trial court only by relying upon the evidence of PW-1. The 1st Petitioner herein was examined as PW-1 and in his chief examination; he has stated that the demised building is required for the 3rd petitioner viz. Madhu Sudhan Rao. A careful perusal of the cross examination of PW-1 disclosed that he required the demised premises for himself and his brother Madhu Sudhan Rao. In my considered opinion, the tenant has no locus or right to question who has to run the business. It is for the landlords to decide who has to conduct the business among their family members. Further, in this case, one of the petitioner wants to conduct business in the demised premises which is in occupation of the tenant/respondent herein. The Learned Rent Control Appellate Authority is not justified in holding that the requirement of the landlord is not bonafide, since in the RCOP petition, the petition premises is required for the 1st petitioner and now in the proof affidavit, he stated that it is required for the 3rd petitioner. That alone can t be a ground to reject the requirement of the petitioners herein is not bonafide.

7. At this Juncture, it is useful to refer the recent Judgment of this Hon ble Court in S.Panneerammal and others v. Ravichandran reported in 2016 (6) CTC 571. In the said Judgment, this Hon'ble Court after elaborately considering the case of own and use and occupation and the bonafide requirement of the landlord, also after considering the various Judgment of this Hon ble High Court and also the Hon ble Apex Court. The learned Judge has also considered the following judgments held by the Hon'ble Apex Court in respect of bonafide requirement of the landlord as follows:-

1) A.S.Venkataraman, Proprietor of Kamala Textiles v. A.V.Harikrishnan Naidu, 2013 (3) LW 845;

2) B.Kishore, Proprietor v. D.Maragathavalli, 2007 (2) CTC 797;

3) G.C.Kapoor v. Nand Kumar Bhasin and others, AIR 2002 SC 200;

4) Sivaraj v. Esakkimuthu, 1999 (2) LW 478; and

5) R.Muruganandham v. J.Noor Mohammed and another, 2009 (3) MLJ 878.

8. Have settled the issue of bonafide requirement of the landlord and the requirement of the building for own use and occupation. In the decision first cited above A.S.Venkataraman's case, this court has observed that non-preparation of the business commencement cannot be put against the Land lord. Owners of the premises must be allowed to occupy a portion of his own choice either to reside or to run his business. In so far as the present case on hand is concerned, the requisite qualification and the capability of the Third Petitioner to run the business have not been denied by the Respondent. That is why the learned Single Judge of this Court in the above cited decision has held that when admittedly both PW2 and her husband were unemployed and both of them are having the requiste qualification to run a computer Internet Centre, the intention to start the business is proved more than what is required with sufficient materials and therefore the bonafide requirement of the Landlord having been proved, the order of Eviction passed by the Appellate Authority on the ground of owner s occupation is perfectly in order and does not warrant any interference.

9. In the decision second cited supra in B.Kishore s case, the Hon'ble Supreme Court observed that enough if landlord makes bonafide preparations to commence business and not necessary that landlord or member of the family for whom business is sought should be actually carrying on business on the date of filing of petitions.

10. The said Judgments are squarely applicable to the facts and circumstances of the present case on hand. Over all, this Court is of the considered view that the petitioners herein have proved their bonafide requirement and they have succeeded in their claim U/s 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act 1960 as amended by Act 23 of 1973.

11. It is my considered opinion that when the landlord had indicated about the type of business that the propose and pleadings need not necessary be so elaborate in detail so as to cover all aspects. The Landlords namely these petitioners particularly, the first petitioner can seek eviction of the Tenant portion from the respondent Tenant for the benefit of his family. Apart from this, the Landlord

makes bonafide preparations to commence business and not necessary the Landlord or Member of the family for whom business is sought should be casually carrying on business on the date of filing of petition.

12. It is my considered opinion is that now a days the Tenanted portion occupied by the Tenants have prolonged one pillar to another from vacating the Tenanted portion whenever the Landlords requires the Tenanted portion. When the landlord with a high faith on the tenant had let his/her property to the tenant at the time of initial tenancy that the tenant income will satisfy his/her family eke out and the tenant will vacate the premises whenever his/her demand made to the Tenant but the demand broke down the landlords faith and expectation and the landlords were thrown pillar to posts by showing the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 as amended by Act 23 of 1973 as a weapon. A person who is occupying the landlords tenanted portion of the property as tenant must always bear in mind that he/she is only licensee to occupy and will have to handover the possession, whenever on demand made by the landlord since that will create cordial relationship and good faith on the human beings.

13. In the case on hand, as per the evidence, the petitioners clearly stated that they wanted the subject premises for own use and occupation and hence the Civil Revision Petition is ought to be allowed by giving reasonable period of time for eviction of the respondent/tenant.

14. In the result:

(a) the Civil Revision Petition is allowed and the Judgment and decree dated 25.10.2012 passed in R.C.A.No.652 of 2010 on the file of the Learned Rent Control Appellate Authority (VIII Small Causes Court), Chennai is set aside, and confirming the judgment and decree in RCOP.No.1128 of 2009, dated 12.08.2010 passed by the Rent Controller/Court of Small Causes Court at Chennai.

(b) the time for eviction is six months from the date of receipt of a copy of this order.

15. Accordingly, this civil revision petition is allowed. No costs.

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