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S.Baskaran Vs. S.Tharabai

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Court : Chennai

Decided On : Feb-15-2012

Judge : R.S. Ramanathan, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 25

Appeal No. : C.R.P (NPD).No.4025 of 2011 and M.P.No.1 of 2011

Appellant : S.Baskaran

Respondent : S.Tharabai

Advocate for Def. : Mr. T.Paranthaman. Adv.

Advocate for Pet/Ap. : M/s.V.Bhiman, Adv

Judgement :

Prayer: This Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 praying to set aside the order dated 23.08.2011 made in R.C.A.No.212 of 2010 on the file of VII Judge, Small Causes Court, Chennai, confirming the order dated 16.02.2010, made in RCOP.No.83 of 2009 on the file of XIV Judge, Small Causes Court, Chennai.

ORDER

1. The revision petitioner is the tenant. The respondents/landlords filed the RCOP.No.83 of 2009 before the XIV Small Causes Court, Chennai, for eviction on the ground of additional accommodation and the same was ordered and confirmed in RCA.No.212 of 2010 on the file of the VIII Small Causes Court, Chennai. Hence this revision.

2.It is submitted by the learned counsel appearing for the revision petitioner that admittedly the landlords are the owners of three shops facing New Avadi Road and the premises of the revision petitioner/tenant is the middle shop and the landlords/respondents are having office behind the three shops and without any basis, the landlords have filed the application for eviction against the revision petitioner alone without taking action against the other two tenants and there is no valid reason for selecting the revision petitioner and therefore, the requirement of landlords, seeking additional accommodation is not bonafide. He further contended that the Courts below failed to appreciate the hardship there may be caused to the tenant by ordering eviction will out weigh the advantage of the respondents/landlords and it is very difficult for the tenant to find out the alternate accommodation in that locality and the revision petitioner is doing business in that premises for more than thirty years and therefore, the order of the court below is liable to be set aside.

3. I am unable to accept the contention of the learned counsel for the revision petitioner, it has been stated by the respondents/landlords that the second petitioner namely the second respondent herein is carrying on business in a small room which is situated on the back side of the tenant shop occupied by the revision petitioner. It is further stated that there is only a dividing wall between the room occupied by the landlords and the shop taken by the revision petitioner. It is further accepted that except the three shops lay out to three tenants, the landlords are not in occupation of any other premises in the locality and the second respondent/landlord is occupying the room on the rear side of the shop let out to the revision petitioner and for the purpose of improving the business of the second respondent herein, they want to premises occupied by the revision petitioner and therefore, the requirement is bonafide. The revision petitioner was examined as RW1 and he admitted in his evidence that the three shops let out to the various

tenants including himself are facing New Avadi Road and the northern shops is a tea shop and behind that shop, there is a staircase leading to first floor and behind the shop let out to him, there is a room and he does not know whether that room is used by the second respondent herein after the death of his father and he further admitted that by removal of the dividing wall between that room and his tenanted portion, the rooms in occupation of the landlords can be used as one portion. Therefore, having regard to the admission of the revision petitioner that the shop used by the respondents/landlords is on the rear side to the portion let out to the revision petitioner and by removing a common wall, both portions can be clubbed into a big hall and behind the shop on the northern side there is a staircase, leading to first floor, the Court below has rightly held that the requirement of landlords is bonafide.

4.Further the landlords have proved that the second respondent is doing business in the rear portion in a room by producing the income tax statement and the Building Construction Agreement Exs.P1 and P14. Therefore, both courts have rightly held that the requirement of landlords seeking additional accommodation is bonafide.

5.Further, the contention of the learned counsel for the revision petitioner that the landlords have willfully chosing revision petitioner premises without chosing the other two shops cannot also accepted. It has been held by the Hon'ble Supreme Court and our High Court that the tenant cannot dictate as to which premises the landlords can choose for additional accommodation and in this case, it has been proved by the landlords that by removing the common wall the landlords can access to the tenanted portion let out to the revision petitioner and for that purpose only they require the tenanted portion for additional accommodation and other portion cannot be used in such a manner. Further the revision petitioner also admitted that the landlords have not demanded enhancement of rent from him. Considering all these aspects the court below has rightly ordered eviction.

6.As regards the contention of the learned counsel for the revision petitioner that the plea of comparative hardship was not considered the Rent Controller and elaborately in paras 13 to 16 of the Judgment referred to the cross examination of

the revision petitioner, wherein the revision petitioner has accepted that he was not doing business, due to ill health and no steps were taken by the revision petitioner to find out fresh accommodation and held that the hardship that may be caused the revision petitioner / tenant will not out weigh the advantage of the landlords and ordered eviction. The learned Rent Control Appellate Authority also considered the same and confirmed the order of the Rent Controller.

7.Therefore, according to me, both the courts have considered the comparative hardship and held hardship that may be caused to the tenant by the order of eviction will not out weigh the advantage of the landlords and it would not be difficult for the tenant to find out the accommodation and the tenant has admitted that he was not doing business due to ill health. Further, every tenant will have to undergo difficulties in finding out fresh accommodation when he is ordered to be evicted and that cannot be the reason to deny the relief to the landlords, if the requirement of landlord is bonafide and the landlords satisfy the provisions of law. In this case as stated supra, the landlords have satisfied the bonafide requirement of the tenanted premises let out to the revision petitioner and therefore, I do not find any infirmity in the order of the Court below in ordering eviction and hence, the Civil Revision Petition is dismissed.

8.The learned counsel for the revision petitioner submitted that the revision petitioner undertakes to file an affidavit and he may be granted time till 31.12.2012 for handing over the vacant possession. Considering the nature of the business of the revision petitioner, I am inclined to grant time till 31.12.2012, on condition of filing undertaking affidavit by the revision petitioner within a period of two weeks from the date of receipt of a copy of this order, undertaking to vacate and hand over the vacant possession to the respondents on or before 31.12.2012 and on further condition of paying the admitted rent till he hands over the vacant possession. In default, if any one of the conditions, it is open to the respondents/landlords to execute the order of the eviction.

9.Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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