
(2009) 08 MAD CK 0359

Madras High Court

Case No: C.R.P. (NPD) No. 825 of 2009 and M.P. No's. 1 and 2 of 2009

A. Subramani

APPELLANT

Vs

S. Gnanasekaran

RESPONDENT

Date of Decision: Aug. 24, 2009

Acts Referred:

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 10(2), 10(3)

Citation: (2009) 8 MLJ 560

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: M.S. Krishnan for R. Rajaraman and P. Veena, for the Appellant; G. Jayachandran, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The following are the allegations in brief contained in the petition filed by the petitioner/landlord (respondent herein) before the Rent Controller u/s 10(2)(i) and Section 10(3)(c) of the Tamilnadu Buildings (Lease & Rent Control) Act, 1960:

1.(a) The petitioner is landlord and the respondent is tenant under the petitioner in respect of the schedule mentioned non-residential premises. The monthly rent for the premises is Rs. 1,750/-. Rs. 1,00,000/- was received as advance by the petitioner. The respondent has wilfully, wantonly failed and neglected to pay the rents from the month of January 2002 at the rate of Rs. 1,750/- per month. Hence he is a wilful defaulter.

1.(b) The petitioner is doing xerox business in a portion of the ground floor of the schedule mentioned property under the stair case. He is having xerox machine, fax machine and STD and local telephone booth. He is also having his franchise office of

First Flight Courier Service and running its collection centre in the said place. He is earning for his livelihood only through the said business. The place occupied by him is not sufficient for his business. The customers of the petitioners are not able to sit and use the telephone and the persons who are coming for xerox are also have to wait outside for taking xerox copies. He requires the portion occupied by the respondent/tenant for his business. Both the portions are under the same roof and the same is separated by 4 inch wall. If the tenant is vacated the petitioner will demolish the wall and use the same as one hall for his business. Hence eviction order may be passed.

2. In the counter filed by the respondent/tenant (Petitioner herein), the following are stated:

2.(a) The respondent has paid a sum of Rs. 3,00,000/- as advance. There is a written agreement. It is false to state that he is wilful defaulter and he is in arrears from January 2002. the petitioner is not in the habit of passing of receipts. After receiving the advance from this respondent, suddenly the petitioner began a business in S.T.D and xerox. He has fixed up name boards and sign boards obstructing the access to the shop occupied by the respondent. Further the view of the respondent's shop was closed almost completely. Hence, the respondent requested the petitioner to remove the name boards and not to obstruct the access to his shop. He also requested the petitioner to issue receipts for the rents received by him for which the petitioner became hostile towards him and began to harass him.

2.(b) There was no wilful default on the part of the respondent. The requirement of the petitioner on the ground of additional accommodation is not true and not bona fide at all. It is solely made for the purpose of evicting the respondent from the place to grab huge advance paid by him and to let out the same to others for enhanced rent and advance. The petitioner has vacated the prior tenant also within a short period. If he vacates the premises, the respondent will put into heavy loss. He has invested heavily in the business. He will be completely ruined if he is asked to vacate the premises. The petition is not at all bona fide, vexatious and devoid of merits. Hence the same has to be dismissed.

3. The Rent Controller has accepted the plea of the landlord with reference to the additional accommodation and rejected the claim on the ground of wilful default. There is no appeal with reference to the wilful default. The petitioner/tenant filed appeal in R.C.A. No. 10 of 2006 before the Rent Control Appellate Authority and the same was dismissed. Hence the petitioner is before this Court.

4. The learned Counsel for the petitioner would submit that the attending circumstances available in this case would show the landlord's intention is not bona fide that he has vacated the earlier tenant one Pasupathi, who was running rice business in the demised premises, for the purpose of getting enhanced rent, that the rent controller has observed in her order that the landlord has burked the

written agreement from the perusal of the Court and that while comparative hardship of the parties are considered, the hardship caused to the tenant would outweigh those to the landlord.

5. Conversely, the learned Counsel for the respondent would submit that the evicting or vacating the earlier tenant by this respondent has got no bearing in the present matter, that the Commissioner's Report and his evidence before the rent controller would clearly show that the landlord is doing his business in a very small place and that the hardships which would be experienced by the landlord would be more when the hardships of the tenant are considered.

6. The learned Counsel for the petitioner took this Court to various findings of the rent controller and appellate authority. As far as the alleged mala fide intention attributed to the landlord is concerned, it is his bottom-line contention that he evicted the earlier tenant by name Pasupathi who was running rice business in the same demised premises and he also reads a relevant portion of the evidence in cross examination of the landlord. However, it is not suggested to the landlord that with a bad intention of getting enhanced rent from some other tenant he evicted the previous tenant. It is also in evidence that without loss of much time the petitioner was inducted as tenant in the premises.

7. As far as the next contention of the petitioner that the respondent does not require the premises for his business is concerned, it is argued by the petitioner's counsel that the entire building belonging to the landlord is a three storied building and the demised premises portion situates only in a small portion in the entire building and that he may seek for any other portion in the vast area, but pointing out the demised premises itself could not be stated to be bona fide. But it is well settled that the tenant cannot dictate terms to the landlord to choose a particular building or portion of the building and choosing the same in choice of the landlord.

8. From the evidence of the Advocate Commissioner, the dimensions of portions which are in occupation of both parties could be seen. It is stated by him that the portion where the landlord is running his business is situated under the staircase with a width of 2 feet and 6 inches and a length of 7 feet and 8 inches. In the said portion the xerox machine and fax machine and a small TV, stabiliser and other accessories are found besides three telephones. The portion possessed by this petitioner measures East-West 14 feet and 9 inches and north south 9 feet and 9 inches and height 10.10 feet. The Commissioner has also noted the storage of rice bags in the portion of the tenant.

9. The Commissioner has also opined that for the customers who are coming for taking xerox copies, there is no space for them to wait, that only one person could wait inside the place, that one person cannot sit by putting a chair and when one person is utilising the telephone, other person could not come inside. In his cross examination he says that the partition wall, which divides both the portions is with

the width of 4 1/2".

10. As far as the comparative hardships of the parties are concerned, it is the version of the landlord that he has been running STD, local phone booth, xerox and fax. He is also running First Flight Courier Service as per his pleading. The petitioner in his cross examination had admitted that the landlord was already running STD booth, that the xerox machine was available at the time of inspection of Commissioner and that he does not know whether he is running colour xerox business or First Flight Courier Service. Worthwhile it is to note that the petitioner himself admitted in his counter that after getting advance from him the landlord suddenly started STD and Xerox. From this circumstance, it could be seen that even earlier to the filing of the petition for eviction the landlord was running telephone booth and xerox. While the evidence of the Advocate Commissioner is carefully scrutinised, it could be seen that the place in which the landlord is doing his business is not all adequate and the customers have to experience much difficulties in coming to the shop and utilising the services rendered by him.

11. As for the hardship to be experienced by the petitioner, it is pleaded that he has paid huge advance, that he has invested heavily in the business and if he vacated the premises, he will put into heavy loss and that he will be completely ruined if he is asked to vacate the premises. While this Court bestows its careful attention to the above said circumstances, this Court is of the considered view that the hardships which would be experienced by the landlord would be more than those of the tenant.

12. The learned Counsel for the petitioner would place reliance upon a decision of this Court in [S. Mohammed Iqbal Vs. M. Padmanabhan](#), wherein it is held as follows:

24. It is not in controversy that the tenant is running a photo studio in the premises and it is his case that he is eking out his livelihood from out of the said business. Needless to point out the hardships that the tenant will have to undergo in setting up his business in a different place wherein his interests would suffer in a great deal. Besides failing to lead rebuttal evidence in this regard, the landlord in this case in hand has also failed to prove on his part as to what are the advantages that he is going to have much less in proof of how it would outweigh the hardships of the tenant. It is an open case that absolutely no material evidence, either less by way of documentary evidence or even by strong oral evidence has been placed by the landlord in proof of his case and it would not be unfitting to say that the landlord, at this end, has proved to be a miserable failure.

13. He also placed much reliance upon a decision of the Supreme Court in [Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta](#), wherein Their Lordships have observed that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life and that an approach either too liberal or too

conservative or pedantic must be guarded against and that the judge of facts should place himself in the arm chair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest and if the answer be in the positive, the need is bona fide.

14. Pointing out the above said decision, the learned Counsel for the petitioner submitted that the authorities below have not appreciated the evidence on record in accordance with law. But this Court is of the view that the evidence have been properly appreciated by the authorities below.

15. Learned Counsel for the respondent would rely upon a decision of the Apex Court in D. Sankaranarayanan v. Punjab National Bank wherein it is held that where on consideration of facts on record landlord's suit for eviction was decreed by the appellate Court, the High Court could not, in revisional jurisdiction, treat the revision petition as second appeal and could not reassess the evidence and reverse the findings of fact of the appellate Court.

16. In yet another decision of the Supreme Court in Asram Motors v. Bina Kumari it is observed that while the High Court in exercise of revisional jurisdiction agreed with the findings given by the Courts below held, it was not necessary for it to examine the correctness thereof and to give detailed reasons for agreeing therewith as if it were hearing an appeal.

17. Following the dictum laid down by the Honourable Supreme Court while the facts of the case are approached, it is the considered view of this Court that the authorities below have applied their minds and come out with concurrent findings as regards the bona fide requirements of the landlord for his additional accommodation and for the relative hardships which would be experienced by both the parties. This Court is in acceptance with the observations and findings of the Courts below. Interference with them is not warranted. The orders passed by the courts below deserve to be confirmed and they are confirmed. The petition is devoid of merits.

18. In fine, the Civil revision Petition is dismissed. No costs. Connected M.Ps are also dismissed. Time for delivery five months.