

Dr. C. Mohan Reddy Vs Dr. S. Florest

Court: Madras High Court

Date of Decision: July 9, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115

Constitution of India, 1950 â€” Article 227

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 â€” Section 10(3)

Citation: (2010) 4 LW 183 : (2011) 2 RCR(Rent) 134

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: R. Thiagarajan, for the Appellant; S. Packiaraj, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Rajasuria, J.

Animadverting upon the order 30.4.2010 passed by the VIII Judge, Small Causes Court, Chennai, confirming the order

dated 15.7.2008 passed by the XV Judge, Court of Small Causes, Chennai, in RCOP. No. 2146 of 2007; and the order dated 30.4.2010 passed

by the same VIII Judge, Small Causes Court, Chennai, in M.P. Nos. 48 to 50 of 2009 in R.C.A. No. 565 of 2008 dismissing the petitions filed

under Order 41, Rule 27 of CPC to let in additional evidence, these civil revision petitions are focused.

2. Compendiously and concisely the relevant facts absolutely necessary and germane for the disposal of these revisions would run thus:

(a) The Respondent/landlady filed the RCOP No. 2146 of 2007 seeking eviction, by invoking Section 10(3)(a)(iii) of the Tamil Nadu Buildings

(Lease and Rent Control) Act (hereinafter referred to as "the Act" for short) on the ground of personal occupation. The matter was contested

before the rent control Court.

(b) During trial, on the side of the Respondent/landlady, the landlady examined herself as P.W. 1 along with one Shanmugaraj as P.W. 2 and Exs.

P1 to P3 were marked. On the side of the revision Petitioner/tenant, the tenant examined himself as R.W. 1 and no document was marked.

(c) Ultimately, eviction was ordered.

(d) Being aggrieved by the said order, the tenant preferred RCA. No. 565 of 2008. During the pendency of the said RCA, three applications were

filed. But those applications were dismissed. As against the said order, C.R.P. Nos. 2224 to 2226 of 2009 were filed and this Court, vide order

dated 4.8.2009 directed the appellate authority to restore those applications and consider the same along with the RCA.

(e) Even thereafter, the Court concerned dismissed the RCA itself. As against which, C.R.P. No. 4042 of 2009 was filed and once again the

matter was remitted back to the appellate Court and once again the order of the Rent Controller was confirmed and the RCA was dismissed.

3. Being aggrieved by and dissatisfied with the said order, these civil revision petitions are filed on various grounds, the gist and kernel of them

would run thus:

(i) Even though the revision Petitioner/tenant filed necessary applications for reception of additional evidence, the appellate Court failed to consider

the same and in fact, the tenant was not even permitted to raise additional grounds of appeal at all.

(ii) The Respondent/landlady is not the exclusive owner of the property, as she was only a co-sharer and the non-impleadment of the other co-

sharer or obtention of consent from the other co-sharer is fatal to the case of the landlady.

(iii) Both the Courts below failed to take into account the fact that the tenant has been in occupation of the premises for about 47 years and

rendering service to the poor and downtrodden.

(iv) The appellate authority failed to see the difference and distinction between Section 10(3)(a)(iii) and Section 10(3)(c) of the Tamil Nadu

Buildings (Lease and Rent Control) Act. The landlady invoked only Section 10(3)(a)(iii) of the Act as though the demised premises is required

only for personal accommodation even though the claim is virtually additional accommodation as contemplated in Section 10(3)(c) of the Act and

the ingredients contemplated u/s 10(3)(a)(iii) are different from the ingredients as contemplated u/s 10(3)(c).

(v) Both the Courts below failed to apply their mind on those aspects and simply ordered eviction.

4. The learned Counsel for the revision Petitioner/tenant, placing reliance on the grounds of revision would develop his arguments the warp and

woof of them would run thus:

Even as on the date of filing of the RCOP, the landlady was in possession of a non-residential portion in the same building and in such a case, when

she wanted the demised premises concerned in this matter towards her additional accommodation, she should have invoked Section 10(3)(c) of

the Act and not 10(3)(a)(iii) of the Act. The Court is enjoined to consider the relative hardship of the tenant and also should test the bona fides of

the landlady concerned. But in this case both the Courts below did not consider the same. Accordingly, the learned Counsel for the revision

Petitioner prays for setting aside the orders passed by both the Courts below and for dismissal of the RCOP itself.

5. By way of torpedoing and pulverising the arguments as put for on the side of the learned Counsel for the revision Petitioner/tenant, the learned

Counsel for the Respondent/landlady would put forth and set forth his arguments, the warp and woof of them would run thus:

(i) As on the date of filing of the RCOP, the landlady was not practicing her profession as Doctor in any portion of the demised premises. So to

say she was not having her clinic there. She obtained eviction of one other shop i.e. first shop in that building through Court and she was not

carrying on any business in that premises and in such a case, Section 10(3)(c) was not attracted as on that date.

(ii) The Court has to consider as to what was the factual position as on the date of filing of the RCOP.

(iii) The co-sharer relating to the property was examined as P.W. 2 and in such a case the question of non-obtention of consent from the co-sharer

would not arise.

Accordingly, the learned Counsel prays by highlighting the flawlessness in the orders of both the Courts below, for dismissal of the revisions.

6. The point for consideration is as to whether there is any infirmity or illegality in the order passed by both the Courts below in view of allegedly

having not considered the relevant ingredients of the law before ordering eviction and whether due opportunity was not given to the revision

Petitioner/tenant in view of the dismissal of the three M.Ps. by the appellate Court?

7. Considering the proet contra, including the arguments as advanced on both sides, I am of the view that the contention raised on the side of the

revision Petitioner/tenant that the RCOP filed without the consent of one other co-owner was fatal to the case of the landlady would not hold water

for the reason that P.W. 2, who was the one other co-owner of the premises was examined and he expressed his categorical consent for the

Respondent/landlady having filed the RCOP. As such, the said ground raised by the tenant is not tenable.

8. In my considered opinion the ground raised by the learned Counsel for the tenant highlighting the distinction between the provisions as contained

in Section 10(3)(a)(iii) and Section 10(3)(c) deserves consideration and I would like to discuss the same and give my view on that.

9. Sections 10(3)(a)(iii) and 10(3)(c) of the Act are extracted hereunder for ready reference:

Section 10(3)(a): A landlord may, subject to the provisions of Clause (d), apply to the Controller for an order direction the tenant to put the

landlord in possession of the building-

(i)

(ii)

(iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he

or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own:

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply

under this clause before the expiry of three months from the date on which the instrument was registered:

Provided further that where a landlord has obtained possession of a building under this clause, he shall not be entitled to apply again under this

clause-

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own.

Section 10(3)(c) A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding any-thing

contained in Clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the

building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business

which he is carrying on, as the case may be.

10. Whenever Section 10(3)(c) of the Act is considered it is always a must to keep in mind Section 10(3)(e) of the Act and the first proviso

appended to it. Hence, those provisions are also extracted hereunder:

Section 10(3)(e): The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the

landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an

order rejecting the application:

Provided that, in the case of an application under Clause (c), the Controller shall reject the application if he is satisfied that the hardship which may

be caused to the tenant by granting it will outweigh the advantage to the landlord.

11. I would like to point out that there are difference between those two provisions. I recollect and call up a few decisions in this regard.

(a) In respect of the cases which arise u/s 10(3)(a)(iii) of the Act, the following decisions could fruitfully be cited.

(i) 1998 MLJ (Supp) 18 : 1997 1 L.W. 713 Ram Narain Arora v. Asha Rani and Ors. certain excerpts from it would run thus.

8 ... Therefore, he submitted relying on the decisions in Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, and Ram

Dass Vs. Ishwar Chander and Others, , that the view taken by the High Court must be upheld.

9. Section 14(1)(e) of the Act read as follows:

14(1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any

member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord

or such person has no other reasonably suitable residential accommodation.

(Italics supplied)

10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family

dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the

landlord requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other

person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the

requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he

has reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be

bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions

raised before the Court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably

suitable residential accommodation and thereby defeat the claim of the landlord.

(ii) 1995 (2) CTC 452 : 1995 2 L.W. 700 Sankaranarayanan v. Palaniswami, certain excerpts from it would run thus:

8 ... Section 10(3)(a)(iii) deals with the conditions for obtaining possession of a non-residential building.

The conditions required are:

The building should be non-residential in character.

b) The landlord should be carrying on business on the date of his applying for eviction.

c) He should not be occupying any other non-residential building belonging to him for the purpose of his business; and

d) The landlord's claim is bona fide for his business needs and not based on oblique motives like trying to obtain more rent or to harass the tenant.

(b) In respect of Section 10(3)(c) the following decisions could fruitfully be cited:

(i) S.R. Babu Vs. T.K. Vasudevan and Others, certain excerpt from it would run thus:

10. Sub-section (8) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) reads thus:

11.(8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the

whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his

personal use.

11. A perusal of Sub-section (8) makes it clear that to invoke this Sub-section the landlord must show that (i) he is occupying only a part of the

building; (ii) the tenant is occupying the whole or a portion of the remaining part; and (iii) the landlord requires the additional accommodation for his

personal use.

12. The following is the distinction between Sub-section (3) and Sub-section (8) of Section 11 of the Act. The former provision applies when the

building is wholly occupied by the tenant and the landlord bona fide needs the building for his own occupation or for the occupation by any

member of his family dependent on him provided he does not have any building of his own in his possession in the same city, town or village

whereas the latter provision applies when a landlord is already in occupation of a portion of the building and needs additional accommodation

which the tenant is occupying, for his personal occupation.

13. In the instant case, admittedly, the first Respondent is in occupation of a part of a building and the Appellant is occupying another part of the

building which the first Respondent requires as additional accommodation for his personal use. Therefore, this case falls under Sub-section (8) of

Section 11 and not under Sub-section (3) of Section 11 of the Act.

14. In our view, once it is held that the landlord requires additional accommodation for his personal use, he is entitled to utilise it to best suit his

requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant. The first

Respondent may use it as it exists or he may use it after necessary repairs, additions or alterations to suit his requirements. The Appellant has no

say in such matters.

(ii) *Rasi Silks and K. Arunachalam Vs. T.A. Venkatachalam and Others*, , an excerpt from it would run thus:

12 ... Holding that the crucial aspect is a special instance in matters arising u/s 1(3)(c) of the Act and that there should be a categorical finding by

the statutory authorities on hardship that may be caused to the Tenant by granting it, will outweigh the advantage to the landlords in K.A.

Loganatha Naicker Vs. S.R. Balasundaram Mudaliar, , it was held thus:

It is imperative for the authorities in cases arising u/s 10(3)(c) of the Tamil Nadu Act (XVIII of 1960), to give specific finding whether the hardship

the tenant is likely to suffer would outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the

statutory authorities, there is no complete enquiry as contemplated in respect of the petitions arising u/s 10(3)(c) of the Act.

21. Contention of Tenant is that the landlords can expand the hotel business on the open space available, which is abutting the premises. In his

evidence, P.W. 1 has stated the open space cannot be utilised for running the hotel. It is well settled that the landlord can choose the portion

required and it is not for the Tenants to dictate terms. In *Mookkan Vs. A. Abdul Rasheeth (deceased) and Others*, this Court has held that the

landlord can choose the portion required and it is not for the tenant to dictate terms. It is not the object of the provision to weigh the hardship of

the Tenant as against the test of the landlord on a delicate scale, giving the benefit of the slight tilt in favour of the tenant.

12. As such, a mere reading of those two sets of decisions would amply make the point clear that duty is enjoined upon the Court to see that the

ingredients as contemplated under those provisions are satisfied depending upon the case concerned before ordering eviction and there could be

no quarrel over such a proposition.

13. As correctly pointed out by the learned Counsel for the revision Petitioner/tenant if the Court is enjoined to consider the case u/s 10(3)(c) of

the Act, necessarily Section 10(3)(e) also should be considered, so to say, the "bona fide requirement" of the landlady. Over and above that as

per the First proviso appended to it the relative hardship also should be considered.

14. Nowhere in the first proviso appended to Clause (e) of Section 10(3) of the Act, hardship of the landlord is contemplated. What is

contemplated in the said proviso is the hardship that would be caused to the tenant in the event of ordering eviction and the court has to see

whether that hardship will outweigh the benefit, which the landlord as such would be getting on evicting the tenant. On the one hand, the for a

concerned under the Act should consider the hardship on the side of the tenant, if eviction is ordered; on the other hand, the courts are not bound

to consider the hardship on the side of the landlords. But what the court should consider is the benefit or advantage that the landlord would be

getting by evicting the tenant. Ultimately it should be assessed as to which of the two would weigh more and accordingly a decision has to be

rendered.

15. If the benefit/advantage would outweigh the hardship, then eviction could be ordered. In other words, if the tenant's hardship outweighs the

advantage of the landlord then no eviction should be ordered and this should be the proper approach. It may appear at first blush, the distinction

sought to be made by me is one between tweedledum and tweedledee; between rock and a hard place; between six of the one and half a dozen of

the other but in my opinion, the distinction is one between chalk and cheese. From the available evidence, the court should consider what probable

benefit that the landlord would be getting by evicting the tenant and it has to be seen what are all the probable hardship to which the tenant would

be put into, if he is evicted from the demised premises. As such, hardship of the tenant, vis-a-vis, the benefit/advantage of the landlord should

weigh in the mind of the authorities under the Rent Control Act. It has to be seen as to whether in this case, such an exercise has been done by the

courts below. Wherefore it has to be seen as to whether the Respondent herein, so to say, the landlady, has correctly invoked Section 10(3)(a)(iii)

of the Act in this case.

16. The learned Counsel for the revision Petitioner/tenant would submit that paragraph 6 of the RCOP would reveal that the landlady's case is one

attracting Section 10(3)(c) of the Act and not Section 10(3)(a)(iii) of the Act.

17. It is therefore just and necessary to extract hereunder paragraph No. 6 of the RCOP.

6. The Petitioner submits that the tenant of 1st shop Jeyaraman was irregular in paying the monthly rent and sublet the shop to one Pavalar

Pakkirisamay. Hence the Petitioner at the first instance filed an eviction petition before the rent controller in RCOP. No. 774/2007 on the first of

XVI Small Causes Court, Chennai, on 3 grounds (i) Wilful default, subletting and owner's occupation. The said Jeyaraman contested the petition

and after full pledged enquiry the petition was allowed and eviction was ordered on 5.9.2007 and 2 months time was given to vacate the shop.

Since the occupant did not vacate the shop the Petitioner moved E.P. No. 480 of 2007 and the court bailiff evicted the 1st shop's occupant on

16.11.2007 and the bailiff handed over the possession to the Petitioner of the 1st shop.

18. No doubt, in the said paragraph No. 6 of RCOP it is found stated that one other portion in the same premises, wherein the present demised

premises is situated, the landlady had succeeded in getting eviction on 16.11.2007. Whereas, the present RCOP was filed on 26.11.2007, so to

say, almost 10 days thereafter. The crucial point to be noted here is as to whether there is anything to indicate and exemplify, demonstrate and

display that after 16.11.2007 and before 26.11.2007, the landlady started her medical practice in the said newly recovered building or in the said

premises. But absolutely there is no iota or shred, shared or jot of evidence in that regard. If there is any evidence available on record to the effect

that before the filing of the present RCOP, the landlady was in occupation of a non-residential portion in the said building for running a clinic, then it

would be quite obvious and axiomatic that Section 10(3)(c) of the Act was the proper provision of law to be invoked and not Section 10(3)(a)(iii)

of the Act. However, in the absence of such clinching evidence, it cannot be held that the provisions of law invoked by the landlady is erroneous.

19. The next point for consideration is as to whether ample opportunity was not given to the tenant in adducing evidence.

20. No doubt, the tenant has been constrained to wage a litigative battle before the appellate forum as well as before this forum twice and get

directions for adducing additional evidence after filing additional grounds in appellate forum. However, the appellate Court felt that such additional

evidence was not necessary.

21. The core question arises as to what purpose would have got served by adducing additional grounds and additional evidence.

22. To the risk of repetition and pleonasm, but without being tautologous, I would like to refer to my discussion supra and point out that there is no

evidence on record to show that after 16.11.2007 and before 26.11.2007, the landlady started her medical practice in that said building and in

such a case, mere granting permission touching upon the additional grounds would not in any way change the legal or factual position. It cannot be

forgotten that proceedings under this Act are summary in nature and in such a case, I am of the considered view that there is nothing to indicate

and exemplify that the landlady approached the Court by quoting the wrong provision of law.

23. Indubitably and indisputably the landlady as on the date of filing of the application was a retired medical practitioner from Government service

and that she required the premises for running her own clinic. No doubt, incidentally she also stated that her two children were also budding

Doctors.

24. Be that as it may, on this point, the law contemplates that it is more than sufficient if the landlady herself is a medical professional and that she

wants the premises for her own use.

25. While analysing the case u/s 10(3)(a)(iii) of the Act, the Court has to consider as to whether the landlady had the genuine intention to start her

own clinic in the demised premises and it is not necessary as per law that as on the date of application actually she should have had a clinic of her

own. Even mere preparation would be sufficient. The very fact that she happens to be a retired Doctor from Government service itself is sufficient

to hold that she had genuine intention to start her private practice in the demised premises concerned and in such a case, both the Courts below

considering those facts, passed orders warranting no interference in revision.

26. The learned Counsel for the revision Petitioner invited the attention of this Court to the reasoning found set out in the order of the appellate

Court and try to comment upon it that the reasons furnished by the appellate Court are not satisfactory.

27. In the order of the appellate authority, no doubt it is found stated that the landlady is having no other building of her own in the city and that

there was nothing to indicate that she was running a hospital in a non-residential building in the city etc. Broadly the appellate authority analysed the

facts with reference to Section 10(3)(a)(iii) of the Act. The tenant admittedly is already having a separate place for her medical practice and by

vacating the demised premises, his practice will not come to a grinding halt and it is always possible for him to shift his clinic from the demised

premises even to some other rented premises within a reasonable time. On the other hand the landlady being a retired medical practitioner cannot

be driven to the extent of finding a suitable rental accommodation for setting up her clinic leaving her own building.

28. In view of the arguments put forth on either side, now this Court has, in the interest of justice, the pros and cons of the matter and found that

the landlady requires the demised premises for her genuine purpose of starting a clinic of her own and that the hardship of the tenant would not

outweigh the benefit of the landlady. Wherefore the ultimate conclusion arrived at by the Courts below need not be interfered with.

29. I am fully aware of the fact that this Court while exercising its jurisdiction u/s 25 of the Act is having more revisional powers than exercising its

revisional powers under Article 227 of the Constitution of India or u/s 115 of the Code of Civil Procedure. Having that in mind alone I have

analysed the factual submissions made on either side and I could see that there is nothing to indicate that the landlady is having any mala fide

intention in evicting the tenant. In fact she is really in need of the premises to set up her own clinic in a fitting manner.

30. Hence in this view of the matter I would like to dismiss the revisions. However, taking into consideration the fact that all along the tenant has

been carrying on his clinic in the premises, he would be require sufficient time to vacate it.

31. Whereupon, the learned Counsel for the tenant would submit that the tenant would require at least two years" time to vacate the premises. Per

contra the learned Counsel for the landlady would submit that already in the litigative process the tenant gained much time and in such a case

granting of two more years would cause discomfiture to the landlady.

32. I am of the view that by striking a balance, a year"s time from this date could be granted for eviction, as the revision Petitioner/tenant, being a

Doctor, would take that much time to vacate the demised premises. Accordingly, it is granted.

33. The learned Counsel for the landlady also would submit that there are huge arrears of rent to be paid by the tenant.

34. I would like to observe that it is a common condition imposed while granting time for eviction that arrears if any shall be paid by the tenant and

accordingly an affidavit also shall be filed by the tenant to that effect and that he would vacate the premises within a year from this date and also

that there will not be any default in payment of rent.

35. In the result, the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.