
K. Rajagopalan Vs Gnanapandithan

C.R.P. (PD) No. 378 of 2014 and M.P. No. 1 of 2014

Court: Madras High Court

Date of Decision: June 10, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 1 Rule 10(2), Order 19 Rule 1, Order 19 Rule 2, 115, 141#Evidence Act, 1872 – Section 3#Presidency Small Cause Courts Act, 1882 – Section 16#Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 – Section 10(2)(i), 10(3)(a)(i), 11, 11(4)

Citation: (2014) 4 CTC 315

Hon'ble Judges: R. Mala, J

Bench: Single Bench

Judgement

R. Mala, J.

The present Civil Revision Petition has been filed challenging the Order dated 9.1.2014 passed in R.C.A. No. 385 of 2013 on

the file of the learned VIII Court of Small Causes, Chennai by reversing the Order and Decretal Order dated 23.7.2013 passed in M.P. No. 344

of 2013 in M.P. No. 614 of 2012 in RCOP. No. 2076 of 2012 on the file of the XI Court of Small Causes, Chennai. The Revision

Petitioner/Landlord has filed RCOP. No. 2076 of 2012 for eviction on the ground of willful default. During the pendency of the RCOP, he filed

M.P. No. 614 of 2012 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act 18 of 1960) (hereinafter called

as the "Act"). In the said Petition, the Respondent/Tenant filed a Petition in M.P. No. 344 of 2013 under Order 19, Rules 1 & 2 r/w

Sections 94(6), 141 & 151 of C.P.C. seeking permission to cross-examine the Landlord with regard to his Affidavit. However, the Revision

Petitioner/Landlord without filing any objection had questioned the maintainability of the said Petition. After hearing the arguments advanced by

both sides and considering the Petition filed by the Tenant, the Trial Court has dismissed the Petition against which the Respondent/Tenant filed

R.C.A. No. 385 of 2013. During the pendency of the R.C.A. the Petition in M.P. No. 614 of 2012 filed under Section 11(4) of the Act has been

allowed and the Tenant was directed to deposit a sum of Rs. 1,02,000/-. Thereafter, the R.C.A. No. 385 of 2013 was also allowed, against

which the present Revision has been preferred.

2. Challenging the impugned Order, the learned Counsel for the Petitioner has put forth his argument on the following lines:

(1) The Petition filed under Section 11(4) of the Act is only a Summary proceedings and there is no need to let in oral and documentary evidence.

(2) Civil Procedure Code is not applicable in the Rent Control proceedings.

(3) The Affidavit filed in support of M.P. No. 614 of 2012 in RCOP. No. 2076 under Section 11(4) of the Act is not evidence. There is no need

to cross-examine the deponent.

(4) Once the Petition in M.P. No. 614 of 2012 was allowed and the arrears of rent has been fixed, the Respondent/Tenant has not preferred any

Appeal and deposited a sum of Rs. 1,02,000/- as per the Order passed in M.P. No. 614/2012 in RCOP. No. 2076 of 2012 on 22.10.2013,

even though the said factum was brought to the notice of the Court by filing a Memo. dated 22.10.2013, the learned Judge (Rent Controller

Appellate Authority), instead of dismissing the RCA as infructuous, has allowed the same.

3. Thus, on the above grounds, the learned Counsel for the Petitioner prayed for setting aside the Order passed by the learned Trial Judge and for

allowing of the Civil Revision Petition. To substantiate his argument, the learned Counsel for the Petitioner relied upon the following decisions:

1. P.N. Karuppa Gounder Vs. Karuppayal and Others, ;

2. Sree Ramavilas Spinning and Weaving Mills (P) Ltd. and L.RMK.L. Ramakrishnan Vs. Virudhunagar Textiles Soolakarai and Others, ;

3. S. Karuppannan. and S. Arumugam Vs. N. Chinnappan, Sukumar, K.N. Venkatarama Ayyar and K.R. Venkataramanan, ;

4. Mrs. Sakunthala and Others Vs. Mrs. A. Devi, ;

5. V.N. Vasudeva Vs. Seth Kirorimal Luhariwala, : V.N. Vasudeva Vs. Seth Kirorimal Luhariwala, ;

6. S. Rathinammal Vs. Ayyavu, ; and

7. P. Lachiram Vs. K.N. Kumaresan, .

4. The learned Counsel for the Petitioner also relied upon the following unreported decisions of this Court:

1. A. Narayanasamy and others v. V. Murugesan and another, dated 24.9.2002.

2. Arumugam v. Seethalakshmi and others, dated 1.7.2005.

3. M. Paul Raj v. N. Paramasivam and another, C.R.P. (NPD) MD. No. 154 of 2009 dated 21.4.2009.

5. Resisting the same, the learned Counsel for the Respondent would submit that he has paid Rs. 5,00,000/- as security deposit and that there was

dispute in respect of the rent. To clarify the same, there is a need to cross-examine the Landlord. Further, in the RCOP proceedings, the Tenant is

entitled to cross-examine the Landlord. This factum has not been considered by the Trial Court and hence, in order to give a fair opportunity to the

Tenant and to comply with the Principles of Natural Justice, the RCA in R.C.A. No. 385 of 2013 has been allowed. So, the learned Counsel for

the Respondent submits that there is no necessity to interfere with the finding of the Trial Court and he prayed for the dismissal of the Civil Revision

Petition. To substantiate his argument, he relied upon the following Acts and Rules.

1. Section 4 of Rule 6 of 1997 Rules of Civil Procedure.

2. Legal Theory (Jurisprudence).

3. Section 20 of the Tamil Nadu General Clauses Act, 1891.

4. Section 16 of the Presidency Small Cause Courts Act, 1882.

6. The learned Counsel for the Respondent also relied upon the following decisions:

1. The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, ;

2. Smt. Jahoran Vs. Kalyanmal and Others, ;

3. Lookman Vs. Indra Singh, ; and

4. Doshei Dei and Others Vs. Rama Routa and Others, .

7. Considered the rival submissions made by both sides and perused the entire materials available on record.

8. Now this Court has to decide whether non-filing of Counter in M.P. No. 344 of 2013 is a ground for allowing the said Petition?

The admitted facts are as follows. The Revision Petitioner/Landlord has filed the RCOP. No. 2076 of 2012 for eviction on the ground of willful

default under Sections 10(2)(i) & 10(3)(a)(i) of the Act 18 of 1960. In that it was specifically stated that at the time of inception of the tenancy, the

Respondent has paid refundable interest free deposit of 50,000 and the Respondent accepted and paid a rent of Rs. 8,000/- per month.

Subsequently, the rent was enhanced to Rs. 8,500/- from March 2012. However, from the month of April 2012, the Respondent/Tenant has

defaulted in payment of the rent. Furthermore, it is pertinent to note that the Revision Petitioner/Landlord has Issued Notice dated 4.6.2012 viz.,

Ex. B1, before filing the RCOP Petition. The Respondent/Tenant issued a reply dated 19.6.2012, viz., Ex. B2, wherein it was stated that "" Rs.

5,00,000/- has been paid towards lease amount for a period of five years and a further sum of Rs. 50,000/- has been paid towards EB deposit

and that both the amounts are refundable without interest at the time of vacating the house, which has been mutually agreed by both of us. After

receipt of the Reply dated 19.6.2012, the Revision Petitioner/Landlord issued a rejoinder dated 22.6.2012, wherein it was stated that ""he had

received only a sum of Rs. 50,000/- as Security Deposit and had also issued a written Receipt for the same"". Thereafter, the Respondent/Tenant

sent a reply to the rejoinder on 6.7.2012 wherein he has reiterated his earlier reply. Admittedly, there was no reply for the same from the Revision

Petitioner/Landlord. The learned Counsel for the Revision Petitioner/Landlord also submits that he has not sent any reply. I am of the view that the

documents viz., Ex. B1 to Ex. B4 are irrelevant for the disposal of the present Civil Revision Petition.

9. It is pertinent to note that the Landlord had filed RCOP on the ground of willful default and during the pendency of the RCOP, he filed a Petition

in M.P. No. 614 of 2012 under Section 11(4) of the Act. Instead of filing Counter in the said Petition, the Respondent/Tenant filed an Application

in M.P. No. 344 of 2013 under Order 19, Rule 1 & 2 r/w Section 94(6), 141 & 151 of C.P.C. seeking permission to cross-examine the Revision

Petitioner/Landlord. In the said Petition, the Revision Petitioner/Landlord instead of filing Counter, challenged the maintainability of the Petition.

The learned Rent Controller after hearing the argument advanced by both sides dismissed the Application in M.P. No. 344 of 2013.

10. The learned Counsel appearing for the Respondent has taken me through the Tamil Nadu Civil Courts Act, element of judicial procedure and

submits that pleading means both Affidavit and Counter. But it is well settled principle that non-issuance of Reply and non-filing of Counter itself is

not a ground for allowing that Application. In the said Order itself it was stated that the Respondent/Landlord has objected the Application and

advanced his argument. After hearing the arguments of both sides only, the Order has been passed. In such circumstances, non-filing of the

Counter in M.P. No. 344 of 2013 will in no way affect the case of the Landlord.

11. The next point that has to be decided is whether the Affidavit filed in support of the Petition is not an evidence?

12. At this juncture, it is appropriate to consider the submissions made by the learned Counsel for the Petitioner that the Affidavit filed in support of

the Petition is not an evidence and the decisions relied on by him in that regard.

13. In the decision reported in P.N. Karuppa Gounder Vs. Karuppayal and Others, , it was held that in the absence of any evidence given in the

form of Affidavit filed in support of an Application, it is not in the nature of evidence. It is appropriate to incorporate Paragraph 11 of the said

decision:

11. Therefore, as per the Judgment of the Honourable Supreme Court rendered in Sudha Devi Vs. M.P. Narayanan and Others, , Affidavit sare

not included in the definition of evidence. Further, in the Judgment of the Rajasthan High Court, it has been stated that the party has to make out a

case for the exercise of that power by the Court and absolute discretion is vested with the court either to allow it or reject the same. Further, a

reading of Order 19, Rule 2 of the Code of Civil Procedure makes it clear that when any evidence is given by Affidavit, the Court may at the

instance of either party order the attendance for cross-examination of the deponent. Therefore, in the absence of any evidence given in the form of

Affidavit filed in support of an Application, it is not in the nature of evidence and the Court has no discretion to permit the cross-examination of the

deponent at the instance of either party.

13.1. In the decision reported in Sree Ramavilas Spinning and Weaving Mills (P) Ltd. and L.RMK.L. Ramakrishnan Vs. Virudhunagar Textiles

Soolakarai and Others, , it was held that the Affidavit can be construed as an evidence under Section 3 of the Indian Evidence Act, if the Court

has directed any party to a proceeding to file the same or if law insists to prove a fact by way of filing an Affidavit. It is appropriate to incorporate

Paragraphs 8 & 11 of the said decision:

8. It is an everlasting principle of law that an Affidavit can be termed to be an evidence within the ambit of Section 3 of the Indian Evidence Act

only in those cases, where the same is filed at the instance or under the direction of the Court or law, specifically permits for proof of anything by

Affidavit. To put it in short, Affidavit can be construed as an evidence under Section 3 of the Indian Evidence Act, if the Court has directed any

party to a proceeding to file the same or if law insists to prove a fact by way of filing an Affidavit. If the said circumstance are in existence, the

Court can invoke the provisions of Order 19, Rule 1 & 2 of the Code of Civil Procedure, 1908 so as to enable the Respondent in any Petition to

make cross-examination to the deponent of the Affidavit concerned.

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11. It is an admitted fact that the present Petition has been filed in I.A. No. 130 of 2005 under Order 19, Rules 1 & 2 of the Code of Civil

Procedure, 1908 so as to permit the Revision Petitioners to make cross-examination to the deponent of Affidavit filed in I.A. No. 23 of 2004 and

the First Appellate Court should restrict its order only with reference to relevant provision of law. In fact the Appellate Court has given

unnecessary and also supernumerary observations as well as findings and the First Appellate Court is directed not to observe the same in disposing

Appeal Suit No. 15 of 2003.

13.2 In the decision reported in S. Karuppannan. and S. Arumugam Vs. N. Chinnappan, Sukumar, K.N. Venkatarama Ayyar and K.R.

Venkataramanan, , it was held that in the absence of any evidence given in the form of Affidavit filed in support of an Application, it is not in the

nature of evidence and the Court has no discretion to permit the cross-examination of the deponent at the instance of either party. It is appropriate

to incorporate Paragraphs 4, 5 & 11 of the said decision:

4. I am unable to accept the contention of the learned Counsel for the Revision Petitioners. Order 19, Rule 19 of the Code of Civil Procedure

deals with Affidavits. Order 19, Rule 1, deals with the power of the Court to direct any party to prove any particular fact by Affidavit or Affidavit

of any witness may be read at the hearing and if the party desires the production of a witness for cross-examination and when such witness can be

produced, the Court should not allow the party to give evidence by Affidavit. Order 19, Rule 2, deals with the power of the Court to order the

attendance for cross-examination of the deponent, who gave evidence by Affidavit upon any Application.

5. In the Judgment in Marneedi Satyam Vs. Masimukkula Venkataswami and Others, , it has been held that:

Though the Evidence Act is not applicable to Affidavits, it does not mean that any Affidavit of any person can go in as evidence "proprio vigore"

without necessity for him to enter the witness box.

In that Judgment, the learned Judge observed that Affidavits are not evidence except (a) where there is an agreement between the parties that

evidence can be taken by Affidavit, or (b) where under Order 19, Rule 1, C.P.C., there is an order of the Court that particular facts may be

proved by an Affidavit or that the Affidavit of any witness may be read at the hearing.

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11. Therefore, as per the Judgment of the Honourable Supreme Court rendered in Sudha Devi Vs. M.P. Narayanan and Others, , Affidavits are

not included in the definition of evidence. Further, in the Judgment of the Rajasthan High Court, it has been stated that the party has to make out a

case for the exercise of that power by the Court and absolute discretion is vested with the Court either to allow it or reject the same. Further, a

reading of Order 19, Rule 2 of the Code of Civil Procedure makes it clear that when any evidence is given by Affidavit, the Court may at the

instance of either party order the attendance for cross-examination of the deponent. Therefore, in the absence of any evidence given in the form of

Affidavit filed in support of an Application, it is not in the nature of evidence and the Court has no discretion to permit the cross-examination of the

deponent at the instance of either party.

14. In the above decisions, it was clearly stated that the Affidavit filed in support of the Petition is not an evidence. In such circumstances, the

Respondent/Tenant is not entitled to file an Application seeking permission to cross-examine the witness, since the Affidavit filed in support of the

Petition filed under Section 11(4) of the Act is not an evidence as contemplated under Section 3 of the Indian Evidence Act.

15. The learned Counsel appearing for the Petitioner would also submit that the Petition under Section 11(4) of Act 18 of 1960 is only a Summary

proceeding. To substantiate his argument, he relied upon the following decisions:

15.1. In the decision reported in V.N. Vasudeva Vs. Seth Kirorimal Luhariwala, : V.N. Vasudeva Vs. Seth Kirorimal Luhariwala, , it was held

that Rent Control proceeding is a Summary proceeding and for the purpose of an Interim Order it was not necessary that there should have been a

full trial. The relevant portion of the said decision is incorporated here under:

It will be noticed that sub-section (3) also contemplates payment of interim rent determined by the Controller before the entire dispute is settled.

Sub-section (6) puts the case under sub-section (1) and sub-section (3) on the same footing and makes no distinction between them. It is also

possible to visualise cases in which the Tenant may deposit the amount of rent under protest and claim that his defence be tried. It is not that even

on the deposit of the arrears of rent in these circumstances the case would come to an end. The latter part of sub-section (1) further shows that not

only the arrears have to be deposited but rent as it falls due has to be deposited month by month by the 15th of each succeeding month. This also

shows that the order under sub-section (1) is not a Final Order but is preliminary to the trial of the case and is made only where the rent has in fact

not been paid. For the purpose of an Interim Order it was not necessary that there should have been a full trial. The Rent Controller had the

Affidavit of the Appellant and he could Judge whether in the circumstances of the case, an Interim Order ought or ought not to be made. He came

to the conclusion that the rent was not paid and the plea that it was being withheld under an Agreement was an afterthought and not true. The High

Court and the Rent Control Tribunal have agreed with this view of the Rent Controller and the conclusion appears to us to be sound. Once such a

conclusion is reached, it is quite manifest that the order was made after affording an opportunity to the Appellant to be heard. No doubt, the

Appellant is entitled to lead oral evidence in regard to the agreement he alleges, but for that he will have an opportunity hereafter. At the moment,

he is being asked to deposit the arrears in Court, which admittedly are outstanding.

15.2. In the decision reported in *S. Rathinammal Vs. Ayyavu*, , it was held as follows:

18. Before passing an order under Section 11 of the Act, the Statutory Authority has been authorised to decide the rent summarily, even in cases

where there is a dispute, sub-section (5) of Section 11 of the Act envisages that the Statutory Authority can impose condition regarding the

amounts deposited under subsection (1) of Section 11, and of payment to the Landlord or for deposit of the rents with the statutory authorities. All

these go to show that in cases where the actual rent payable to the Landlord is disputed or where a dispute is raised about the existence of

relationship of Landlord and Tenant, during the pendency of the proceedings, deposit of rent summarily decided by it has to be effected in the

interests of both the parties.

15.3. In the decision reported in *P. Lachiram Vs. K.N. Kumaresan*, , in Paragraph 2, it was held as follows:

2. A proceeding under Section 11(4) of the Act is intended to accelerate the long-drawn proceedings under the Tamil Nadu Buildings (Lease and

Rent Control) Act. As eviction is possible in a case where the Tenant commits willful default in the payment of rents and particularly, after the

recent amendment in 1973 explaining willful default as meaning non-payment or tender of rent after the issue of a notice calling for such payment of

rent by the Landlord, the importance of Section 11(4) has to be brought to light and in its true light. Section 11(4) is, therefore, intended to make

the Tenant alert during the entirety of the proceedings and be conscious of his obligations and statutory duties in the matter of payment of rents.

Even here, the Legislature has provided that the Rent Controller in a case where an Application under Section 11(4) is taken by the Landlord

should enquire into the dispute as to the amount of rent to be paid by the Tenant and make such enquiry as he deems necessary and summarily

determine the rent so to be paid or deposited. Such enquiry should not be long-drawn as in the case with the main proceedings. They are intended

to be summary and they have to be disposed of at least within four weeks from the date when such Applications are filed. This would be therefore,

a directive to the lower Court to see that Applications under Section 11(4) are heard and decided within two months from the date of presentation

of such Applications. There is absolutely no justification to keep such Applications beyond such time. This is an observation to the Courts below,

so that hereafter at least there may be an accelerated disposal of the Rent Control matters.

Thus, the above decisions would show that the proceeding under Section 11(4) of the Act is only a Summary proceeding.

16. The learned Counsel for the Petitioner would rely upon the following decisions stating that Civil Procedure Code is not applicable to the Rent

Control proceedings. The learned Counsel for the Respondent had also filed the typed set of papers which contains the direction of the Supreme

Court to the registry for the Affidavits under Order 19, C.P.C.

16.1. In the decision reported in Mrs. Sakunthala and Others Vs. Mrs. A. Devi, , in Paragraph 20, it was held as follows:

20. From the propositions of law laid down by this Court, the other Courts and the Apex Court from time to time, what comes to be established is

that the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is a self-contained Code by itself and that the Rent Controller or the Appellate

Authority cannot be considered as Courts and the proceedings before them are not governed by the provisions of Civil Procedure Code. While

such being the position of law, the contentions of the learned Counsel for the Revision Petitioners to the effect that certain provisions of the Civil

Procedure Code have not been followed while dealing with the above matters either by the Rent Controller or by the Appellate Authority are

baseless and unfounded either on facts or in law. For the above discussions held either on facts or in law, the Revision Petitioners do not seem to

have any axe to grind. The Courts below, on proper appreciation of the evidence placed on record and following the required procedures as

contemplated under the Act and in Application of the correct legal position, have rightly arrived at the conclusion to order the eviction of the

Revision Petitioners/Tenants and there is no patent error of law nor perversity in approach, so far as the decisions arrived at by both the Courts

below are concerned and hence calling for any interference by this Court into the well considered and well merited orders passed by the Lower

Court is unwarranted.

16.2. In the unreported Judgment of this Court made in the case of A. Narayanasamy and others v. V. Murugesan and another, dated 24.9.2002,

in Paragraph 7, it was held as follows:

7. The Revision Petitioners also relied upon the case of Mrs. Sakunthala and Others Vs. Mrs. A. Devi, , wherein the learned Judge after relying

upon catina of cases has held that Civil Procedure Code is not applicable to the Rent Control proceedings. It is a well established law that the Rent

Court is not a Civil Court and the C.P.C. is not applicable to the Rent Court.

16.3. In the unreported Judgment of this Court made in the case of Arumugam v. Seethalakshmi and others, dated 1.7.2005, in Paragraph 15, it

was held as follows:

15. There is no provision in the Tamil Nadu Buildings (Lease & Rent Control) Act 1960, or in the Rules for any of the provisions of the C.P.C.

being made applicable to the actions and proceedings under the Act. On the other hand, the provision in the Act clearly indicate that the Code of

Civil Procedure was not intended to be generally applicable to the proceedings under the Act. The preponderance of judicial opinion is that the

C.P.C. as such will not apply to the proceedings before the authorities constituted under the Tamil Nadu Buildings (Lease & Rent Control) Act

1960. Elaborately considering this aspect, in Mrs. Sakunthala and Others Vs. Mrs. A. Devi, , V. Kanagaraj, J. has held that the Act is a self-

contained Act and that the Rent Controller and Appellate Authority are not Courts and the proceedings are not governed by the C.P.C. The

learned Judge has quoted the passage from V.N. Krishnamurthi's Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Fourth Revised

Edition, 1998, at page No. 182. We may also usefully refer to the same: ""Applicability of Civil Procedure Code: In N.K. Segu Abdul Khadir

Hadjiar Vs. A.K. Murthy, , it was pointed out that the provisions of C.P.C. were not made available to proceedings under the Act in the absence

of Rules nevertheless the principles of the same should be applied: Sha Devichand Moolchand Vs. Sha Dhanraj Kantilal, . The Act itself does not

contain any provision regarding the application of Civil Procedure Code and in fact the provisions of the Act seem to be self-contained in regard to

procedure and the Act has gone to the extent of providing for bringing in the Legal Representatives on record and costs, to mention two instances.

If really the Code of Civil Procedure is applicable mutatis mutandis to the procedure under the Act, the provisions are wholly superfluous. On the

other hand, they clearly indicate that the Code of Civil Procedure was not intended to be generally applicable to the proceedings under the Act:

S.J.S. Fernandes Vs. V. Ranganayakulu Chetty, .

16.4. In the unreported Judgment of this Court made in the case of M. Paul Raj v. N. Paramasivam and another, dated 21.4.2009, in Paragraphs

7 & 8, it was held as follows:

7. At this stage, this Court recalls the decision in Aruppukottai Dravida Munnetra Kazhagam v. M. Periaswami and another, 1974 TLNJ 247 at

248, wherein it is held that admittedly, there is no provision in the Madras Buildings (Lease and Rent Control) Act or in the Rules framed under the

said Act, for any of the provisions of the Civil Procedure Code being made applicable to actions and proceedings taken or instituted under Act

and that as early as in 1965, it has been held in Seethalakshmi Ammal v. Rajammal, 1965 (1) MLJ 287, that the Rent Controller is not a Court and

that the Civil Procedure Code is not applicable to proceedings taken under the Act and that the Madras Buildings (Lease and Rent Control) Act

and the Rules framed thereunder themselves make provision for certain matters, such as service of summons, setting aside of ex parte orders,

proceedings by or against legal representatives, etc., no part of the Civil Procedure Code has been made applicable to the various proceedings

that have to be taken in actions under the Madras Buildings (Lease and Rent Control) Act, such as impleading of parties, service of summons,

setting aside the ex parte Orders, continuance of proceedings by the legal representatives of a deceased Petitioner or Respondent, etc. and it is

therefore, obvious that Order 1, Rule 10(2) of the Civil Procedure Code cannot also apply to any proceedings under the Act.

8. Generally, there is an exclusion of the applicability of the provisions of the Civil Procedure Code and where it is either made applicable or even

intended to apply, provision is made to that effect as per the decision in N. Devarajan Vs. D.V. Munirathnam, . The special procedure of rules

framed under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, provide for a procedure to be followed by the learned Rent

Controller and the learned Appellate Authority and they deal with certain aspects of the procedure to be followed and it is quite obvious that the

provisions of the Code of Civil Procedure cannot be invoked dealing with the Petition under the Act as per the decision in T.N. Krishnamoorthy

Vs. Jagat Textiles, .

16.5. The learned Counsel for the Petitioner also relied upon the decision of the Division Bench of this Court made in O.S.A. No. 273 of 2008,

dated 11.8.2008, wherein it was stated though it was held that the Rent Control Court is a Civil Court, but not in terms of the provisions of the

Code of Civil Procedure. Further, though it was held that where the provisions of the Rent Control Act are silent, the provisions of the Code of

Civil Procedure are applicable, but as already held that the Rent Control Act and the Rules made thereunder are complete code covering the

proceedings under the said Act.

17. Thus, the above decision shows that Civil Procedure Code is not applicable to the Rent Control proceedings.

18. The learned Counsel appearing for the Respondent relied upon the decision reported in The Managing Director (MIG) Hindustan Aeronautics

Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, , and submits that since the Appellate Court has not exercised its jurisdiction either illegally

or with material irregularity, the High Court could not invoke jurisdiction under Section 115 of the Civil Procedure Code. It is appropriate to

incorporate Paragraphs 5 & 6 of the said decision:

5. In our opinion the High Court had no jurisdiction to interfere with the order of the First Appellate Court. It is not the conclusion of the High

Court that the First Appellate Court had no jurisdiction to make the order that it made. The order of the First Appellate Court may be right or

wrong, may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is

not the case that the First Appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could

not have invoked its jurisdiction under Section 115 of the Civil Procedure Code: See the decisions of this Court in Pandurang Dkoni Chougule v.

Maruti Hari Madhav, D.L.F. Housing & Construction Company Private Ltd. v. Samp Singh and Ors.

6. For the reasons mentioned above, we allow Appeal No. 840 of 1971 and dismiss No. 841 of 1971. The resulting position is that the order of

the High Court is set aside and that of the First Appellate Court restored. In the circumstances of the case we make no order as to costs in this

Court.

The above decision is not applicable to the facts of the present case because as already discussed the Civil Procedure Code is not applicable to

the Rent Control Proceedings as rightly held by the learned Trial Judge. Whereas, the First Appellate Judge has illegally allowed the Petition, after

the disposal of the Petition in M.P. No. 614 of 2012. So, the High Court can invoke its Revisional jurisdiction.

18.1. The learned Counsel appearing for the Respondent also relied upon the decision reported in Smt. Jahoran Vs. Kalyanmal and Others, ,

wherein it was held that in the execution Court, the Petitioner-Objector submitted an explanation under Order 19, Rule 2, C.P.C. and prayed that

she may be permitted to cross-examine the deponents, who have filed the Affidavits in support of the case of the non-Petitioner No. 1-Decree-

holder. It is appropriate to incorporate the relevant portion in Paragraph 9 of the said decision:

9.....The facts further reveal, according to learned Counsel for the Petitioner himself, that even the Judgment-Debtor himself was taking care of

interest of the Petitioner in the Suit by submitting that Petitioner is necessary party in the Suit. Learned Counsel for the Petitioner read over the

Application under Order 19, Rule 2, C.P.C. filed before the Executing Court and from that Application it comes out that only objection and the

allegation of vagueness in the Affidavits is due to the reason that all the deponents stated in their Affidavits that the Petitioner is not permanently

residing in the house in dispute, but the deponents did not disclose where the Petitioner is residing. Meaning thereby the only alleged reason for

seeking permission to cross-examination of the deponents is only that Petitioner wants to find out truth about the statement of the deponents as

they failed to disclose where the Petitioner is permanently residing. This can hardly be a ground in the light of the statement of the deponents where

they have stated that the Petitioner is not permanently residing in the house in dispute.

The above decision is not applicable because as already stated the Civil Procedure Code is not applicable to the Rent Control proceedings.

18.2. The learned Counsel for the Respondent also relied upon the decision reported in Lookman Vs. Indra Singh, . But, the above decision is not

applicable to the facts of the present case because this Court (Madras High Court) has already held that Civil Procedure Code is not applicable to

the Rent Control proceedings. Furthermore, at the time of allowing the RCOP, the Petition filed under Section 11(4) of Act 18 of 1960 was

disposed of. In such circumstances, I am of the view that the above decision is not applicable to the facts of the present case.

18.3. The learned Counsel for the Respondent also relied upon the decision reported in Doshei Dei and Others Vs. Rama Routa and Others, . The

said case relates to the Civil Suit that has been filed for recovery of possession and hence the same cannot be applicable to the present case as it

deals with the ambit of revision jurisdiction under amended C.P.C. But, in the present case, as already stated the Affidavit filed in support of the

Petition is not a evidence, as contemplated under Section 3 of the Indian Evidence Act. Furthermore, Section 11(4) Petition is only a Summary

proceeding and the Civil Procedure Code is not applicable to the Rent Control proceedings and the Petition in M.P. No. 614 of 2012 was also

already disposed of. In such circumstances, I am of the view that the decision relied on by the learned Counsel for the Respondent is not

applicable to the facts of the present case.

19. Admittedly, the Respondent/Tenant has filed a Petition in M.P. No. 344 of 2013 under Order 19, Rules 1 & 2 r/w Sections 94(6), 141 & 151

of C.P.C. seeking permission to cross-examine the Landlord. Since the Civil Procedure Code is not applicable to the Rent Control proceedings,

the Petition filed by the Respondent/Tenant in M.P. No. 344 of 2013 itself is not maintainable. The Trial Court has considered this aspect in

proper perspective and come to a correct conclusion.

20. Further, it is pertinent to note that the Petition in M.P. No. 614 of 2012 filed under Section 11(4) of the Act has been allowed and the arrears

of rent amount has been fixed. In pursuant of that the rent arrears has also been deposited by the Respondent/Tenant and no Appeal has been

preferred against the Order passed in M.P. No. 614 of 2012. Furthermore, when the main M.P. itself was disposed of, the Rent Control

Appellate Authority, without applying his mind has set aside the Order passed in M.P. No. 344 of 2013, which is unsustainable. In fine, the fair

and Decretal Order dated 9.1.2014 made in R.C.A. No. 385 of 2013 on the file of the learned VIII Court of Small Causes, Chennai is liable to

be set aside and hereby set aside and the Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No

costs.