Highcourt Durai vs Anbuleela on 18 June, 2019

Author: C.Saravanan

Bench: C.Saravanan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On 29.04.2019
Pronounced On 18.06.2019

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1167 of 2014
and
M.P.No.1 of 2014

Highcourt Durai ... Petition

vs.

Anbuleela ... Responde

Prayer: Civil Revision petition is filed under Section 25 of Tamil Buildings (Lease and Rent Control) Act,1960 to set aside the order passed in R.C.A.No.256 of 2006 dated 26.09.2013 by the Hon'ble Judge, VIIth Small Causes Court, Chennai confirming the order passed in R.C.O.P.No.2125 of 2004 dated 29.12.2005 by the Hon'ble XIII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.T.T.Ravichandran

For Respondent : No appearance

ORDER

The present Civil Revision Petition is directed against the order passed by the VII Court of Small Causes (Rent Control Appellate Authority), Chennai in R.C.A.No.256 of 2006 dated 26.09.2013, http://www.judis.nic.in confirming the order passed by the XIII Court of Small Causes (Rent Controlller), Chennai in R.C.O.P.No.2125 of 2004 dated 29.12.2005.

2.The Respondent/Landlady in the present case had rented out shop No.1 and 2 located at Old No.15, New No.23, and 15th main road TANSI Nagar, Velachery 600042 to the Petitioner/Tenant for carrying on hardware business in the name “Durai Agencies”. During the interregnum in 1999 the petitioner had also changed the nature of business by dealing in furniture and vessel business under the name and style of Durai & Co. Later which the Petitioner/ Tenant made few changes and started a fancy store by the name “Arasan Fancy Stores”.

3.An eviction petition was filed by the Landlady/Respondent against the Petitioner/Tenant before the Rent Controller in R.C.O.P.No.2125 of 2004 for use of the rented premises for other purpose, nuisance and owner’s accommodation under Section 10(2)

(ii) (b), 10(2) (v) and 10(3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 respectively.

4.The parties have been in dispute since 1996. The petitioner also appears to have taken on sublease of Shop No.3 which was http://www.judis.nic.in leased to one Zion by respondent’s husband where the petitioner allegedly carried on vegetable business under the name of Sudha Vegetables.

5.Details of proceedings before the Rent Controller are as follows:-

Case No Parties and grounds R.C.O.P.No.2353 of 1996 Filed by the petitioner for deposition of rent. R.C.O.P.No.2354 of 1996 Filed by Mr.Zion for deposition of rent of Shop No.3 R.C.O.P.No.230 of 1999 Against the petitioner for fixation of fair rent. R.C.O.P.No.231 of 1999 Against Mr.Zion for fixation of fair rent of Shop No.3 R.C.A.No.976 of 2002 Against the order in R.C.O.P.No.230 of 1999, which is pending.

R.C.O.P.No.263 of 1997 -

R.C.O.P.No.262 of 1997 -

6.During the proceeding before the Rent Co

R.C.O.P.No.2125 of 2004 both the parties were heard and eviction http://www.judis.nic.inwas ordered by against the Petitioner/Tenant.

7.Against the order of the Rent Controller, the Petitioner preferred an appeal in R.C.A.No.256 of 2006 before the Rent Controller Appellate court. To substantiate the same, the petitioner filed M.P.No.354 of 2013 to mark the deposition of the petitioner in R.C.O.P.No.263 of 1997 and R.C.O.P.No.230 of 1999 to show the existence of the aforesaid rental agreements signed in the year 1991 and thereafter for the 2nd time in 1993. These documents were also marked as Exhibits R7 and R8. The petitioner relied on the deposition in R.C.O.P.No.263 of 1997 and R.C.O.P.No.230 of 1999

to show the existence of the aforesaid rental agreements signed in the year 1991 and thereafter for the 2nd time pursuant to order passed in M.P. Though, the certified copies of the depositions were also marked as Exhibits R7 and R8 before the Rent Control Appellate Court, copies of agreements have not been filed.

8.The Rent Controller Appellate Court after discussions and consideration confirmed the decision rendered by the Rent Controller and dismissed the appeal.

9.Aggrieved by the same the Petitioner/Tenant has filed the present Civil Revision Petition.

10.The issue arises consideration is whether interference is warranted in the present Civil Revision Petition under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on the stated grounds?

11.Heard Mr.T.T.Ravichandran, the learned counsel for the petitioner.

12.In the Rent Control proceeding, the petitioner had specifically denied execution of any document and stated that there was an oral rental arrangement that was entered with the respondent's husband in the year 1989 and that the petitioner had put up the super structure by himself investing money on the rented premises.

13.After the case was argued at length before the Rent Controller, the Respondent filed M.P.No.702 of 2005 for marking of Ex.P11 dated 1/8/1991. That document was alleged the rental agreement duly signed between the petitioner and the respondent's husband on 01.08.1991.

14.Deficit stamp/stamp duty was directed to be paid. The learned Rent Controller after comparing the same concluded that the said document was genuine rental agreement signed between the respondent's husband and the petitioner as early as dated 01.08.1991.

15.The learned counsel for the petitioner submits that Ex.P11 dated 01.08.1991 was a fabricated document and was introduced after the petitioner had brought to the notice of the Court to the decision of the Honourable Supreme Court rendered in the case of Harirao vs N.Govindhachari and others AIR 2005 SC 3389.

16.The learned counsel for the petitioner submits that even according to the Respondent/Landlady in her deposition, there were negotiations for two other lease agreements in the year 1991 and 1993. However, copies of these rental agreements have not been produced.

17.The learned counsel further submitted that even as if it is assumed that the signature in Ex.P11 dated 01.08.1991 was that of the husband of the respondent/landlady, same cannot be relied in

http://www.judis.nic.inthe year 2004-2005. In this connection, the learned counsel for the petitioner relied on the decision of this Court in the case of Central Bank of India (A Nationalised Bank) vs Antony Hardware Mart 2006-3-L.W.58 wherein it was held as under:

> "At the outset, we want to point out that the Trial Court has committed an error in comparing the signatures in Ex.A-2 and Ex.A-5 with the admitted signature of the defendant in the Vakalath and written statement. In the judgement reported in 1999 (3) C.T.C.156, 2000-1-L.W.511 in the case of Somasundaram vs Palani, this Court has held as follows:
>
> "Even though the Court may have the power to compare the signatures, there must be some admitted signature of the defendant, on the basis of which a comparison will have to be made. In this case, a comparison has been made on the basis of signatures affixed by defendant in the vakalath an written statement, which are documents that have come into existence after the dispute arose, and after the promisory note in question was filed into Court along with plaint. A comparison should not have been made on the basis of those signatures. If that be so, it has to be held that the comparison was not made in accordance with law, even though the Court is empowered to make a comparison"

18.The learned counsel referred to Gulzar Ali vs State of Himachal Pradesh in 1998 (2) SCC 192 wherein it has held that it cannot be said that identity of handwriting of a document can be established only by restoring to one of those two sections, namely Sections 45 and 47.

"In order to prove the identity of the handwriting any mode not forbidden by law can be resorted to. Two modes are indicated by law in Sections http://www.judis.nic.in 45 and 47 of the Evidence Act. Section 45 of the Act permits expert opinion to be regarded as relevant evidence and Section 47 permits opinion of any person acquainted with such handwriting to be regarded as relevant evidence."

19.The decisions of the Supreme Court Cases in several cases were referred to while passing a stay order particularly the decision rendered in page (64) in the case of Lalit Popli vs Canara Bank and others, reported in 2003 (3) SCC 583, wherein it was held as under:

> "Irrespective of an opinion of the handwriting expert, the Court can compare the admitted writing with the disputed writing and come to its own independent conclusion. Such exercise of an comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 of 73 of the Evidence Act are complementary to each other. Evidence of handwriting expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when an expert's evidence is not there, the Court has power to compare the writings and decide the matter."

20.The learned counsel also referred to the decision rendered of the Honourable Supreme Court Gangamma and others vs Shivalingaiah reported in 2005 (9) SCC 359 where it was held as follows :

> 7. A bare perusal of the aforementioned provision would clearly go to show that in terms thereof merely a presumption is raised to the effect that signature and every other part of http://www.judis.nic.in such document, which puports to be in the handwriting of any particular person, is in that person's handwriting and in case a document is executed or attested, the same was executed and attested by the persons by whom it purports to be executed and attested.
>
> 8. Section 90 of the Indian Evidence Act nowhere provides that in terms thereof the authenticity of the recitals contained in any document is presumed to be correct. The High Court, therefore, committed a manifest error of law in interpreting the provision of Section 90 of the Indian Evidence Act and, thus, fell into an error in formulating the substantial question of law. As the purported substantial question of law was formulated on a wrong reading of Section 90 of the Indian Evidence Act, the impugned judgment cannot be sustained. We may furthermore notice that even if a formal execution of a document is proved, the same by itself cannot lead to a presumption that the recitals contained therein are also correct. The mere execution of a document, in other words, does not lead to the conclusion that the recitals made therein are correct, and subject to the statutory provisions contained in Sections 91 and 92 of the Evidence Act, it is open to the parties to raise a plea contra thereto"

21.The learned counsel for the petitioner also relied on the following decisions:-

> i. M.K. Palaniappa Chettiar vs A. Pennuswamipilla (1970) 2 SCC 290,.

ii. Gurdial Batra vs Rajkumar Jain (1989) 3 SCC 441. iii. Ammasai Gounder vs Lakshmiamma (1996) 1 MLJ 231.

22.In the first mentioned case the court held that the burden http://www.judis.nic.in was on the Landlord to prove all ingredients which entitle him to seek eviction in the contexts of section 10(2) of Madras buildings (Lease and Rent Control) Act No.18 of 1960.

23.In the second mentioned case the premise was let out for running of a repair shop along with repair business, sale of television was temporarily carried on. The court held that "we do not think this constituted a change of user within the meaning of section 13(2)(ii)(b) of the Act so as to give a cause of action to the landlord to seek eviction of the tenant" .

24.In the third mentioned it was held that the authorities below could not legitimately come to the conclusion that there had been a violation of section 10(2)(ii)(b) of the Act and it is always open to the landlord to claim relief under section 10(2)(ii)(b) provided the requirements are satisfied. The Court held that "What matters in the case of claim like this is that change of user must be change in the character of the user for which alone the building has been let out. There are user for which the

it was let was only non- residential without further restriction." http://www.judis.nic.in 25.According, to the petitioner, Ex.P.11 was a fabricated document introduced only to get over the decision of the Honourable Supreme Court in Hari Rao vs N. Govindachari AIR 2005 SC 3389 and therefore it was submitted that the order passed by the Rent Controller and Rent Control Appellate Court in accepting Ex. P11 as a document to substantiate existence of a lease agreement cannot be sustained. The learned counsel therefore submits that the impugned orders passed both by the Rent Controller and the Rent Controller Appellate Court was to set aside.

26.It is the case of the petitioner that signature in Ex.P11 was obtained in blank. However, barring a bald assertion of the petitioner, there is no evidence to suggest that the respondent landlady's husband had obtained the signature in blank.

27.The admitted fact remains that the petitioner had originally rented out the premises for carrying on hardware business is not in dispute. Later, the petitioner changed the business to vessels and furniture. Still later the petitioner decided to convert the same into a fancy store. As per the relevant clause in Ex. P11, the petitioner was not to alter the nature of business contrary to the said agreement. Ex.P11 was to be inforce for a period of 11 months only. It is also the case of the petitioner that rental agreement was signed in the http://www.judis.nic.in year 1991 and thereafter for the 2nd time in 1993.

28.This was done after cross-examining the respondent landlady over a period of time from April 2005 to September 2005 on several occasions. Thereafter, the evidence was re-opened and the respondent/landlady was recalled and re-examined. The respondent/landlady was further cross-examined.

29.The petitioner again wanted to cross examine the respondent/landlady before suffering an adverse order from the Rent Controller. In the appeal before the Rent Control Appellate Court, the petitioner filed M.P.No.586 of 2012 to cross examine the respondent/land lady again M.P.No.586 of 2012 was dismissed.

30.The Rent Control Appellate Court dismissed the appeal by referring to paragraph 6 of the decision of the Honourable Supreme Court in Hari Rao vs N. Govindachari AIR 2005 SC 3389. In para- 6, the Hon'ble Supreme Court it was held as under:-

> 6. On the plain terms of the statute, uninfluenced by the authorities, it appears to us that user of the building for a purpose other than that for which it was leased, has to be considered in the context of Section 21 of the http://www.judis.nic.in Act which prohibits conversion of a residential building into a non-residential building except with the permission in writing of the Controller, any covenant in that behalf entered into by the tenant and the nature of the tenancy. In other words, when the lease is granted for the purpose of a trade, in the absence of any covenant in the contract between the parties prohibiting a user different from the particular one mentioned in the lease deed, the tenant would be entitled to carry on any trade in the premises, consistent with the location and the nature of the premises. In a case where the

> premises let out for a commercial purpose are used by the tenant for a residential purpose, it would be a user for a purpose other than that for which it was leased attracting Section 10(2)(ii)(b) of the Act. Similarly, if a building had been let out for the purpose of a trade, but a tenant uses the premises for the purpose of manufacture or production of materials after installing machinery, that would be a user other than the one for which the building was let. User of a building let out for a trade as a godown may attract the provision.

Ultimately, the question would depend upon the facts of a particular case, in the context of the terms of the letting and the covenants governing the transaction and the general spirit of Section 108(o) of the Transfer of Property Act, 1882. Merely because a shop let out for trade in shoes and other leather goods is used by the tenant also for the purpose of trading in readymade garments, it could not be held to be a user by the tenant of the premises for a purpose other than that for which it was leased. It has to be noted that even now, the tenant is carrying on the business of trading in shoes, which according to the landlord was the purpose for which the building was let. The trade in shoes has not been stopped by the tenant. All that has happened is, that he has also diversified into selling some readymade garments or T-shirts, the manufacture of which even some of the manufacturers of shoes have taken up.

31.In para 8 it was held as under:-

> http://www.judis.nic.in ……"While construing a provision of law imposing a liability for eviction, like Section 10(2)(ii)(b) of the Act, one must see whether there has been such a change of user of the premises as to make it alien to the purpose for which the building was let and deny eviction when the basic activity remains the same and there is only a variation in the manner or mode of carrying on of that activity. Therefore, the interpretation placed on Section 10(2)(ii)(b) of the Act by the High Court in the decision under appeal and in some other decisions of that Court referred to in the orders of the Rent Controller and the High Court, has to be held to be not warranted or justified. The order of eviction passed by the High Court under Section 10(2)(ii)(b) of the Act has, therefore, to be reversed."

32.The, presence of restriction clause in the agreement is a relevant factor. In the above case, the shop was let out for the purpose of trade in shoes/leather goods alone. Later the business was expanded to expanded by including a trade in readymade garments also. The Rent Control Appellate Court held the above decision was not applicable to the facts of the case in view of the clause.

33.The above decision was followed by this court in P.C. Philips vs R.Ponnusawamy 2011 (2) MWN (civil) .

34.In M. Arul Jothi vs Lajja Bal, (2000) 3 SCC 723, the http://www.judis.nic.in lease agreement contained a specific clause which states "shall be used by the tenant only for carrying on his own business and the tenant shall not carry on any other business than the business".

35.In M. Arul Jothi vs Lajja Bal, (2000) 3 SCC 723, though it was argued that the use of the word "only" with reference to the tenant doing business coupled with the last three lines, namely, "the tenant shall not carry on any other business than the above said business", clearly spells out the intent of the parties which restricts the user of the tenanted premises, only for the business which is stated therein and no other.

36.To counter this argument, the appellant therein referred to Section 108(o) of the Transfer of Property Act,1882 and the language of Section 10(2)(ii)(b) which are similar and submitted that interpretation has to be given in a broader perspective, that is the use of the building by the tenant should not be such as to damage it or diminish its value and restriction if any could be that if it was given for business it should not be used for residential purpose and vice versa.

http://www.judis.nic.in 37.The Supreme Court however rejected this argument of the tenant and held as follows:-

> "we have no hesitation to reject this. If such an interpretation is given, it would make any specific term of a valid agreement redundant. Once parties enter into a contract then every word stated therein has to be given its due meaning which reveals the rights and obligations between the parties. No part of the agreement or words used therein could be said to be redundant. Such restriction could only be if any statute or provision of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 specifies, which is none. Nor do we find any restriction by Section 108 of the Transfer of Property Act. In fact, Section 108 of the Transfer of Property Act starts with the words "in the absence of a contract or local usage to the contrary". In other words, it permits contract to the contrary mentioned under that section.
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> 38.The findings of the facts rendered by the Rent Controller in light of Ex. P11 cannot be disturbed particularly in the view of the admission of the petitioner that there was a rental agreement signed in 1991 and that signature in Ex.P11 was his though according to the petitioner, Ex.P11 was signed in blank stamp paper.

That assertion however remains unsubstantiated. However that agreement was valid only for 11 months.

39.There are no other agreements filed by the petitioner to substantiate that in 1993 another lease agreement was signed http://www.judis.nic.in except vide Ex.R7 deposition of the Respondent/Landlady on 11.02.1998 in R.C.O.P.No.263 of 1997 to state that there was another lease agreement signed in 1993. Neither of the parties have also filed a copy of the lease agreement allegedly executed in 1993.

40.The petitioner appears to have used the rented premises for hardware business at the time of inception. Thereafter, in 1999 he appears to have used the rented premises for vessels and furniture business and thereafter started a fancy store at the rented premises under the name and style of "Arasan Fancy Stores".

41.Ex. P 11 dated 01.08.1991 was for a period of 11 months. Therefore, while it would be correct to infer that Ex.P11 contained restrictive clause, it cannot be said that the said agreement would be binding between the parties for the period thereafter unless there are evidence to show the parties intended to be governed by the terms of the said agreement in Ex.P 11.

42.Though, according to the petitioner there was another lease agreement signed in the year 1993 as per the deposition of the respondent/landlady in R.C.O.P.No.263 of 1997, there are no http://www.judis.nic.indocuments forthcoming from either side to substantiate the existence of separate lease agreement at the time when the petitioner changed the business to fancy/business.

43.Therefore, it has to be only assumed that there was an oral agreement between the parties for continuing the lease and the parties have not agree to be bound by the restrictive clause in Ex.P 11 in view of the admitted conduct of the petitioner that he had varied the nature of use as discussed above. The fact that petitioner has varied the nature of business at the rented premises during 1999 and 2003 is not disputed. In fact as per the averments in R.C.O.P.No.2125 of 2004 which culminated in the impugned orders, the petitioner had filed R.C.O.P.No.2353 of 1996 to deposit the rent into the court which was ordered on 29.07.1997. The respondent had also filed R.C.O.P.No.230 of 1999 for fixation of fair rent. The Rent Controller had also fixed the fair rent at Rs.2429/- per month against which the petitioner had filed R.C.A.No.976 of 2012.

44.Thus, the fact that the petitioner kept altering/varying is the business at the rented premises is neither in dispute nor can be ignored.

45.In my view, Ex.P11 did not govern the parties. The parties were governed by oral rental agreements. There is also no evidence http://www.judis.nic.in to show that there were restrictions under the oral rental agreements. Therefore, the basis of the impugned order of the Rent Controller and Rent Control Appellate Court giving undue importance to restrictive clause in Ex.P11 agreement dated 01.08.1991 deserves to be interfered.

46.Further, the decision rendered in M.Arul Jothi vs Lajja Bal (2000) 3 SCC 723 also cannot be applied to four corners of the facts of the case. Similarly, the ratio of the Honourable Supreme Court in Hari Rao vs N Govindacharry AIR 2005 SC 3389 also cannot be applied as there was no written rental agreement in existence between the parties at the time when the dispute arose. In view of the same, reliance placed on the restrictive clause in Ex.P 11 to inter breach of Section 10(2) (ii) (b) of the Act cannot be countenanced. Therefore, the impugned order is liable to be interfered and deserves to be set aside.

47.Though, the respondent had claimed and let in evidence to show that her son was proposing to start DTP centre and completed his Graduation and was pursuing M.C.A at Indira Gandhi Open University and doing business the Rent Controller had rejected the plea. No cross appeal was filed by the respondent/landlady. http://www.judis.nic.in Therefore the issue relating to the nuisance under Section 10 (2)

(v) and own accommodation under Section 10(3) (a) (iii) cannot be considered now in the present Civil Revision Petition filed by the petitioner/tenant.

48.At the same time, the observation contained in the above paragraph will not prejudice the respondent/landlady for initiating appropriate proceedings for evicting the petitioner under the provision of newly introduced Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017.

49.Consequently, the present Civil Revision Petition is allowed with the above observations. No costs. Consequently connected Miscellaneous Petition is closed.

18.06.2019 Index :Yes/No Internet :Yes/No jen http://www.judis.nic.in To

1.The VII Small Causes Court, Chennai.

2.The XIII Judge, Small Causes Court, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.

http://www.judis.nic.in C.SARAVANAN, J.

jen Pre-delivery order in and 18.06.2019 http://www.judis.nic.in