

## J.Mohideen Pichai vs Aaron Aasir on 27 October, 2014

**Author: V.M.Velumani**

**Bench: V.M.Velumani**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2014

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)Nos.2119 of 2013

and 2120 of 2013

&

M.P.(MD) Nos.1 of 2013 and 1 of 2014

J.Mohideen Pichai

.. Petitioners in both the C.R.Ps.

Vs.

Aaron Aasir

.. Respondent in both the C.R.Ps.

Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, to call for the records relating to the fair and decretal order, dated 24.09.2013, made in R.C.A.Nos.9 and 8 of 2013 on the file of the Rent Controller-Appellate Tribunal (Principal Subordinate Judge), Tirunelveli, confirming the fair and decretal order, dated 07.02.2013, made in R.C.O.P.Nos.29 and 46 of 2011 on the file of the Rent Controller (District Munsif Court), Tirunelveli and set aside the same and allow the petitions for depositing the rent.

!For Petitioner : Mr.A.Sivasubramanian  
(in both the C.R.Ps.) for M/s.Siva Ayyappan Associates

^For Respondent : Mr.S.Siva Thilakar  
(in both the C.R.Ps.)

Date of reserving the Judgment : 19.09.2014

Date of pronouncing the Judgment: 27.10.2014

:COMMON ORDER

These civil revision petitions have been filed to set aside the fair and decretal order, dated 24.09.2013, made in R.C.A.Nos.9 and 8 of 2013 on the file of the Rent Controller-Appellate Tribunal (Principal Subordinate Judge), Tirunelveli, confirming the fair and decretal order, dated 07.02.2013, made in R.C.O.P.Nos.29 and 46 of 2011 on the file of the Rent Controller (District Munsif Court), Tirunelveli.

2.Since the issues involved in both the Civil Revision Petitions and the parties are one and the same, they are heard together and disposed of by this common order.

3.In both the civil revision petitions, the revision petitioner is the tenant, whereas the respondent is the landlord in respect of the petition premises. The respondent filed R.C.O.P.No.29 of 2011 before the Principal District Munsif Court, Tirunelveli, for an order of eviction against the petitioner from the petition premises on the ground of wilful default in payment of rent and owners occupation for establishing a business for his son under Sections 10(2)(i) and 10(3)(a)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act 1960 (hereinafter referred to as "the Act"). The petitioner filed R.C.O.P.No.46 of 2011 under Section 8(5) of the Act, seeking permission to deposit the rent into Court, as the respondent refused to receive the rent, when tendered by the petitioner.

4.The learned Rent Controller, by order dated 07.02.2013, dismissed R.C.O.P.No.46 of 2011 and allowed R.C.O.P.No.29 of 2011 on the ground of owners occupation only and disallowed the claim of the respondent that the petitioner wilfully did not pay the rent. Against the said order, the petitioner filed R.C.A.Nos.8 and 9 of 2013. The Appellate Authority, by the order dated 24.09.2013, dismissed both the R.C.As. Against the orders of the Courts below, the petitioner has filed the present civil revision petitions.

5.The necessary facts for deciding the civil revision petitions are as follows:-

(i) The respondent is the owner of petition premises. The petitioner became a tenant in respect of the said premises from 26.04.2004 and is carrying on business of selling mobile phones. He paid a sum of Rs.1,20,000/- as advance and the rent was fixed at Rs.3,500/- per month. The rental agreement was entered into for eleven months. After expiry of eleven months, fresh rental agreement was entered into with enhanced rent. On 13.03.2011, a rental agreement was entered into for eleven months and monthly rent was fixed at Rs.5,225/-. The petitioner was not regularly paying the rent. From July 2010, he did not pay the rent. He promised to vacate the petition premises as per the rental agreement, dated 13.04.2010, but he did not vacate. The respondent issued receipts to the petitioner for the rent paid upto July 2010. Afterwards, the petitioner did not pay the rent continuously. The petitioner without a knowledge and consent of the respondent, deposited a sum of Rs.4,975/- and Rs.5,225/- in the account of the respondent. The petitioner wilfully defaulted the rent amounting to Rs.60,700/-.

(ii) Further, the respondent's son got married and he is without job. Hence, the respondent requires the petition premises for own occupation for the business of his son. For the above reasons, the respondent filed R.C.O.P.No.29 of 2011, for evicting the petitioner. The petitioner filed counter statement in the month of October 2011, denying all the allegations made by the respondent. According to the petitioner, the respondent on expiry of eleven months agreement, used to create problem in order to get enhanced rent.

(iii) The petitioner paid rent for July 2010 to January 2011 to the respondent's son, who promised to get receipt from his father, stating that his father has gone to Kerala and after returning from Kerala, he would obtain receipt and hand over the same to the petitioner. But he did not issue receipts. One Sahul Hameed was present when the petitioner paid the rent to the respondent's son. The petitioner has paid rent regularly and there is no arrears. In any event, the respondent is having Rs.1,20,000/- paid by the petitioner as advance and it is open to the respondent to adjust arrears from the advance. The respondent refused to receive the rent, when the same was sent by money order. The respondent failed to furnish his Bank Statement, hence the petitioner has filed R.C.O.P.No.46 of 2011 under Section 8(5) of the Act, seeking permission to deposit the rent into Court.

(iv) The learned Rent Controller conducted a joint trial, common evidence was recorded in R.C.O.P.No.29 of 2011, the respondent examined himself as P.W.1, his son-A.Gabrial Raja Singh was examined as P.W.2 and one A.Sivanpandi was examined as P.W.3 and Exs.P1 to P3 were marked on behalf of the respondent. The petitioner himself examined as R.W.1 and one P.Gnana Moorthy and A.Sakthi Manikandan were examined as R.Ws.2 and 3. The petitioner marked Exs.R1 to R24 on his behalf.

(v) The learned Rent Controller considering all the materials on record and held that the petitioner committed default in payment of rent, but rejected the claim of the respondent for eviction on the ground of wilful default in view of the fact that Rs.1,20,000/- is with the respondent paid by the petitioner as advance.

(vi) The learned Rent Controller considered the claim of the respondent for owners occupation and held that the said requirement is bona fide and requires the petition premises for his son's business. The learned Rent Controller on the materials on record and evidence, held that the petitioner failed to comply with the provisions of Sections 8(1) to 8(4) of the Act and the petitioner had not made out a case for depositing the rent into Court. For the said findings, the learned Rent Controller allowed R.C.O.P.No.29 of 2011 filed by the respondent on the ground of owners occupation and dismissed R.C.O.P.No.46 of 2011 filed by the petitioner.

6. Against the common order, dated 07.02.2013, the petitioner filed R.C.A.Nos.8 and 9 of 2013. The appellate authority after framing necessary points for consideration, analysed the entire matter and by common order, dated 24.09.2013, dismissed both the R.C.As. Against the common order of the appellate authority, dated 24.09.2013, confirming the common order of learned Rent Controller, dated 07.02.2013, the petitioner has filed the present civil revision petitions.

7.Heard Mr.A.Sivasubramanian, learned counsel for the petitioner and Mr.S.Siva Thilakar, learned counsel for the respondent.

8.The learned counsel for the petitioner argued that the Courts below failed to consider that the respondent is already having a Tiffin Centre and the respondent's son is running the said Tiffin Centre. The Courts below erred in holding that the intention of the respondent to start a Tiffin Centre for his son, shows his bona fide requirement. The learned counsel for the petitioner further contended that the petitioner is running Mobile Shop from 2004 and invested huge amounts. If the petitioner is evicted, he would be put to severe hardship and the Courts below failed to consider this aspect. The hardship of the petitioner would be more than the advantage to the respondent. As far as the permission to deposit the rent into Court is concerned, the learned counsel for the petitioner argued that the respondent refused to accept the rent, when he handed over in person, refused to receive the rent sent by money order and refused to furnish the details of Bank Account. These facts were proved by the petitioner and hence, the Courts below ought to have allowed the petitioner's R.C.O.P. and appeal and permitted him to deposit the rent into Court.

9.Per contra, the learned counsel for the respondent argued that the petitioner committed default in payment of rent without paying the rents for the months of July 2010 to January 2011, the tenant tried to pay the rent for subsequent months, hence the respondent refused to receive the improper payment. The Courts below have considered the ingredients of Section 8 of the Act and the action of the petitioner properly and rejected the claim of the petitioner to deposit the rent into Court. As far as the owners occupation is concerned, the respondent has let in cogent evidence to show that the said requirement is bona fide requirement, the respondent proved that his son is not having any job and is carrying on business in his own premises. The respondent had also proved through evidence of P.W.3 that he has made all arrangements for his son to start a Tiffin Centre. The learned counsel for the respondent argued that the Courts below have appreciated the facts in proper perspective and this Court in a Revision cannot re-appreciate the evidence to disturb the concurrent findings of the Courts below.

10. In support of his submission, the learned counsel for the respondent relied on the following Judgments:

(i) P.M.Punnoose Vs. K.M. Munneruddin and Others [AIR 2003 SC 2993], wherein in paragraph No.17, it has been held as follows:-

"17.It is true that the revisional jurisdiction conferred on the High Court under Section 25 of the Act is not as narrow as one under Section 115 of the Code of Civil Procedure; nevertheless, a finding of fact arrived at by the appellate authority cannot be lightly interfered with by the High Court acting like a Court of appeal and reappreciating the evidence. ...."

(ii)President, Communist Party and another Vs. Mohammed Rahamatul Ansari and Others [2007 (1) MLJ 239], wherein in paragraph No.17, it has been held as follows:-

"7. .... When both the authorities have concurrently rendered factual finding based on the evidence and when those findings are reasonable and legally acceptable, this Court cannot interfere with such concurrent findings in its revisional jurisdiction under Section 25 of the Rent Control Act."

(iii) Mudigonda Chandra Mouli Sastry Vs. Bhimanepalli Bikshalu and others [2000 (I) MLJ 19 (SC)], wherein in paragraph No.4, it has been held as follows:-

"4.Coming to the second submission what we find is that, that the Rent Controller and the first appellate authority after assessing the evidence recorded concurrent finding of facts that the need of the landlord was bona fide. It was not pointed out that the said finding suffered from any legal infirmity. Under such circumstances, it was also not open to the High Court in exercise of its revisional jurisdiction to have indulged in reassessment of evidence and thereby interfered with the concurrent finding of facts recorded by the two courts below, especially when it was found by the High Court that the tenant's wife had already acquired a vacant accommodation in the town of Tenali and the tenant himself was transferred from Tenali to Marcherla. ...."

11.I have carefully perused all the materials on record, the Judgments relied on by the learned counsel for the respondent and the arguments of the learned counsel for the petitioner as well as the respondent.

12.The respondent has proved his requirement for owners occupation by cogent and reliable evidence. The contention of the learned counsel for the petitioner that relative hardship was not considered by the Courts below is untenable and unsustainable. Relative hardship is applicable only when the landlord prays for additional accommodation. In any event, this contention was considered by the Courts below and rejected the same on the ground that the petitioner can remove the Mobile Shop from the petition premises without any difficulty. The Courts below have considered the facts properly and there is no error or material irregularity in the said findings. The Judgments relied on by the learned counsel for the respondent squarely apply to the facts of the present cases.

13.Similarly, the Courts below have properly considered the claim of the petitioner to deposit the rent into Court. From the materials on record, it is clear that the petitioner without paying rent from July 2010 to January 2011, tried to pay the rent, which are rightly refused. The petitioner also did not follow the procedure contemplated under Section 8 of the Act. There is no infirmity in the findings of the facts by the Courts below warranting interference by this Court.

14.In the result, both the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed. Three months time is granted for the petitioner to vacate and deliver vacant possession of the petition premises, if he files an affidavit of undertaking within one week from the date of receipt of a copy of this order, in this Court, to deliver vacant possession of petition premises to respondent within the time granted by this Court.

To

- 1.The Rent Controller-Appellate Tribunal, (Principal Subordinate Judge) Tirunelveli.
- 2.The Rent Controller, (District Munsif Court) Tirunelveli.