

(2010) 07 MAD CK 0107

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 1935 of 2009 and M.P. No. 1 of 2009

S. Ariya Thilakan @ Thilak

APPELLANT

Vs

Dr. Mohammed Ali

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madras Buildings (Lease and Rent Control) Act, 1947 — Section 7(2)
Negotiable Instruments Act, 1881 (NI) — Section 138
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 17, 17(1),
17(2), 2(8)

Citation : (2010) 07 MAD CK 0107

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : M. Venkadeshan, for the Appellant; N. Chandrakanthan, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Civil Revision Petitioner/Appellant/Tenant has filed this Civil Revision Petition as against the order dated

12.06.2009 in R.C.A. No. 591 of 2008 passed by the Learned Appellate Authority viz., VII Judge, Court of Small Causes, Chennai.

2. The First Appellate Authority viz., VII Judge, Court of Small Causes, Chennai, while passing order in R.C.A. No. 591 of 2008 in R.C.O.P.

No. 113 of 2008, dated 12.06.2009, has among other things observed that "...The Revision petitioner/Tenant has committed an act of nuisance

and resultantly dismissed the appeal without costs."

3. Being dissatisfied with the order passed by the Learned Appellate Authority viz., VII Judge, Court of Small Causes, Chennai, dated

12.06.2009 in R.C.A. No. 591 of 2008 in R.C.O.P. No. 113 of 2008, the Revision petitioner/Tenant has projected this Civil Revision Petition before this Court.

4. Before the Learned Rent Controller viz., XII Judge, Court of Small Causes, Chennai, on the side of the respondent/Landlord, PW1 has been

examined and Ex.P.1 to Ex.P.7 have been marked. On the side of the Revision petitioner/Tenant, RW1 has been examined and Ex.R.1 has been

marked. On an appreciation of oral and documentary evidence available on record, the Learned Rent Controller viz., XII Judge, Court of Small

Causes, Chennai, has come to the conclusion that the Revision petitioner/Tenant has committed an act of nuisance as per Section 10(2)(v) of Tamil

Nadu Buildings (Lease & Rent Control) Act, 1960, and ordered eviction of the Revision petitioner/Tenant, by granting him two months time.

5. According to the Learned Counsel for the Revision petitioner/Tenant, both the Authorities under the Act have relied on the evidence of PW1

(Wife of respondent/Landlord) without taking into account of the legality of the evidence produced by the Respondent/Landlord.

6. It is the further contention on the side of the Revision petitioner/Tenant that both the Authorities have committed an error in accepting the

evidence of PW1 (Wife of Respondent/Landlord) in the absence of examination of an independent witness to support the case of the

Respondent/Landlord.

7. Continuing further, the Learned Counsel for the Revision petitioner/Tenant submits that both the Authorities have placed reliance on Ex.P.2

Letter dated 15.04.2005, Ex.P.3 Letter dated 05.04.2007 and Ex.P.7 Apology Letter dated 26.12.2007, given by the petitioner addressed to the

Inspector of Police and an inculpatory statement given by the accused to a Police Officer is not admissible before a Court of Law under the Indian

Evidence Act.

8. That apart, the Learned Counsel for the Revision petitioner/Tenant projects the plea that Ex.P.5 Petition Receipt No. 101/2007 and Ex.P.6

Petition Receipts (four in numbers) bearing Nos. 20/2007 (dated 15.03.2007), 28/2007 (dated 30.03.2007), 115/CSR/N3/02, dated

09.06.2002 & Receipt, dated 27.07.2002, erroneously relied on by both the Authorities and indeed, the First Appellate Authority has dismissed

M.P. No. 172 of 2009 filed by the Revision petitioner/Tenant and the cumulative evidence available in the case will clearly point out that the respondent/Landlord has no ground to evict the Revision petitioner/Tenant.

9. In short, the contention of the Learned Counsel for the Revision petitioner/Tenant is that both the Authorities have not adverted to the factual aspects of the matter in a proper perspective, which has resulted in miscarriage of justice and therefore prays for allowing the Civil Revision Petition in the interest of justice.

10. Per contra, the Learned Counsel for the Respondent/Landlord submits that both the Authorities have rendered a concurrent finding that the Revision petitioner/Tenant has committed an act of nuisance and resultantly ordered eviction and at this stage, this Court sitting in Revision need not interfere with the same.

11. It is useful to refer to the evidence of PW1 and RW1 which assume significance in the present case on hand.

12. The wife of the Respondent/Landlord has been examined before the Learned Rent Controller as PW1 in the Rent Control Original

Proceedings. In her evidence, PW1 has deposed that the petition mentioned property belongs to her husband (Respondent/petitioner) and the

Revision petitioner is the Tenant in respect of the ground floor shop portion of the petition mentioned premises and that the Revision

petitioner/Tenant is running a Watch Shop by paying a monthly rent of Rs. 2,225/- and that the Revision petitioner has come as a Tenant in August

2002 and the Revision petitioner's wife also will be in the Shop and that the Revision petitioner's wife used to keep rowdies and scolded her when

demand is made for payment of monthly rent.

13. It is the further evidence of PW1 (Wife of Respondent/Landlord) that the wife of the Revision petitioner used to bring persons belonging to the

Association of Merchants and conduct talks and the Revision petitioner's wife has beaten her on several occasions and she has also abused by

using abusive language and opposite to the petition mentioned shop, there is a bus stop and when she has been humiliated, at that time, the nearby

shop persons and standing public at the bus stand will watch the same.

14. Further, the evidence of PW1 is to the effect that she has given the Police complaint when she has been beaten by the Revision petitioner's

wife and the apology letter is Ex.P.2 and the Revision petitioner/Tenant's wife apology letter is Ex.P.3 and again on 28.11.2007, the Revision

petitioner's wife has twisted her hand and has given a blow for which she has lodged a complaint before the Police Station viz., Ex.P.4 and Ex.P.5

is the Receipt for accepting the petition and Ex.P.4 and Ex.P.6 Receipts are to show the acceptance of the earlier complaints given by her and

again the Revision petitioner's wife has given an Apology Letter Ex.P.7 dated 26.12.2007.

15. PW1 in her cross examination has categorically stated that as against the Revision petitioner/Tenant the police has not filed a First Information

Report or taken further proceedings.

16. RW1 (the Revision petitioner/Tenant) in his evidence has stated that he is a Tenant for the past 16 years in the petition mentioned property and

for 7 years he has been a tenant along with Baskar in the capacity of the Partner and initially he paid the rent through Cash and later for the past

one year, he is paying the rent through Cheque and on some occasion, the Respondent/Landlord used to give receipts and on many occasions, the

Respondent/Landlord has not issued receipts and he used to give receipts for 5 to 6 months at a time and the said receipts are Ex.R.1 (Series).

17. It is the further evidence of RW1 that in the petition mentioned property, there is a lavatory facility and it is locked without use and when he

asked the Respondent/Landlord about this by approaching him, he will create a problem and since the Police Station is situated in the same Street,

he will complain and when the Constables came for conducting enquiry at the time the Respondent/Landlord used to open the lavatory and he will

inform the Constables that he has been attacked and scolded by the Revision petitioner and the Police after enquiry without conducting further

proceedings will send the parties back and except the lavatory problem there is no other problem between him and the Respondent/Landlord.

18. Added further, RW1 (Revision Petitioner/Tenant) in his cross examination has stated that he does not own any other building and if he is

vacated from the petition mentioned property, then he cannot remain as a Tenant.

19. In the main RCOP No. 113 of 2008, the Respondent/Landlord as petitioner has averred that ""right from the inception of the tenancy the

Revision petitioner and his wife used to behave indecently before the public and the other Tenants in the petition mentioned premises where nine shops are there, with the Respondent's wife and on several occasions, the Respondent's wife lodged complaint for assault, nuisance and for using filthy words before the other Tenants and caused nuisance to other Tenants in the same premises on several occasions the other Tenants complained about the nuisance caused to them by the Revision petitioner and the police warned the Revision petitioner and his wife and others used to give written apology letter and keep quiet for some time etc., and once again without resorted to commit indecent nuisance act of talking filthy words and physical ill-treatment.

20. The Respondent/Landlord in his petition has mentioned that acts of guilty of nuisance is caused to the other Tenants are also doing business in the same premises and said acts caused great mental agony and injury to the Respondent/Landlord and his wife since they are both senior citizens and heart patients.

21. The Respondent/Landlord also in his petition has stated that the Revision petitioner meddled with electric supply to his portion thereby enabled his portion to get lesser meter reading and caused other Tenants to get increased meter reading and therefore, the Revision petitioner is guilty of nuisance.

22. The Revision petitioner/Tenant in his counter while denying the averments in Paragraph 4 of the petition has admitted the averment made in Paragraphs 1 to 3 of the petition. The Revision petitioner/Tenant in his counter has stated that the Respondent/Landlord used to lock the toilet and keep the key with him by not allowing any of the Tenants in the ground floor portion to use the toilet which is a basic necessity to all human beings and whenever the Revision petitioner raised the question of toilet facility the Respondent and his wife used to refuse to provide such facility and used to lodge false complaint such as assault, nuisance and using filthy words, etc.

23. According to the Revision petitioner/Tenant, the Police after conducting due enquiry used to warn the Respondent/Landlord not to bring false complaint and they will direct him to open the lock for the toilet and further that the electricity meters for all the tenancy portions are separate and

no way it is connected with the other meters and all the meters have been fixed in a common place and no one can meddle or commit fraud.

24. In the counter, the Revision petitioner/Tenant has stated that the Respondent/Landlord's malafide intention is to get an enhance rent and the

Respondent/Landlord's case is not a genuine one.

25. It is to be noted that the term "nuisance" has not been defined in the Act. Only a private nuisance which interferes with an individual's use and

enjoyment of an immovable property or some right respect of it is contemplated in Section 10(2)(v) of the Act.

26. The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, as per Section 10(2)(v) requires either the Tenant is guilty of such acts and

conduct which are a source of nuisance to those who occupy other portions in the building, a portion of which he himself occupies as a Tenant or

such acts and conduct amount to nuisance to the occupiers of the building in the neighbourhood.

27. Generally, if the Tenant, who has been abusing and quarreling and when this is admitted by himself, then it will be an act of constituting

nuisance. Frequent quarrels and use of abusive language indulged in by the servants of the Tenants by reason of their coming to the backside of the

premises where the daughters and wife of the Landlord take bath constitute nuisance as per decision *Davey & Sons v. Liberty Dry Cleaners*

(1980) TNLJ 15 at 17.

28. A reading of Section 10(2)(v) of the Act covers the acts or conduct complaint of against the Tenants ought to be a nuisance to the occupiers of

the other portions of the same buildings in the neighbourhood.

29. At this stage, this Court pertinently points out that in the decision *Janakiram v. Nagammal* (1958) 1 MLJ Short Notes at Page 5, it is held that

where the Tenant and the daughter indulged in quarrels among themselves using vulgar and indecent language, such conduct would amount to

nuisance resulting in eviction u/s 10(2)(v) of the Act".

30. Just because there has been no Police complaint nor there has been any enquiry it does not cease to be a nuisance as per decision *Davey &*

Sons v. Liberty Dry Cleaners (1980) TNLJ 15 at 18.

31. One cannot ignore an important fact that "every inconvenience" cannot become an automatic actionable nuisance. In order to constitute an

actionable nuisance, the said nuisance ought to be of a reasonably perceptible degree.

32. A perusal of Ex.P.5 Petition Receipt No. 101/2007 shows that the PW1 (Wife of the Respondent/Landlord) is the petitioner/complainant

before the Police and the Revision petitioner's wife is the counter petitioner and the dispute pertains to the non payment of rent in respect of the

Shop where the counter petitioner is running a Watch Shop and on 25.11.1007, when the PW1 had demanded monthly rent the counter petitioner

has abused the PW1 and also has come to assault her. Ex.P.4 is the xerox of the complaint dated 28.11.2007 addressed by PW1 (Wife of the

Respondent/Landlord) to the Inspector of Police, P5-M.K.B. Police Station, Chennai-39. It transpires from Ex.P.4 Complaint that the cheque

towards rent has been returned from the Bank without their being any money and in the cheque tendered for two months the September month

cheque has been returned from the Bank because of insufficiency of funds and that from the date of issuance of cheque, the Revision

petitioner/Tenant has not come to the Shop and when the Revision petitioner's wife is asked about the same she loudly speaks as to why the

cheque has been deposited into the Bank without asking her and further she is also heckling her in front of the common public etc.

33. As seen from Ex.P.7 Letter dated 26.12.2007 written by the Revision petitioner/Tenant's wife addressed to PW1, it is clear that the Revision

petitioner's wife has clearly stated that she will not scold PW1 hereafter any abusive language and that she has only held the hand of the PW1 and

not twisted the hand of the PW1 and in case if PW1 says that she (Revision petitioner's wife) has twisted the hand of her then she may be excused

and further, the Revision petitioner's wife has assured that such kind of mistake will not recur and she will pay the December month arrears and

every month rent, every 4th/5th day of the month through Cash and she will pay the two months arrears rent on 05.01.2008 etc.

34. In this connection, this Court points out Section 17(1) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, which enjoins that no

Landlord shall not interfere with the amenities enjoined by the Tenant without just or sufficient cause, cut off or withhold or caused to be cut off or

withheld or any of the amenities enjoined by the Tenant or wherein existence during the previous tenancy etc.

35. The ingredients of Section 17 of the Act are only additional safeguards of the Tenant to his continued enjoyment of the rights created by the contract of the tenancy in his favour, other than the rights available to him under the General Law.

36. If there is no relationship of the Landlord and Tenant Section 17 will not apply. Section 17 can be availed of by a Tenant when a Landlord withholds the amenities without a cause. Unfortunately, the Revision petitioner/Tenant has not resorted to the benefit available to him as per Section 17(2) of the Act. It is true that to attract Section 17(1) one has to prove that he is a Tenant. The rights of the parties ought to be determined as per definition Section 2(8) of the Act which defines the term "Tenant".

37. A perusal of Ex.P.6 Petition Receipts (4 in numbers) the first petition receipt mentions the name of counter petitioner as "Krishnamoorthy", "Dilak". The second receipt shows the counter petitioner's name as "Mr. Thilak". The third receipt dated 09.06.2002 does not refer to the counter petitioner's name. However, in the fourth receipt in Ex.P.6, the counter petitioner's name is seen as "Baskar" in different ink and the name of the present Revision petitioner is mentioned in different ink in Tamil. However, in Ex.P.6 (Series) the First two receipts No. 20/2007 and 28/2007 referred to the Revision petitioner's name and in the gist of the petition column in the first receipt it is mentioned as "The counter petitioner's misbehaviour, arrogancy, etc." In the second receipt it is mentioned that the Revision petitioner is abusing with vulgar words and insulting the PW1 in front of the public.

38. Ex.P.2 is the Letter of the Revision petitioner/Tenant addressed to the Inspector of Police, P-5, N.K.B. Police Station, Chennai-39 wherein the Revision petitioner/Tenant has among other things stated that he will pay the monthly rent correctly on 15th and that in case of default he will abide by the action taken by the latter and till then he will not scold the PW1 (Respondent/Landlord's wife) in abusive language, when he sees her. Obviously, the dispute between the Respondent/Landlord and the Revision petitioner/Tenant relates to the monthly payment of rent in due time. Merely on account of the Revision petitioner/Tenant in Ex.P.2 letter dated 15.04.2005 the Revision Petitioner/Tenant has addressed the Inspector of Police, P-5, MKB Police Station, Chennai-39 stating that he will pay the

monthly rent for the shop properly on 15th of every month etc. will not be a sufficient or a good ground for eviction u/s 10(2)(v) of the Act. Moreover, even though the Revision petitioner/Tenant and his wife have been said to be responsible for verbal exchanges/quarrels or verbal abuse in filthy language in connection with the dispute/delay in regard to the payment of monthly rent or the default in payment of rent, these are not sufficient to attract the ground of "nuisance" as per Section 10(2)(v) of the Act, as far as the present case is concerned.

39. Admittedly, the Police have not registered a case against the Revision petitioner's wife or the Revision petitioner in connection with the verbal abusive language employed by them against the P.W.1 (Respondent/Landlord's wife). Further, the Police Constables or the Inspector of Police, P-5, N.K.B. Police Station, Chennai-39, has not been examined on the side of the Respondent/Landlord before the Learned Rent Controller.

Added further, the Respondent/Landlord has not examined himself as a witness before the Learned Rent Controller. Moreover, no single person from nearby shop or a single person from among the standing public has been examined on the side of the Respondent/Landlord to substantiate the version of P.W.1 that she has been humiliated by the Revision petitioner's wife by means of using abusive language.

40. The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, does not say that the acts and conduct complained of against a tenant must be committed within the precincts of the premises.

41. Though in Ex.P.4 letter dated 28.11.2007, P.W.1 (Respondent/Landlord's wife) addressed to the Assistant Sub-Inspector of Police, P-5,

N.K.B. Police Station, Chennai-39, has made mention of about the Cheque being returned for "insufficiency of funds" . It is not known as to

whether the Respondent/Landlord has initiated criminal case against the Revision Petitioner u/s 138 of the Negotiable Instruments Act.

42. As far as the present case is concerned, other than PW1 (Respondent/Landlord's wife) no independent witness has been examined on the side of the Respondent/Landlord before the Learned Rent Controller in the main RCOP proceedings.

43. This Court aptly cites the decision quoted by the Revision petitioner viz., Janab Mohd. Abdulla v. Janab Abdul Sammad 1957 (1) MLJ Short

Notes Page 20, wherein it is held as follows:

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), Section 7(2)(iv) - Verbal quarrels with Landlord and entertaining on the rented

premises persons who are not to the liking of the Landlord.

The fact that the Tenant was responsible for verbal quarrels with his Landlord is not a sufficient ground for eviction u/s 7(2)(iv) of the Madras

Buildings (Lease and Rent Control) Act, 1947. Moreover the mere fact that the Tenant brought on the rented premises persons whom the

Landlord did not like or with whom the Landlord was not on good terms is not a kind of annoyance which the law can recognise or remedy and

cannot be a ground for eviction.

44. The Learned Counsel for the Respondent/Landlord cites the decision S.U.S. Davey & Sons v. Liberty Dry Cleaners, under name Board

(Garment Cleaners) (1980) TNLJ 15 at 17, wherein it is held as follows:

A reading of the evidence of PW1 and Ex.P.6 would clearly constitute a ground for eviction u/s 10(2)(v), in that, the Tenants have been found

guilty of such acts and conducts which are a nuisance to the occupiers of the other portion, namely the Landlords in this case.

45. He also relies on the decision J.V. Bhoopalan Vs. Rajamanickammal, S. Srinivasan and S. Kumaresan, , wherein it is held that the High Court

sitting in Revisional jurisdiction u/s 25 of the Act cannot re-appreciate evidence and come to a different conclusion.

46. The Learned Counsel for the Respondent/Landlord invites the attention of this Court to the Honourable Supreme Court decision Sarla Ahuja

Vs. United India Insurance Company Limited, at Page 104, wherein at Paragraph 17, it is held as follows:

Rent Controller approved the claim of the Landlord as bona fide after taking into account the aforesaid broad aspects. It cannot be said that the

Rent Controller had taken into account irrelevant factors in reaching the conclusion. Hence the High Court has improperly exercised its Revisional

jurisdiction in upsetting the findings of the Rent Controller.

47. At this juncture, this Court necessarily points out that the power of Revision u/s 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act,

1960, is not so limited in its applicability as it is u/s 115 of the Code of Civil Procedure, but this Court as a Revisional Court has certainly well

within its right to satisfy itself as to the regularity of proceedings, or correctness, legality or propriety of any orders or decisions rendered by the competent Authorities constituted under the Act.

48. In the present case, there is absence of evidence in regard to a causation of nuisance to the occupiers of other portions in the same petition

mentioned building are of the buildings in the neighbourhood. Though in the instance case, the Revision petitioner/Tenant and his wife have been

reportedly responsible for the verbal quarrels with the Respondent/Landlord's wife more than one occasion, in connection with the payment of

monthly rent even purportedly using abusive language etc., these are not sufficient ground for ordering eviction u/s 10(2)(v) of the Tamil Nadu

Buildings (Lease & Rent Control) Act, 1960, in the considered opinion of this Court. The proper course for the Respondent/Landlord is to

approach the Learned Rent Controller by filing necessary RCOP petition and seeking appropriate remedy on the ground of wilful default against

the Revision petitioner/Tenant in the manner known to law. In that view of the matter, this Court sets aside both the orders of the Appellate

Authority and the Learned Rent Controller made in R.C.A. No. 591 of 2008 dated 12.06.2009 and the order dated 21.07.2008 in RCOP. No.

113 of 2008 and allows the Civil Revision Petition.

49. In the result, the Civil Revision Petition is allowed leaving the parties to bear their own costs. Consequently, the order dated 12.06.2009 in

RCA No. 591 of 2008 passed by the VII Judge, Court of Small Causes, Chennai and the order dated 21.07.2008 in R.C.O.P. No. 113 of 2008

on the XII Judge, Court of Small Causes, Chennai, are set aside to prevent an aberration of justice. The RCOP No. 113 of 2008 stands

dismissed. Consequently, connected Miscellaneous Petition No. 1 of 2009 is closed.