

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-7-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.313 of 2004

Azra Mukerji  
rep. By Power of Attorney  
Dr.Bimal Charles

.. Petitioner (Land lord)

vs

M/s.Sandis (India) Pvt. Ltd.,  
Manour House  
100, Harrington Road  
Chennai 31.

.. Respondent (Tenant)

Civil revision petition preferred under Sec.25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 against the decree and judgment passed in RCA No.291 of 2002 on the file of the VIII Judge, Small Causes Court Appellate Rent Controller, Chennai, on 5.9.2003.

For Petitioner : Mr.P.S.Raman Senior counsel for  
Mr.P.R. Raman

For Respondent : Mr.M.Sudhakar  
for Mr.R.Subramanian

ORDER

Challenge is made to the judgment of the Rent Control Appellate Authority namely the VIII Judge, Court of Small Causes, Madras, made in RCA No.291 of 2002 whereby the order of the Rent Controller namely the XV Judge, Court of Small Causes, Madras, allowing the petition in RCOP No.3198/2002 on the ground of owner's occupation, was reversed by dismissing the petition.

2.The Power of Attorney of the revision petitioner-landlady filed the said RCOP under Sec.10(3)(a)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 inter alia alleging that the petition mentioned premises belonged to the landlady; that pursuant to the agreement of tenancy entered into between the parties on 18.7.1985, the respondent-tenant has been in occupation of the building; that the monthly rental was Rs.2,250/-; that an advance of Rs.10,000/- was paid; that the husband of the petitioner

is a Medical Practitioner in the Mission in the foreign country; that after the assignment, they were to come back to India; that her son is being educated in India; that all of them wanted to come back to their residence in India; that there was a request made by the petitioner through the Power Agent, to the respondent to vacate the apartment; but, it was being denied; that there was exchange of notices, and under the circumstances, there arose a necessity for filing the petition for eviction before the Rent Controller.

3.The petition was resisted by the respondent-tenant on the grounds that the petition itself was not maintainable under Sec.10 (3)(a)(1) of the Act; that the premises was non-residential, and hence, it could not be used for the residence of the landlady; that there was no need for the personal use and occupation of the property; that the reason mentioned therein, is untrue and lacked bonafide; that all of them settled in the foreign country, and hence, the petition was to be dismissed.

4.The learned Rent Controller on enquiry, has recorded a finding in favour of the landlady and allowed the petition. Aggrieved, the tenant took it on appeal. The appellate forum reversed the order and dismissed the petition. Hence, this revision has arisen at the instance of the landlady before this Court.

5.In support of the revision petition, the learned Counsel for the petitioner would submit that the eviction was sought for on the ground of owner's occupation; that P.W.2 was the power of attorney, who has also given evidence before the Court; that there was a letter issued by the landlady; that apart from that, there was also exchange of notice between the parties; that the reasons adduced at the time of the filing of the RCOP, were twofold; that firstly, her son was being educated in the City of Madras, and after his education, he has to occupy the premises; that secondly, the landlady's husband is a Medical Practitioner in an Association in the foreign country; that after his assignment was over, they have to come back to India and settle down in Madras; that for that purpose, the premises is required; and that P.W.1 has categorically given evidence as to the averments found therein.

6.The learned Counsel would further add that the learned Rent Controller has considered the reasons and found it bonafide; but, the appellate forum has reversed the order without considering either the factual or the legal position or the reasons adduced which were true and genuine; that in a given case like this, what was the criteria to be considered was actually the bonafide requirement at the time of the filing of the petition for eviction, and even the subsequent events have got to be considered; that it is an admitted position that the husband of the landlady has retired; that they have to come back to India and settle down in the native land; that they have to live in their own premises at their old age; that there is nothing to show that they have got any other property in the city of Madras; that under the circumstances, the tenant cannot be permitted to say that they could not occupy their own building at this age, and hence, the order of the Rent Controller

has got to be restored by setting aside the order of the appellate forum.

7. Contrary to the above, it is contended by the learned Counsel for the respondent-tenant that the Rent Controller has not considered the other reasons or the lack of bonafide on the part of the landlady, but ordered eviction; that it was rightly set aside by the appellate forum; that in the instant case, even at the time of the filing of the RCOP for eviction, the son who was put in education, of the landlady was actually in the hostel, since he did not require the premises; that further, even after the education, he did not require the premises; that what was averred in the petition was that after his education was over in the city of Madras, he went over to London; that it is pertinent to point out that the other ground on which the eviction was sought for was that after the retirement of the husband of the landlady, a Medical Practitioner, they have to come from Switzerland to India so that they could have the residence in the Indian parts; that after his assignment was over in Switzerland, he went over to London; that the circumstances that the son was being educated in Madras, and he went over to London, and all the family members were residing in London would clearly indicate that they did not require the property for their occupation; that the allegation that the property is required for the son's occupation is nothing but not only a myth and story, but also a reason invented for the purpose of getting an order of eviction; that under the circumstances, the petition was rightly dismissed by the appellate forum, and hence, that order has got to be sustained.

8. The Court paid its anxious consideration on the rival submissions made. It is not in controversy that the respondent herein is carrying on its business in the premises leased out by the landlady in the year 1985 under the agreed rental of Rs.2,250/-, and an advance of Rs.10,000/- was also paid. It is also an admitted position that the rent was also enhanced to Rs.5,000/- per month. As could be seen from the averments made, the property was required for the son's occupation, and though it was found to be a part of the building, certain alterations were made, and it is fit for residential purposes. Hence, the first contention put forth by the tenant was rightly negated.

9. As far as the second contention put forth by the respondent's side that it lacked bonafide was concerned, this Court is of the considered opinion that this contention was rightly rejected by the Rent Controller. In the instant case, it is not in controversy that the revision petitioner-landlady is the owner of the premises. There is no iota of evidence to show that except the property in question, she is owning any other property in the city of Madras. At the time when the petition was filed, she was actually with her husband, a Medical Practitioner, in Switzerland. It is brought forth in the affidavit filed by the power agent of the landlady in support of the petition that after the assignment was over, they have to come back to the native land and reside in the city of Madras, and to occupy the premises which is in the occupation of the



respondent-tenant at that time. Now, the assignment was over in Switzerland, and they are actually in London. It could be seen that the landlady is aged about 60, and her husband is also a retired Medical Practitioner. They wanted to come back to the native land and live in their premises at their age. Once there is no other property which is available for them at their old age, and they got the desire to leave London and settle down in the native land, the law would not put forth any impediment for such a desire being fulfilled.

10. In the instant case, it is true that the son who was educated at the time in Madras, was actually in the hostel, and after the education was over in Madras, now, he is in London. As pointed out by the learned Counsel for the respondent, for the son's need, it cannot be a correct reason for which eviction should be ordered. It is true that in a given case, the crucial event should be taken as on the date when the petition for eviction was filed. But, in the instant case, the subsequent events must also be taken into consideration. Even now, they are staying over in London, and their desire is to come back to the native land and reside in their own property. Except this property, there is no other property owned by or available for them. Under the circumstances, if the petition is dismissed and if they come back, they could not reside in or enjoy the property. When a person owns the property, automatically the right to enjoy would follow. In the instant case, if the petition is dismissed, the right to enjoy the property would be negatived. The test to be applied under the circumstances, is whether the requirement is bonafide. Once the landlady wants to come back to India along with the husband who is a retired person, and they want to reside in their property, this Court is of the opinion that no question of lack of bonafide would arise, and it could be very well inferred that it is genuine. In such circumstances, the order of the Rent Controller is restored, and the appellate forum's order is set aside. Consequently, the order of eviction is sustained.

11. Taking into consideration the fact that the respondent is running its office there, this Court feels that sufficient time should be given to enable the tenant to find out a suitable accommodation. Accordingly, this Court grants 15 (fifteen) months' time to the respondent to vacate and hand over possession. An affidavit of undertaking should be filed within a period of two weeks herefrom.

12. Now, it is brought to the notice of the Court that originally, RCOP for fixation of fair rent was filed; that it was fixed at Rs.19,000/- and odd; that challenging the same, both the parties have preferred appeals; that those appeals are pending before the appellate forum, and the parties are awaiting disposal. Under the circumstances, this Court is of the considered opinion that the respondent-tenant cannot be permitted to occupy the property without paying the rent. Accordingly, the tenant is directed to make payment of rental at the rate of Rs.10,000/- per

month till the disposal of those appeals or handing over possession whichever is earlier. This civil revision petition is, accordingly, allowed. No costs.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To;

- 1.The Rent Control Appellate Authority  
The VIII Judge  
Court of Small Causes  
Madras
- 2.The Rent Controller  
The XV Judge  
Court of Small Causes  
Madras
3. The Section officer,  
VR Section,High Court, Madras

1 cc to Mr.P.R. Raman, Advocate, Sr. 48153  
1 cc to Mr.R. Subramanian, Advocate, Sr. 47635

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