

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.04.2008

CORAM

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

C.R.P. (NPD) .No.2223 of 2004
and
C.M.P.No.16916 of 2004

1.Varadharajan & Co.,
49 Chetty Street,
Panruti Taluk.

2.Radhakrishnan Pillai & Co.,
49, Chetty Street,
Panruti Taluk.

3.Varadharajan
4.Pushpanathan
5.Thirupura Sundarai
6.Udayakumari
7.R.Balasubramaniam

Kasthuri Krishnan

.. Petitioners

.. Respondent

Prayer:-This revision has been filed under section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act against the order dated 2.4.2004 in RCA.No.6 of 1996 passed by the learned Subordinate Judge (Rent Control Appellant Authority), Panruti, reversing the order dated 28.11.1994 in RCOP.No.9 of 1990 on the file of the District Munsif, (Rent Controller), Panruti.

For Petitioners : Mr.R.Sunil Kumar, Advocate
For Respondent : Mr.R.S.Varadarajan, Advocate

ORDER

This revision has been preferred against the judgment in RCA.No.6 of 1996 on the file of the learned Subordinate Judge (Rent Control Appellant Authority), Panruti, which had arisen out of the order in RCOP.No.9 of 1990 on the file of the District Munsif, (Rent Controller), Panruti.

2.RCOP.No.9 of 1990 was filed by the landlord under Section 10(2) (i) and 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act (hereinafter referred to as 'the Act'). According the petitioner in RCOP.No.9 of 1990 / landlord, the petition scheduled property beloned to the first petitioner absolutely and it is not a residential building, but a shop which is used for business purposes. The first petitioner had entered into a partnership agreement with the respondents 3, 4 & 6 and as per the terms and conditions of the partnership deed dated 1.4.1981, he was carrying on business in grocery in the name and style of 'Sri Rajeswari Stores, P.Sinivanan Pillai & Co'. The said business is being carried on by the respondent in the petition scheduled premises in the capacity of tenant under the first petitioner, who is the landlord. The rent was deposited in the account of the first petitioner by the respondent. The respondents 3 to 6 also carrying on business in the same petition scheduled property in the name and style of 'R.Varadharajan & Co.'. Thereafter, the first petitioner came out of the partnership and the respondents are carrying on business after changing the name of the partnership. The first petitioner required the petition scheduled premises for his own use and occupation ie., for carrying on his business, since he (first petitioner) is carrying on his business in a rented premises, which belongs to one K.V.Muthaiya Chettiar. The said rented premises is so small and tiled building, which is not sufficient for the first petitioner to carry on his business. Only for expanding his existing business, the first petitioner requires the petition schedule building for his own business, which he is carrying on in the rented premises. The petitioners have further alleged that the respondents have committed willful default in payment of rent from 1.4.1989 till 31.3.1990. So on the ground of willful default also the petitioner filed the petition for eviction.

3.The respondents in their counter would contend that Radhakrishnan Pillai & Co., is not registered under the provisions of the Indian Partnership Act and in the eye of law, they are non-est. Only the respondents 3 to 6 are liable to be sued as tenant. It is true that the first petitioner being the landlord and as well as one of the partners in the business under the name and style of 'Sri Rajeswari Stores P.Srinivasan Pillai &Co.', the rent due to him was credited in his account annually as per the agreement between the parties to that effect. Even after his exit from the business namely 'Sri Rajeswari Stores P.Srinivasan Pillai & Co.", the first petitioner continued to receive the rent in a lump-sum per annum as per the original agreement between the parties. Accordingly, the first petitioner received the annual rent of Rs.3,500/- representing the rent for the year ending March-1989. Thereafter, annual rent was increased to Rs.4,000/-. There

was no arrears of rent and the respondents have not committed any willful default in payment of rent. The first petitioner's claim that he requires the petition scheduled building for the purpose of his own business cannot be sustainable. The petitioner has got several non-residential buildings at his command, both of his own and of rental premises, some of them equally spacious as that of the petition mentioned property and some others are larger than the petition mentioned property to run the respective business. Hence, it is false to contend that the petitioner requires a bigger place like the petition mentioned terraced property for his expansion of business. The reasons alleged in support of the petitioner's personal claim for personal occupation of the property are all false and made for the occasion. Hence, the petition is liable to be dismissed.

4. The respondents have filed an additional counter statement contending that the first petitioner had failed to maintain the building and that if an Advocate Commissioner is appointed the said position will come to light.

5. The petitioners have filed a reply counter contending that the repair works and improvement in the petition mentioned building are being properly carried by the petitioners and the respondents have not carried out even a minor repair in the petition scheduled building.

6. Before the learned Rent Controller the first petitioner has examined himself as P.W.1. (After first petitioner's death during pendency of RCA, his son - second petitioner was examined as P.W.2). Rent deed between the first petitioner and the respondents dated 7.12.1959 was marked as Ex.P.1. Through P.W.2 Ex.P.2-Will dated 1.7.1988 was marked on 20.6.2000. On the side of the respondents, R4 was examined as R.W.1 and one Vadivel was examined as R.W.2 and Ex.R.1 to Ex.R.15 were marked.

7. On the basis of the oral and documentary evidence, the learned Rent Controller finding that the petitioners are not entitled to the relief asked for in the petition, had dismissed the RCOP.No.9 of 1990. Aggrieved by the findings of the learned Rent Controller, the landlord had preferred RCA.No.6 of 1999 before the Rent Control Appellate Authority / Subordinate Judge, Panruti. The Rent Control Appellate Authority after giving due deliberations to the submissions made by the learned counsel on both sides and after going through the order of the learned Rent Controller and after weighing and after scrutinizing the evidence adduced before the Court, has allowed RCA.No.6 of 1996 in part, thereby setting aside the findings of the learned Rent Controller in respect of Section10(3)(a)(iii) of the Act and dismissed RCA.No.6 of 1996 in respect of the findings of the learned Rent Controller under Section 10(2)(1) of the Act, which necessitated the tenants / respondents in RCOP.No.9 of 1990 to prefer this revision.

8. Heard the learned counsel for the revision petitioners as well as the learned counsel for the respondents and considered their respective measures.

9. The learned counsel for the revision petitioners would contend that in the rent control petition the first petitioner has stated that the petition scheduled building is required only for expanding his business and he has not stated that the building is required for the second petitioner, who is none other than his son, and so after the death of the first petitioner, nothing survives in RCOP and the second petitioner cannot maintain the petition since he has no cause of action. The learned counsel for the revision petitioner would further contend that even according to P.W.1 / first petitioner, the second petitioner is carrying on his business at Neyveli and hence, the petition scheduled premises is not required for him for expanding his business. Relying on 2000 (II) MLJ 339 (Murugan Finance, Arni Vs. Senthilnathan), the learned counsel for the revision petitioners would contend that requirement of the building under Section 10(3)(a)(c) of the Act must continue till the final disposal of the eviction petition and since the first respondent alone had required the petition scheduled building for expanding his own business, after his death, the requirement does not continue and hence, the present second petitioner / respondent herein cannot maintain the RCOP. No. 9 of 1990 after the death of his father, who is the first petitioner in RCOP. No. 9 of 1990. The facts of the said ratio is that:

"The landlord filed an application for eviction on the ground that he requires the schedule building for his own occupation as additional accommodation and also on the ground that the building requires immediate demolition and reconstruction. The respondent was a tenant continued to be a tenant of the landlord after purchase of the petition scheduled building by the petitioner and the tenancy was also attorned. It was averred that the landlords are doing wholesale and retail business under the name and style of 'Bhaggyam & Co' in the rented building and so they wanted the petition scheduled building for their own use and occupation. After the purchase of the petition scheduled building, the landlord had intimated the respondent about the purchase of the petition scheduled building by him and also about his requirement. The tenant had agreed to vacate the premises, but required two years period. Inspite of waiting for more than three years, the tenant did not vacate. Therefore eviction petition was filed after issuing layer's notice.

The relevant observation in the said ratio for the purpose of deciding this case runs as follows:-

The decision relied on by the counsel for the petitioner in J.Jermon's case A.I.R. 1999 SC 3041, cannot have any application to the facts of this case. In that case, their Lordships set aside the order of the High Court based on the plea of subsequent events, for which there is no pleading. Landlord claimed eviction on the ground that he required the building for his own occupation, but pending proceeding, he wanted to take note of subsequent events and claimed eviction on the ground that the requirement comes under Section 10(3)(a)(c) ie., additional accommodation. Since there was no pleading to that regard. Their Lordships considered it between 10(3)(a)(iii) and 10(3)(c) and remitted the matter, enabling the parties to file additional pleadings and lead evidence. In this case, the landlord has already pleaded both his claim under own occupation and also his case for own occupation for additional accommodation. Both the Authorities have also held that the tenant is in occupation of other premises and therefore, he will not be put to greater hardship. But, that by itself will not be sufficient to confirm the order. Merely because, the tenant is in occupation of other premises, the landlord is not entitled to take possession unless he satisfies the grounds under the Rent Control Act while considering the grounds for eviction. While considering the requirement, the law is settled that the requirement must continue till the final disposal of the eviction petition. That means, the subsequent events also will have to be taken into consideration by Court."

It is seen from the facts of the said case that originally the petition was filed for own occupation, but subsequently the evidence was let in as to the effect that the landlord required the building for additional accommodation. Only under such circumstance, it has been held that the requirement from the inception of RCOP till the disposal of the RCOP shall be on the same ground and no event the ground can be altered till the disposal of the petition. Further in the said ratio the landlord had subsequently raised a plea that since the tenant is not in occupation of the petition scheduled building and was in occupation of three other buildings, he required the petition scheduled building for additional occupation giving a go by to his original ground of owner's occupation. Under such circumstance, it has been held also in the said ratio that the claim on the basis that the tenant is in occupation of the other premises is not a ground to allow the application unless the landlord satisfies the ground under the Rent Control Act for eviction. So the above said facts of the said case will not be applicable to the present facts of the case.

10. In the case on hand along with the first petitioner, the second petitioner, who is the son of the first petitioner, also in the array of parties at the time of filing of RCOP. So after the death of first petitioner, the action taken by the first petitioner will continue as rightly contended by the learned counsel appearing for the respondent

herein, who has based his reliance on 1976 (1) MLJ 128 (Vijayaraghavan Vs. Mohammed Yakub Rowther (died) and others), wherein the relevant observation runs as follows:-

"Whatever may be said of the general principle *actio personalis moritur cum persona* which itself has some exceptions, that general doctrine cannot be inducted as a matter of course into decisions obtained under peculiar circumstances and under given conditions and prescriptions as per the special enactment. The Tamil Nadu Buildings (Lease and Rent Control) Act provides for certain reliefs in favour of landlords and concurrently enables the tenants to continue in occupation of the demised premises unless they are compelled to surrender that possession by an invocation of the special law. Therefore, if a landlord or a landlady, as the case may be, comes to Court and obtains possession whereby the tenant would be obliged to surrender possession not under a contract, but under the provisions of a statute and that too under the stringent clauses, the invocation of which alone could enable the landlord or landlady to obtain possession, then such a right cannot be barely characterized as a personal right which ought to die with the person concerned. The exception to the above doctrine that the personal right dies with the person can certainly be invoked having regard to the peculiar nature of the right obtained by the landlord or landlady under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960).
.....

The Supreme Court would say that a case in which the petitioner's death occurs after a decree for possession is passed in his favour, say, during the pendency of the appeal filed by the unsuccessful tenants is one of the many categories of cases which ought to be distinguished from the generality of cases which usually arises for consideration. Dealing with such a category, the Supreme Court observed:

Cases falling under this category are distinguishable because the decisions therein are explicable on the basis, though not always so expressed that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and therefore the legal representatives are entitled to defend further proceedings, like as appeal, which constitute a challenge to that benefit."

11. After the death of the first petitioner, the second petitioner has deposed before the trial Court as P.W.2. P.W.2 would depose that on 1.7.1988 his father had executed a Will and as per Ex.P.2-Will 'C' schedule to the said Will, which is the petition scheduled property in RCOP.No.9 of 1990 on the file of the District Munsif, Panruti, has been bequeathed in favour of him and that after the death of his father, the said Will came into force and as per the terms of the Will the beneficiaries are enjoying their respective shares allotted under the

Will and he would further categorically depose that as per the said EX.P.2 - Will petition scheduled property belongs to him (P.W.2 - second petitioner). The learned counsel for the revision petitioners would contend that even as per the evidence of P.W.1, P.W.2 is having a shop at Neyveli and that he is looking after the said shop and so he would contend that the second petitioner is not carrying on any business in the petition scheduled building. But in this regard absolutely not even a suggestion was put to P.W.2 as to the effect that he is not carrying on his business in the petition scheduled property after the death of his father (first petitioner). In this connection the learned counsel for the respondent relying on 1992(1) LW 290 (N.s.Gopalan Vs. S.L.Maheswari) would contend that even under the Will the son can prosecute the claim made by his father in RCOP. The exact observation in the above said ratio runs as follows:-

"The tenant challenged the validity of the order of the Rent Controller directing that upon the death of the petitioner / landlady during pendency of the RCOP, the beneficiary under a registered Will executed by her be impleaded in her place. It was contended for the tenant/revision petitioner that it was not open to the beneficiary under the will to prosecute the eviction proceedings.

Rejecting the contention, it was held that the Will is a registered one. AS such, a *prima facie* case has been made that the beneficiary under a registered Will was entitled to prosecute the eviction proceedings initiated by the testator. In case the tenant feels that the Will is a forgery, it is open to him to take appropriate proceedings attacking the genuineness of the Will. Hence, there is no illegality or irregularity in the order of the Court below."

12. The learned counsel for the respondent would contend that the eviction was ordered by the Rent Control Appellate Authority finding that the requirement is a *bona fide* one and that such finding is a conclusion of fact and this court while exercising the revisional jurisdiction cannot interfere with the findings regarding the question of fact. In support of this contention, the learned counsel for the respondent relied on a ratio in 2006(1) MLJ 322 (R.K.Nair, Sole Proprietor, R.K.Engineering Enterpris, Chennai, Vs. Saramma George and others), wherein the ratio *decidendi* runs as follows:-

"As a matter of fact in the above cited case S.Mariappan Vs. Kadar Beevi (1997)3 LW 141, it was held that the pleading regarding *bona fide* need is always a question of fact; when both the Authorities below have concurrently come to the correct conclusion that the claim of the landlord is *bona fide*, the revisional jurisdiction of this court becomes restricted."

13. The learned counsel appearing for the revision petitioners relying on 1991(2) Kar.L.J. 219 (DB) (Yasimsab Fakruddinsab Dori Vs. Basappa A/F Basappa Hangaraki (dead) by L.Rs), would contend that on the death of the landlord during pendency of the eviction petition, the legal representatives are not entitled to the benefit of the order of eviction. The relevant observation in the said dictum runs as follows:-

"The right to continue the causes by the LRs, in a petition under Section 21(1)(h), in turn, depends upon the plea raised in the petition viz., as to whether the possession of the premises is sought on the ground that it is required for the landlord and/or for the members of his family. If no plea is raised in the petition that the premises is also required for the use and occupation of the members of the family and/or for running the business in the case of seeking possession for non-residential purpose that the premises are required by the landlord and/or by the members of his family, the cause will not survive on the death of the landlord. In the light of the plea raised by the original landlord, the cause of action perished with the death of the original landlord are not entitled to continue the proceedings."

This ratio will inure to the benefit of the revision petitioners, if the RCOP was filed by the first petitioner alone, who died pending RCA. But in the case on hand the RCOP was not only filed by the first petitioner but also by his son second petitioner claiming that the petition scheduled property is required for expanding the business run by the first petitioner in Door No.50. After the death of the first petitioner, P.W.2 / second petitioner had entered into the box claiming that the petition scheduled property has been bequeathed by his deceased father first petitioner under Ex.P.2 - Will in his favour and that the beneficiaries under Ex.P.2-Will are enjoying their respective shares allotted under Ex.P.2-Will in terms of the Will. P.W.2 has further categorically deposed to the effect that as per the terms of the Will he had taken possession of the petition scheduled shop and he is in possession and enjoyment of the same. Under such circumstance, it cannot be said in the facts of the present case that after the death of the first petitioner, the legal representatives of the first petitioner / landlord are not entitled to continue the proceedings because in this case only along with the second petitioner / son, the first petitioner / father had filed RCOP.9 of 1990 for eviction. So the dictum in 1991(2) Kar.L.J. 219 will not be applicable to the present facts of the case.

14. The ratio decidendi in 1993 (II) MLJ 442 (M/s.Sultan Hardware Corporation and others Vs. CT.Meiyammai Achi and others), is as follows:-

"The principles laid down by the various decisions referred to supra, would go to fortify the stand taken by the learned counsel for the respondents. The judicial opinion throughout appears to have been consistent for more than two decades in holding that so

long as the basis or ground on which the additional accommodation was sought for subsisted and continued even after the death of a landlord/landlady who initially filed the application for eviction of a tenant and recovery of possession under Section 10(3)(c), the legal representatives are entitled to continue the proceedings for their benefit also and the same do not come to an end with the death of the landlord who initially filed it. This view appears to have gained ground with courts on the peculiar nature of the right secured to the owner of the property under the Act and also on account of such right and claim being an adjunct to the rights in the property as such and also fortified by the bona fides in the requirement for additional accommodation when as in the present case, the owner has filed the application seeking recovery of possession as additional accommodation for the business that was being carried on in the same premises and it is also shown that notwithstanding the death of the erstwhile owner, the legal representatives who stepped into the shoes of the landlord have also succeeded to the business and successfully continuing the same. There will be no rhyme or reason or logic in stating that the application for eviction should be also held to have suffered a natural death with the person who filed it."

There cannot be two opinion with regard to the above said proposition of law. But the only difference is that RCOP.No.9 of 1990 was not filed by the first petitioner alone. RCOP.No.9 of 1990 was filed by both the first petitioner and the second petitioner, who is none other than his son. After the death of the first petitioner pending RCA, the second petitioner has deposed to the effect that the petition scheduled building has devolved on him under Ex.P.2-Will. Under such circumstance, as correctly stated by the learned counsel for the revision petitioners, the maxim *actio personalis moritur cum persona* will not be applicable to the present facts of the case, since the son, the legal heir of the first petitioner, is already in the array of parties as second petitioner in RCOP.No.9 of 1990 even at the time of filing of RCOP.No.9 of 1990. So the dictum in 1993 (II) MLJ 442 will not be applicable to the present facts of the case.

15. For the same proposition of law the learned counsel for the revision petitioners relied on 1993(2) LW 217 (S.G.Ponnambalam and another Vs. T.A.Palanivelu). The learned counsel appearing for the revision petitioners would contend that in the absence of any pleading and averment in the petition as to the effect that the second petitioner is associated with his father / first petitioner in business prior to his death, he is not entitled to any relief in the petition. But in the case on hand, the second petitioner claimed his right and title in respect of the petition scheduled property only under Ex.P.2-will. According to P.W.1-First petitioner, he was carrying on his business in the shop No.51, Door No.50, which belongs to a trust and that he was carrying on business in the same place for nearly 40 years and that he requires the petition scheduled building, in which the revision

petitioners herein are conducting their business as tenant, only for the purpose of expanding his business, which is being carried on at Door No.50. P.W.1 has further deposed to the effect that the second petitioner was running his business at Neyveli, but he used to go from Panruti. Even in the petition the first petitioner has not stated that the petition scheduled building is required for expanding the business of the second petitioner. He has categorically stated that he requires the building for expanding his business, which he is carrying on at Door No.50. So after his (P.W.1) death the petition scheduled building has been bequeathed to the second petitioner. So as correctly contended by the learned counsel appearing for the respondent that the cause of action for filing of the RCOP does not die along with the first petitioner, but also it survives even to the second petitioner, who gets the petition scheduled buildings under Ex.P.2-Will from the first petitioner and steps into the shoes of the deceased first petitioner in asking the petition scheduled property, which has been bequeathed under Ex.P.2-Will by his father, for expanding the business already run by the first petitioner in Door No.50 (Shop No.51), which belongs to the Trust.

16. Further the two ingredients under Section 10(3)(a)(iii) of the Act are that on the date of filing of the petition the petitioner or his family members shall not have any other non-residential buildings in his own or in the name of his family members; and the petitioner or any member of his family is not carrying on any business in a non-residential building, in the city, town or village. There is no material placed to show that the petitioners in RCOP are having yet another non-residential building apart from the one scheduled to the petition. The business carried on at Door No.50 (Shop No.51) belongs to a trust and it is a rented building as per P.W.1. Under such circumstance, I do not find any reason to interfere with the well considered order of the Rent Control Appellate Authority / Subordinate Judge, Panruti, in RCA.No.6 of 1996 in arriving at a conclusion that the petitioners in RCOP.No.9 of 1990 are entitled to evict the tenants / respondents in RCOP.No.9 of 1990 under Section 10(3)(a)(iii) of the Act.

17. In fine, this Civil Revision Petition is dismissed confirming the judgment in RCA.No.6 of 1996 on the file of the Subordinate Judge, Panruti (Rent Control Appellate Authority). Time for vacating and handingover vacant possession four weeks from this date. No costs. Connected Miscellaneous Petition is closed.

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Asst.Registrar

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Sub Asst.Registrar

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To,

1. The Subordinate Judge, Panruti.
(Rent Control Appellate Authority)
2. The District Munsif, Panruti.
(Rent Contoller).

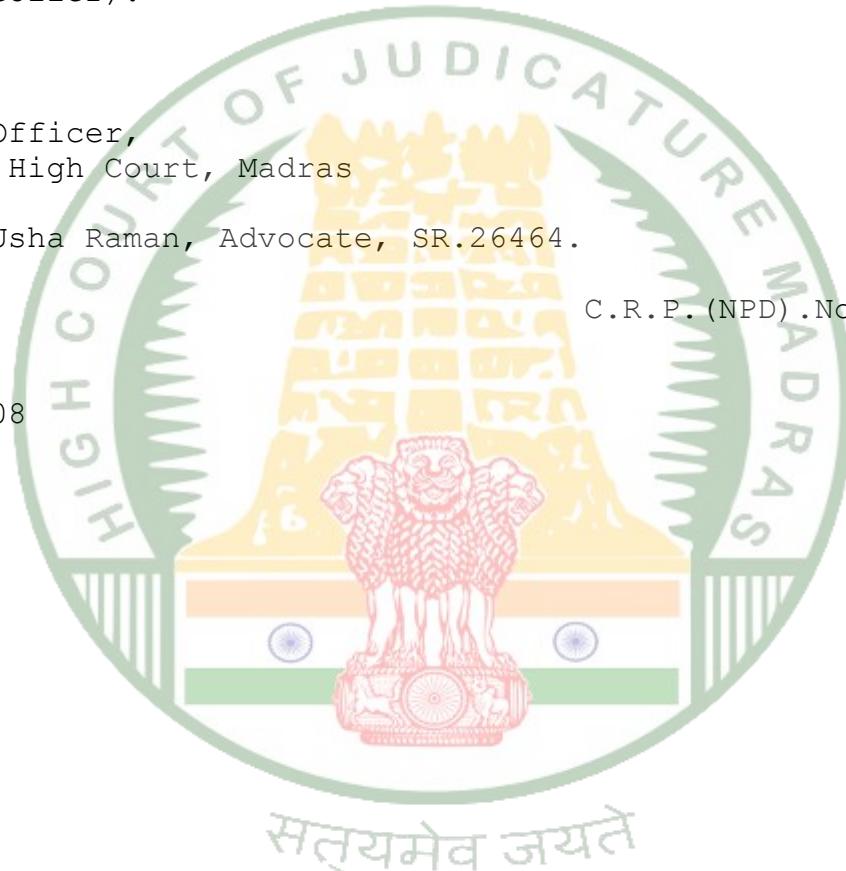
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The Section Officer,
V.R.Section, High Court, Madras

1 cc To M/s.Usha Raman, Advocate, SR.26464.

C.R.P. (NPD) .No.2223 of 2004

CMP (CO)
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