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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 08.04.2019

Delivered on : 30.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (PD) .No.319 of 2019

and

C.M.P (MD) .No.1534 of 2019

P.Ramachandran : Petitioner/Petitioner/Respondent

Vs.

Tayub Haji Ismail : Respondent/Respondent/Petitioner

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.311 of 2018 in R.C.O.P.No.18 of 2017 on the file of the Principal Rent Controller (Principal District Munsif), Madurai Town.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.M.P.Senthil
For Respondent : Mr.S.Subbiah, Senior Counsel
for Mr.G.Aravinthan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.311 of 2018 in R.C.O.P.No.18 of 2017 on the file of the Principal Rent Controller (Principal District Munsif), Madurai Town.

2.The brief facts of the case are as follows:

2.1. The respondent / petitioner is the absolute owner of the entire building bearing door No.9-A, Jadamuni Koil Street, Madurai Town. The entire property originally belonged to one Mrs.C.R.Kasturi and four persons. The said persons have sold the said property in favour of the respondent / petitioner by means of four registered sale deeds dated 30.03.2015. Pursuant to which, the respondent / petitioner became the absolute owner of the entire property.

2.2.The vendors of the property, in respect of a portion of the above said property rented out to the petitioner/tenant at Rs.3,437.50 per month. Such rent should be paid by the petitioner/tenant on or before 5th of every English calender month. The petitioner/tenant shall utilize the said premises for the purpose of carrying out textile business.



2.3. The respondent / landlord submits that after negotiation with the vendors of the said property, the respondent approached the petitioner and other occupants of the property for vacating the premises as he is going to demolish the entire structure and put up a modernized commercial building. The petitioner as well as other tenants, who were in occupation of the said property, were well aware with regard to the proposed sale. Thereafter, the respondent purchased the entire property by way of four registered sale deeds dated 30.03.2015. Therefore, all the tenants agreed to vacate their respective portions. The petitioner sought one year time for vacating the said premises. However, the respondent disagreed with the same and stated that the demolition work shall be commenced within a period of one month and the same shall be completed before within a period of three months from the date of delivery of possession. Therefore, the petitioner is bound to vacate the premises under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to the 'Act'). Hence, the respondent/landlord has filed a petition in R.C.O.P.No.18 of 2017 before the learned Rent Controller (Principal District Munsif), Madurai Town, for eviction on the ground of demolition and reconstruction of the property in question.

3.The learned counsel for the petitioner/tenant has filed a statement of objection stating that the petition mentioned property is not in a dangerous or dilapidated condition. He further submits that the respondent is not having adequate and necessary funds for such new construction as he is unable to mobilize such funds from other sources. It is not true that the respondent/landlord has taken necessary steps to obtain a building plan approval from Madurai City Municipal Corporation. He further submits that the respondent intends to resell the property to third parties for higher price. The said sale deeds did not disclose the fact that the building is in dilapidated condition and also the tenants are in occupation. When the respondent purchased the said property, the entire portions were occupied by the tenants. If the petitioner/tenant would be vacated from the property, he has to windup his business and hence, a heavy damage would be caused to petitioner/tenant. Hence, the petitioner contends that the petition in R.C.O.P.No.18 of 2017 is not maintainable either in law or on facts.

4.Pending R.C.O.P., the petitioner/tenant filed an interlocutory application in I.A.No.311 of 2018 under Rule 12(2) of the Tamil Nadu Buildings Lease and Rent Control Rules 1974, (hereinafter referred to 'Rules) seeking not to accept the proof affidavit filed by the respondent/landlord and also to direct him to let in oral evidence. In the said I.A., the tenant stated that the landlord has come forward with a proof affidavit to be filed in the above R.C.O.P., so as to let in evidence on his side. The
chief examination of respondent by filing proof affidavit is not maintainable under the Tamil Nadu Building Lease and Rent Control



Rule/Act, since the said Rule/Act have not been amended, so as to empower the learned Rent Controller to record the evidence by way of filing proof affidavit.

5. The learned counsel for the petitioner/tenant has raised his averments in the affidavit filed in I.A.No.311 of 2018 by stating that though other Acts viz., Negotiable Instrument Act, Motor Vehicles Act and C.P.C., were amended, the Tamil Nadu Building Lease and Rent Control Act has not been amended to let in evidence by filing proof affidavit. Rule 12(2) of the Tamil Nadu Buildings Lease and Rent Control Rules 1974, clearly mentions that **the learned Rent Controller shall also record a brief note of the evidence of the parties and witnesses, if any, examined on either side; and upon the evidence so recorded and after consideration of any documentary evidence which may be produced by the parties and pass order on the application.** Under such circumstances, the proof affidavit filed by the respondent/landlord is not maintainable due to non-making suitable amendment in the Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 as amended Act 24 of 1974. Hence, the petitioner/tenant prays not to accept the proof affidavit filed by the respondent/landlord in the aforesaid proceedings and direct him to let in oral evidence in the above said case.

6. The attitude of the petitioner/tenant has been countered by the respondent/landlord by stating that the intention of the petitioner is only to drag on the proceedings. Reliance is based on the judgment of this Court reported **in 2018(3) T.N.L.J(Civil) 445**, which is applicable to the present case on hand.

7. In the said I.A., the learned counsel for the respondent/landlord has filed a counter statement by stating that Rule 12(2) of the said Rules read with Order 18 Rule 4 of C.P.C. **Provides and enables and in fact permits to file proof affidavit, instead of examination of the witnesses.** Further, the learned counsel brought to the notice of the judgment of this Court reported **in AIR 2006 Madras 190 = 2006(1) Law Weekly 785 in the case of Raoul Vs. Thierry Sandammalle**, which permits the Rent Controller to accept evidence in Chief by means of filing proof affidavit, instead of taking oral evidence in Chief by examining the witnesses in Court for hours together consuming much of time of the Court in recording chief examination.

8. Rule 12(2) of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 is extracted as follows:

"(2) The controller or the authorised officer or an officer authorised by him, as the case may be, shall give to the parties a reasonable opportunity to state their case. He shall also record a brief note of the evidence of the parties and witnesses, if any, examined on either side; and upon the evidence so recorded and after consideration of any documentary evidence which may



be produced by the parties, pass order on the application".

9. The learned counsel for the respondent/landlord further submitted that petitioner/tenant cannot have any grievance or get prejudiced by filing the proof affidavit as contemplated under Order 18 Rule 4 C.P.C. In support of his contention, the learned counsel for the respondent has quoted the **statement of object and reasons of the Amendment Act, 2002** as well as authoritative pronouncement of Apex Court **reported in AIR 2004 Page 355**. Hence, the contention of the respondent/landlord is that the amendments are being made in the Code of Civil Procedure from time and again to meet the contingencies, particularly, the amendments incorporated by the **Amendments Act 22 of 2002** with regard to the **"recording of evidence"** which was brought out in order to give a speedy and substantial justice to the litigant across the country. Hence, the Rent Controller is having ample powers to record the evidence by invoking Order XVIII Rule 4 C.P.C., and the same is extracted hereunder:

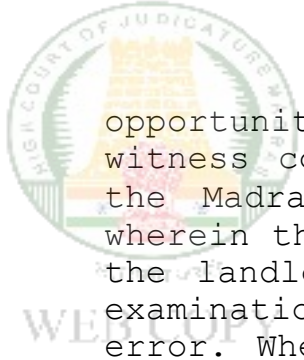
"4. Recording of Evidence: (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

provided that where documents are filed and the parties rely upon the documents, the proof and the admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court"

Therefore, the learned counsel for the respondent/landlord sought for dismissal of the said petition.

10. The Rent Control Authority by referring the contentions raised and the cases relied upon by the petitioner as well as the respondent, discussed that the procedure has been contemplated under Rule 12(2) of the said Rules and taken into account the fact that the Rent Control proceedings is a summary proceedings, admittedly the Tamil Nadu Buildings Lease and Rent Control Rules were passed in the year 1974 and even in the Civil Courts until the C.P.C., was amended in the year of 2001-2002, the evidence of the witnesses have been recorded in the open Court for taking chief examination and not by way of proof affidavits which were prepared elsewhere. The amendment made to C.P.C., enable the Civil Courts to record the Chief Examination by way of proof affidavit.

11. The trial Court further observed that the Tamil Nadu Buildings Lease and Rent Control Rules were not correspondingly amended, after amendments made to C.P.C., in this regard. In the Rent Control Cases before the Court, the Court used to receive any evidence of chief examination only by proof affidavit. The proof affidavit of the parties shall be filed in the open Court and the witness will be called to the witness box to prove the evidence in Chief examination by way of proof affidavit. Thereafter, adequate



opportunity will be given to the other side to cross examine the witness concerned. The said view was accepted by the decision of the Madras High Court reported **in AIR 2006 (Madras) Page 90**, wherein this Court has held that accepting the proof affidavit from the landlord with a liberty of subjecting the witness for cross examination by the other side in person before the Court is of no error. When there are contra decisions on the same issue the one appears to be acceptable by the Court can be followed.

12.The trial Court has further contended that in the decision of this Court in the case of **S.Meganathan Vs.Sankaran alias Sankara Moorthy**, dated 18.07.2017, it has been held that Order 1 Rule 10 C.P.C., is not applicable to the Rent Control Cases. The Tamil Nadu Buildings Lease and Rent Control Act and Rules are not exhaustive, even provision for filing of petition to appoint an Advocate/ Commissioner was included under Section 18 Rule 4 C.P.C by way of amendment made in the year 1973. In the above amendment, it was specifically held that while appointing advocate commissioner, the Rent Controller shall have all the powers of a Civil Court under C.P.C. Assuming Order 1 Rule 10 of C.P.C., is not applicable to the Rent Control Proceedings, the power of the impleading a third party is inherent to the Rent Controller.

13.In this case, the Rent Control Authority has analysed all the aspects which are relevant for adopting the procedure regarding the evidence as amended in the C.P.C., The Rent Control Authority has further observed that the petitioner/tenant is making several attempts by way of filing petition after petition to drag on the case. Hence, the said petition was filed by the petitioner/tenant questioning the procedure of Rent Controller in receiving the proof affidavit as oral evidence. After observing all these things, the Rent Control Authority has dismissed the said interlocutory application.

14.Aggrieved against the said order of dismissal, the petitioner/tenant has preferred this Civil Revision Petition.

15.In the grounds of revision, the learned counsel for the petitioner/tenant would submit that the learned Rent Controller has erred in dismissing the present I.A., by accepting the version of the respondent/landlord without advertting to the scope and ambit of Rule 12(2) of the Tamil Nadu Rent Control Rules which mandates that the party should be examined and evidence should be recorded. Further, he would submit that the Rent Controller has misconstrued the whole issues, as if, Order 18 Rule 4 C.P.C., is applicable in rent control proceedings for accepting a proof affidavit, as if like a Civil Court without advertting to the specific provision provided under Rule 12(2) of Tamil Nadu Rent Control Rules relating to the manner in which, the evidence should be recorded in the rent control proceedings.



16.The grievance raised by the petitioner/tenant is that the learned Rent Controller completely over looked the settled principles that the Tamil Nadu Rent Control Act and Rules are self-contained code and Civil Procedure Code is not applicable, except for execution alone, as per Section 18 of Rent Control Act. In such circumstances, the question of invoking Order XVIII Rule 4 C.P.C., to accept the proof affidavit cannot be sustained. Hence, the petitioner/tenant contends that without advertting to the Rent Control Act and Rule, which are self-contained code and the application of C.P.C is only for limited extent alone, the order passed by the learned Rent Control Authority is liable to be set aside.

17.I have heard the rival submissions made by both counsel.

18.In support of his arguments, the learned counsel for the petitioner/tenant has relied upon the order of this Court reported **in 2018(6) CTC 598 (Marry Kutty Koshy Vs.Hemalatha Pushpakaran)**, wherein, it has been held as follows:

"filing of proof affidavit in lieu of chief examination - whether permissible under Rent Control Act and Rules - Rule 12(2) of the Rules contemplates that the Rent Controller should hear oral evidence of witnesses and take our relevant evidence for deciding the issue"

18.1.The fact in the said case is that the landlady sought eviction of tenant on grounds of *bona fide* necessity of additional accommodation. Tenant pleaded relative hardship, if she was asked to vacate the premises since she had spent significantly on improving the demised premises for her businesses based on agreement from the landlady to extend the tenancy. The said landlady has filed a proof affidavit in lieu of chief examination in the rent control proceedings. The tenant objected to the filing of proof affidavit on the grounds that the rent control rules clearly require oral evidence to be taken in open Court and the same cannot be substituted with a proof affidavit, and that it cannot be substituted by the provisions of C.P.C. In the said case, further stated that when law prescribes a particular Act to be done in a particular mode, the same has to be done in that manner and none else. The Hon'ble Supreme Court in the judgment **in Auto Cars Vs. Trimurti Cargo Movers Pvt., Ltd., 2018(2) CTC 343 (SC): 2018 (3) LW 325** has held as follows:

" It is settled rule of interpretation that when the legislature provides a particular thing to be done in a particular manner then such thing has to be done in the same prescribed manner and in no other manner".

18.2.It is also discussed in the said case that the proof affidavit which are being filed are only reproduction of the pleadings and in many cases the proof affidavit contains additional facts not pleaded either in the plaint or in the written statement. Even if the proof affidavit is filed, the witnesses are being put into the box and documents are marked which leads to additional

work. It is further discussed that that the Rent Control is a self-contained Act, the procedure that is contemplated under this Act and its Rules have to be followed to the letter. Therefore, when the rules does not contemplate the chief examination being given in the form of proof affidavit, the order of the Rent Controller rejecting the application filed by the petitioner suffers from infirmity and is liable to be set aside. In the said case paragraph numbers 29, 32, 34 & 35 are extracted hereunder:

"29. Such an amendment has not been incorporated in the Rent control Act or Rules in **T.N. Krishnamoorthy Vs. Jagat Textiles, 1981 (1) MLJ 394** this Court has held as follows:

"The rules framed under Act XVIII of 1960 provide for the procedure to be followed by the Rent controller and the Appellate Authority and deal with certain aspects of the procedure to be followed in certain contingencies. When such a provision is made about the procedure to be followed, in the light of plethora of authorities which have been placed, it is quite obvious that the provisions of the Civil Procedure Code, as such, cannot be invoked while dealing with the petitions arising under Act XVIII of 1960

32. The learned Judge has arrived at his conclusion by taking note only of the amendment in Order 18 Rules 4 & 5 of the Code of Civil Procedure this omission, as rightly pointed out by the counsel for the petitioner, is erroneous. The learned Judge has not considered the fact that even under the Code, upon which the learned Judge has placed reliance, Order 18 Rule 13 provides for a Memorandum of substance of the deposition of each witness being written and signed by the Judge.

34. Though the procedure of filing proof affidavit had been introduced with the object of minimizing the work and judicial time, however what has happened in the course of time is that this system of filing proof affidavit in lieu of oral chief examination has not realized the desired object. The proof affidavit which are being filed are only reproduction of the pleadings and in many cases the proof affidavit contains additional facts not pleaded either in the plaint or in the written statement. Even if the proof affidavit is filed, the witnesses are being put into the box and documents are marked which leads to additional work.

"35. the provisions of the Code of Civil Procedure cannot be read into the Rent Control Act and its Rules particularly when the Rules have prescribed the procedure with reference to the recording of evidence as already



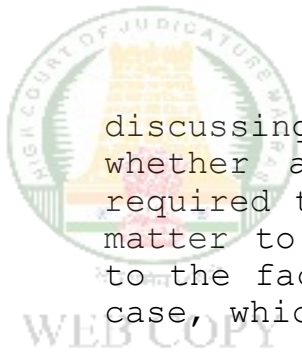
narrated. There is a distinct difference between the recording of evidence as contemplated under the Rent Control Act and recording of evidence as contemplated under the Code of Civil Procedure (barring the provisions of Order 18, Rule 13) after the amendment introduced by Act 22 of 2002, Negotiable Instruments Act and the Family Court Act. Considering the fact that the Rent Control is a self-contained Act, the procedure that is contemplated under this Act and its Rules have to be followed to the letter. Therefore, when the Rules does not contemplate the chief examination being given in the form of proof affidavit the order of the Rent Controller rejecting the application filed by the petitioner suffers from infirmity and is to be set aside".

18.3. In the said case, the arguments advanced by the petitioner/tenant is that after the Amendment introduced by Act 22 of 2002, the Amendments were made in the Negotiable Instrument Act as well as the Family Court Act by incorporating the filing of proof affidavit in lieu of chief examination. However, such amendment has not been brought into the Rent Control Act and the rules continue to read the same as it was even prior to the amendment of the code of Civil Procedure.

19. The learned counsel for the respondent/landlord, in support of his contention, has relied upon the judgment of the **Hon'ble Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. The Union of India reported in (2003) 1 Supreme Court Cases 49**, wherein it has been held as follows:

"Civil Procedure Case, 1908 - Amendments introduced by Amendment Acts 46 of 1999 and 22 of 2002 C.P.C., wherein, it has held that, object of amendment is to prevent plaintiff delaying the issuance of summons by not taking the steps necessary - if therefore plaintiff files process fees and completes other formalities required within 30 days, there would have been sufficient compliance with provisions of Section 27 even if Court is unable or does not issue summons before the expiry of 30 days".

19.1. In the said case, the petitioner challenged the amendments made to the Code of Civil Procedure by Amendment Act 46 of 1999 and Amendment Act 22 of 2002. In the said case, it has been represented by the counsel that some of the amendments which have been made with a view to show that there may be some practical difficulties in implementing the same and contended that some clarifications may be necessary. The required qualification is with regard to the amendment that has been made under Section 27 which deals with summons to the defendant. The other new sections also introduced in the Civil Procedure Code was also discussed under Section 89 C.P.C., In the said case, in paragraph No.18 while



discussing the service of summon, it has also been stated that whether a witness shall be directed to file affidavit or be required to be present in Court for recording of his evidence is a matter to be decided by the Court in its discretion having regard to the facts of the case. The relevant paragraph No.19 in the said case, which reads as follows:

"19. Order 18 Rule 4(2) gives the Court the power to decide as to whether evidence of a witness shall be taken either by the Court or by the Commissioner. An apprehension was raised to the effect that the Court has no discretion and once it decides that the evidence will be recorded by the Commissioner then evidence of other witnesses cannot be recorded in Court. We do not think that this is the correct interpretation of Sub-Rule (2) of Rule 4. Under the said Sub-Rule, the Court has the power to direct either all the evidence being recorded in Court or all the evidence being recorded by the Commissioner or the evidence being recorded partly by the Commissioner and partly by the Court. For example, if the plaintiff wants to examine 10 witnesses, then the Court may direct that in respect of five witnesses evidence will be recorded by the Commissioner while in the case of the other five witnesses evidence will be recorded in Court. In this connection, we may refer to Order 18 Rule 4(3) which provides that the evidence may be recorded either in writing or mechanically in the presence of the Judge or the Commissioner. The use of the word "Mechanically" indicates that the evidence can be recorded even with the help of the electronic media, audio or audio-visual, and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage"

20. The learned counsel for the respondent/landlord has also relied upon the order of this Court in the case of **R. Ashok Vs. Susila Jeyaraj** reported in **2014(4) CTC 762**, wherein it has been held that

"Rent Controller appointed under Act is Court or persona designata - Trapping of Civil Court is criteria to hold Rent Controller as Court."

20.1. The issue involved in the said case is that the tenant filed an application to condone the delay in filing the application to set aside ex parte order. Rent Controller dismissed the said application by holding Section 5 of the Limitation Act, will not apply to the Rent Control Proceedings. As per the provisions of Section 28, which deals with "Summons to Witnesses" subject to such condition and limitation as may be prescribed, the Controller may, in his discretion, issue summons to witnesses requiring them to



attend in person to give evidence or to produce documents in their custody in connection with any proceedings before him. In view of the above said Section, for deciding the issue as to whether the Rent Controller is a Court or not, if the tests afore stated are applied to the powers and functions of the controller constituted under Sub Section (3) of Section 2 of the Act, it becomes, obvious that the afore stated essential trappings to constitute the Controller as Court are found to be present in this case. Therefore, the provisions of Section 5 of the Limitation Act very well apply to the Rent Control Proceedings, in respect of the application to set aside the order of Eviction. In the said case, the relevant portions are extracted hereunder:

"23.The Rent Controller ought to have seen that the fiction created by Section 18 of the Act can be extended only for the limited purpose of exercising the powers vested in a Civil Court, while executing the orders of eviction, such as those provided under Order 21 of the Code, but cannot be extended to matters such as those contained in Order 22 and other provisions of the Code relating to the execution of a decree.

51.In Raju v. Senior Officer, 1993 TLNJ 169 at 172: 1993(2) LW 1711, it has been held that the powers exercisable by the Rent Controller under the Act and the rights adjudicated by him, of the parties, undoubtedly lead to a conclusion that the Rent Controller is a Court. If that be so, in the absence of any specific provision excluding the Application of Section 5 of the Limitation Act and in view of the provisions contained in Sections 3 & 5 of the Limitation Act, it shall have to be held that the provisions of Sections 5 of the Limitation Act are attracted to an Application filed under the Act for setting aside an ex parte Order of Eviction passed by the Rent Controller. It is clear that the Rent Controller cannot be considered to be persona designata.

52.In an another decision in B.C.S.Enterprises v. Ashok Kumar Lunia, 1995(2) CTC 281, it has been observed that the Rent Controller is also a Court and he has got inherent powers to order amendment of pleadings. The earlier view of the High Court that the Rent Controller is a "persona designata" has been given up.

53.In Madan Lal, J. V. P.K.M.S.Jailani Beevi, 1998 (2) CTC 727 : 1998(3) LW 471, it has been held that the Rent Control Authorities are Courts and not persona designata. Authorities constituted under the Act have power to order amendment of pleadings from requirement on the ground of owner's occupation to additional accommodation.



79. Besides the powers exercisable by the Rent Controller under the Act and the rights adjudicated by him, of the rights, undoubtedly lead to a conclusion that the Rent Controller is a Court. If that be so, in the absence of any specific provision excluding the Application of Section 5 of the Limitation Act and in view of the provisions contained in Sections 3 & 5 of the Limitation Act, it shall have to be held that the provisions of Section 5 of the Limitation Act are attracted to an application filed under the Act for setting aside the Order of Eviction passed by the Rent Controller.

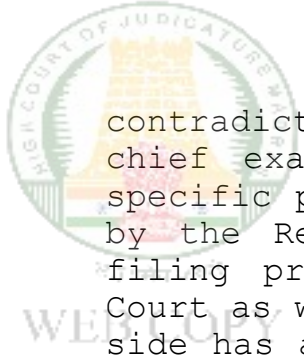
83. Keeping in view of the above facts, this Court finds that the provisions of Section 5 of the Indian Limitation Act are very well applicable to the proceedings pending before the Rent Controller and with this observation, this Court is of the view that the Revision Petition is liable to be allowed and the impugned order is deserved to be set aside"

21. The learned counsel for the respondent/landlord has also replied upon the order of this Court reported **in 2006-1-L.W.785 (Raoul Vs. Thierry Sandammalle)** wherein it has been held as follows:

"C.P.C Order 18 Rule 5 (as amended by Act 46 of 1992 and Act 22 of 2002 w.e.f. 1.7.2002) Practice, Pondicherry Buildings (Lease and Rent Control) Rules (1980), Rule 13(2) Constitution of India, Article 227- Cr.P.C under Art.227 against proceedings before the Rent Controller, permitting the land lady to file proof affidavit as a substitute of statements in the chief examination. The Rent Controller may accept proof affidavit from witnesses so as to form it as chief examination, and subject the witnesses straight to cross examination by the other side, after serving them a copy of the proof of affidavit. Hence, in the said case, accepting the affidavit from the landlady, of course with a liberty of subjecting herself for cross examination by the other side in person before the Court, is of no error and accordingly, dismissed the Civil Revision Petition".

22. The amendment introduced by Amendment Act 46 of 1992 and 22 of 2002 is to minimise the work of the Court and also the time to be saved. The proof affidavit filed before the Rent Control Authority is not an error and irregularity, since the Rent Control Authority is also the Civil Court. Hence, the provision of Code of Civil Procedure regarding amendment is very much applicable to the said Court.

23. In view of the above discussion and based on the citations, this Court is of the view that in order to avoid such



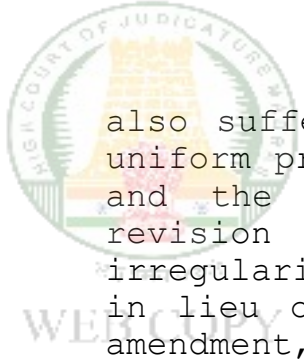
contradictory view regarding filing of proof affidavit in lieu of chief examination, it has observed that in the absence of any specific provision of the Code of Civil Procedure is being adopted by the Rent Control Authority, as discussed earlier. By way of filing proof affidavit for chief examination, much time of the Court as well as the parties are very much restricted and the other side has also been given the right to cross-examine the plaintiffs or defendants, which is in no way prejudice the right of the other party by accepting the proof affidavit for chief examination.

24.If there is any omission or addition is made in the proof affidavit, it is for the other side to observe and act accordingly and it is for the contesting party to identify and contest the same. Further, by applying the procedure followed in C.P.C., regarding the amendment purpose, the provisions can also very well available for amendment of the petition. Though the proof affidavit is the exact version of the plaint, the parties are at liberty to make any amendment with regard to any details that he has furnished in the petition. After making some amendments, the parties will let in oral evidence. since the other side is also furnished with the copy of the affidavit, he has every right and possibility to contest the same. If there is any omission or addition, the provision of C.P.C for amendment with regard to the property or persons, that is also made by the Rent Control Authority. Hence, the procedure laid down in the amended C.P.C., is very much applicable to the Rent Control Proceedings also. In view of the decisions made in the earlier case and also the procedure is being adopted by the Rent Controller in all cases, in the absence of any specific provision. The Rent Controller cannot be prevented for adopting the procedure laid down in C.P.C.

25.To avoid such contradictory view, the Registry is directed to make necessary measures since almost all the Rent Control Authorities are adopting the procedure of receiving the proof affidavit in lieu of chief examination. In executing the order and in amending the procedure, the provision of the C.P.C is being adopted by the Rent Controller. In setting aside the exparte decree wherein in the absence of any specific provision under Section 5 of the Limitation Act, is applicable as per the decision of the case referred above.

26.With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

27.If the proof affidavit is rejected, which is filed in lieu of chief examination, the Rent Control Authority and the Rent Control Appellate authority will suffer lot of inconvenience and the order of dismissal will definitely affect the procedure being followed by the Rent Control Authorities and the number of cases were proceeded in the said manner and further pending cases will



also suffer the same inconvenience. To avoid issue like this, an uniform procedure has to be observed by the rent control authority and the rent control appellate authority. Hence, this civil revision petition is dismissed by stating that there is no irregularity caused in accepting the proof affidavit which is filed in lieu of chief examination. Though in the absence of specific amendment, the rent control authority is observing the various provisions in the Civil Procedure Code. Further, it is observed in the aforesaid judgment that the rent control authority is a Civil Court and there is no bar for the rent control authority to accept the proof affidavit.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

NS/msa

To

1.The Principal Rent Controller
(Principal District Munsif),
Madurai Town.

+1CC TO MR.M.P.SENTHIL, Advocate Sr. No.65020

+1CC TO MR.G.ARAVINDHAN, Advocate Sr. No.65133

order made in
C.R.P. (MD) (PD) .No.319 of 2019
and
C.M.P (MD) .No.1534 of 2019
Dated:- **30.04.2019**

NS (CO)

TR (28.05.2019) 13P 4C