



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.04.2022

Pronounced on : 05.08.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021
and CMP. Nos.18968 of 2021, 18044 of 2021 & 18046 of 2021

C.R.P.(PD) No.2532 of 2021 :

J.Thennarasu ... Petitioner / Petitioner / Respondent

Vs

Anita Nalliah Respondent / Respondent / Petitioner

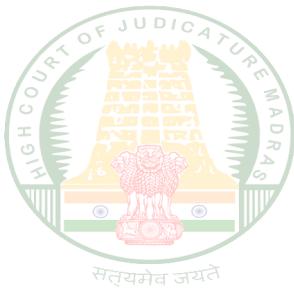
C.R.P.(NPD) Nos.2372 & 2373 of 2021 :

1. M.Logu ... Petitioner / Petitioner / Respondent
in CRP (NPD) No.2372 of 2021
2. O.M.Paul ... Petitioner / Petitioner / Respondent
in CRP (NPD) No.2373 of 2021

Vs.

1.Sadak Hameed Thaika
2.Shafak Hameed Thaika

[Respondents 2 & 3 are represented by their
Power Attorney Agent Mr.Shafak Hameed Thaike.]



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

3.Sahid Hameed Thaika

.... Respondents 1 to 3 in
C.R.P.(NPD) Nos.2372 & 2373 of 2021

Prayer in CRP(PD) No.2532 of 2021 : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 23.10.2021 in MP.SR.No.35278 of 2021 in RLTOP.No.477 of 2020 on the file of the learned XVI Small Causes Judge cum Rent Controller, Chennai, and permit the petitioner to recall and cross-examine P.W.1 in the interest of justice.

Prayer in CRP(PD) Nos.2372 & 2373 of 2021 : Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order passed by XVI Small Causes Court, Chennai in (i) MP.SR.No.25480 of 2021 in R.L.T.O.P.No.374 of 2019 and (ii) MP.SR.No.26950 of 2021 in R.L.T.O.P.No.376 of 2019, dated 07.09.2021.

In C.R.P.(PD) No.2532 of 2021 :

For Petitioner : Mr.K.F.Manavalan

For Respondent : Mr.T.Jayaramaraj
Mr.Sharath Chandran, Amicus Curiae

C.R.P.(NPD) Nos.2372 & 2373 of 2021:

For Petitioners : Mr.Na.Malaisaravanan
(in both CRPs)

For Respondents : Mr.P.B.Balaji
(in both CRPs)



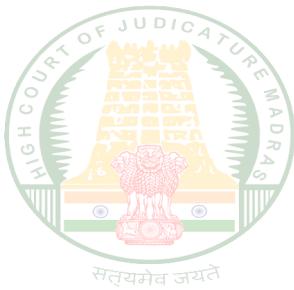
C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

COMMON ORDER

The short point involved in this batch of revisions relates to the power of the Rent Controller to allow cross-examination of witnesses under Section 36(2) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (hereinafter would be referred to as the Act). Before dealing with this issue, the brief facts involved in each of the cases are as under :

CRP.No.	Revision filed by	Facts of the case	Decision and Line of reasoning of Rent Court
2532/2021	Tenant	<p>RLTOP.No.477/2020 was filed by the respondent / landlady under Sec.21(2)(f) of the Act, that the revision petitioner/tenant has converted the petition premises from residential use to commercial use and under Sec.21(2)(g) for landlord's own occupation.</p> <p>The tenant in his counter denies both and alleges that landlord's requirement for own use is not bonafide.</p> <p>The tenant/revision petitioner has filed MP.SR.No.35278/2021</p>	<p>Petition rejected as not maintainable in the SR. stage itself.</p> <p><u>Line of reasoning :</u> The prime object of enacting the new Act and replacing the old Act is that to provide fast adjudication of disputes. The Act itself has given a procedure under Sec.36(1)(e) to hold summary inquiry as it deems fit and necessary. The main issue that has to be decided is whether the parties have complied the mandatory requirement u/s.4(2) of the TNRRRLT Act. Therefore, allowing the parties to cross-examine opposite parties will defeat the very object of the new Act.</p> <p>The Rent Court opined that Sec. 36(2) can be invoked only in exceptional cases. The</p>



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

CRP.No.	Revision filed by	Facts of the case	Decision and Line of reasoning of Rent Court
		<p>to re-open the respondent/ petitioner side evidence in RLTOP.No.477 of 2020, and that came to be dismissed, and this was challenged in the present revision.</p>	<p>petitioner/respondent had not filed any documents to support his contentions regarding sale agreement.</p> <p>The other contention of the petitioner <i>vis-a-vis</i> owning of additional properties by the respondent is not relevant to the present case as there is no precondition required that the landlord should not own more than one property within the jurisdictional limits for invoking the ground u/s. 21(2) (g) for own use and occupation.</p>
2372/2021	Tenant	<p>RLTOP.No.374/2019 was filed by the respondents/landlords on the ground that the tenant has failed to enter into tenancy agreement in terms of Sec.21(2)(a) of the New Act. The tenant disputes it.</p> <p>The tenant/revision petitioner has filed MP.SR.No.25480/2021, praying to let in oral evidence in chief and cross and permitting him to file oral evidence.</p>	<p>Petition rejected as not maintainable</p> <p><u>Line of reasoning :</u></p> <p>Same reasons were cited by the Ld. Judge as mentioned above in RLTOP NO. 477/2020.</p> <p>As per Sec. 2 (n) of the new Act, the dismissal of the earlier proceedings in the old Act is no bar for filing the present petition under the new Act.</p> <p>Hence, allowing this petition to adduce evidence or permitting cross examination will only consume more time and it will lead unnecessary delay and prolong the proceedings. Then the very object of enacting this new Act will not be achieved.</p>
2373/2021	Tenant	RLTOP.No.376/2019, by the same landlord who	Petition rejected as not maintainable



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

CRP.No.	Revision filed by	Facts of the case	Decision and Line of reasoning of Rent Court
		<p>preferred the earlier case, but against another tenant. The ground for eviction too is same and is under Sec. 21(2)(a) of the Act. And, here too the tenant disputes it.</p> <p>The tenant/revision petitioner has filed MP.SR.No.26950/2021, praying to let in oral evidence in chief and cross and permitting him to file oral evidence.</p>	<p><u>Line of reasoning :</u></p> <p>Same line of reasoning was adopted by the Ld. Judge as stated in RLTOP.No.374/209</p>

2.1 In order to appreciate the point involved, it is necessary to set out Sec. 36 of the Act. It reads:

“ 36. Procedure of Rent Court and Rent Tribunal :

(1) Subject to any rules that may be made under this Act, the Rent Court and the Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act V of 1908), but shall be guided by the principles of natural justice and shall have power to regulate their own procedure, and the Rent Court shall follow the following procedure, namely:-

(a) the landlord or tenant may file an application before the Rent Court accompanied by affidavits and documents, if any;



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

- (b) the Rent Court, then, shall issue notice to the opposite party, accompanied by copies of application, affidavits and documents;
- (c) the opposite party shall file a reply accompanied by affidavits and documents, if any, after serving a copy of the same to the applicant;
- (d) the applicant may file a rejoinder, if any, after serving the copy of the opposite party;
- (e) the Rent Court shall, then, fix a date of hearing and may hold such summary inquiry as it deems necessary.
- (2) In every case, before the Rent Court and the Rent Tribunal, the evidence of a witness shall be given by affidavit. However, the Rent Court and the Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination, such witness can be produced and may order attendance for examination or cross-examination of such a witness.
- (3)
- (4)
- (5)
- (6) (a) All applications under clauses (a), (b) (c), (e), (f) and (h) of sub-section (2) of section 21 shall be decided within 90 days of filing of application to the Rent Court;
- (b) Applications under clauses (d) and (g) of sub-section (2) of section 21 shall be decided within 30 days of filing of application to the Rent Court.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

3.1 An analysis of Sec. 36 of the Act shows that it neither prohibits the right of cross examination, nor has it made it an automatic procedural facility as in a proceeding in the classical school of adversarial jurisprudence. On the nature of enquiry, the Act enables the Rent Court to regulate it with its own procedure, but the legislative thrust is on the adherence to the principles of natural justice. This would imply that the Rent Court, even as it regulates its procedure must ensure its conformity with the rules of natural justice. Principles of natural justice, in its barest form involves the need to hear the one who would be affected by a proceeding before a Court or a Tribunal. But, the issue here is not about granting a party before the Rent Court an opportunity of being heard, but is about how much a litigant must be heard by it: Is it confined to a mere hearing of the rival parties on their respective versions of the case by granting them an opportunity to adduce their evidence in support of it, or does it extend to giving them an opportunity to discredit the evidence of the other side through cross examination?

3.2 The legislature now makes its next statement when it declares that the proceedings before the Rent Court is summary in nature, and follows it up with



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY another statement that the inquiry by a Rent Court must be through the affidavit of the parties, with a rider that cross examination may be permitted only if the Rent Court considers it expedient '*in the interest of justice*'. Then the Act proceeds to set two different time lines under Sec.36(6) of the Act for the Rent Court to dispose a case, which may vary depending on the nature and category of disputes.

3.3 This takes the scrutiny to the next stage. The Act, having granted the Rent Court the authority to evolve its own procedure to regulate the enquiry (consistent with the principles of natural justice), and having declared that it must be summary in character, then it proceeds to make a critical statement: That the oral evidence of the parties must be confined to presenting their respective case through their affidavits to enable it to dispose of a dispute within the prescribed time-lines. Within this statutory scheme, how cross-examination of a witness, including a party-witness, must be positioned? The scheme of the Act does not authorise a Rent Court to foreclose cross examination merely because the enquiry contemplated is summary in nature. Cross examination is therefore, neither guillotined, nor is it jettisoned as an impediment to the statutory instruction on expeditiousness.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY 3.4 The strong message which the scheme of Sec.36 of Act sends to the litigant is that the cross examination of a party is no more right-based as in adversarial jurisprudence, but need based. And here the only instructive guide a Rent Court is statutorily provided with is that, cross examination is allowable only '*in the interest of justice*', an expression of high malleability under the rules of interpretation that leaves enormous discretion with the Rent Court.

3.5 Contextually, the discretion conferred on the Rent Court to decide on the need for allowing cross examination poses certain difficulties as the criterion prescribed by the phrase '*in the interest of justice*' does not appear in isolation, but exists along with few other such as '*own procedure*' (of the Rent Court), '*summary*' proceeding etc., besides the diktat on time-bound disposal of cases. Each of these phrases constitutes specific legislative instructions on the procedure which a Rent Court is required to follow. It is possible that some of these expressions may influence the judicial psyche while a Rent Court is required to decide on the need for allowing cross examination, and in the process there is a lurking danger that the legislatively spelt out criterion '*in the interest of justice*' regulating cross examination may be missed out. In other words, the approach of the Rent Court can tend to be anti



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY if it allows itself to develop a preference for phrases like the *summary proceedings*, or the stipulation on time bound disposal, to relegate its statutory duty to consider the need for allowing cross examination as a mere facet of its discretionary power.

4.1 The canvas is spread vast and wide, and there are more brushes to paint with. There are exciting colours too. But they do not guarantee that a piece of art will be produced. It always depends on the quality of the one who handles the material. Exercising a discretionary power in that sense is no different from the analogy that is brought in to explain it. The strength of any discretionary power lies in its elasticity and in its functional ability to adjust its application to the need of a particular case. Discretionary powers which a statute grants a Court or a Tribunal, are more often free roaming and wild, and are rarely limited by well defined peripheral lines. It can be exciting and tempting, yet its exercise more often poses the greatest challenge to any adjudicator. It needs respect for the law, a firm understanding of the justice involved in a cause, and the intuition to know how to engage with discretionary power to advance the cause of justice with a firm awareness on the extent to which an adjudicator may go. The utility and success of



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

4.2 Noticing that the statute has given a wide space to the Rent Court without any illustrative circumstances, and the possibility it has created for perceiving the same as conferring unbridled discretion to the Court, and observing that its working has thrown the possibility to upset the equation, affecting in the process the fairness required in an adjudicatory process of the tribunal, it has become necessary to address the issue in its deeper layers. In this exercise, to assist this Court, it appointed Shri. Sharath Chandran, Advocate as an *Amicus Curiae*.

Submissions of the Amicus Curiae:

5.1 The scheme of the Act closely follows the pattern of Section 21(1) of the Rajasthan Rent Control Act, 2001, which is in pari materia with Sec.36(2) of the T.N.Act. The scope of the aforesaid provision came up for consideration before the Rajasthan High Court. In *Aasandas Vs State of Rajasthan*, [(2005) 2 RLW 1281], a Division Bench of the Rajasthan High Court held that cross examination would be inevitable where "*the decision depends on the oral testimony and the affidavits given forms oath against oath.*" In *Mahmud Khan Vs State of Rajasthan*,



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB [(2005) 5 WLC 287], another Division Bench of the same Court opined that cross examination could not be claimed as a matter of right, and that a party seeking cross examination was required to satisfy the Rent Tribunal of the need for it. In *Ramswaroop Vs Charanjeet Singh*, [2008 1 WLC], yet another Division Bench held that cross examination should be ordinarily permitted unless the request is found to be vexatious and is made with an intention to delay trial. But in *Mithlesh Jain v Rent Tribunal* [(2010) WLC 507] a learned single judge of the Rajasthan High Court (M.N Bhandari. J, as he then was) held that permitting cross examination as a rule rather than an exception would be self-defeating and would obfuscate the timely disposal of rent cases.

5.2 In *Kushiram Dedwal Vs Additional Judge, SCC, Meerut* [(1998) 32 ALR 59] while considering the provisions of Sec. 34 of the UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, an identical issue came up before the Allahabad High Court. The Division Bench held that cross examination was not a matter of right, and that it was incumbent upon the party to set out the necessary facts by way of an application, which would then be adjudicated by way of a reasoned order.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

5.3 The cumulative effect of the principles that emanate from these decisions (of the Rajasthan and Allahabad High Courts) are that cross examination is no more a matter of right, and that a party seeking it must make an application before the Tribunal to justify the need for cross examination. And, the Tribunal should always decide the issue with a speaking order that would enable the superior court to examine whether the discretion conferred on the Tribunal has been exercised in accordance with law, See: ***Oryx Fisheries v Union of India***, [(2010) 13 SCC 427].

In ***K.L Tripathi Vs State Bank of India & Others*** [(1984) 1 SCC 43], the Hon'ble Supreme Court has underscored that the requirements of natural justice depends on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting and the subject matter to be dealt with etc. The bottomline is that there shall be fairness in real action. The need for cross examination therefore, ultimately must have to be tested on the plane of fairness in judicial proceedings.

5.4 Given the setting, in the context of the present Act, the Rent Court while considering the need for cross examination, cannot afford to ignore the timeline provided for disposal of the cases under Sec.36(6) of the Act. This now requires



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY that the Rent Court must strike a balance between the procedural fairness and requirement for expeditious disposal of rent cases. A summary enquiry might have been contemplated, but still the Act does not rule out the possibility of cases requiring evidence. See: ***Mst Bibi Fatma v Bakarshah*** [AIR 1921 Sind 45], where the Court quoted with approval a circular issued by the Bombay High Court in its High Court Civil Circulars¹

Submissions of Shri P.B.Balaji:

6.1 The Act has provided certain key expressions backed by considerable freedom or discretion with the Rent Court for deciding if it needs to permit cross examination. The key expressions are: (i) '*principles of natural justice*'; (b) device its '*own procedure*' consistent with it; (iii) enquiry by '*summary*' procedure; and (c) oral evidence through '*affidavits*'. On the aspect of allowing cross examination of witnesses, Sec.36 of the Act expressly states that the Rent Court as well the Rent

1 *The intention is that the Judge shall make such enquiry only as he thinks necessary to satisfy his mind. In making such enquiry the number of witnesses, whom he may think proper to examine on one side or the other, and the length of cross-examination which he may think right to permit, are matters entirely within his discretion which should be used in such a way as to prevent the object of the Legislator being deleted. Were it otherwise, any party desirous of delaying the order could easily do so by calling a large number of unnecessary witnesses or cross-examining at unreasonable length. There may be cases where the use of affidavits in place of oral evidence would be desirable. Where the evidence is taken on affidavit, the Court must be more careful to check any prolixity and to visit any fault in this direction by deprivation of imposition of costs. These remarks apply to all Acts which direct a summary enquiry in civil matters."* Also see: ***Robert Hryniak v Fred Mauldin*** [2014 1 SCR 87] of the Canadian Supreme Court.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB ~~COT~~ Tribunal are not bound by the procedure laid down by the Code of Civil Procedure, 1908, and that there is no vested procedural right of cross examination available to the party. The Supreme Court in the case of ***P.J.Gupta and Company Vs K.Venkatesan Merchant*** [(1975)1 SCC 46(48)] has held that where a special enactment sets out a special procedure, that will prevail. Extensive reference was also made by the learned counsel to the ratio in ***K.L. Tripathi Vs. State Bank of India & Others***, [(1984)1 SCC 43].

6.2 In the light of the ratio laid down by the Hon'ble Supreme Court, it is evident that wherever a statute vests discretion with the Court, it is imperative that it is exercised judiciously. Contextually, a party cannot seek cross examination of a witness as a matter of right for it is likely to defeat the very object of the enactment, namely to provide a fast adjudication process for resolution of disputes between landlords and tenants.

6.3 The learned counsel then proceeded to provide the circumstances which may warrant a cross examination.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

7. Heard Thiru. K.F Manavalan and Thiru.Na.Malaisaravanan, respectively the counsel for the petitioners in CRP(PD)2532 of 2021 & CRP(NPD) 2372 and 2373 of 2021. They focused more on the facts.

Discussion & Decision:

8. Statements are broadly made as they should be, since the statute has opted for expressions or phrases with immense elasticity, conferring the Rent Court with enormous discretion. Here the expression '*in the interest of justice*' as a factor provided to guide the need for allowing cross examination needs to be balanced along with few other phrases. And, this balancing act may have to be worked within the parameters laid down by the Hon'ble Supreme Court in ***K.L. Tripathi's case.*** The principles enunciated by the Supreme Court reads:

32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or give some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanations of the



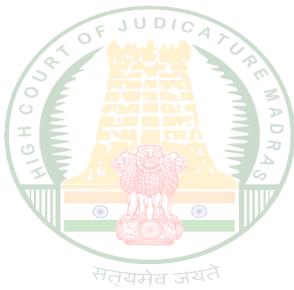
C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY *circumstances there is no requirement of cross examination to be fulfilled*

to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly.”

The following propositions can be deduced from the above decision:

- Right of cross examination is inevitable when credibility of a person who has testified or given information is in doubt or the version or the statement of the person who has testified is in dispute.
- Where there is no lis regarding the facts but only certain explanation of circumstances then there is no requirement of cross examination. Where there is no dispute as to facts or the weight to be attached on disputed facts but only an explanation of the acts, then also absence of opportunity of cross examination does not create any prejudice.
- On facts, if no real prejudice is caused to a party by denying the opportunity of cross examination, even then it would not vitiate the decision.
- A party who does not choose to controvert the veracity of the evidence or testimony cannot subsequently claim that there was no opportunity of cross examination.
- Whether the principles of natural justice stands complied would depend upon the facts and circumstances of each particular case.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY 9. This Court does not intend to lay down any straight jacket as that may interfere with the discretion of the Rent Court. However, the present attempts is to provide certain illustrative circumstances to the Rent Court to aid it in managing its discretionary power in considering a plea for cross examination on a plane of '*interest of justice*' provided by the statute. For ease of reference it is tabulated below:

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
Sec.14 Deposit Rent	14(1) If landlord refuse to receive rent.	Can be proved by documentary evidence regarding the compliance of pre-requisites for invoking Sec.14(1)	If a genuine dispute is raised regarding the mode and manner of compliance.
		If the dispute pertains to rate of Rent, that can be proved by the Rent Agreement registered under Sec.4	May not be necessary.
	14(2) If a Tenant has a bonafide doubt about the person to whom rent has to be paid	It may relate both to the identity of the landlord and documentary evidence properly authenticated would be sufficient.	If a bonafide dispute arises as to the authenticity of the documents produced by the Landlord, cross examination may be necessary. But the Tribunal must satisfy before hand



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COP

<i>Provisions of law & Head of Dispute</i>	<i>Content of possible dispute</i>	<i>How far can be proved without cross examination</i>	<i>If cross examination will be required</i>
			that the objection to the authenticity of the documents is bonafide and that the tenant has made out a <i>prima facie</i> case for suspecting the authenticity of such documentary evidence so produced by the landlord.
		If it relates to right of the person who is alleged to be the landlord, then the Rent Agreement registered in terms of Sec.4 will take care.	Where a third party claim arises, which lead to a genuine doubt about the right of the landlord, and if the landlord disputes it, then to that extent tenant may be permitted to cross examine the landlord. And, if the tenant produce any materials to project his case of a third party claim to rent, then to that extent landlord may be cross examined. Here again, the Tribunal must satisfy itself before hand that the materials produced before it <i>prima facie</i> is capable



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COP

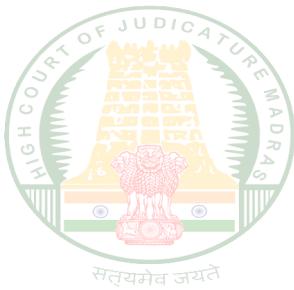
Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
			of tilting the balance.
		If the tenant takes up a defence in terms of Sec.15(4) and claims deduction for maintenance, then the procedural compliance for invoking it can be proved by the documentary evidence.	If there is any dispute raised by the landlord as to the actual expenditure incurred by the tenant, and if any of the documentary evidence provided to prove the actual expenditure <i>prima facie</i> is found suspicious, then to that limited extent, cross examination may be necessary.
Sec. 21(2)(a)	Eviction sought on ground of failure to enter into a tenancy agreement. Here, a dispute can arise, (a) if the tenant denies tenancy; or (b) The tenant setting up a tenancy which the landlord denies.	Ordinarily not necessary unless the case falls in category (a) or (b) which cannot be proved through written document.	Cross examination may be necessary only if the case falls in category (a) or (b). The Rent Court should take care to see that cross examination seeking to establish reasons for not entering into lease agreement etc cannot be entertained. See : <i>A.M Mansoor Refai Vs Shafak Hameed Thaika,</i> [C.R.P.2811 of 2021 order dt. 20.12.2021]



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COP

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
Sec. 21(2)(b)	Eviction sought on ground of defaults in payment of rent.	Since rent agreement is registered, it settles the quantum of rent payable. If receipt is not given for the entire rent paid, then the tenant is required to invoke Sec.13. Both these can be proved by documentary evidence.	If the receipt produced by the tenant is alleged to be a fabrication, or if any correction or interlineation is seen made in the receipt issued for payment of rent, then cross examination to that limited extent may be necessary.
Sec. 21(2)(c)	Eviction sought on ground of subletting without landlord's written consent.	If the tenant denies and shows a consent letter, that may settle the issue.	If the genuineness of any written consent produced by the tenant is denied by the landlord, then cross examination may be necessary.
Sec. 21(2)(d)	Misuse of the tenanted premises after landlord's notice to stop misuse.	'Misuse' has been statutorily defined in a narrow sense to mean encroachment of additional space and also acts involving public nuisance. The whole facts required to be established may not be easily established by documentary evidence of parties. Commissioner's Report may be	Cross examination may be necessary, but the Rent Court may have to appreciate the need for it on the basis of facts involved in a particular case.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COP

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
		necessary. And, it leaves free space for dispute on facts not easily provable by documents.	
Sec. 21(2)(e)	Repairs, demolitions, rebuilding with additions or alteration etc.,	Similar to the circumstance in Sec.21(2)(d) above	- do -
Sec. 21(2)(f)	For alteration etc. for converting the use of the building based on change of land used by the competent authority.	Can be proved by documentary evidence of competent authority	Cross examination may be required if there is any ambiguity in ascertaining if a particular building falls with any zone whose land-use is converted by the competent authority.
Sec. 21(2)(g)	Requirement for own use and occupation.	With the Act getting rid of the need for establishing bonfide need for seeking demolition and reconstruction as was required in the earlier Act, a mere declaration of landlord's intent is sufficient.	Hardly any space is available for cross examination. The Rent Court must address the issue with a mind of the facts before it and if it throws any peculiarity that may warrant a cross examination.
Sec. 21(2)(h)	Tenant himself issued a notice in writing to vacate and handover possession, based on	Can be proved by the notice of the tenant.	Cross examination may be necessary if the tenant denies the very notice and



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COP

<i>Provisions of law & Head of Dispute</i>	<i>Content of possible dispute</i>	<i>How far can be proved without cross examination</i>	<i>If cross examination will be required</i>
	which the landlord contracts to sell the tenanted property.		alleges fraud with prima facie material to support it.
Sec. 24	Refund of advance/default regarding the same.	It can be proved by the documents. First, the Rent agreement registered with the authority itself would provide the advance amount paid; And receipts ought to be issued for the rent paid; And defaulted rent may have to be calculated based on this. And adjustment of any arrears of rent in the advance amount is merely a matter of arithmetic.	Space available for cross examination is narrow. Again the Rent Court needs to appreciate the facts before it.
Sec. 25	Order directing payment of rent and other charges pending eviction proceedings under clauses (e) to (h) of sub-section of Section 21.	It is proceeding of the Rent Court, where there will be an enquiry. It is essentially an ancillary proceeding to eviction proceedings.	A need for cross examination may not arise since quantum of rent will be notified in the Rental Agreement itself.
Sec.26	Landlord proposing to construct additional structure/ improvements and declares his readiness	Can be substantially proved by documentary evidence	Readiness and willingness of the landlord can be tested in cross examination. But the Rent Court



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COP

Provisions of law & Head of Dispute	Content of possible dispute	How far can be proved without cross examination	If cross examination will be required
	and willingness to put up additional construction.		may have to weigh it in the context of sufficiency of documentary evidence made available by the landlord.
Sec.27	Landlord seeking to sever vacant land from the rest of the premises for the purposes of putting up new constructions.	- do-	- do-

It is reiterated that what is provided hereinabove is merely illustrative and not exhaustive.

10. Turning to specifics of the cases now before this Court, there are two aspects: Firstly none of the applications seeking leave of the Rent Court to cross examine were taken on record. The Rent court may have considered this practice as expedient, but it may not be appreciated. See: ***Selvaraj Vs Koodankulam Nuclear Power Plant India Limited*** [(2021) 4 CTC 539]. The second aspect is on the merit of the orders rejecting leave to the applicant/tenant to cross examine. Facts of the



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY and the grounds on which the Rent Court has dismissed each of the applications have already been tabulated in the opening paragraph, and they may be referred to.

11. The power under Article 227 can be exercised only in aid of justice, and the High Court is not bound to interfere in every case where there is a procedural irregularity unless and until it is convinced that a miscarriage of justice has occasioned thereby (See *Somasundaram v Anguparameswari Textiles Private Limited*, (2008) 4 LW 1020). Thus, even though the Rent Court may not have been correct in refusing to number the application, nevertheless its rationale for rejecting the request for cross examination does not warrant interference, as no miscarriage of justice has been occasioned thereby. In none of the orders now under challenge, this Court does not find that the Rent Court has erred in exercising its discretion in the context of the facts before it. Hence, no interference under Art. 227 is warranted. But it is still underscored that in future, the Rent Court shall take any application seeking its leave for cross examination on to its file and dispose them with a speaking order.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY 12. The conclusion is written on the wall. There is no merit in any of the revisions and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

05.08.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

ds/CM

To:

1. The XVI Small Causes Judge cum Rent Controller
Chennai.

2. The Section Officer
VR Section, High Court Madras.



C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

WEB COPY

N.SESHASAYEE.J.,

ds/CM

Pre-delivery Order in
C.R.P.(PD) No.2532 of 2021
and C.R.P.(NPD) Nos.2372 & 2373 of 2021

05.08.2022

27/27

<https://www.mhc.tr.gov.in/judis>