



C.R.P.(MD)No.2658 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 07.12.2024

PRONOUNCED ON: 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2658 of 2023

and

C.M.P.(MD)Nos.13856 and 13897 of 2023

T.G.Alankar Vigneshwaran,
Proprietor,
of A.R.Fashion,
Vee.Kay.Traders,
No.280 (Ground Floor),
Kamarajar Salai,
Madurai – 625 009.

: Petitioner/Appellant/Tenant

Vs.

C.V.Krishnamoorthy (died),
C.K.Murali,
Trustee of C.K.S.Saraswathi Ammal,
Private Dharma Trust,
No.280, Kamarajar Salai,
Madurai – 625 009.

: Respondent/Respondent/Landlord

PRAYER:- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and executable orders passed in R.C.A.No.8/2022, dated 28.07.2023, on



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the file of the Principal Subordinate Judge, Madurai, by confirming the fair and executable order passed in R.C.O.P.No.9/2009, dated 26.11.2021, on the file of the Additional District Munsif, Madurai.

For Petitioner : Mr.A.Sahul Hameed

For Respondent : Mr.V.Veera Pandian
for M/s Vast Law Associates

ORDER

The Civil Revision Petition is directed against the order passed in R.C.A.No.8 of 2022, dated 28.07.2023, on the file of the Rent Control Appellate Authority / Principal Subordinate Court, Madurai, confirming the order passed in R.C.O.P.No.9 of 2009, dated 26.11.2021, on the file of the Additional Rent Controller / Additional District Munsif Court, Madurai Town.

2. It is not in dispute that the petition mentioned property was originally owned by C.K.S.Saraswathi Ammal and that she executed a registered Will dated 11.02.1971 bequeathing the petition mentioned property for conducting private Dharma trust. It is also not in dispute



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that the said Trust is the present landlord and the revision petitioner is the tenant. It is also not in dispute that C.V.Krishnamoorthy was the trustee of the petitioner Trust at the time of filing of the eviction petition and after his death on 23.09.2017, as per the Will, the senior most male member of the family C.K.Murali has become the trustee and he was / is taking part in the above proceedings.

3. The respondent / landlord has filed a petition in R.C.O.P.No.9 of 2009 against the revision petitioner / tenant claiming eviction on the ground of wilful default in payment of rent under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The revision petitioner / tenant has filed counter statement raising objections. During trial, the respondent / landlord has examined the brother of the trustee viz., C.K.Rajaganesh as P.W.1 and exhibited 6 documents as Exs.P.1 to P.6. The revision petitioner / tenant has examined himself as R.W.1 and exhibited 37 documents as Exs.R.1 to R.37. The learned Additional Rent Controller, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the order dated 26.11.2021 by holding that the tenant has committed wilful default in payment of rent, allowed the petition and directed the revision



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petitioner / tenant to vacate and hand over the vacant possession of the petition mentioned property within a period of one month from the date of the order. Aggrieved by the said eviction order, the tenant has preferred an appeal in R.C.A.No.8 of 2012 and the learned Rent Control Appellate Authority, upon perusing the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment dated 28.07.2023 dismissing the appeal and thereby confirming the eviction order passed by the Additional Rent Controller. Aggrieved by the dismissal of the appeal, the tenant has preferred the present Civil Revision Petition.

4. The only point that arises for consideration is as to whether the findings of the Courts below that the tenant has committed wilful default in payment of rent is proper and in accordance with law?

5. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court reported in ***Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh*** reported in (2014) 9 SCC 78 and the relevant passage is extracted hereunder:



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“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power



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to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

6. It is pertinent to mention that the jurisdiction of this Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act is confined to legality, propriety and correctness of the orders of the Courts below. The revisional Court under Section 25 of the said Act, having supervisory jurisdiction, should not act as if it was exercising the Appellate jurisdiction, by appreciating the evidence, weigh the same and by that process come to a different conclusion and reverse a finding of the fact arrived at by the Courts below. Even if two views are possible with the same set of facts, the revisional Court cannot substitute its own view so as to interfere with the findings of the Courts below. Moreover, the power under Section 25 of the said Act is not co-extensive with the power of the appellate Court. Bearing the above legal position in mind, let us consider the case on hand.



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Ammal and hence, the tenant did not know whether the property belongs to private or public trust, that originally he was inducted as tenant by one Usha rani in the year 1993 for a monthly rent of Rs.7,000/- for running a readymade cloth business in the name and style of “Vee Kay Traders” under an oral tenancy, that in the meantime, the tenancy was transferred to the respondent and agreed to pay a sum of Rs.3937.50 as rent and Rs.3937.50/- as amenities from the year 1996 and it was increased to Rs.11,213/- in the year 2007 and he has paid Rs.17,720/- as advance, Rs. 30,000/- as security deposit and also paid pagadi of Rs.4,00,000/-, that there were no arrears of rent till February 2008, that since there was dispute between them and after exchanging of legal notices, they have entered into compromise and thereby fixed the rent at Rs.4,005/- that the tenant never agreed to enhance the rent at the rate of 12.50% of the existing rent once in three years, the tenant has issued a cheque for Rs.4,005/- towards rent for the month of March 2008 in April 2008, but the petitioner has refused to receive the same alleging that he has to obtain new rental receipt books, that since the landlord did not receive the rent for April 2008, he sent a letter dated 14.06.2008 to call for and specify the bank within ten days, that though the notice was received by the landlord, they have not sent any reply, that the tenant has then sent



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the rent through money order on 03.07.2008, but the same was also refused, that the tenant has then approached the Rent Controller seeking permission to deposit the rent as per Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act and that therefore, the revision petition is liable to be allowed.

9. Though the tenant has taken a half hearted plea of her defence that the alleged landlord has not chosen to produce the Will alleged to have been executed by Saraswathi Ammal and as such, the tenant did not know as to whether the property belongs to a private or public Trust and that if the property is belonging to a public Trust, then the very filing of R.C.O.P., is not maintainable and that in case if the same is a private trust, then the trustee is not entitled to delegate his power to any person under Section 47 of the Trust Act to give evidence and that therefore, the evidence adduced by his brother as P.W.1 is legally inadmissible.

10. It is pertinent to note that the tenant in the petition filed in R.C.O.P.NO.159 of 2008 seeking permission to deposit the rent has specifically stated that the petition mentioned property originally belonged to C.K.S.Saraswathi Ammal, that she executed the registered



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Will by way of conducting private dharmam and that the petition mentioned property is belonging to the said Trust. The learned Rent Controller, by referring to Section 47 of the Trust Act and also the decision of this Court in *Nakkheeran Publication Vs. Dhyanaapeeta Charitable Trust* reported in *CDJ 2011 MHC 4699*, has rightly dealt with the above objections and rejected the same.

11. It is not in dispute that the rent for the petition mentioned building at the time of filing the eviction petition was Rs.11,213/-. It is not in dispute that before filing of the eviction petition, the tenant in the petition filed in R.C.O.P.NO.159 of 2008 for deposit of rent, has deposited the rent due for the earlier months. But the main contention of the landlord is that though the tenant has agreed to pay the enhanced rent at the rate of 12.50% of the existing rent, in the agreement entered into between the parties on 30.08.1990 has failed to pay the same. According to the landlord, after inducting the revision petitioner as tenant, there arose some disputes between them, followed by exchange of legal notices and that thereafter, they have entered into a compromise and on that basis, agreement came to be executed on 30.08.1999. The tenant, in his counter statement as well as in evidence would specifically admit



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about the disputes that arose between them and the exchange of legal notices between them and that the settlement that was arrived at subsequently between them. But in the counter statement, the tenant has taken a stand that he has never agreed to pay the enhanced rent at the rate of 12.50% of the existing rent once in every three years and he has also not admitted the agreement dated 30.08.1999. But the tenant, while in witness box, would admit the execution of the agreement between the parties and the same came to be exhibited as Ex.P.5. The relevant portion in the cross-examination evidence of R.W.1 is extracted hereunder for better appreciation:

“ எட்களுக்கும்இ சி.வி.கரு:முர்த்திக்கும் 30.08.1999ம் ுத்தியன்று ஒரு உடன்பாடு ஏற்பட்டது என்றால் சரிதான். ுமற்படி உடன்பாட்டின் சட்கதிகள் பற்றி எனது எதிருரையிலும்இ நிரூபண வாக்கு முலத்திலும் நான் மறுக்கவில்லை என்றால் சரிதான். ுமற்படி உடன்பாடு ஆவணம் என்னிடம் உள்ளது. என்னிடம் காண்பிக்கப்படும் ஆவணம்தான் எட்களுக்குள் ஏற்பட்ட 30.08.1999ம் ுத்தியிட்ட உடன்பாடு ஆவணம் என்றால் சரிதான்இ ுமற்படி ஆவணம் ம.சா.ஆ.5 ஆக குறியீடு செய்யப்படுகிறது.

..... நான் எனது எதிருரையிலும்இ நிரூபண வாக்கு முலத்திலும் 3 ஆண்டுகளுக்கு ஒருமுறை 12.50% வாடகை உயர்த்தி செலுத்தப்படுவண்டும் என்ற சட்கதியை நான் மறுத்துள்ளன் என்றால்



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சரியல்லஇ நான் ஒப்புக்கொண்டுள்ளது. எனது எதிருரையில் பத்தி

6 – க் It is false to state that the rate of rent increased for every 3 years at the rate of 12.5% of existing rent என்று சொல்லியுள்ளது என்றால் சரிதான்.”

In the connected case, R.W.1 would say that

k.rh.M.6 thpirapy; xt;btu K:d;W tUl;jp;Fk; xg;g[f;bfhs;sg;gl;l thlifapypUe;J 12.5% cah;j;jp tHA;fg;gl;L te;Js;sJ vd;why; rhpjhd;. 2008-k; Mz;oyypUe;J xg;g[f;bfhs;sg;gl;l khj thlifapypUe;J xt;btu K:d;W Mz;LfSf;F xUKiw 12.5% cah;j;jp tHA;fg;gl;oUf;f Btz;Lk; vd;why; rhpjhd;. mt;thW cah;j;jp tHA;Ftjw;Bfh my;yJ ePjpkd;wj;jpy; itg;gPL bra;tjw;Bfh ehd; Kaw;rp vLf;ftpy;iy vd;why; rhpjhd;. xg;g[f;bfhs;sg;gl;l thlifapypUe;J 12.5% K:d;W tUla;fSf;F xUKiw cah;j;jp kDjhuh; thlifahf bgw;Wf;bfhs;s chpika[s;sJ vd;why; rhpjhd;.”

12. Considering the above, it is very much clear that the tenant has specifically admitted the agreement under Ex.B.5 and also the fact that he had agreed to pay the enhanced rent at 12.50% of the existing rent for every 3 years. Admittedly, the tenant has not paid rent at the enhanced



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rate till now. As rightly contended by the learned Counsel for the respondent, the intention of the tenant can easily be gathered from the defence taken by him in the counter statement disputing his liability to pay the enhanced rent at 12.50% of the existing rent for every 3 years. It is not the case of the tenant that he has paid rent at the enhanced rate and what was paid by him was only at the rate of Rs.11,213/- per month. Considering the above, this Court has no hesitation to hold that the Courts below have rightly decided that the tenant has committed wilful default in payment of rent.

13. It is pertinent to note that the Rent Control Original Petition came to be filed on 05.01.2009 and already 15 years had lapsed. As rightly contended by the learned Counsel for the respondent/landlord, the revision petitioner /tenant has already protracted the proceedings successfully for the past 15 years and thereby prevented the respondent/landlord from getting the property. Considering the above, the decision of the Courts below in ordering eviction of the revision petitioner/tenant cannot be found fault with and this Court is in its entire agreement with the findings of recorded by them. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and



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the same is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed. Consequently the connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs. The revision petitioner/tenant is directed to vacate the petition mentioned property and hand over the vacant possession of the same to the respondent/landlord within a period of one month from the date of receipt of a copy of this order.

01.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL
To

- 1.The Principal Subordinate Court, Madurai.
- 2.The Additional District Munsif Court, Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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