

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.02.2015

Decided on : 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD)No.4526 of 2014
and M.P.No.1 of 2014

1.S.Rajasekar
2.Mr.K.Venkatesh

... Petitioners / Tenants

Vs

1.Sartaj Begum
2.Sofia Shireen
3.Ali Akthar
4.Fathima Tabrex
5.Zubeda Bergs

... Respondents/Lanlords

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act against the order made in RCA No.34 of 2011 on the file of Subordinate Court at Tambaram dated 24.01.2014 reversing the judgment and decree in RCOP No.90 of 2008 dated 31.10.2011 on the file of Rent Control Authority/Principal District Munsif at Alandur.

For Petitioner : M/s.V.P.Rajendran

For Respondents : Mr.P.Valliappan
for M/s.B.Vijay

ORDER

This revision is directed against the order passed by the Rent Control Appellate Authority (Sub Court, Tambaram) in RCA No.34 of 2011 reversing the order of the Rent Controller (Principal District Munsif), Alandur passed in RCOP No.90 of 2008.

2. Facts of the case in nutshell are as follows -

(A) The tenants are the petitioners in this revision. The landlords filed eviction petition in RCOP No.90 of 2008 against the petitioners under Section 10 (2) (i) of Tamil Nadu Buildings (Lease and Rent Control) Act.

(B) The landlords have averred that the petition premises was let out to the tenants on a monthly rent of Rs.16,000/- and they paid advance of Rs.1,60,000/- as security deposit at the time of inception of the tenancy. The tenants requested the landlords to obtain electric power supply of 75 HP and agreed to pay Rs.2,20,000/- towards the expenses and on the understanding, the said amount is deductible at Rs.10,000/- every month out of the rent payable to the landlords and the entire amount was deducted.

(C) The landlords requested the tenants to vacate the premises since the same is required for their own use and occupation. The tenants promised to vacate the premises on or before June 2008 and after adjustment of the entire security deposit, they failed to vacate the petition premises and on the other hand filed a suit against the landlord and also filed RCOP for deposit of rent into the Court. The landlords have specifically stated that the tenants deliberately evading the payment of rent from December 2007.

(D) The tenants resisted the eviction petition stating that the security deposit was not deducted as per the claim of the landlord and when the rent was tendered, the landlords refused and therefore the tenants deposited the rents in the Bank and also filed an application to deposit the same into the Court in RCOP No.23 of 2008.

(E) The landlords also filed another eviction petition in RCOP No.87 of 2008 against the tenants under Section 10(2) (a) (iii), 10(2) 9ii) (n) and 10(2)(iv) of Tamil Nadu Buildings (Lease & Rent Control) Act.

3. The Rent Controller, has taken up both the cases together and by a common order dated 31.10.2011 dismissed both the

eviction petitions. Aggrieved by the order, the landlords preferred two appeals in RCA Nos.34 & 35 of 2011. The Appellate Authority reversed the orders of the Rent Controller and allowed both the appeals. Aggrieved by the order passed in RCA No.34 of 2011 which was filed against the order made in RCOP No.90 of 20089, the tenants have filed the present revision.

4. Mr.V.P.Rajendran, learned counsel for the petitioners submitted that the Rent Controller, on proper appreciation of evidence held that the tenants have not committed wilful default but the Appellate Authority, overlooking the material evidence and without discussion, reversed the findings of the Rent Controller and that the Appellate Authority miserably failed to note that the tenant deposited rents after complying the requirements under Section 8(2) of the Act.

5. On the other hand, Mr.P.Valliappan, learned counsel for the respondents would submit that the tenants have wilfully, deliberately and with *supine indifference* failed to pay the rent from December 2007; that the tenants have not followed the mandatory procedures specified in Sections 8 (2), (3) and (4) of the Act before invoking Section 8 (5) of the Act. Hence, even the amount deposited under Section 8 (5) of the Act would not erase the wilful default

committed by the tenant. The learned counsel further submitted that even after filing of the eviction petition, the tenants have not paid the rents regularly and only in the year 2009, the tenants had paid Rs.3,34,400/- towards the arrears of rent from 01.12.2007 to 30.06.2009, i.e. for 19 months. The learned counsel has relied upon a judgment reported in **2002 (4) CTC 572 [E.Palanisamy v. Palanisamy (D) by Lrs. and others]** and **2011 (1) MWN (Civil) 754 [K.R.Sathappan & anr. v. AR.Renganayagi]** in support of his contentions.

6. There is no dispute with regard to the jural relationship of parties and quantum of rent. According to the landlords, the tenants have failed to pay the rent from December 2007 and the advance amounts of Rs.1,60,000/- was adjusted on the understanding that the tenant would vacate the petition premises by June 2008. Though the tenants have disputed the case of the landlords, they have not produced any material to show that they have been paying rents regularly till June 2008.

7. The Hon'ble Supreme Court had an occasion to consider the provisions of Sections 8 (2) and 8 (5) of the Act. In **2002 (4) CTC 572 cited supra**, the Hon'ble Apex Court has held that the

tenant has not justified in straight away invoking Section 8 (5) of the Act without following the procedures contained in the earlier sub sections wherein it has been held as follows -

8. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straightaway invoking Section 8 (5) of the Act without following the procedure contained in the earlier sub-sections i.e. sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises in pursuance of the High Court judgment.

8. This Court, following the judgment cited supra, in **2011 (1) MWN (Civil) 754** has held that Section 8 (5) of the Act could be invoked only after complying with the mandatory requirements of Sections 8 (2), 8 (3) and 8 (4) of the Act. Despite the deposit made under Section 8 (5) of the Act, without complying with the earlier sub-

sections of Section 8, does not convert the wilful default committed by the tenants into a simple default. Para 16 would run thus -

16. Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 mandates that before filing an application to deposit rent, the tenant has to comply with sub-clauses 2,3 and 4 in succession. It is true that the second petitioner has produced copies of the cheques dated 02.09.2005 in R.C.O.P.No.32 of 2005. Those cheques were drawn long after the institution of the eviction proceedings. There is nothing on record to show that the petitioners have called upon the respondent to specify the bank into which the rent could be deposited. Similarly, as a second step, they have not sent the rent by money order after deducting the money order commission. It was only in the event of complying with the mandatory provisions of Section 8(2), 8(3) and 8(4), the petitioners can invoke Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Any deposit made under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, without complying with the earlier provisions of Section 8, will not convert the willful default into one of simple default.

9. In the counter filed by the tenants, it is specifically stated that "rents were tendered, petitioners refused, notice was caused, the petitioners were not complied. Hence the respondent deposited rent into the Bank and filed an application to deposit the same into this court under RCOP No.23 of 2008". There is no specific pleading in the counter of the tenants for complying with the

mandatory requirements of Section 8 (2) of the Act. Admittedly, the tenants had paid Rs.3,34,400/- being arrears of rent for 19 months only in the year 2009.

10. It is seen that the landlords initiated eviction proceedings against the tenants in the month of September 2008. Even after initiation of eviction proceedings on the ground of wilful default, the tenants have not paid rents regularly. The tenants have also not proved that they have complied the mandatory requirements under Section 8 (2) of the Act.

11. In the light of the decision cited supra, the tenants have to comply with the procedures before invoking Section 8 (5) of the Act. The Rent Controller has merely observed that the tenants have deposited arrears of Rs.3,34,000/- and also subsequently deposited rent and hence it cannot be construed as wilful default. It is the statutory obligation of the tenant to pay the rents regularly. In my considered opinion, the subsequent pay of arrears of rent in lumpsum will not obviate the wilful default committed by the tenant. The Rent Control Appellate Authority has rightly reversed the finding of the Rent Controller and ordered eviction on the ground of wilful default. In the light of the principles laid down in the decisions cited

supra, I do not find any perversity or illegality in the finding of the Rent Control Appellate Authority.

12. The revision is devoid of any merits and is liable to be dismissed and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.03.2015

Index:Yes
Internet:Yes
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To

1. The Subordinate Judge,
Tambaram.
2. The Principal District Munsif,
Alandur.

K.KALYANASUNDARAM,J.
rgr

Pre-delivery order in
C.R.P(NPD)No.4526 of 2014

09.03.2015