

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

C O R A M

THE HONOURABLE **Mr.JUSTICE K.KALYANASUNDARAM**

CRP.NPD.No.523 of 2015
and M.P.Nos.1 & 2 of 2015

Mrs.Dr.R.Indira

... Petitioner

Vs.

1.Mr.Tony Joseph

2.Mr.Bobby Joseph

... Respondents

PRAYER : Revision Petition is filed under Article 227 of Constitution of India against the order of the learned IX Judge, Court of Small Causes, Chennai in MP No.231 of 2014 in MP No.132 of 2014 in RCA No.442 of 2014 dt.19.01.2015.

For Petitioner : Mr.R.Srinivas
For Respondent : Mr.Prakash Goklaney
for R1 & R2

ORDER

This revision is directed against the order of the Rent Control Appellate Authority / IX Judge, Small Causes Court, Chennai in MP No.132 of 2014 in RCA No.442 of 2014.

2. The Revision Petitioner is the landlady. She filed an eviction petition alleging that the tenants have failed to pay the rent from December 2012 and also sought eviction on the ground of own use and occupation.

3. The landlady filed an application in MP No.110 of 2014 in the eviction petition under Section 11(3) of the Act seeking for a direction to the tenants to deposit the rental arrears of Rs.2,80,000/- for the period from December 2012 to February 2014 and for further direction to continue to pay the future rent till the disposal of the eviction petition.

4. The Rent Controller, by order dated 29.04.2014, directed the tenants to pay Rs.4,00,000/- being arrears of rent from December 2012 to March 2014 less excess rental advance of Rs.2,40,000/- on or before 05.06.2014. Due to non-compliance of the conditional order passed on 29.04.2014, the Rent Controller allowed the application and ordered eviction.

5. Aggrieved by the order of the Rent Controller dated 29.04.2014, the tenants preferred an appeal before the Appellate Authority in RCA No.442 of 2014. The tenants had taken out an application in MP No.132 of 2014 seeking stay of further proceedings in the eviction petition. The Appellate Authority granted interim stay on condition that the tenants shall deposit Rs.2,00,000/- to the credit of the appeal, on or before 02.09.2014. The tenants have not complied with the conditional order of the Appellate Authority. On 04.09.2014, for non-compliance of the conditional order, the stay was not extended.

6. While so, the landlady filed an application in MP No.193 of 2014

in the appeal under Section 11 (3) of the Act seeking for a direction to the tenants to deposit Rs.6,40,000/- being the arrears of rent from December 2012 to September 2014 and continue to deposit the future rent. When the applications were pending, the tenants filed MP No.231 of 2014 for extension of stay granted in MP No.132 of 2014. In the affidavit filed in support of the petition, the tenants have stated that they filed MP No.189 of 2014 seeking extension of time to comply with the conditional order and the petition was allowed on 06.11.2014, accordingly the tenants deposited Rs.2,00,000/- on 10.11.2014. The Appellate Authority allowed MP No.231 of 2014 and extended the stay. Aggrieved by the order, the present revision is filed.

7. Mr.R.Srinivas, learned counsel for the petitioner submitted that the landlady is a retired Government Doctor and she is a senior citizen aged about 85 years. Though the tenants have not disputed the quantum of rent, however, they are chronic defaulters and they have failed to pay the rents from December 2012. The learned counsel further submitted that as per Section 11 of the Rent Control Act, the tenants have statutory obligation to pay the rent to defend their case and that the eviction petition itself was filed on the ground of willful default, even during the pendency of the eviction petition, the tenants have not paid rents regularly. Hence, the tenants are not entitled for extension of stay.

8. On the other hand, Mr.Prakash Goklaney, learned counsel for the respondent submitted that the tenants were not given opportunity to defend their case. It is true that the Appellate Authority has directed the tenants to deposit Rs.2,00,000/- on or before 02.09.2014 but due to unavoidable circumstances, the tenants could not comply with the conditional order. The tenants, within a period of one week, filed application seeking extension of stay and the same was allowed by the Appellate Authority. The learned counsel further submitted that the tenants should be given opportunity to pursue the appeal and in a short cut manner, they cannot be thrown away from the petition premises; that the landlady had already filed an application under Section 11(3) before the Appellate Authority and the Appellate Authority can be directed to dispose of these applications and that the tenants are ready to abide by the order passed by the Appellate Authority.

9. At this juncture, the learned counsel for the respondent tendered a Demand Draft bearing No.122999 Dated 09.03.2015 drawn on Federal Bank, Chennai in favour of the petitioner for a sum of Rs.1,50,000/- being the part of the arrears amount payable to the petitioner. The learned counsel for the petitioner received the demand draft for Rs.1,50,000/- without prejudice to the right of the petitioner. The learned counsel for the petitioner also sought direction of this Court to the Appellate Authority to disperse Rs.2,00,000/- deposited by the respondent to the credit of the appeal, being the

arrears of rent payable to the petitioner. The learned counsel for the respondent submitted that he has no objection for the amount to be paid to the landlady. Hence, the Appellate Authority is directed to disperse Rs.2,00,000/- deposited to the credit of the appeal to the landlady, without prejudice to her right in the appeal.

10. Considering the submissions made by the learned counsel on either side, this revision petition is disposed of with a direction to the Rent Control Appellate Authority to dispose of the applications in MP No.193 of 2015 and MP No.256 of 2014, on merits, within a period of two weeks from today. The petitioner is also directed not to proceed with the eviction petition till the disposal of the applications. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.03.2015

Index : Yes/No
rgr

Note : Issue order copy by 11.03.2015

K.KALYANASUNDARAM, J.

rgr

To

The IX Judge,
Court of Small Causes,
Chennai

CRP.NPD.No.523 of 2015

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