

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2015

C O R A M

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

CRP.NPD.No.593 of 2015
and M.P.No.1 of 2015

Mr.Jeetendra Chopra
Proprietor
Rolex Enterprises
No.7, Ekambareswarar Agraharam
Park Town,
Chennai 600 003

... Petitioner / Tenant

Vs.

1.Mr.T.S.Sundaresa Davey
2.Mr.S.Ramanath Davey
3.Mr.S.Vidyashankar Davey

... Respondents / Landlords

PRAYER : Revision Petition is filed under Section 225 of Tamil Nadu Act 18 of 1960 as amended by Act 23 of 1973 against the order and decretal order dt.26.8.2014 in RCA No.116 of 2014 on the file of IX Judge (Appellate Authority), Court of Small Causes, Chennai confirming the order and decretal order dt.12.2.2014 in RCOP No.1949 of 2011 on the file of XIII Court (Rent Controller) Small Causes, Chennai.

For Petitioner : Mr.K.P.Shanthosh

For Respondents : Mr.T.Paranthaman,
Caveator for R1 to R3

ORDER

This revision is directed against the order dt.26.8.2014 passed by the Appellate Authority in RCA No.116 of 2014 confirming the order of the Rent Controller dt.12.2.2014 made in RCOP No.1949 of 2011.

2. The unsuccessful tenant in the eviction proceeding is the revision petitioner. The landlords/respondents herein filed RCOP No.1949 of 2011 before the Rent Controller (III Small Causes Court, Chennai) under Section 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act alleging that the tenant has committed default in payment of rent from April 2010 to September 2011, i.e. for period of 18 months and after adjusting the arrears amount with the advance amount of Rs.13,000/-, the tenant has defaulted for a period of 11 months.

3. The tenant resisted the claim petition stating that he had paid Rs.15,000/- as advance at the inception of the tenancy and on the first hearing date of the eviction petition, he had paid Rs.40,000/- to the landlords. After adjusting the arrears amount, still the landlords have excess amount of the tenant.

4. Before the trial court, the parties have adduced both oral and documentary evidence. The Rent Controller, after considering the evidence of both the parties, held that the tenant has committed willful default and allowed the eviction petition. Concurring with the findings of the Rent Controller, the Appellate Authority dismissed the appeal preferred by the tenant in RCA No.116 of 2014. Aggrieved against the order, the tenant has preferred the present revision.

5. Mr.K.P.Shanthosh, learned counsel for the petitioner submitted that the tenant has not committed willful default as he had tendered the entire arrears on the first hearing date of the eviction petition; that the landlords have refused to receive the rent and hence the tenant has sent the arrears of rent through money order under Ex.R3, that PW1 himself admits in his evidence that during the pendency of the eviction petition, the tenant was paying rents regularly, however, the authorities, without proper appreciation of evidence has ordered eviction and hence the same is liable to be set aside by this Court.

6. Per contra, Mr.T.Paranthaman, learned counsel for the respondents submitted that the tenant has statutory obligation to pay the rents regularly, but in this case, the tenant has not paid the rent for almost 18 months and the default is deliberate and therefore the Rent Controller has

rightly allowed the petition holding that the tenant has committed willful default. It is further submitted that the appellate authority also rightly observed that the default committed is not willful and such finding need not be upset by this Court.

7. There is no dispute with regard to the jural relationship of the parties and the quantum of rent. According to the landlords, the tenant has failed to pay the rent from April 2010 to September 2011. The tenant has also admitted the default in payment of rent for period from April 2010 to September 2010, but contents that he forwarded the amount through money order, marked as Ex.R3 on 26.08.2010, which was refused by the landlords. Undisputedly, the petition filed by the tenant to deposit the arrears of rent under Section 8(5) of the Act was allowed to be dismissed for non-prosecution. After dismissal of the petition, the landlords have filed the eviction petition on the ground of willful default, but the tenant has paid Rs.40,000/- on the first day of hearing, i.e. on 23.12.2011.

8. The Honourable Apex Court in *E.Palanisamy v. Palanisamy (D) by LRs and others reported in (2003) 1 Supreme Court Cases*. Certain excerpts from it, would run thus :

"4. It would be seen from the above provisions that while the landlord is required to issue a notice of default, on refusal by the landlord to accept rent, the tenant is required to call upon the landlord by way of a notice to specify the name of a bank in which rent could be deposited by the tenant to the credit of the landlord. If the landlord specifies the name of the bank to deposit the rent, there is an obligation on the part of the tenant to make the deposit of arrears of rent in the account of the landlord. However, if the landlord does not specify the name of a bank in spite of being called upon by the tenant through a notice, the tenant is required to send the amount of arrears through a money order to the landlord after deducting the commission payable on the money order. If the landlord still refuses to accept the rent, the tenant is entitled to file an application before the Rent Controller seeking permission to deposit the arrears of rent under sub-section (5) of Section 8 of the Act.

5. Mr.Sampath, the learned counsel for the appellant argued that since the appellant tenant had deposited the arrears of rent in court, it should be taken as compliance with Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the court for permission to deposit the arrears of rent. Since there is a substantial compliance with Section 8 inasmuch as the arrears of rent stand deposited in court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the

benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh v. Ganpat Lal* [(1996) 1 SCC 243] and *M. Bhaskar v. J. Venkatarama Naidu* [(1996) 6 SCC 228].

6. The counsel for the appellant did not dispute that the tenant had not fulfilled the conditions prescribed in Section 8 of the Act before making deposit of rent in court. Hence similar circumstances and while dealing with almost similar provisions contained in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, this Court in *Kuldeep Singh v. Ganpat Lal* [(1996) 1 SCC 243] held: (SCC p. 249, para 8) "8. In the present case, the appellant is seeking to avail of the benefit of the legal fiction under Section 19-A(4) of the Act. It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. [See *Bengal Immunity Co. Ltd. v. State of Bihar* [AIR 1955 SC 661 : (1955) 2 SCR 603] (SCR at p. 646).] The appellant can avail of the benefit of Section 19-A(4) if the deposit of Rs.3600 made by him in the Court of Munsif (South), Udaipur, on 29-10-1982, by way of rent for the months of May 1982 to October 1982, can be treated as a payment

under Section 19-A(3)(c) so as to enable the appellant to say that he was not in default in payment of rent. Under Section 19-A(3)(c) the tenant can deposit the rent in the court only if the conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present case. The deposit which was made by the respondent in court on 29-10-1982 cannot, therefore, be regarded as a deposit made in accordance with clause (c) of sub-section (3) of Section 19-A and the appellant cannot avail of the protection of sub-section (4) of Section 19-A and he must be held to have committed default in payment of rent for the months of May 1982 to October 1982. This means that the decree for eviction has been rightly passed against the appellant on account of default in payment of rent for the period of six months."

9. Ex.R3 would reveal that the tenant has forwarded rent by money order only on 26.08.2010 for the period from April 2010 to July 2010. It is further seen that the tenant has paid the arrears of rent of Rs.40,000/- on the first hearing of the eviction petition, i.e. On 23.12.2011. It is settled law that the payment of arrears of rent on the first hearing would not erase the willful default committed by the tenant. Both the authorities, on proper appreciation of evidence held that the tenant has committed willful default. The factual finding of the authorities, on proper appreciation of evidence does not warrant interference by this court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The tenant is directed to vacate and handover vacant possession to the landlord, on or before 30.09.2015. The tenant shall continue to pay the rents regularly.

11.03.2015

Index : Yes
rgr

To

1. The XIII Judge,
Court of Small Causes,
Chennai.

2. The IX Judge,
Court of Small Causes,
Chennai.

K.KALYANASUNDARAM, J.

rgr

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