

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM:

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

CRP(NPD)Nos.761 and 762 of 2015
and
M.P.No.1 of 2015

Vagaram Patel : Petitioner/Appellant/Tenant

vs.

K.C.Sivakaran : Respondent/Respondent/Landlord

Prayer in CRP(NPD)No.761 of 2015:- Civil Revision petitions filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and final order, dated 01.08.2014 made in R.C.A.No.18 of 2013 on the file of the Rent Control Appellate Authority (Principal Subordinate Court, Erode), confirming the Fair and Final Order, dated 12.08.2013 made in R.C.O.P.No.27 of 2010 on the file of the Rent Controller (Principal District Munsif), Erode.

Prayer in CRP(NPD)No.762 of 2015:- Civil Revision petitions filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and final order, dated 01.08.2014 made in R.C.A.No.17 of 2013 on the file of the Rent Control Appellate Authority (Principal Subordinate Court, Erode), confirming the Fair and Final Order, dated 12.08.2013 made in R.C.O.P.No.24 of 2010 on the file of the Rent Controller (Principal District Munsif), Erode.

For Petitioner : Shri.A.K.Kumarasamy

For respondent : Shri.G.Ethirajulu

COMMON ORDER

CRP (NPD)No.761 of 2015 arises out of the order passed by the Rent Control Appellate Authority in RCA No.18 of 2013, confirming the order of the Rent Controller in RCOP No.27 of 2010, dated 12.08.2013.

2.CRP(NPD)No.762 of 2015 is directed against the order of the Rent Control Appellate Authority, Erode in RCA No.17 of 2013, confirming the order of the Rent Controller, Erode, passed in RCOP No.24 of 2010, dated 12.08.2013.

3.The tenant is the petitioner in both the revision petitions. The petitioner filed RCOP No.24 of 2010 before the Rent Controller (Principal District Munsif, Erode) under section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

4.The case of the tenant is that he was inducted in the petition premises on a monthly rent of Rs.6,000/- and while he was paying the

rent regularly, in the month of June 2010, the respondent/landlord demanded exorbitant rent of Rs.22,000/- per month and also refused to receive the rent. Hence, the petition.

5.The respondent/landlord resisted the petition stating that the agreed rent was Rs.11,100/-, but the tenant has offered only Rs.6,000/- and therefore, it was refused by him.

6.The landlord filed RCOP No.27 of 2010 against the tenant under sections 10(2)(1), 10(2)(a)(b) of the Tamil Nadu (Rent and Lease Control) Act 1969 alleging that the tenant has neglected to pay the rent of Rs.11,100/- per month from July 2010 and the tenant joining with his brother giving trouble to the other tenants and neighboring shop owners and therefore, he is liable to be evicted from the petition premises on the ground of willful default and nuisance.

7.That petition was resisted by the tenant, again contending that the rent is only Rs.6,000/- and he was paying the rent regularly, but the landlord demanding higher rent and refused to receive the same. The tenant has further contended that there is no willful default and he has not caused any nuisance to the other tenants.

8. Before the Rent Controller, the parties have adduced the evidence, both oral and documentary. The Rent Controller, having found that the agreed rent was Rs.11,100/- and the tenant has failed to pay the rents regularly, ordered eviction on the ground of willful default, while rejecting on the ground of act of nuisance. The Rent Controller having held that the tenant has not followed the procedures contemplated under section 8(2) and 8(4) of the Act, before filing the petition under section 8(5), dismissed the petition filed by the tenant for deposit of rent.

9. Aggrieved over the common order passed by the Rent Controller, the tenant had preferred RCA No.17 of 2013 against the order passed in RCOP No.24 of 2010 and RCA No.18 of 2013 against the order passed in RCOP No.27 of 2010. The Appellate Authority, concurring with the findings of the Rent Controller, dismissed both the appeals by a common order. Challenging the concurrent findings of the courts below, the tenant had preferred these civil revisions.

10. Shri.A.K.Kumarasamy, learned counsel appearing for the

petitioner submitted that the tenant paid rents regularly upto September 2010 and he has sent the rent for the month of October 2010 by way of cheque, but it was returned by the landlord. The said act of the landlord in refusing to receive the rent, necessitated the tenant to file a petition under section 8(5) of the Act. Though, the tenant has followed the procedures contemplated under the Act, the authorities below, without proper appreciation, held that the tenant is not entitled for deposit of rent for non-compliance of the procedures contemplated under the Act.

11.The learned counsel further submitted that the landlord has not established that the tenant has committed willful default and therefore, the orders of the appellate authority are perverse and arbitrary, so there are liable to be set aside by this court.

12.Per contra, Shri.G.Ethirajulu, learned counsel appearing for the respondent/landlord submitted that the agreed rent was Rs.6,000/- and amenity charges was Rs.5,100/-, therefore, the tenant is liable to pay Rs.11,100/- per month, however, admittedly, the tenant has not paid the rent from the month of July 2010 and as on date, the tenant is

liable to pay the arrears of rent to the tune of Rs.3,04,630/-.

13.It is further submitted that the procedures contemplated under sections 8(2) and 8(4) of the Act are mandatory in nature and for non-compliance of the procedure, the Rent Controller as well as the Appellate Authority have rightly dismissed the application filed by the tenant under section 8(5) of the Act and therefore, the concurrent findings of the both the courts below, cannot be over turned by this court, while exercising the power under section 12(5) of the Act.

14.In the instant case, the jural relationship of the parties are not in dispute. However, according to the landlord, the agreed rent for the tenanted premises is Rs.11,100/-, but the tenant has contended that the agreed rent is Rs.6,000/- per month. Ex.P4 Rental Agreement, dated 21.06.2010 would reveal that the tenant has agreed to pay Rs.6,000/- towards rent and Rs.5,100/- towards amenity charges. PW1 has also given evidence stating that the agreed rent was Rs.11,100/- per month including the amenity charges.

15.Ex.P1 is the notice sent by the landlord. Ex.P2 is the reply sent

by the tenant. In the rejoinder under Ex.P3, the landlord has stated about the rental agreement, dated 21.06.2010, the agreed rent is Rs.11,100/- per month.

16.The Rent Controller, after referring to the oral evidence of PW1 and also after perusing the materials available on record held that Ex.P4 Rental Agreement is a genuine and the agreed rent is Rs.11,100/-. The Rent Controller has followed the decisions reported in **1968 (2) MLJ 50 in the case Rayal and Company vs. K.G.Ramachandran and 1990(2) SCC 651 in the case of Pushpa Sen vs. Susma Chose**, to come to the conclusion that the rent includes the amenity charges. The Rent Controller held that non payment of rent would amount to willful default.

17.The Rent Controller also found that the tenant has not complied with the statutory provisions contemplated under sections 8(2) and 8(4) of the Rent Control Act and the Rent Controller relying upon the decisions of the Hon'ble Apex Court in the case of **Kuldeep Singh vs. Ganpat Lal and another reported in AIR 1996 SC 729 and 2002(4) CTC 572 in the case of E.Palanisamy vs. Palanisamy and others, in the case of Sarla Goel and others vs.**

Kishan Chand reported in 2009(7) SCC 658, held that the compliance of sections 8(2) and 8(4) are mandatory. Since the tenant has not followed the procedure, dismissed the petition filed under section 8(5) of the Act.

18.The Appellate Authority, after independently considering the materials available on record, concurred with the findings of the Rent Controller.

19.It is to be noted that the landlord has filed the statement of accounts stating that as on date, the tenant is liable to pay Rs.3,04,630/- towards arrears. It is settled law that subsequent conduct of the parties can be taken into consideration, while deciding the case arising under the Rent Control Act.

20.In view of the concurrent findings of the authorities on proper appreciation of evidence and non payment of rents during pendency of eviction proceedings, I do not find any reasons to interfere with the impugned order.

21. In the result, both the civil revision petitions are dismissed. No costs. Consequently, connected Miscellaneous petition is closed. However, considering the facts and circumstances of the case, the tenant is directed to vacate and hand over the possession of tenanted premises on or before 31.12.2015. The tenant is further directed to pay the entire arrears of rent, within a period of four weeks from the date of receipt of a copy of this order and also continue to pay the rents regularly without any default till 31.12.2015.

Index : Yes/No
Internet : Yes/No
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K.KALYANASUNDARAM_J.

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