

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08-07-2015**

CORAM

THE HONOURABLE Dr.JUSTICE **S.TAMILVANAN**

**Rev.A.No.115 of 2009
and M.P.No.1 of 2009**

E.Viswanathan

.. Applicant

Versus

V.T.Jesudas

... Respondent

Review Application has been filed under Order XLVII Rule 1 read with Section 114 of CPC, seeking to review the order, dated 01.04.2009 made in C.R.P (NPD).No.115 of 2009 by this Court.

For Applicant : Mr.N.Seshathri

For Respondents : Mr.K.V.Sundarajan

ORDER

The Review Application has been preferred under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, to review the order, dated 01.04.2009 made in C.R.P (NPD).No.115 of 2009 and allow the Revision Petition.

2. It is an admitted fact that the review petitioner is the tenant and the respondent herein is the landlord of the RCOP premises. The Rent Control Original Petition in R.C.O.P.No.1886 of 2005 was filed by the respondent / landlord under Section 10(2)(1) of the Tamil Nadu Building (Lease and Rent

Control) Act (herein after referred to as "the Act"), for evicting the review petitioner / tenant from the RCOP premises.

3. Learned Rent Controller found that the review petitioner had committed wilful default in payment of rent from March 2003 to July 2005 and according to the respondent, the agreed rent payable per month was Rs.7,500/-. The review petitioner / tenant had raised a plea that there was no arrears of rent, in view of the alleged advance amount paid by him and it was also contended by the petitioner / tenant that the monthly rent claimed by the respondent / landlord was not correct.

4. Having considered the evidence adduced by both sides, the learned Rent Controller allowed the RCOP and ordered for eviction and in the appeal, the same was confirmed by the Rent Control Appellate Authority. Aggrieved by which, the Civil Revision Petition in C.R.P.(NPD).No.115 of 2009 was filed by the Review petitioner / tenant before this Court.

5. Learned Judge (**A.C.Arumugaperumal Adityan, J**), by order, dated 01.04.2009 in the Revision, has discussed the scope of Revision and also held that the CRP is liable to be dismissed, on the facts and circumstances of the Revision Petition. In the aforesaid order, the learned Judge has categorically held

that the revision petitioner therein, raised a defence that Ex.P.4, letters, dated 23.08.2002 and 20.09.2002 were forged documents, though the said plea was not raised either before the learned Rent Controller or before the Rent Control Appellate Authority and held that such a defence is not legally sustainable. It was further found that there was no suggestion put before the learned Rent Controller / trial Court to P.W.1 / landlord as to the effect that Ex.P.4 was a forged document, on the side of the Review Petitioner / tenant, while he cross examined P.W.1, the respondent / landlord. Learned Judge has found further in paragraph No.6 of the order passed in the Civil Revision Petition as follows :

"P.W.1 in the cross-examination would admit that two cheques mentioned in Ex.P.4 were handed over to him by the tenant in person (page No.5 of the cross-examination of P.W.1) under Ex.P.4, two cheques, viz., one for Rs.7500/- and another for Rs.37,500/- totally Rs.45,000/- will denote the arrears of rent for six months at the rate of Rs.7,500/- per mensum. Under such circumstances, the contention of the learned counsel for the revision petitioner that the agreed rent for the petitioner schedule premises is only Rs.4,000/- and not Rs.7,500/- cannot be sustained. Under such circumstances, the tenant cannot take shelter under Section 7 (1) (a) of the Act also."

6. It is further seen that the order passed by the learned Judge would

show that it was a concurrent finding by the learned Rent Controller and the Rent Control Appellate Authority and the same was confirmed in the Revision by this Court. It is also made clear that the learned Judge, find it reasonable to provide sufficient time for the Revision Petition / tenant to vacate and hand over the possession of the RCOP premises to the respondent / landlord. In this regard, after hearing both sides, this Court passed the order, directing the Review Petition / tenant to vacate and hand over the possession, within nine months, though he had asked one year time and the respondent / landlord raised no objection only for granting six months time for the Review Petitioner / tenant to vacate and hand over the possession.

7. It was also contended that after filing of the Rent Control Original Petition, the Review Petitioner had committed continuous wilful default in payment of rent, which was to the tune of Rs.2,20,500/-, as contented by the learned counsel appearing for the respondent / landlord. On the said circumstances, by the order passed in the Civil Revision Petition in C.R.P(NPD).No.275 of 2009, dated 01.04.2009, this Court dismissed the Revision preferred by the Review Petitioner / tenant, however, 9 months time was granted from the date of the order, i.e., 01.04.2009. However, the Review Petitioner / tenant has come forward with the Review Petition.

8. As contended by the learned counsel appearing for the respondent,

as it is a contested order passed on merits, hence, this Court became functus officio to reopen and decide the same once again as an appellate court. After hearing lengthy arguments from both sides, considering all the points advanced by both sides, the order was rendered by this Court on 01.04.2009.

9. As per Section 114 of the Code of Civil Procedure, the scope of review is limited. When there is any error apparent on the face of the record or clerical or arithmetic error, that can be set right by way of review, however, this Court cannot assume the jurisdiction of an appellate court by way of review, in order to reopen the case and decide once again the Revision preferred by the Review Petitioner.

10. As there is concurrent finding by the learned Rent Controller and the Rent Control Appellate Authority, that there is wilful default committed by the Review Petitioner / tenant and that was confirmed by this Court in the Revision, without any legal basis, the Review Petitioner / tenant cannot make out a case, to allow the Review Petition.

11. Even in case of Revision, the Revisional Court can interfere if the finding of the Court below is perverse, for which the finding should be against the evidence. Hence, there is no scope to consider the finding of the Courts

below as perverse. There is no such circumstances, as per the evidence available on record to show that there is any perverse finding by the Rent Controller or the Rent Control Appellate Authority. Even that would be available only for a Revisional Court, not for deciding the Review Petition. The order, dated 01.04.2009 also make it clear that it is a consent order, whereby the Review Petitioner / tenant asked one year time to vacate and hand over the possession to the respondent / landlord, for which the respondent / landlord gave consent only for six months. However, this Court provided 9 months time for the Review Petitioner / tenant to vacate and hand over the premises to the respondent / landlord from the date of the order.

12. Having gone through the averments and the submissions made by both the learned counsel, this Court is of the view that there is no legal ground available to review the order passed by this Court on 01.04.2009. In fact, the Review sought for could be construed only as an abuse of process of law and the court, since the Review Petitioner / tenant, without vacating and handing over the possession, has raised his inconsistent plea, after the order was passed.

13. It is also not in dispute that the Review Petitioner / tenant has not paid arrears of rent of Rs.2,20,500/-, as found by the learned Judge of this Court in the said order. Hence, the Review Application is liable to be dismissed, as

there is no merits for entertaining the Review Application.

14. In the result, this Review Application is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there is no order as to costs.

08-07-2015

Index : Yes / No
Internet : Yes / No
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S.TAMILVANAN, J.

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To

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

**Order in
Rev.A.No.115 of 2009**

08-07-2015