

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.02.2015

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (NPD)No.4352 of 2013
and M.P.Nos.1 of 2013 & 1 of 2015

Suyambulingam,
Proprietor
Chithra Stores,
Old No.78, Pillaiyar Koil Street,
(Ground Floor)
New Jawaharlal Nehru Salai
Jaggarkhanpet,
Chennai – 600 083.

... Petitioner

Vs

A.S.Manonmani

... Respondent

Prayer : Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act against the order and decreetal order dated 03.10.2013 dismissing the petition in MP No.656 of 2013 in RCA No.296 of 2001 passed by the VIII Rent Control Appellate Judge, Chennai.

For Petitioner : M/s.S.Jaganathan
For Respondents : Mr.M.V.Muralidharan

ORDER

The revision is directed against the order passed in MP No.656 of 2013 in RCA No.296 of 2001 passed by the VIII Rent Control Appellate Judge, Chennai.

2. The petitioner is the tenant. The respondent / landlady initiated eviction proceedings against the petitioner in RCOP No.1424 of 2009 under Section 10 (2) (i) and 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act.

3. The landlady has averred in the eviction petition that the tenant was inducted on a monthly rent of Rs.1500/- and he has not paid rents from the month of July 2005 till the eviction petition was filed in the month of October 2009, amounting to Rs.72,000/-. The landlady has further stated that her husband was doing hardware business alongwith her sons, thereby she has gained experience in running the business and she requires the petition premises for her own use and occupation to start a hardware business.

4. The eviction petition was resisted by the tenant by filing a counter stating that he was paying rents regularly but the landlady was not in the habit of issuing receipts. Since the landlady refused to receive the rent, he sent the same by a demand dated dated 17.02.1999, that the landlady even refused to receive the demand draft and the rent was paid upto September 2009. The tenant has further contended that the landlady is aged 70 years and she cannot do the hardware business.

5. The Rent Controller, dismissed the eviction petition on both the grounds. Aggrieved by the order, the landlady filed an appeal and the Appellate Authority allowed the same on the ground of wilful default while rejecting the ground of own use and occupation. Thereupon, the tenant filed M.P.No.656 of 2013 to condone the delay of 36 days in filing the application to set aside the ex parte order. The Appellate Authority dismissed the application. Aggrieved by the order, the present revision is filed.

6. Heard Mr.S.Jaganathan, learned counsel for the petitioner, Mr.M.V.Muralidharan, learned counsel for the respondent and perused the records.

7. The learned counsel for the petitioner submitted that the tenant was regularly paying rent to the landlady and on political motive, the landlady refused to receive the rent and so the tenant had forwarded the rents by money order and by way of demand drafts. Even after initiation of eviction proceedings, the tenant paid the entire arrears and he has also filed a petition under Section 8 (5) to deposit the rent in to the court.

8. It is further submitted that the appellant and the respondent have argued the appeal and after transfer of the Judge, the petitioner was under the impression that the Appellate Judge would have passed orders on merits. But the Appellate Court only heard the arguments of the landlady and allowed the appeal on the ground of wilful default, without hearing the tenant. It is further submitted that the delay was properly explained by the tenant but the Appellate Authority, adopting hypertechnical approach, dismissed the petition.

9. Per contra, learned counsel for the respondent submitted that the tenant has committed wilful default from the month of July 2005 and even after filing of the eviction petition, the tenant was not paying rent regularly. The learned counsel further submitted that the landlady filed a petition in M.P.No.91 of 2010 under Section 11 (4) of the Act seeking for direction to the tenant to deposit arrears of rent for the month of September 2009 to May 2010. Only after passing order in the 11 (4) petition, the tenant deposited the amount. The tenant had paid the rent for the month of November 2010 to May 2011 only on 30.06.2011. When the appeal was pending, the landlady filed MP No.437 of 2012 under Section 11 (4) of the Act and only after the order passed in the application, the tenant deposited the amount.

10. The learned counsel further submitted that the tenant has not paid rents from August 2012 to till date and the tenant chose to file a petition under Section 8 (5) of the Act only in the month of August 2014. It is contended that after transfer of the Presiding Officer, the appeal was posted for arguments of the tenant on 03.01.2013 and the appeal was subsequently adjourned for more than 14 hearings till 17.04.2013, however the tenant has not availed the opportunity and deliberately remained absent. The learned counsel also submitted that the conduct of the tenant would show that he is not entitled for any indulgence of this Court.

11. It is seen that the eviction petition was filed during the month of October 2009 alleging that the tenant has not paid rent from the month of July 2005. It is not in dispute that even pending the eviction petition, the tenant has not paid rents regularly and only on the application filed by the landlady, he paid rent for the month of September 2009 to May 2010. Even thereafter, only on 30.06.2011, the tenant paid the rental arrears for November 2010 to May 2011. Admittedly, during the pendency of the appeal, the tenant has not paid rents regularly. The Appellate Court has dismissed the application holding that though the appeal was posted for arguments between 03.01.2013 to 17.04.2013, the tenant has not availed the opportunity.

12. It is settled law that the length of delay is immaterial, but acceptability of explanation is the criteria and that while considering the application for condonation of delay, the court has to see the conduct of parties. I am of the view that the petitioner, with malafide intention, deliberately absented himself from appearing before the Appellate Court and filed the petition later with a view to protract the litigation. In this case, the tenant has not explained the delay in filing the application to set aside the exparte order. The Rent Control Appellate Authority has rightly dismissed the application which does not warrant interference by this Court.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. The tenant is directed to vacate and handover the vacant possession of the petition premises to the landlady, on or before 31.07.2015. The tenant is also directed to file an undertaking affidavit to that effect within a period of two weeks from this date and pay the entire arrears of rent within a period of two weeks from the date of receipt of a copy of this order.

26.02.2015

Index:Yes/No
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K.KALYANASUNDARAM,J

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To

The VIII Judge,
Court of Small Causes,
Chennai.

C.R.P (NPD)No.4352 of 2013

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