

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) Nos.604 & 605 of 2012andM.P.Nos.1 & 1 of 2015C.R.P.(NPD) Nos.604 of 2012

S.Dhanalakshmi	...	Petitioner
	Vs.	
D.Raghuram Reddy	...	Respondent

C.R.P.(NPD) No.605 of 2012

S.Dhanalakshmi	...	Petitioner
	Vs.	
1.D.Raghuram Reddy (deceased)		
2.D.Anusuya		
3.D.Arunkumar		
3.D.Kirankumar	...	Respondents

RR2 to 4 brought on record as LRS of the deceased sold respondent vide order of Court dated 26.09.2013 made in M.P.1 of 2013 in CRP.No.605 of 2012.

PRAYER: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the common judgment dated 24.11.2011 passed in R.C.A.No.246 of 2011 & R.C.A.No.274 of 2010 on the file of the learned VIII Judge, Small Causes Court, Chennai, confirming the fair order and decreetal order dated 09.04.2010 & 23.04.2010 passed in M.P.No.416 of 2009 & R.C.O.P.No.1371 of 2008 on the file of the learned XIV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondents : Mr.S.Thiruvengadam

COMMON ORDER

These civil revision petitions arise out of the common judgment dated 24.11.2011 passed in R.C.A.Nos.246 of 2011 & 274 of 2010 on the file of the learned VIII Judge, Small Causes Court, Chennai, confirming the fair and decreetal orders dated 09.04.2010 & 23.04.2010 respectively passed in M.P.No.416 of 2009 in R.C.O.P.No.1371 of 2008 & R.C.O.P.No.1371 of 2008 on the file of the learned XIV Judge, Small Causes Court, Chennai.

2. Pending Revision Petitions, the respondent/landlord died and his legal heirs were brought on record in C.R.P.No.605 of 2012 as respondent Nos.2 to 4.

3. The tenant is the civil revision petitioner in both the CRPs. The respondent/landlord in both the Revisions initiated eviction proceedings against the petitioner in R.C.O.P.No.1317 of 2008 under Section 10 (2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 on the ground of willful default.

4. The case of the landlord is that the tenant was inducted as a tenant by a lease agreement dated 20.11.2006 for a portion measuring to an extent of 429 square feet in the building bearing D.No.2-B, first Main Road, Kumaran Nagar,

Peravallur, Chennai - 82 on a monthly rent of Rs.4,500/-. The tenant has paid a sum of Rs.1,10,000/- as advance. At the request of the tenant, an another portion measuring to an extent of 330 sq.feet of vacant land was leased out to him on the same day for a monthly rent of Rs.750/- and the tenant has paid an additional amount of Rs.15,000/- as advance. However, the tenant failed to pay the rent regularly from November, 2007 to May, 2008 amounting to Rs.36,750/-. Hence, the tenant is liable to be evicted under the provision of Section 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

5. The tenant resisted the eviction petition contending that he was inducted in the year 2004 under the lease agreements dated 21.09.2004 and 22.09.2004 to an extent of 429 sq.feet and 330 sq.feet on a monthly rent of Rs.4,000/- and 750/- respectively, totaling a sum of Rs.4,750/- as monthly rent. Subsequently, the landlord has granted oral lease of tiled portion measuring ----- sq.feet in the above said premises and vacant site measuring -----sq.ft. lying adjacent to the asbestos roof portion on a monthly rent of Rs.750/- and the tenant has paid an additional amount of Rs.5,000/-, pursuant to the oral lease agreement, the tenant has put up tin sheet roofing. It is further contended that the tenant could not commence her business for want of necessary infrastructure, building plan, water and sewerage connection, property tax receipts and NOC from the landlord and therefore, she commenced the eating

house under the name and style of “Sri Balaji Restaurant” on 22.04.2005.

6. The tenant has further contended that the rent for the four portions have been consolidated at Rs.6,000/- per month from January, 2008 and the landlord collected the rents till February, 2008. When the tenant demanded agreement of lease in writing for the tiled portion and tin sheet roof portion, on 08.03.2008, the tenant sent a letter by a registered post requesting the landlord to effect repairs to the tiled portion. The landlord sent a reply dated 26.03.2008 making false allegation and also, demanding the premises for his own occupation.

7. It is further alleged that on 05.04.2008, the landlord along with his family members visited the Restaurant and abused the family members in a filthy language, for which, a criminal case was registered in L.P.No.163 of 2008 with K.9 Police Station. The tenant sent a reply on 30.04.2008 enclosing demand draft for a sum of Rs.6,000/- towards rent from the month of March, 2008. The tenant has further stated that the landlord has refused to receive the rents tendered for the months of April to July, 2008 and after receipt of the notice in the eviction petition, the tenant sent a demand drafts for a sum of Rs.18,000/- and Rs.6,000/- on 18.08.2008 & 19.08.2008 respectively. According to the tenant, he is not in arrears of rent and a huge amount of Rs.1,30,000/- was lying

with the landlord which was paid as advance by the tenant.

8. During the pendency of the eviction petition, the landlord filed M.P.No.416 of 2009 under Section 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, seeking for a direction to the tenant to deposit the rents amounting to Rs.1,02,000/-. The tenant filed a counter reiterating the stand taken in the eviction petition. In addition to that, the tenant has stated that the landlord is not the owner of the site, which belong to Thanthondri Amman Devasthanam and the tenancy in favour of the landlord was terminated by the Devasthanam and therefore, the eviction petition itself is not maintainable.

9. The Rent Controller, by an order dated 09.04.2010, directed the tenant to pay the arrears of rent of Rs.1,80,000/- (from November, 2007 to April, 2010) for a period of 30 months ($\text{Rs.6000} \times 30 = 1,80,000$), less the amount paid of Rs.24,000/-, which comes to Rs.1,56,000/- on or before 22.04.2010. Due to non compliance of the order, the Rent Controller, allowed M.P.No.416 of 2009, on 23.04.2010 and consequently, passed an order of eviction in R.C.O.P.1371 of 2008 on the same day. Aggrieved by the orders, the tenant preferred appeals in R.C.A.No.274 of 2010 against the order passed in M.P.No.416 of 2009 and R.C.A.No.246 of 2011 against the order passed in R.C.O.P.No.1371 of 2008. The Rent Control Appellate Authority having found that the tenant has not complied

with the order of the Rent Controller and also, not paid the rents regularly during the pendency of the appeal, rejected both the appeals. Challenging the common judgment, the present civil revision petitions have been filed.

10. Mr.J.R.K.Bhavanantham, learned counsel for the tenant submitted that the tenant was regularly paying the rent to the landlord, but she was not in the habit of issuing receipts. The tenant has paid the rents up to March, 2008 and subsequently, the landlord has deliberately refused to receive the rents. Therefore, the tenant has paid the rents from the months of April to July, 2008 Immediately.

11. It is further contended that as per Section 7 of the Act, the landlord is entitled to receive only one month rent as advance and the excess advance amount has to be adjusted towards the alleged arrears of rent. The learned counsel further submitted that taking advantage of the injunction order passed in I.A.No.7722 of 2008 in O.S.No.3085 of 2008, on 11.05.2008, the landlord along with antisocial elements broke open the chain lock fixed on the Iron gate facing the 1st main Road and after gaining entry into the tin shed portion, pull down the tin sheet roofing and also caused damages to the cooking vessels and other provisions stocked in the premises. It is further submitted that when the tenant did not have the basic amenities to carry on the business, the landlord is not

entitled for rent for the suspended period. The learned counsel has relied on the judgment reported in **2000 M.L.J. (Supp.) 270, 2002-1 L.W.133 and 2013 (3) MWN (Civil) 593.**

12. On the other hand, Mr.S.Thiruvengadam, learned counsel for the landlord submitted that the tenant is a chronic defaulter in payment of rents and after receiving notice in the eviction petition, he paid a sum of Rs.6000/- by way of demand draft along with notice dated 30.04.2008 and further, a sum of Rs.18,000/- and Rs.6,000/- by way of Demand Drafts dated 18.08.2008 and 19.08.2008 respectively, totaling a sum of Rs.30,000/- and he is liable to pay a sum of Rs.2,63,750/- as on 25.04.2012, and, subsequently, he has not paid the rents.

13. The learned counsel further submitted that the tenant was given lease only on the basis of the written lease agreement dated 20.11.2006 and there is no oral lease agreement as alleged by the tenant. The learned counsel denied the allegations of the tenant about the trespass and the damages caused to the tenant.

14. According to the landlord, the tenant has not paid the rents from

November, 2007 and despite providing ample opportunity to the tenant to deposit the rents, he has not complied with the condition and therefore, he is not entitled to contest the eviction petition as per Section 11 of the Act. However, the tenant contends that he paid the rents up to March, 2008. It is to be noted that the dispute between the landlord and the tenant has started in March, 2008 itself when he issued the notice dated 08.03.2008. According to the tenant, he demanded the landlord to issue an agreement of lease in writing for the tiled portion and tin sheet roofed portion. Admittedly, the tenant has not produced any material for payment of rent up to March, 2008. The Rent Controller, after considering the entire facts, by an order dated 09.04.2010, directed the tenant to deposit a sum of Rs.1,56,000/-, after deducting the payment already made, on or before 22.04.2010. It is to be further noted that the tenant has not challenged the conditional order of the Rent Controller, dated 09.04.2010. However, the tenant challenged the final order passed in M.P.No.416 of 2009 dated 23.04.2010 and the consequential order made in R.C.O.P.No.1371 of 2008.

15. In **2000 M.L.J (Supp.) 270 (Mrs.Kasturi Vs.Mrs.Padma)**, this Court has held as follows;

“ 26. The general law between landlord and tenant is provided under the Transfer of

Property Act. Sec. 108 of Transfer of Property Act deals with rights and liabilities of lessor and lessee. Clause (1) of Sec.108 of that Act says that 'the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf. Clause (c) of Sec.108 of that Act says that 'the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lessee without interruption'. We have to read Sec.108 of the Transfer of Property Act along with Sec.17 of the Rent Control Act, which debars the landlady from withholding or cutting off any amenity.

37. The further question that arises for consideration is, whether Sec.17(4) of the Rent Control Act will bar the tenant from pleading suspension of payment of rent. If the landlady refuses to restore the amenities, the Accommodation Controller can pass an order directing the tenant to restore the amenities, and the cost incurred shall be adjusted in the rent payable. It has nothing to do with the suspension of payment of rent. As held in all the

decisions cited supra, once the amenities are restored, the tenant become liable to pay the entire rent. Suspension of payment of rent remains only for the period during which the amenities are not restored. It is not a non-payment of rent, much less wilful default in payment of rent. The tenant has also stated in her counter that she is not paying the rent only to compel the landlady to restore the amenities, and that she is willing to pay the same once the amenities are restored.

38. While considering the scope of wilful default as a ground for eviction, it is the misconduct of the tenant that forfeits the right of the tenant of the occupy. If the non-payment of rent is due to the conduct of the landlady, it cannot be termed as 'Wilful default'. Under the Rent Control law and the Transfer of Property Act, both the parties are bound to mutually respect their statutory and contractual obligations. If the landlord/landlady is allowed to get possession of the building inspite of his/her misconduct or unauthorised acts on the ground that the tenant has committed wilful default, that will amount to giving a premium for his/her illegal acts. As stated earlier, the

decisions of the Rent Controller and also the Appellate Authority should be based on justice, equity and good conscience. If that principle could be applied, in the case on hand the landlady will not be entitled to get possession of the building. ”

16. In 2002 1 LW page 133 (M/s.A.Rafeeq Ahmed & Co.rep. By its partner K.Muktar Ahamed Vs. M/s.Montari Leather Ltd., rep.by its Chairman and Managing Director), the Division Bench of this Court has observed as follows;

“ 78. For the foregoing discussions, we are not persuaded to approve the views taken by M. Srinivasan, J., as he then was, in S.K.Rajapandian v. A. Kesavan, (1991-2-L.W 453 and in Ravichandran v. N. Sulaiman (1996-1-CTC 30, the views taken by M.Karpagavinayagam, J., in P.K.Periasamy Nadar & Sons v. S. Sakthivel (1197-2 CTC 241), and in M.S.Murugan v. Smt.Santhakumari and 4 others (2000-3L.W.394). The view taken by K.A.Thanikachalam,J., in Pichai Chetty and others v. N.K.Muthukrishanan (1991-2L.W614), and hold that the said pronouncements are not good law. We sustain the view taken by R.Balasubramanian, J., in K.P.Janaki Ammai & Others

v.K.Badrinarayanaaiah(1999-2-L.W.102), the view taken by S.M.Abdul Wahab,J., in Schwartz Dasan v. K.S.Devadoss (1999-1-CTC 560) in holding that it is not a condition precedent to deposit the arrears ordered or directed to be deposited under Section 11(3) or (4) to prefer the appeal under Section 23 of the Acts as correctly decided. The reference is answered in the above terms. No costs.”

17. The single judge of this Court in a decision reported in **2013 (3) MWN (Civil) 593 (Saroja Ammal and another Vs. Ganesa Mudaliar (deceased) 2.Soodamani and 3 others)**, following the judgment reported in 2002 1 LW 133 has held as follows;

“8. Now, the further question is as to whether the Petitioners are bound to deposit the Rent before the Appellate Court at the time of filing the Appeal and whether such deposit is a condition precedent. The said question was already answered by the Hon'ble Division Bench of this Court reported in A. Rafeeq Ahmed & Co., rep. by its Partner, K. Muktar Ahamed v. Montari Leather Ltd., rep. by its Chairman and Managing Director, 2002 (1) LW 133, wherein it is found that it is not a condition precedent to deposit the arrears of Rent ordered or directed to be

deposited under Section 11(3) or 11(4) to prefer an Appeal under Section 23 of the Act before the First Appellate Court. In fact, the Hon'ble Division Bench disapproved the views taken in very many decisions out of which, one is the decision reported in S.K.Rajapandian v.A. Kesavan, 1991 (2) LW 453, which decision has been relied on by another learned Single Judge reported in A.C. Abraham Kingsley v. Shanthi and Others, 2006 (4) CTC 46 : 2006 (3) MLJ 829, which infact was relied on by the Lower Appellate Court to reject the Appeals. Therefore, in my considered view, there need not be any requirement for depositing the arrears of rent or the amount ordered by the Rent Controller under Section 11(3) & 11(4) while preferring the Appeal before the Appellate Authority challenging the very same Order.

9. Insofar as the other decision relied on by the learned Senior Counsel for the Respondents reported in Maragathammal v. Kamalammal, 2006 (5) CTC 698 (SC) : 2006 (4) MLJ 1685, is concerned, the facts and circumstances of that case is totally different and distinguishable and hence, the same can not be applied to the present case. On the other hand, the Hon'ble

Division Bench decision reported in A. Rafeeq Ahmed & CO., rep. by its Partner, K. Muktar Ahamed v. Montari Leather Ltd., rep. by its Chairman and Managing Director, 2002 (1) LW 133, is on the point.

10. Thus, by following the above cited decision of the Hon'ble Division Bench of this Court, I hold that the Appeal filed by the Petitioners before the Appellate Authority is maintainable as against the Order passed under Section 11(4) of the Act without depositing the Rent."

18. In the case on hand, the petitioner/tenant has alleged that taking advantage of the order of interim injunction, the landlord has trespassed into the property and also, caused damages and thereafter, he could not carry on the business. It is to be noted that the allegations of the tenant was not proved in this case. It is settled law that even in the cases of denial of the jural relationship and dispute over quantum of rent, the Rent controller has got power to direct the tenant under Section 11(3) and (4) of the Act to deposit arrears of Rent. Further, admittedly, the tenant has been in possession of the tenanted premises. I am of the view that so long as the tenant continues to be in possession of the petition premises, he has statutory obligation to pay the rent

regularly and he should have deposited rent as directed by the Rent Controller.

19. Further, the appeal of the tenant was dismissed on merits and not on the ground of non-deposit of the entire arrears before entertaining the appeal. In the light of the fact of this case, I am of the considered view that the judgments relied on by the learned counsel for the petitioner do not apply to the present case.

20. Both the authorities had given ample opportunity to the tenant to deposit the arrears of rent and he has not availed the same. According to the landlord, the tenant is liable to pay the arrears of rent for a sum of Rs.3,00,000/- as on date, which is not disputed by the tenant. It is settled law that the subsequent events can be taken into account, while considering the case arising out of the Rent Control Act. In view of the finding stated supra, I do not find any reason to interfere with the order impugned in these revision petitions.

In the result, the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.03.2015

Index : Yes/No
Internet: Yes/No
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To

1. The learned VIII Judge,
Small Causes Court, Chennai.
2. The learned XIV Judge,
Small Causes Court, Chennai.

K.KALYANASUNDARAM, J.

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