

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.2793 of 2014

N.Govindasamy

S/o.Late R.Natesa Naicker

.. Petitioner/Petitioner/Petitioner

Vs.

1.The Managing Director

TSMAC, C.M.D.A, Tower-II

IV Floor, Gandhi Ervin Bridge Road

Egmore, Chennai – 600 008.

2.Mr.S.Manoharan

S/o.Late K.Shanmugam

3.Mr.K.Venkatesan

S/o.Late N.Kothandan

.. Respondents/Respondents/Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.04.2014 made in M.P.No.145 of 2013 in R.C.O.P.No.723 of 2013 on the file of the learned XV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.G.Jayachandran

For Respondents : Mr.K.S.Vaithyanathan, for R3

Mr.Ramachandran, for R2

R1 – No Appearance

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsels appearing for the respondents.

2. The present Civil Revision Petition has been filed challenging the impugned order dated 22.04.2014 made in M.P.No.145 of 2013 in R.C.O.P.No.723 of 2013, wherein the respondent is directed to deposit a sum of Rs.8,40,000/- being the arrears of rent from the month of June 2011 to June 2013, while the prayer made in the petition is to direct the respondents to pay the rent due till the disposal of the main RCOP, failing which the respondents are directed to put the petitioner in possession.

3. It is the case of the revision petitioner/land lord that he filed the rent control proceedings in RCOP.No.723 of 2013 for eviction on

the ground of willful default. During the pendency of the proceedings, the petitioner also filed a petition in M.P.No.145 of 2013 under Section 11(3)(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [herein after called as the 'Act'] for the following reliefs:

"To direct the respondents to pay the entire arrears of monthly rent for the month of June 2011 onwards @ Rs.35,000/- p.m for 24 months (June 2011 to June 2013), amounting to a sum of Rs.8,40,000/- and continues to pay the rent which may subsequently become due in respect of the petition premises until the termination of the proceedings, failing which stop all further proceedings and make an order directing the respondent to put the petitioner in possession of petition premises."

But the Trial Court had passed the following order:

"In the result, this petition is allowed. The respondent is directed to deposit a sum of Rs.8,40,000/- being the arrears of rent from the month of June 2011 to June 2013 on or before 5.6.2014 failing which all further proceedings would be stopped in the main RCOP. For compliance call on 6.6.2014."

4. The learned counsel for the revision petitioner would contend that the order passed by the Trial Court is against the provision of law under Section 11(4) of the Act. Hence, the revision petitioner has come forward with the present Civil Revision Petition seeking for a direction to the respondents to pay further arrears of rent for the periods from July 2013 to the date of ordering this Civil Revision Petition and further direct the respondents to continue paying the rent to the petitioner which may subsequently become due in respect of the petition property until the termination of the Rent Control Proceedings in accordance with Section 11(1) of the Act.

5. Resisting the same, the learned counsels appearing for the 2nd and 3rd respondents would submit that without preferring an RCA against the order made in M.P, the revision petitioner has straightaway come forward with the revision and hence, the revision is not maintainable. To substantiate the said contention, the learned counsel appearing for the third respondent relied upon the decision reported in **2010 (1) MWN (Civil) 826, M.Sivagami v. K.S.Ganesan.**

6. Per contra, the learned counsel for the revision petitioner

relied upon the decision reported in **2007 (4) CTC 561, N.Chellapandi v. C.Kaathan** to substantiate his contention that if an error has been committed by the learned Rent Controller or if there is an excess in jurisdiction, the party can invoke Article 227 of the Constitution and prefer a revision. Thus, the learned counsel would submit that the revision is maintainable.

7. Furthermore, the learned counsels appearing on both sides fairly submitted that after the filing of the present Civil Revision Petition, the rent has been periodically paid.

8. Considered the rival submissions made by both sides and perused the typed set of papers.

9. The only point that has to be decided is whether a revision is maintainable without preferring an RCA?

At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the revision petitioner reported in **2007 (4) CTC 561, N.Chellapandi v. C.Kaathan**, wherein it was held that in rent control proceedings when an order passed by the learned Rent Controller does not affect the rights of the parties finally

or when the order is not in accordance with the provisions of law, then the order need not be canvassed in Appeal before the learned Rent Control Appellate Authority and it can be canvassed before the High Court under Article 227 of Constitution of India. It is appropriate to incorporate paragraphs 13 and 14 of the said decision:

"13. The other decision that has been cited by the learned counsel for the petitioner is reported in Rabayakkal v. Singarayar, 2002 (1) CTC 481. In the said decision, the question that has arisen for consideration was that when the Rent Controller failed to determine the monthly rent and arrears and still stopped the Rent Control Proceedings on account of arrears of rent, can the High Court exercise the power under Article 227 of the Constitution of India, even though an Appeal could have been filed against the order of the Rent Controller. While dealing with the said controversy this Court has held that since the Rent Controller has not followed the mandatory provision of Sections 11(3) and 11(4) of the said Act, the High Court can interfere with the said order of the Rent Controller under Article 227 of the Constitution of India, even though an Appeal could have been filed against the order of the

Rent Controller. But, in the present case on hand, the learned Rent Controller exercised his discretion and dismissed the Application filed by the petitioner under Section 5 of the Limitation Act. The learned Rent Controller has found that the reason assigned by the petitioner in the said Application is not sufficient and hence, dismissed the said Application. Hence, the above decision cited by the learned counsel for the petitioner will not be applicable to the facts and circumstances of the present case.

14. The discussion made above will clearly establish that when an order passed by the Rent Controller does not affect the rights of the parties finally, an Appeal under Section of the Act need not be filed and aggrieved party can straightaway approach the High Court under Article 227 of the Constitution of India. Furthermore, if the order of the Rent Controller is not in accordance with the provisions of law, then it can be said that the order need not be canvassed in Appeal before the Rent Control Appellate Authority, but can be canvassed before the High Court under Article 227 of the Constitution of India. But, as

discussed above, the learned Rent Controller has found that the reason stated by the petitioner to condone the delay of 1246 days in preferring the Application to set aside the ex parte order is not convincing and dismissed the said Application. The said order cannot be said to be an order not finally deciding the rights of the parties or the learned Rent Controller failed to follow the mandatory provisions or procedures contemplated in the said Act. Hence, without preferring an Appeal under Section 23 of the said Act challenging the order of the Rent Controller, the petitioner cannot invoke Article 227 of the Constitution of India by preferring the Civil Revision Petition before this Court."

Thus, in the above decision it was held that the revision is maintainable.

10. In the decision relied on by the learned counsel for the respondent reported in **2010 (1) MWN (Civil) 826, M.Sivagami v. K.S.Ganesan**, in paragraph 19, it was held as follows:

"19. The present petition has been filed under Section 11(4) of the Tamil Nadu Buildings (Lease & Rent

Control) Act, 1960. The Rent Controller has passed the impugned order and thereby directed the revision petitioner/respondent/tenant to pay a sum of Rs.32,500/- on or before 27.02.2007. Therefore, it is needless to say that by virtue of the impugned order passed by the Rent Controller, the right of the revision petitioner/respondent/tenant is affected. Under the said circumstances, she has to file only Appeal and not Revision.”

But the above citation is not applicable to the facts of the present case because in the above decision, the tenant has challenged the impugned order passed in Section 11(4) application, whereas in the instant case, the landlord himself has challenged the impugned order stating that the statutory provision of Section 11 of the Act has not been complied with, which would amount to error in jurisdiction. Further, it would also affect the rights of the parties.

11. Thus, considering the facts of the present case in the light of the decision relied on by the learned counsel for the revision petitioner reported in **2007 (4) CTC 561, N.Chellapandi v. C.Kaathan**, I am of the view that the revision is maintainable. Furthermore, it has been

submitted by both sides that subsequent to the impugned order, the respondent/tenant has paid the rent up to date. Hence, the respondent/tenant is directed to pay the rent periodically as per the terms of the lease agreement entered into between the parties on or before 10th of every month till the disposal of the main RCOP proceedings.

12. The learned XV Judge, Small Causes Court, Chennai is directed to dispose of the R.C.O.P.No.723 of 2013 within a period of three months from the date of receipt of a copy of this order. At this juncture, learned counsel for the petitioner requested the permission of this Court to withdraw the sum of *Rs.8,40,000/-* deposited by the respondent/tenant pursuant to the impugned order passed by the Trial Court. Hence, the petitioner is directed to file appropriate cheque application before the Trial Court for withdrawing the said amount and the learned Trial Judge is directed to consider the application and pass appropriate order within a period of one week from the date of filing such application by the revision petitioner/landlord because the respondent/tenant has got no say in the matter.

13. The present Civil Revision Petition is allowed with the above directions. No costs.

08.01.2016

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To

The learned XV Judge,
Small Causes Court, Chennai.

R.MALA, J.

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