

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2016

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.Nos.3886 and 3887 of 2014
and M.P.Nos.1 and 1 of 2014

Alli ... Petitioner

Vs.

Dibyendu Choundhery ... Respondent

PRAYER: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended, against the fair and decretal order dated 21.08.2014 made in R.C.A.Nos.349 and 350 of 2014 on the file of IX Small Causes Court at Chennai reversing the fair and decretal order dated 05.06.2014 made in M.P.Nos.99 and 83 of 2014 in R.C.O.P.No.600 of 2008 on the file of the XVI Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.K.Sellathurai

For Respondent: Mr.T.Velumani

COMMON ORDER

C.R.P.(PD).No.3886 of 2014 is directed against an order passed by the learned Rent Controller, directing the revision petitioner to re-deposit a sum of Rs.8,97,750/- to the credit of the suit withdrawn by her as per the order dated 19.03.2013 in M.P.No.173 of 2013.

C.R.P.(PD).No.3887 of 2014 is filed against the dismissal of payment-out petition.

2. It is stated by the respondent-tenant that he was a tenant under the revision petitioner for non residential purpose. The landlady had availed loan from the Tamil Nadu Industrial Investment Corporation creating charge over the property and the proceedings were initiated by them against the petitioner for recovery of dues. In order to repay the debt, the petitioner-landlady offered to sell the tenanted property including other areas and the same was also accepted by the respondent-tenant. The total sale consideration was fixed at Rs.24,27,000/- and a sum of Rs.17,42,065/- was paid as an advance. There was already a sum of Rs.1,50,000/- lying in the hands of landlady as the rent advance. Therefore, a total sum of Rs.18,92,065/- was paid by the tenant towards the sale consideration. In the meanwhile, R.C.O.P was filed by the landlady on the ground of willful default, in which, application under Section 11(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act was filed, which was dismissed. An appeal against the same was also dismissed. The respondent also filed a revision in C.R.P.(PD) No.2862 of 2010, in which, this Court had directed the respondent- tenant to deposit the entire rental arrears. Aggrieved by the same, SLP was preferred by the

tenant. The Hon'ble Supreme Court has directed the petitioner therein to deposit the arrears of rent within eight weeks and current rent has to be deposited before the Rent Controller. It was represented before the Hon'ble Supreme Court that the entire arrears had been deposited by the tenant. the petitioner/landlady was allowed to withdraw the arrears of rent and current rent, which shall be subject to the result of the proceedings before the Rent Controller.

3. In the meanwhile, the respondent-tenant also filed C.S.No.978 of 2005, which was transferred to the Civil Civil Court, Madras and numbered as O.S.No.5387 of 2011 for specific performance. The said suit was decreed and it is stated that an appeal was preferred against the same and stay of decree was also granted.

4. While so, on an application by the petitioner-landlady to withdraw the arrears of the rent deposited, the learned Rent Controller has allowed the same to withdraw the amount. The respondent-tenant also had filed an Interlocutory application to direct the landlady to re-deposit a sum of Rs.8,97,750/-to the credit of the R.C.O.P withdrawn by her, as per the orders made in M.P.No.173 of 2013. The said application was allowed by the Rent Control Appellate Authority. Aggrieved by the same, this Civil Revision has been filed.

5. The dispute that arose between the parties is as to whether the withdrawal should be subject to the result of the rent control proceedings or the landlady could have been permitted to withdraw the arrears of rent, before the disposal of the R.C.O.P.

6. Be that as it may, there is a suit for specific performance, which was decreed by the trial Court and the same was stayed by this Court. The tenant is in occupation of the premises in question and the rent is being paid only pursuant to the direction issued by the Hon'ble Supreme Court. As the Hon'ble Supreme Court has stated that the withdrawal should be subject to the result of the rent control proceedings, it is directed that the parties should go for trial and complete the proceedings. It is also stated that the trial is in progress in R.C.O.P. In the light of the above, in the interest of both the parties, the RCOP has to be disposed of on merits.

7. The learned Rent Controller is directed to complete the trial and pronounce orders on or before 28.02.2017. He is also directed to decide the issue whether the amount deposited and withdrawn by the petitioner-landlady is only a rent payable to her. It is stated that the current rent is being deposited by the tenant into Court and the tenant

shall continue to do so till the disposal of the proceedings. It is also open to the tenant to take out an application to re-deposit the rent, subject to the result of the rent control proceedings. The Civil Revision Petitions are accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.12.2016

Index : Yes/No

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The XVI Judge,
Court of Small Causes, Chennai.

PUSHPA SATHYANARAYANA.J

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