

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HON 'BLE **Dr. JUSTICE. S.VIMALA**

Civil Revision Petition (NPD) No.3927 of 2014
and M.P.No.1 of 2014

K.Rajagopalan

... Petitioner / Landlord

Vs.

R.Gnanapandithan

... Respondent / Tenant

Prayer :- Civil Revision Petition (NPD) filed under Section 25 (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set-aside the order and decreetal order passed in R.C.A.No.366 of 2014, dated 02.09.2014, by the learned IX Court of Small Causes, Chennai, reversing the order and decreetal order, dated 03.07.2014 passed in R.C.O.P.No.2076 of 2012 on the file of the XI Court of Small Causes, Chennai and to allow this Civil Revision Petition.

For Petitioner : Mr. K.Ramu

For Respondent : Mr. K.K.N.Ganeshan

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ORDER

The landlord is the Revision Petitioner.

1.1. The landlord filed the petition for eviction in R.C.O.P.No.2076 of 2012, on the ground of willful default in the payment of rents and also on the ground of own use and occupation. The respondent disputed the relationship of landlord and tenant and

further contended that it was only a lease for a period of five years for which the petitioner has received a sum of Rs.5,00,000/- towards lease amount and Rs.50,000/- towards EB Deposit, both refundable at the time of vacating the house.

2. The landlord took-out an application in M.P.No.614 of 2012 in R.C.O.P.No.2076 of 2012, under Section 11 (3) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (hereinafter referred to as "the Act") to enable the Court to determine the amount of rent summarily. By the order, dated 05.10.2013, passed in M.P.No.614 of 2012, the respondent was directed to deposit a sum of Rs.1,02,000/-, being the rental arrears from April 2012 till September 2013, (at the rate of Rs.8,000/- per month), less excess rental advance of Rs.42,000/- on or before 21.10.2013, failing which, all further proceedings would be stopped and that the eviction of the respondent would be ordered. The respondent was also directed to deposit the future rents, as and when they become due to the credit of the R.C.O.P.

3. The respondent, without prejudice to the contentions raised, deposited a sum of Rs.1,02,000/- to the credit of the R.C.O.P. The respondent did not pay the future rents, as ordered by the Rent

Controller, from October 2013. A memo was filed by the landlord inviting the attention of the Court to the fact that the respondent failed to comply with the order with regard to future payment of rents, i.e., from October 2013, and therefore, the respondent has no right to contest the proceedings. Thus, the landlord sought an order of eviction.

4. The respondent filed a reply to the memo filed by the landlord, in which it is alleged that due to ill-health and dialysis treatment, he was not able to pay the rents for the period from October 2013 to June 2014; as he has recovered from his illness, he is ready to deposit the rental due of Rs.72,000/- for the period from October 2013 to June 2014.

5. The petitioner / landlord has filed a memo, dated 19.06.2014, praying to stop further proceedings and to order eviction.

5.1. A reply, dated 23.06.2014, was filed, in response to the memo filed by the landlord, in which, it is stated that the respondent has recovered from his ill-health and he is ready to deposit the rental dues of Rs.72,000/-.

5.2. The reply by the tenant was rejected and an order of eviction was passed, by the learned Rent Controller, by the order, dated 03.07.2014.

5.3. Challenging the same, an appeal was filed before the Rent Control Appellate Authority, by the respondent, in R.C.A.No.366 of 2014. The learned Rent Control Appellate Authority, set-aside the order of eviction passed in R.C.O.P.No.2076 of 2012 and directed both the parties to appear before the Rent Controller, on 18.09.2014.

6. The critical observation made by the learned Rent Control Appellate Authority needs to be extracted in order to decide whether the order of remand passed by the Rent Control Appellate Authority suffers from any illegality or impropriety, which reads thus:-

“.. the learned rent controller ordered eviction for the non compliance of the order which is for depositing the rental arrears of Rs.1,02,000/-. **But for the non-payment of future rent there was not specific orders.** Thus, the cause of action arose in MP No.614/12 is ended after compliance of the order. Accumulating the rental arrears to the subsequent periods forms **new cause of action** for that period the respondent has to file a separate applications.....”

7. Challenging the same, this Civil Revision Petition has been filed by the landlord, on the following important grounds:-

(i) The learned appellate Judge failed to see the real purport behind enacting Section 11 (3) of the Act. The lower appellate court

failed to see that petitioner / landlord cannot be driven to file repeated 11 (3) applications for every subsequent default committed by respondent / tenant under the Act and thus, the impugned order is liable to be set-aside.

(ii) The lower appellate court failed to see that the petitioner / landlord cannot be put to undue hardship merely because, allegedly the order of the trial court in 11 (3) Application, dated 05.10.2013 is silent as to the consequences of non-deposit of future rent.

(iii) It is settled law that it is the duty of the tenant to deposit the rent regularly and that there need not be any direction continuously or reminder from the Court to direct the tenant to pay the rent without default.

(iv) The lower appellate court failed to see that under Section 11 (1) of the Act obligation is imposed on respondent / tenant to continue to pay rents till termination of eviction proceedings. The same is in-built in every order passed under Section 11 (3) of the Act, the consequence of non-compliance of an order passed under Section 11 (3) of the Act is provided under Section 11 (4) of the Act and is thus inbuilt, as otherwise innocent landlord like petitioner will be forced to file repeated applications under Section 11 (3) of the Act for every subsequent default committed by the respondent (tenant).

(v) The order of the lower appellate court is contrary to the well

settled principles of law that act of court shall prejudice none viz., *actus curiae neminem gravabit*. The lower appellate court having concurred with the petitioner's case in toto, to the shock and surprise set-aside the order of eviction ordered by the Rent Controller on the erroneous and legally untenable ground that the Rent Controller in its order, dated 05.10.2012, passed under Section 11 (3) of the Act, did not mention the consequence in the event of default committed by respondent / tenant in respect of future rents.

(vi) The lower appellate court erred in holding that the Rent Controller had not mentioned the consequences of future rent in the 11 (3) order, whereas the Rent Controller had unequivocally and in unambiguous terms had directed the respondent / tenant to pay the future rent as and when it becomes due. Thus, there is a specific direction under order passed under Section 11 (3) of the Act to the tenant to pay future rents as well, any non-compliance of direction under Section 11 (3), eviction order would result automatically, which is an order to be passed under Section 11 (4) of the Act. Thus, the impugned order is liable to be set-aside.

(vii) The lower appellate court ought not to have entertained appeal without the respondent / tenant depositing the defaulted rent into the court in terms of Section 11 (1) of the Act. The lower appellate court not only admitted the appeal, without directing the

respondent to deposit the admitted / defaulted rent from September 2013, but even allowed the appeal without the respondent tenant depositing the admittedly defaulted rent which is the condition precedent as per Section 11 (1) of the Act to entertain an appeal. Thus, the order of the lower appellate court is liable to be set-aside.

8. The learned counsel for the petitioner relied upon the following decisions in order to support the grounds taken in this Civil Revision Petition.

9. The learned counsel for the landlord relied upon the decision reported in **2013 (3) MWN (Civil) 241 (Anto Joseph vs. Jean Paul Rajarathinam)**, in order to support the proposition that mere averment does not stand the test of proof. It is pointed out that even though the respondent claimed that he paid a sum of Rs.5,00,000/- to the petitioner herein, no document was filed. The relevant observation of the decision, cited supra, reads as under:

“16. Material on record further discloses that though the tenant had contended that the Landlord's mother had borrowed a sum of Rs.4,68,700/-, the Tenant has not filed a single document. It could be further deduced that he had not paid Rent from April 2002. Though the learned Counsel for the Revision Petitioner/Tenant has submitted

that both the authorities under the Rent Control Act, have failed to consider a case of adjustment of Rent from the amount, due and payable by the erstwhile Landlord, as rightly contended observed by the authorities under the Rent Control Act, mere averments does not stand the test of proof."

The Tenant has been squatting over the property for so many years for payment of Rent and through the Will, dated 02.10.2003, has come into effect and by virtue of the same, the respondent has become the owner of the property, the Tenant has denied the jural relationship of Landlord-Tenant. ***The intention of the Tenant reflects mala fide. Though arrears of Rent directed to be paid, has not been paid within the stipulated time and on the date of reporting payment, the Tenant has come forward to file a Petition for making deposit in the Court, in respect of payment as ordered in I.A.No.90 of 2012.***"

(ii) The learned counsel for the landlord submitted that the appellate Court ought not to have entertained the appeal, against the order passed under Section 11(4) of the Act, in the absence of tenant depositing the statutory duty of depositing / paying the arrears of rent. Pointing out the failure on the part of the tenant to comply with the obligation of depositing the future rent, the decision reported in **2011 (1) MWN (Civil) 533 (K.Maheswari vs. Ashwini Kumar)**, is

relied upon:

"14. It is seen from the scheme of Section 11 that the Act imposes an obligation upon the tenant to pay all the arrears of rent before he could contest a petition for eviction. In order to achieve this objective of ensuring the payment of rent, various steps are provided under Section 11. Sub section (1) of Section 11 actually imposes two obligations upon the tenant. Section 11 (1) reads as follows:-

"11. Payment or deposit of rent during the pendency of proceedings for eviction No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that Section, or to prefer any appeal under Section 23 against any order made by the Controller on the application, unless he has paid or pays to the landlord, or deposits with the Controller or the Appellate Authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposits, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate Authority, as the case may be...."

15. A reading of the above provision shows that ***it imposes two obligations upon the tenant, one in***

respect of the past arrears and the other in respect of future rent.

In respect of the past arrears, the above provision uses the expression "unless he has paid or pays to the landlord or deposits with the Controller all arrears of rent due in respect of the building upto the date of payment". In respect of future rent, the Section uses the expression "continues to pay or to deposit any rent which may subsequently become due until the termination of the proceedings". The Section also uses the conjunction "and" in between the first obligation relating to past arrears and the second obligation relating to future rent.

It is clear from this decision that while under Section 13(iii) ***the obligation to pay arrears of rent is by adjudication and that the obligation to pay future rent is on account of the statute itself*** (by virtue of the later part of section 11(i)). In this case, there is not only statutory obligation to pay the future rent, but, also a duty to obey the orders of the Court with regard to the payment of future rents. The respondent has not chosen to fulfill the same.

(iii) Relying upon the dictum laid down that non-fulfilment of statutory obligation would result in the ***defence being struck off*** and the tenant cannot have any cause to complain, the decision reported in **2006 (5) CTC 698 (Maragathammal vs. Kamalammal)** is relied upon:

"14. In this case an order was passed under Section 11 dated 09.11.1995, directing the respondent-tenant to deposit the entire admitted arrears of rent in Court on or before 22.11.1995 failing compliance of which the respondent's defence would be struck off. Admittedly, the respondent-tenant did not deposit the arrears of rent on or before 22.11.1995 and instead of that lodged a schedule on 21.11.1995. In this lodgement schedule the respondent stated that she wanted to deposit the rents from the month of June 1992 to October 1995, i.e. a sum of Rs.26,650 covering 41 months. This lodgement schedule came to be considered and the issue of challan for depositing the sum of Rs.26,650 was ordered on 29.11.1995."

(iv) 2013 (3) MWN (Civil) 626 (V.J.Padmini vs. P.R.Prabhakar):-

"15. The learned counsel appearing for the petitioner, alternatively, sought for permission to deposit the rent into the Court by extending the time granted already. Once this Court has rejected the Civil Revision Petition filed by the petitioner in the earlier round and when the said order has become final and conclusive, this request cannot be entertained as the same is not maintainable. Therefore, the request made by the learned counsel appearing for the petitioner for depositing the rent is rejected. Accordingly, I find no merits in the Civil Revision Petition and the same is dismissed. The

connected Miscellaneous Petition is closed. No costs."

9.1. The decisions relied upon by the learned counsel for the petitioner / landlord supports the case of the landlord that by the conduct the respondent / tenant, he himself has invited the order of eviction.

10. The learned counsel for the respondent relied upon the following decisions:-

(i) Contending that when the order of the lower Appellate Court cannot be tainted with illegality or material irregularity, the High Court has no jurisdiction to interfere with the order passed, the decision reported in **AIR 1973 SC 76 (Managing Director vs. Ajit Prasad Tarway)** is relied upon:

"5. The order of the first appellate court may be right or wrong ; may be in accordance with law or may not be in accordance with law ; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under Section 115 of the Civil Procedure Code"

10.1. So far as this case is concerned, the jurisdiction of the

lower appellate Court has been exercised with material irregularity. The following observation, which is self-explanatory, is worth quoting:-

“.. the learned rent controller ordered eviction for the non compliance of the order which is for depositing the rental arrears of Rs.1,02,000/-. **But for the non-payment of future rent there was not specific orders.** Thus, the cause of action arose in MP No.614/12 is ended after compliance of the order. Accumulating the rental arrears to the subsequent periods forms **new cause of action** for that period the respondent has to file a separate applications.....”

10.2. These reasonings are against the law and against the facts available on record.

10.3. The order, dated 05.10.2013, passed in M.P.No.614 of 2012 in R.C.O.P.No.2076 of 2012 is specific in directing the respondent to deposit future rent as and when they become due to the credit of the R.C.O.P.

10.4. Moreover, de hors the direction from the Court, it is the duty of the tenant to deposit the rent as and when it is due.

10.5. The landlord is not expected to file petition under Section 11 (3) of the Act, for each and every month, till the eviction proceedings are over. Therefore, the order passed by the first Appellate Court suffers from illegality and material irregularity.

10.6. Yet another contention of the learned counsel for the respondent is that when the principles of natural justice is violated and in the place of an application merely a memo is filed, rightly the first Appellate Court set aside the order and therefore, the order has to be sustained, the decision reported in **2014 5 MLJ 872 (P.T.Lee Chengalvaraya Naicker Trust, Rep. By its Chairman, Vepery, Chennai-7 and others vs. S.Shanmugam and others)** is relied upon. In the said decision, it has been held that ***a memo would be filed to record certain facts*** and normally, for an appropriate order, an application has to be filed. The relevant observation reads as under:

"22. It is not in dispute that A.Nos.2021 & 2022 of 2013 filed by the Applicants/Third parties are pending on the file of the Learned Single Judge. Ordinarily, when Applications are pending for consideration, before a Court of Law, filing of memo by the parties concerned seeking an appropriate order for issuance of necessary directions is not a desirable/prudent one, in the considered opinion of this Court. To put it succinctly, ordinarily, a memo would be filed to record certain facts in a given proceedings before a Court of Law."

11. So far as this case is concerned, for the relief required

originally an application has been taken out. The Court has passed a conditional order and ***later to record the fact that conditional order has not been obeyed, the memo has been filed.***

11.1. It is not a case where the main relief is sought for by filing a memo. An Application under correct provision of law has been filed in which opportunity has been given to the other side. Even in the memo, notice has been given to the other side.

12. Therefore, there is no violation of principles of natural justice. In fact, as held in the case of **2006 (4) CTC 46 (A.C.Abraham Kingsley vs. Shanthi and others)**, when the tenant has no explanation for non-compliance of order that resulted in the order of eviction, he cannot challenge the same on the ground of violation of principles of natural justice. The relevant observation in the decision, cited supra, reads as under:-

“6. Per contra, the learned Counsel for the tenants submitted that before action was taken by the Rent Controller on the memo filed by the landlord intimating the non-compliance of the conditional order, notice should have been issued to the tenants to verify the facts mentioned in the memo and as no notice was issued by the Rent Controller, the order of eviction passed against them is nullity in the eye of law as the principles of natural justice was blatantly violated by the Rent

Controller. He further submitted that ***striking out the tenants' defence is an exceptional step and such a step could be taken only after extending an opportunity to the tenants before passing orders on the memo.*** Learned counsel drew my attention to the judgment of the Appellate Authority wherein in para 7 it is stated by the Appellate Authority that there is no serious objection by the landlord for permitting the tenants to deposit the arrears and to proceed with the rent control proceedings. Therefore, the learned Counsel submitted that the judgment is more or less like a consent judgment and it cannot be challenged by the Revision Petitioners."

13. Already the respondent herein has filed Civil Revision Petition No.378 of 2014, challenging the order passed in R.C.A.No.385 of 2013, in which, the right of the respondent to call the deponent for cross-examination has been extensively dealt with.

14. Even though the respondent is stated to have suffered from kidney failure, it may be a ground for seeking extended time for eviction and not a ground for escaping eviction.

15. In the result, the order, dated 02.09.2014, passed in R.C.A.No.366 of 2014, is set-aside and this Civil Revision Petition is

allowed. Two months time is hereby granted to the respondent to vacate and hand over the possession to the petitioner. No costs. Consequently, the connected MP is closed.

15.03.2016

Index: Yes / No
Web : Yes / No
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S.VIMALA, J.,

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To

1. IX Court of Small Causes, Chennai
2. XI Court of Small Causes, Chennai
3. The Section Officer, V.R.Section, Madras High Court,
Chennai – 104

C.R.P. (NPD) No.3927 of 2014
& M.P.No.1 of 2014

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