

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)Nos.834 & 835 of 2014 &

M.P.No.1 of 2014 in

CRP (NPD) No.834 of 2014

Ritty Mini Departmental Stores

Rep. by its Proprietor

Mr.H.Issac Ponsingh

No.106/102, Velacherry Main Road

Guindy, Chennai - 32

CRPs

... Petitioner in both

v.

Build Well Construction Co. (P) Ltd.

Rep. by its Managing Director

Mr.N.Sunil Kumar

No.38, 2nd Floor

Marutham Street, Fathima Nagar

Valasaravakkam

Chennai - 600 87

CRPs

... Respondent in both

Civil Revision Petition No.834/2014 filed under section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 1961 against the judgment and decree dated 08.01.2014 in R.C.A. No.238 of 2013 on the file of VIII Small Causes Court, Chennai, confirming the fair and decreetal order dated 26.03.2013 passed in R.C.O.P.No.1633 of

2011 on the file of XII Small Causes Court at Chennai.

Civil Revision Petition No.835/2014 filed under section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 1961 against the judgment and decree dated 08.01.2014 in M.P.No.852 of 2013 in R.C.A. No.238 of 2013 on the file of VIII Small Causes Court, Chennai.

For Petitioners : Mr.P.Selvaraj

For Respondent : Mr.P.Anbarasan

COMMON ORDER

Challenging the order passed in R.C.A. No.238 of 2013 on the file of Rent Control Appellate Authority, VIII Judge, Small Causes Court, Chennai, confirming the order passed in R.C.O.P.No.1633 of 2011 on the file of XII Judge, Small Causes Court, Chennai, the tenant has filed the Civil Revision Petition in CRP (NPD) No.834 of 2014.

2. Challenging the order passed in M.P.No.852 of 2013 in R.C.A. No.238 of 2013 on the file of Rent Control Appellate Authority, VIII Judge, Small Causes Court, Chennai, the tenant has filed the Civil Revision Petition in CRP (NPD) No.835 of 2014.

3. The respondent-landlord filed the Rent Control Original Petition in R.C.O.P.No.1633 of 2011 for eviction on the grounds of willful default and own use and occupation.

4.1 The case of the landlord is that the tenant was inducted in the year 1988 with regard to one shop portion on a monthly rent of Rs.1,000/- and the tenancy was extended to 3 shop portions and the rent was fixed at Rs.6,000/- for the building and a sum of Rs.4,500/- towards electrical fittings and accessories. A sum of Rs.73,500/- was paid by the tenant as security deposit. The rent was subsequently enhanced to Rs.15,525/- with effect from 16.11.2010.

4.2 According to the landlord, the tenant committed default in paying the monthly rent from November 2010 till July 2011. The arrears of rent payable by the tenant amounts to Rs.2,40,176/-. Even after adjusting the security deposit of Rs.73,500/-, the respondent is liable to be evicted on the ground of willful default. Further, the landlord has stated that they are running a business in the name and style of "Build Well Construction Co. (P) Ltd.", which is having an office at a rented premises and therefore, they required the premises for their own use and occupation.

5. According to the petitioner-tenant, the monthly rent for the

let out premises is Rs.13,500/- plus service tax @ 12.36% exclusive of electricity and other charges. The tenant has been paying the monthly rent regularly without any default. The landlord failed to receive the rent from March 2011 and after complying with the mandatory requirement under section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the tenant has filed the Rent Control Original Petition in R.C.O.P.No.1684 of 2011 on the file of XV Judge, Small Causes Court, Chennai. There are several shops in the first and second floors besides 6 shops in the ground floor apart from the petition premises, therefore, the landlord can shift his business to any other shop without seeking for eviction of the tenant. The tenant has been running a departmental store since 1988 and has not even committed any default in payment of rent. In these circumstances, the tenant prayed for dismissal of the the Rent Control Original Petition.

6. Before the Rent Controller, on the side of the landlord P.W.1 was examined and 20 documents Exs. P1 to P20 were marked and on the side of the tenant, R.W.1 was examined and 2 documents, Exs.R1 and R2 were marked.

7. The Rent Controller, after taking into consideration the oral and documentary evidences, ordered eviction, on the ground of

willful default and dismissed the petition on the ground of own use and occupation.

8. Aggrieved over the same, the tenant preferred an appeal in R.C.A. No.238 of 2013.

9. In the said appeal, the tenant filed an application in M.P.No.852 of 2013 to permit him to deposit the rent for the period from September 2011 to September 2013, amounting to Rs.3,79,200/- and permit him to continue to deposit the monthly rent of Rs.13,500/- plus service tax for subsequent months till the disposal of the appeal.

10. The landlord filed their counter disputing the averments stated in the petition and further stated that the total arrears from November 2010 to September 2013 amounts to Rs.9,48,222/-. Further, the landlord has stated that the tenant filed the Rent Control Original Petition in R.C.O.P.No.1684 of 2013 to deposit the rent into court,. However, the same was dismissed for non-prosecution.

11. The Rent Control Appellate Authority by common order dated 08.01.2014, dismissed the appeal as well as the Miscellaneous

Petition in M.P.No.852 of 2013. As against the order passed by the Rent Control Appellate Authority, the tenant has filed the above Civil Revision Petitions.

12. Heard Mr.P.Selvaraj, learned counsel appearing for the petitioner and Mr.P.Anbarasan, learned counsel appearing for the respondent.

13 . On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the revision petitioner is a tenant under the respondent on a monthly rent of Rs.15,168/-. In the petition, the landlord has stated that the tenant had defaulted in paying the monthly rent from November 2010 till July 2011. The tenant disputed that there is no arrears of rent and that the landlord had refused to receive the rents paid by them. In support of their contention, the landlord produced Ex.P20 and on a perusal of the said document, it is clear that the rents sent to one Sunil Kumar under Ex.P20 document was refused by him. The tender was not made in the name of the company. According to the tenant, the said Sunil Kumar is the Managing Director of the landlord company. When the tenancy is between the respondent company and the tenant, the

payment of rents by the tenant in favour of the individual viz., Sunil Kumar, shall not absolve them from paying the rent to the respondent-landlord. Therefore, by sending the rents to the said Sunil Kumar, who is not the landlord of the premises, the said act done by the tenant shall not dis-entitle the landlord from evicting the petitioner company from the petitioner premises. Subsequently, the tenant filed a petition in R.C.O.P.No.1684 of 2011 under section 8 (5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, for depositing the rent into court, which was also dismissed for default by the Rent Controller and till the disposal of the R.C.O.P.No.1633 of 2011, the tenant has not taken any steps to restore R.C.O.P.No.1684 of 2011. Subsequently, during the tenancy of the appeal, the tenant filed a petition in M.P.No.207 of 2013 to restore R.C.O.P.No.1684 of 2011 with regard to payment of electricity consumption charges. The Rent Control Appellate Authority found that the tenant is liable to pay the electricity consumption charges amounting to Rs.3,64,038/- and also for the subsequent months electricity consumption charges.

14. Since the tenant failed to establish that he had paid the monthly rents without default and by filing an application in M.P.No.852 of 2013, before the Rent Control Appellate Authority to permit him to deposit a sum of Rs.3,79,200/- towards arrears of rent

for the period from September 2011 to September 2013 itself would establish that the tenant had defaulted in paying the monthly rents to the landlord. Sending rents to the individual, viz., Sunil Kumar, was rightly rejected by the courts below while ordering eviction.

15. As already stated, the tenancy was only between the respondent company and the petitioner company. In such circumstances, the petitioner-tenant is liable to pay only to the company and not to an individual.

16. In these circumstances, so far as Civil Revision Petition Petition in CRP (NPD) No.834 of 2014 is concerned, the landlord has clearly established that the tenant has committed willful default in paying the rents by adducing oral and documentary evidences. The courts below have concurrently ordered eviction on the ground of willful default.

17. With regard to Civil Revision Petition Petition in CRP (NPD) No.835 of 2014, since the petitioner-tenant has already filed a petition in R.C.O.P.No.1684 of 2011 before the Rent Controller under section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act and left it to be dismissed for non-prosecution, by filing an application before the Rent Control Appellate Authority after suffering

an order of eviction was rightly dismissed by the Rent Control Appellate Authority. The tenant cannot be allowed to pay the accumulated rental arrears as and when they like.

18. In these circumstances, I do not find any error or irregularity in the orders passed by the courts below. The Civil Revision Petitions are devoid of merits and are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2016

Index : Yes/No
Rj

To

1. The VIII Judge,
Small Causes Court, Chennai
2. The XII Judge,
Small Causes Court, Chennai.

M. DURAISWAMY,J.,
Rj

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M.P.No.1 of 2014 in
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