

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

CRP (NPD) No.1339 of 2006
and
M.P.No.1 of 2006

1.A.Manoharan
2.Sukumaran
3.Chandran

... Petitioners

vs.

R.Maruthachalam

...Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamilnadu Building Lease and Rent Control Act 18 of 1960 as amended by Act 1 of 1980 against the judgment and decree passed in R.C.A.No.44 of 2004 on the file of the Rent Control Appellate Authority cum III Additional Sub Court, Coimbatore dated 17.10.2005 confirming the judgment and decree passed in RCOP No.11 of 1999 on the file of the Rent Controller, II Additional District Munsif Court, Coimbatore dated 24.11.2003.

For petitioners : Mr.S.Arjun
for M/s.P.Indumathi

For Respondent : Mr.G.K.Muthukumar
for M/s.R.Vijaya Sudha

O R D E R

The petitioners are the tenants and respondents in R.C.O.P.No.11 of 1999, filed by the respondent herein for eviction on the ground of wilful default and subletting.

2.The case of the landlord viz., the respondent herein is that the tenants committed wilful default in paying the monthly rent commencing from 01.08.1998 to 31.12.1998 and that the first petitioner herein sublet the premises to the second and third petitioners. The petitioners as the respondents in the eviction proceedings contested the same. According to them, there was no subtenancy as alleged by the landlord and on the other hand, all of them are tenants under the landlord. Insofar as the allegation of wilful default is concerned, it is their case that the landlord failed to issue receipts for the rent received for

some period and refused to receive the rent itself for other period. It is their further case that the petitioners 2 and 3 herein filed R.C.O.P.No.93 of 1999 for depositing the rent into the court and therefore, there cannot be an order of eviction on the ground of wilful default.

3.The learned Rent Controller on appreciation of facts and circumstances found that the tenants have committed wilful default and ordered eviction on that ground. Insofar as the other ground viz., subletting is concerned, the learned Rent Controller rejected the claim of the landlord.

4.Aggrieved against the order of eviction passed by the learned Rent Controller, the tenants preferred an appeal before the Rent Control Appellate Authority. The Appellate Authority on considering the respective case of the parties, agreed with the findings rendered by the learned Rent Controller and thus confirmed the order of eviction on the ground of wilful default.

5.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials placed before this court.

6.It is not in dispute that the eviction petition filed against the petitioners herein, though urged on two grounds viz. wilful default and subtenancy, both the courts below have concurrently found against the landlord, insofar as the ground of subtenancy is concerned and that the landlord has not chosen to challenge such concurrent findings. However, insofar as the other ground viz.wilful default is concerned, the courts below concurrently found that the tenants have committed wilful default. It is seen that the tenants sought to resist the eviction petition by contending that the landlord either refused to issue the receipts for some period or receive the rent itself for other period. They also further contended that the petition filed by them before the learned Rent Controller for deposit of rent into the court in RCOP No.93 of 1999 would justify their contention that there is no wilful default. Both the courts below have concurrently found the first contention that the landlord refused to issue the receipt or receive the rent itself, as not established by the tenants as some receipts marked as exhibits issued by the landlord himself well in advance before the receipt of the rent would show that the landlord was not in the habit of not issuing the receipt, as alleged by the tenants. In respect of the next contention of the tenants that they approached the learned Rent Controller and filed a petition to deposit the rent into the court, both the courts below pointed out that such application was filed by the tenants after the filing of the eviction petition by the landlord.

7. Needless to say that if the landlord refused to receive the rent, the course of action left open to the tenants under law is to be exercised immediately then and there and not to wait till an eviction petition is filed on the ground of wilful default. In this case, admittedly, RCOP No.93 of 1999 came to be filed by the tenants only after the filing of the present RCOP for eviction. Therefore, the contention of the tenants is without any bonafide.

8. Considering the above stated facts and circumstances, I am of the view that the concurrent findings rendered by the courts below do not warrant any interference by this court. Thus, the civil revision petition fails and the same is dismissed.

9. Finally, learned counsel for the petitioners made a request that the petitioners 2 and 3 may be granted two months time for vacating the premises, since the first petitioner has already vacated the premises. Learned counsel appearing for the respondent is not having any objection for granting such time. Accordingly, the petitioners 2 and 3 are granted time to vacate the premises on or before 09.12.2016. If the petitioners 2 and 3 failed to vacate the premises, as undertaken before this court through their counsel, it is open to the landlord/respondent to resort to the proceedings before the Execution Court. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Rent Control Appellate Authority
cum III Additional Sub Court,
Coimbatore.
2. The Rent Controller,
II Additional District Munsif Court,
Coimbatore.

+ 1 to Mr.R. Vijaya Sudha, Advocate SR.57571

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MSM(CO)
EU 21.11.16