

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1179 of 2012
and
M.P.No.1 of 2012**

A.Arief

.. Petitioner

Vs.

1.Dr.Sivanand @ Dr.Shivanandha

2.Dr.L.Sundaram

.. Respondents

(The Second Respondent is representing
for and on behalf of the first respondent
as Power of Attorney holder dated 05.08.1994)

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Lease and Rent Control Act 18/60 as amended by 1/80), against the Fair and decretal order dated 30.01.2012 passed in R.C.A.No.20 of 2011 on the file of the Sub Judge and Rent Control Appellate Authority of the Nilgiris at Udthagamandalam, confirming the order dated 21.12.2010 passed in RCOP.No.5 of 2007 on the file of the District Munsif and Rent Controller, Gudalur, whereby eviction order passed for vacating the suit premises.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.T.Srinivasa Raghavan (for R2)

ORDER

The tenant is the revision petitioner in this C.R.P and the case of the revision petitioner is that he was inducted as a tenant under the Respondent herein on 13.9.2006. The petition mentioned property is a non residential building bearing D.No.10/476 J4 Part of Gudalur Third Grade Municipality. According to the revision petitioner the Tenancy is a oral one. Whereas, according to the Landlord, originally the tenancy was oral and subsequently it was reduced into writing on the same date i.e on 13.9.2006. The further case of the tenant is that at the time of occupying the petition mentioned premises, the landlord has obtained the signature of the petitioner herein in blank papers and the same has been used by the Respondent herein as Lease Agreement dated 13.09.2006 with false averment and the said Agreement is a forged one. The tenant has been paying the monthly Rent regularly to the Landlord. But the Landlord is not in the habit of issuing Rental Receipts to the tenant. The petitioner herein denied that he had

vacated the premises on 10.05.2007 as alleged by the Landlord, in fact the respondents herein/ Landlords have forcefully locked the petitioner's premises and thereafter it was break open after a police complaint was made by the revision petitioner.

2.The petitioner herein has been in possession and enjoyment of the petition premises and he is regularly paying the Rents. But the respondents herein filed the Eviction petition against the petitioner herein on the ground of willful default and act of waste.

3.Per contra, the respondents herein/ landlords contended that the petition premises is a Non Residential building and the petitioner herein agreed to pay a monthly rent of Rs 100/- for having Electronics and Mobile business and he also paid an advance amount of Rs 10,000/-. The oral lease agreement was duly executed in writing on 13.09.2006 in the presence of witnesses. The tenancy commenced from 15.09.2006 and as per the Agreement it is only for 11 months from 15.09.2006. It is agreed between both parties that the Tenancy can be extended after the lease period, by increasing the rent by 5% from the existing rate. From January 2007 onwards the petitioner herein deliberately failed to pay the rent, stating that he is not going to

continue the business and wanted to vacate the same. The petitioner herein had also set up another shop, for his convenience and agreed to hand over the petition premises on 07.05.2007 and he also vacated the premises and handed over the same on receipt of Advance amount of Rs.10,000/- on 10.05.2007. The petitioner herein promised to settle the arrears of rent within 15.05.2007. The respondents herein on taking delivery of petition premises had put up a new lock by replacing the old. On 14.05.2007 the petitioner herein sent Legal notice to the respondents herein, as if he is in legal possession of the premises and he also left his goods and lot of things in the premises. For that the respondents herein sent a correct reply notice.

4.Subsequently on 17.05.2007, the petitioner herein/ tenant put another lock, besides the lock put up by the respondents herein and demanded illegally Rs.1,00,000/- to remove the lock. On 28.08.2007 at night in the absence of the respondents herein, the petitioner herein trespassed into the petition premises by forcibly broken the lock put up by the respondents herein and dumped some unwanted and other materials inside the premises and replaced another lock with a view to cause damage to the petition premises. The petitioner herein wantonly and deliberately refuses to pay rent from the month of January 2007

onwards and also locked the building immediately after getting a convenient shop for his business. Due to the illegal acts of the petitioner herein, there is a heavy loss and damage to the petition premises of the respondents herein. Hence the respondents/ landlords have filed the eviction petition against the petitioner herein.

5.I heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.T.Srinivasa Raghavan, learned counsel appearing for the 2nd respondent. I have also perused the materials available on records.

6.This Civil Revision Petition is filed by the tenant against the order of eviction passed against him on the ground of willful default and act of waste. The respondents herein are the landlords of the petition mentioned premises. The demised premise is a non-residential building. The 2nd respondent herein executed a power deed Ex-P4, dated 05.08.94 in favour of the 1st respondent herein to conduct the case on his behalf. It is seen from records that as per Ex-P1, dated 13.09.06 rental agreement was entered into between the revision petitioner and respondents herein. As per Ex-P1, rental agreement the lease is commenced from 13.09.06 and the monthly rent was fixed at

Rs.1000/- and the lease period is 11 months. The revision petitioner was running electronic goods and mobile business in the petition mentioned premises and he also paid Rs.10,000/- towards security deposit in other words.

7. According to the landlords, the revision petitioner refused to pay monthly rent from January 2007 onwards and he had not paid electricity charges also. Further, the revision petitioner handed over the possession of petition premises to the respondents herein on 10.05.2007 and immediately thereafter, the landlords locked the premises. When the facts are being so, on 14.05.2007 the revision petitioner issued legal notice Ex-P5, wherein he alleged that the landlords have forcefully locked the premises and they have not permitted to the tenant to enter in the premises to run the business.

8. The respondents herein under Ex-P7, has sent a suitable reply to the notice of the revision petitioner. While so, the revision petitioner had wantonly and deliberately put another lock over the petition premises. Thereafter, on 28.08.07 the revision petitioner had trespassed into the petition premises and remained there by locking the premises and kept the key with him and thereby caused lot of

damage to the petition premises.

9. In order to prove the case, the Advocate Commissioner was appointed at the instance of the respondents herein and the learned Advocate Commissioner visited the petition premises and filed his report Ex-C1. Along with the advocate commissioner, Assistant Executive Engineer of PWD also inspected the petition premises and he also filed report under Ex-C2.

10. A careful perusal of Ex.C1 report of the learned Advocate Commissioner disclosed that at the time of inspection the learned Advocate Commissioner enquired the neighbouring shop owners and in that enquiry one Prathapan, Thousq Ali, Abdul Rahim, John Warghse, have stated that the petition premises is under lock and key for the past 10 months and it is not used by tenant/revision petitioner. The Learned Advocate Commissioner further stated in his report that at the time of inspection, he found the schedule premises was under lock and key and he saw the tenant, who was running business nearby building and he asked the tenant to come over the schedule mentioned premises to open the lock for inspection, but the tenant refused to come over and opened schedule mentioned premises. From the report

of learned Advocate Commissioner, it is clearly revealed that the revision petitioner has locked the petition premises and kept the premises with his custody for the past several months without using the same and thereby caused lot of damage to the petition premises. Further, both the authorities below have ordered eviction on the ground willful default and damages by holding that the revision petitioner has not paid the rent for the petition premises from January 2007 onwards. In order to controvert to same, the revision petitioner has not adduced any oral or documentary evidence on his side, except his counter affidavit to the eviction petition.

11. At this juncture, it would be relevant to refer to the judgment of this Court reported in **1992-1-LW-62** in the case of ***Deluxe Road Lines, Rep by its partner Kushalchand B. Sha -Vs- P.K. Palani Chetty***, wherein this Court held as follows:

“an unexplained default is undoubtedly willful, it is for the tenant to plead and prove the circumstances under which he failed to pay the rent as required by the statute. The obligation to pay rent is not merely contractual but also statutory”.

12. In the case on hand, the revision petitioner has not paid rent from the month of January 2007, except a formal denial in the counter, there is no explanation given by the petitioner herein for his non-payment of rent. Furthermore, there was no oral or documentary evidence adduced by the petitioner herein to explain his default, therefore the same remain unexplained and this court can take adverse inference against the tenant holding that he had not paid the rent from the month of January 2007 onwards.

13. The said legal proposition that unexplained default is definitely willful, was reiterated by this Court in its reported judgment **2005 (2) CTC 377**.

14. The revision petitioner has neither adduced any oral evidence nor produced any documentary evidence. In the absence of any other material evidence from the side of the revision petitioner/ tenant, the Learned Rent Controller and Learned Appellate Authority have decided the case on merits with available records. The authorities below have rightly come to conclusion that the tenant have committed willful default in payment of rent and also caused damage and waste to the petition premises and ordered eviction on both the grounds.

15.In the light of the above discussion, I am of the considered view that the well considered orders of the authorities below are not warranted interference and the same is deserves to be dismissed.

16.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2016

Note:Issue order copy on 05.07.2017

Internet:Yes

Index:Yes

vs

To

1.The Sub Judge and
Rent Control Appellate Authority,
The Nilgiris at Udhagamandalam.

2.The District Munsif and
Rent Controller,
Gudalur.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.1179 of 2012
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