

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (NPD) No.1388 of 2012

R.Ajyakumar

... Petitioner

Vs.

Jayabarathi

... Respondent

Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the fair and decretal order dated 10.02.2012 and made in R.C.A.No.56 of 2011 on the file of the learned VIII Judge Court of Small Causes, Chennai confirming the fair and decretal order dated 11.11.2010 and made in R.C.O.P.No.2063 of 2009 on the file of the learned XII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondent : Mr.N.Manokaran
for M/s.C.Sathish

ORDER

This memorandum of civil revision has been directed against the judgment and decree dated 10.02.2012 and made

in the appeal in R.C.A.No.56 of 2011 on the file of the VIII Court of Small Causes, Chennai confirming the fair and decretal order dated 11.11.2010 and made in the rent control proceedings in R.C.O.P.No.2063 of 2009 on the file of the learned Rent Controller (XII Court of Small Causes), Chennai.

2. Heard Mr.J.R.K.Bhavanantham, learned counsel appearing for the revision petitioner and Mr.N.Manoharan, learned counsel appearing for the respondent.

3.The petitioner is the tenant, whereas the respondent is the landlady in respect of the demised premises. The respondent had initiated a rent control proceeding in R.C.O.P.No.2063 of 2009 on the file of the learned Rent Controller (Court of Small Causes), Chennai under Section 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 as amended by Act 23 of 1923(hereinafter may be referred to as "the Act") seeking the relief of eviction of the petitioner/tenant on the grounds of wilful default in payment of rent and owner's occupation.

4. The revision petitioner had strenuously contested the said petition and ultimately, on appreciation of evidences, both oral and documentary, the learned Rent

Controller had found that the petitioner/tenant is liable to be evicted only on the ground of wilful default in payment of rent and not on the grounds of owner's occupation. Therefore he had allowed the petition partly directing the petitioner to vacate and handover vacant possession of the rented premises to the respondent within a period of two months from the date of the order.

5. It is obvious to note here that during the pendency of the petition in R.C.O.P.No.2063 of 2009, the petitioner, who is the tenant, had filed a petition in M.P.No.458 of 2009 under Section 11 (3) of the Act seeking the leave of the Rent Controller to deposit the admitted arrears of rent at the rate of Rs.2400/- for 4 months from July 2009 upto October 2009 and continue to deposit the future admitted arrears of rent at the same rate of Rs.2400/- to the credit of R.C.O.P.No.2063 of 2009 till the disposal of the above Rent Control Original Petition. That petition was allowed by the Rent Controller and thereby the revision petitioner /tenant was permitted to deposit the rent at the rate of Rs.2400/- per month from July 2009 till March 2010 totalling Rs.24,000/- on or before 09.04.2010 and continue to deposit the rent from April 2010 on or before the 10th of every succeeding month.

6. Having been aggrieved by the order of eviction on the ground of wilful default, the petitioner herein, being the tenant, had preferred an appeal in R.C.A.No.56 of 2011. Challenging the correctness of the order passed by the Rent Controller in M.P.No.458 of 2009 dated 25.03.2010, the respondent being the landlady had preferred another appeal in R.C.A.No.224 of 2010.

7. With the issue involved in both the appeals are one and the same and the parties to the appeals are also one and the same, both the appeals were consolidated together and disposed of in a common judgment dated 10.02.2012 and thereby the appeal preferred by the revision petitioner/tenant in R.C.A.No.56 of 2011 was dismissed confirming the order of eviction and the appeal preferred by the respondent in R.C.A.No.224 of 2010 against the order dated 25.03.2010 and made in the petition in M.P.No.458 of 2009 was dismissed as infructuous as the issue involved in the appeal in R.C.A.No.224 of 2010 is merged with the appeal in R.C.A.No.56 of 2011.

8. No doubt the learned Rent Controller and the learned Rent Control Appellate Authority have given concurrent findings with reference to the quantum of rent

and both the Courts below have found that there was wilful default on the part of the revision petitioner in payment of rent.

9. In the nature of the case, as aforestated, it is to be understood that the appellate authority is the last court of facts and even though High courts jurisdiction is wider than Article 227 of the Constitution of India and Section 115 of CPC, still the High Court cannot assume the role of the appellate Court. The High Court can interfere only when there is gross illegality or perversity. This ratio has been laid down in ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh [(2014) 9 SCC 78]***. In Paragraph No.43 of this decision, the Supreme Court has held that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority, because on re-appreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if

perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

10. As discussed in the opening paragraphs, though the

Rent Control Original Petition was filed for the eviction of the revision petitioner/tenant on two grounds i.e., on the ground of wilful default in payment of rent and owner's occupation, the learned Rent Controller, while allowing the petition on the ground of wilful default in payment in rent, had proceeded to dismiss the petition on the ground of owner's occupation. Admittedly, no cross objection is filed by the respondent/landlady.

11. It is an admitted fact that the revision petitioner originally came to be in occupation of the tenanted premises as a tenant under the mother of the respondent in the year 2002. According to the revision petitioner, at the time of her occupation the monthly rent was fixed at Rs.2200/- and she has also paid a sum of Rs.50,000/- as advance. This has not been disputed. But, what the respondent/landlady would contend is, that the monthly rent was gradually enhanced to the extent of Rs.5,000/-. It is also an admitted fact that the respondent/landlady was not in the habit of issuing receipts.

12. As per the contention of the revision petitioner, she had to pay the rent only at the rate of Rs.2,400/- and accordingly she had paid the rent at the rate of RS.2400/- till June 2009. However, no receipts were issued by the

respondent / landlady. As per the contention of the revision petitioner/tenant, she had sent the rent for July, August and September 2009, which was refused to be received by the respondent / landlady and therefore, she had opted to issue a notice to the respondent/landlady to name a bank in the vicinity so as to enable her to deposit the rental arrears in that bank. It is also an admitted fact that the respondent had filed a petition in M.P.No.458 of 2009 on the file of the learned Rent Controller seeking permission to deposit the rents into Court to the credit of the Rent Control Original proceedings. That petition was allowed. Accordingly, the revision petitioner was permitted to deposit the rental arrears at the agreed rate of Rs.2400/- to the credit of the petition in R.C.O.P.No.2063 of 2009. The above said application in M.P.No.458 of 2009 was filed by the revision petitioner under Section 11(1) of the Act. The respondent /landlady in her cross-examination has admitted that at the inception of tenancy, the rent was determined at Rs.2200.- and subsequently it was enhanced to Rs.5000/-.

12.In Paragraph No.10 of the order of eviction passed by the learned Rent Controller, it has been observed that due to lack of documentary evidence regarding the quantum

of rent, this Court had to resort to the oral evidence adduced in order to determine the actual quantum of rent at the time of filing the Rent Control Original Petition.

13. It is to be noted that the respondent landlady had chosen to enter the witness box to speak about the enhancement of rent periodically to the extent of Rs.5,000/- from January 2007. On the other hand, the revision petitioner had specifically contended that the original rent of Rs.2200/- was subsequently enhanced to the extent of Rs.2400/- per mensem and thereafter, the rent was not enhanced. In order to prove her contention, the revision petitioner had not chosen to enter the witness box. In this connection, the learned Rent Controller has observed that mere pleadings, without getting into the box to substantiate her claim cannot become the evidence.

14. As aforestated, the case of the respondent/landlady is that the rent was periodically enhanced to Rs.5000/- per mensem from January 2007 onwards. Her evidence had withstood the test of cross-examination of the revision petitioner. Absolutely, there is no documentary proof on either side to clear or clarify the doubt in respect of the quantum of rent. However, as the

revision petitioner had not chosen to enter into the witness box and opted to substantiate her case atleast through the oral evidence, the learned Rent Controller had no other option excepting to believe the evidence of the respondent/landlady and accordingly, he had come to the conclusion that the respondent/landlady had proved her claim that the quantum of monthly rent was Rs.5000/- at the time of filing of the petition. Under this circumstance, the learned Rent Controller had found that the non-payment of rent at the rate of Rs.5000/- per month from November 2008 onwards upto June 2009 and the payment of rent at the rate of Rs.2400/- per mensem from July 2009 onwards at a lower rate would go to show the supine indifference of the respondent to pay the correct rent to the landlady.

15. According to the learned Rent Controller, the supine indifference on the part of the revision petitioner/tenant was continued even after the issuance of legal notice under Ex.P1. But the learned Rent Control Appellate Authority, by way of endorsing the view taken by the Rent Controller, in Paragraph 13 of his judgment, has observed that since he had arrived at a conclusion that the quantum of rent is Rs.5000/- even after the adjustment of excess advance available with the respondent/landlady,

the revision petitioner/tenant is yet to pay the arrears of rent. The non-payment of monthly rent without any just reason will certainly establish the callous attitude of the revision petitioner/tenant which is supinely indifferent, which attract the provisions of 10(2)(i) of the Act. Therefore, he has found that the revision petitioner/tenant is liable to be evicted on the ground of wilful default.

16. Since both the Rent Controller as well as the Rent Control Appellate Authority have given concurrent findings about the fact that the revision petitioner/tenant had committed wilful default in payment of rent, this Court is of considered view that the concurrent findings of the Courts below do not require any interference.

17. Mr.J.R.K.Bhavanandam, the learned counsel appearing for the revision petitioner has urged this Court to remit the matter back to the Rent Control Appellate Authority for fresh disposal of the Rent Control Appeal after hearing both parties only for the purpose of giving a definite finding with regard to the quantum of rent.

18. This Court, on perusal of the order of eviction

passed by the learned Rent Controller as well as the judgment and decree passed by the learned Rent Control Appellate Authority, is of view that the remittance of the matter back to the first appellate Court does not require as the Rent Control Appellate Authority has correctly given the finding in consonance with the order of eviction passed by the Rent Control Appellate Authority.

In the result, the revision petition is dismissed and the judgment and decree dated 10.02.2012 and made in R.C.A.No.56 of 2011 on the file of the learned VIII Judge Court of Small Causes, Chennai and the fair and decretal order dated 11.11.2010 and made in R.C.O.P.No.2063 of 2009 on the file of the learned XII Judge, Court of Small Causes, Chennai are confirmed. No costs.

10.11.2016

Index: Yes/No

Internet: Yes

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To

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

T.MATHIVANAN.J.,

gpa

C.R.P (NPD) No.1388 of 2012

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