

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) Nos.3228 and 3229 of 2016 and
CMP.Nos.16358 and 16359 of 2016**

P.V.Mugila

...Petitioner in both CRPs

versus

B.R.Latha

...Respondent in both CRPs

PRAYER: CRP No.3228 of 2016 filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.08.2016 passed in M.P.No.96 of 2016 in R.C.A.No.186 of 2016 on the file of Rent Control Appellate Authority cum IX Small Causes Court at Chennai reserving liberty to the respondent to file 11(4) application in R.C.A.No.186 of 2016.

CRP No.3229 of 2016 filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.09.2016 passed in M.P.No.228 of 2016 in R.C.A.No.186 of 2016 on the file of Rent Control Appellate Authority cum IX Small Causes Court at Chennai.

For Petitioner : Mr.B.Thilak Narayanan

For Respondent : Mr.B.V.Suresh Kumar

COMMON ORDER

The Rent Control Appellate Authority passed an interlocutory order in the stay petition filed by the petitioner in RCA.No.186 of 2015, directing her to deposit a sum of Rs.1,54,000/- and permitted the

respondent to file petition under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short TNL & RC Act). Feeling aggrieved, the petitioner is before this Court challenging the order dated 9 August 2016 in M.P.No.96 of 2016 and 21 September 2016 in M.P.No.228 of 2016 in R.C.A.No.186 of 2016.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3. The respondent initiated proceedings in RCOP No.975 of 2015 against the petitioner, seeking eviction on the grounds of willful default, bonafide requirement and ceased to occupy the premises. The original petition was opposed by the petitioner by filing counter statement.

4. Before the Rent Controller, the respondent filed an application invoking Sections 11(3) and 11(4) of the TNL & RC Act, to direct the petitioner to deposit the admitted rent. The learned Rent Controller while directing the petitioner to pay the rental arrears from April 2015 to February 2016, opined that the question regarding payment of arrears of rent from 1 January 2013 to 31 August 2015 will be decided during the course of trial.

5. The petitioner filed statutory appeal in RCA No.186 of 2016 before the Rent Control Appellate Authority, Chennai, challenging the order passed by the Rent Controller.

6. Before the Appellate Authority, the petitioner filed M.P.No.96 of 2016 to stay the operation of the order passed by the Rent Controller directing her to pay the rental arrears from April 2015 to February 2016.

7. The Trial Court while granting interim stay made an observation that the respondent is entitled to file an application under Section 11(4) of the TNL & RC Act. The said order is under challenge in CRP (PD) No.3228 of 2016.

8. The respondent taking advantage of the observation made by the Appellate Authority in the order dated 9 August 2016 in M.P.No.96 of 2016 filed M.P.No.228 of 2016 to direct the petitioner to deposit the entire arrears and in default to stay all further proceedings.

9. The learned Appellate Authority allowed the said application and directed the petitioner to deposit a sum of Rs.1,54,000/- The said order is under challenge in CRP (PD) No.3229 of 2016.

10. The Appellate Authority committed a jurisdictional error by advising the respondent to file a petition under Section 11(4) of TNL & RC Act and a further error by directing the petitioner to deposit a sum of Rs.1,54,000/- by entertaining the petition filed by the respondent under Section 11(4) of TNL & RC Act.

11.The appeal before the Appellate Authority was against the order passed by the Rent Controller, directing her to deposit the rent for the period from April 2015 to February 2016. In the said appeal, the only issue is as to whether the Rent Controller was correct in directing the petitioner to make the deposit. The Appellate Authority exceeded its jurisdiction by making an observation that the respondent is entitled to invoke Section 11 of TNL & RC Act and thereafter, by passing an order directing the petitioner to deposit the amount by entertaining the application under Section 11 of the TNL & RC Act.

12. The Trial Court was expected to decide as to whether the petitioner has made out a case for stay of operation of the order passed by the Rent Controller, dated 01.03.2016 in RCOP No.975 of 2015. There is no question of passing an order adverse to the interest of the petitioner in a stay petition filed by her, by granting liberty to the respondent to file a petition under Section 11(4) of TNL & RC Act.

13. The learned Appellate Authority exercised advisory jurisdiction by making an observation that the respondent is entitled to file a petition under Section 11(4) of TNL & RC Act.

14. It is a matter of record that the order passed by the Rent Controller rejecting the request made by the respondent for payment of rental arrears from 01.01.2013 to 31.08.2015 has become final. There was no challenge at the instance of the respondent to the said order. The learned Appellate Authority by permitting the respondent to file an application under Section 11(4) of the TNL & RC Act and thereafter, directing the petitioner to deposit a sum of Rs.1,54,000/- exceeded its jurisdiction. I am therefore of the view that the impugned orders are liable to be set aside.

K.K.SASIDHARAN, J.

(svki)

15. In the result, the order dated 9 August 2016 in M.P.No.96 of 2016 permitting the respondent to file petition under Section 11(4) of TNL & RC Act is set aside. The order dated 21 September 2016 directing the petitioner to deposit a sum of Rs.1,54,000/- is also set aside.

16. In the up shot, I allow the Civil Revision Petitions. No costs. Consequently, connected miscellaneous petitions are closed.

22.11.2016

Index : Yes/No
svki

To

The Rent Control Appellate Authority cum
IX Small Causes Court, Chennai

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