

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **14.03.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.1380 of 2015

and

M.P.No.1 of 2015

G.Sitharaman

.. Petitioner

vs

M/s.Metamorph Fitness Centre Pvt.

Ltd., No.9, Seshadri Road

Alwarpet, Chennai 600 018

rep.by its Director

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 against the order dated 03.02.2015 passed by the learned IX Judge, Court of Small Causes [Rent Control Appellate Authority], Chennai in dismissing the appeal in RCA No.490 of 2014 confirming the order dated 03.09.2014 passed by the learned XI Judge, Court of Small Causes [Rent Controller] Chennai in a memo filed in RCOP No.2472 of 2012.

For Petitioner : Mr.S.Ragunathan

For Respondent : Mr.M.Santhanaraman

ORDER

The landlord in a rent control proceedings has preferred the above revision, against the order dated 03.02.2015 passed by the learned IX Judge, Court of Small Causes [Rent Control Appellate Authority], Chennai in dismissing the appeal in RCA No.490 of 2014 by confirming the order dated 03.09.2014 passed by the learned XI Judge, Court of Small Causes [Rent Controller] Chennai in a memo filed in RCOP No.2472 of 2012.

2. Heard both sides.

3. The facts leading to the filing of this Civil Revision Petition would run thus:

(i) RCOP No.2472 of 2012 has been filed by the petitioner for eviction of the respondent under Section 10(2)(i) of the Tamil Nadu Building (Lease and Rent Control) Act [in short 'the Act'] for the default of payment of a sum of Rs.20,64,880/-.

(ii) Pending RCOP, the landlord filed an application in M.P.No.163 of 2013 under Section 11(3) of the Act, seeking a direction to the respondent to pay the sum of Rs.4,64,968/- as arrears of rent and M.P.No.218 of 2013 for a direction to respondent to pay a sum of Rs.23,24,840/- being the arrears of monthly lease rentals and service tax payable from November 2012 to March 2013.

(iii) A common order was passed on 29.08.2013 by the Rent Controller, allowing both the applications in part directing the respondent to pay a sum of Rs.15,95,814/- [Rs.11,72,228/- upto June 2013 and Rs.4,23,586/- for July 2013] on or before 12.09.2013, and in default, all further proceedings in the main RCOP would be stopped and eviction of the respondent would be ordered. The respondent was also further directed to pay the future rents from August 2013 without fail. The matter was posted for compliance on 13.09.2013. The said order was complied with and the monthly rents for July and August and

September 2013 were paid. However, from October 2013 to December 2013, the tenant defaulted payment. Therefore, MP No.24 of 2014 was filed to stop all further proceedings in RCOP No.2472 of 2012 for non compliance of the order dated 29.08.2013 passed in I.A.Nos.163 and 218 of 2013. Pending the said M.P.No.24 of 2014 the arrears were paid by the respondent and the said MP was closed. Once again, the tenant defaulted in payment of rents for February and March 2014, forcing the landlord to file yet another memo seeking a direction to the respondent for payment of arrears. Again on payment of the arrears, the memo was closed. As a chronic defaulter, the tenant once again defaulted in his payment of monthly rent for May 2014. Once again memo was filed by the landlord for a direction to the respondent/tenant to pay the monthly rents regularly. After several adjournments, the tenant paid a sum of Rs.4,23,596/- for the month of June during July 2014. On 22.07.2014, the Rent Controller passed an order on the memo stating that the rents for May and June 2014 have been credited to the account of the landlord through fund transfer and therefore, held as follows:

"Admittedly there is delay in payment of rents and hence eviction ought to be ordered, would be noteworthy of consideration in the main RCOP in ascertaining the wilfulness in the admitted default committed by the respondent. Hence, for the present, this court is not inclined to order eviction in this memo as the petitioner as on date had received the rental arrears. In the view of this Court, prayer of the memo has become infructuous by the petitioner having accepted the rental arrears."

4. Aggrieved by the above said order, the petitioner/landlord had preferred RCA No.490 of 2014. Pending RCA, MP No.142 of 2014 was filed to stay all further proceedings in RCOP No.2472 of 2012. The said stay application was closed by the Appellate Authority stating that the order passed by the Rent Controller is only procedural in nature and the same not being a final order, does not attract Section 23(2) of the Act. Aggrieved by the same, the landlord preferred CRP PD No.3794 of 2014 and this Court vide order dated 14.11.2014, while disposing of the Civil Revision Petition directed the Rent Control

Appellate Authority to dispose of the appeal in RCA No.490 of 2014 within a period of thirty days from the date of receipt of a copy of the said order and till such time, the RCA is disposed of, the proceedings in RCOP No.2472 of 2012 was directed to be kept in abeyance. On 03.02.2015, while dismissing the RCA, which was filed against the order dated 22.07.2014 passed by the Rent Controller in the memo filed by the landlord, the Appellate Authority held as follows:

"The trial court has concluded that the delay in payments of rent will be noted and considered in the main RCOP in ascertaining the wilfulness in the admitted default committed by the respondent. It is well settled law that the matter in dispute must be decided after full trial and appreciating the entire relevant records and material evidence. It is true that defaulter should not be allowed to continue the proceedings. But, on the date of filing memo, the petitioner was not in arrears of the rent. Admittedly, he committed delay in paying rent. As concluded by the trial court, it is noteworthy consideration to decide the element of "willful" at the stage of pronouncing judgment. Therefore, the appellate authority decided

that the learned Rent Controller has passed reasonable order and decree by following the established principles of law. So, the interference of the appellate authority is not warranted."

Thus holding, the Appellate Authority, dismissed the RCA directing the Rent Controller to dispose of the matter within two months. Aggrieved by the said order, the present revision is filed.

5. Pending revision, a notice was issued on 09.03.2015 under Sections 433(e) and (f) and 433 (1)(a) of the Companies Act, 1956. On the said date, the respondent was in arrears of rent to the tune of Rs.25,41,516/- from September 2014 to February 2015. In fact, the Director of the respondent-company had filed an affidavit, in which, he had admitted the arrears of Rs.87,63,521/- as on 30.11.2016 though it is much more, according to the landlord. On 19.07.2016, an order was passed by the Company Court in CA No.275 of 2015 directing the respondent to pay the admitted arrears of rent to the tune of

Rs.87,63,521/- in six equal monthly instalments; but the respondent/tenant had paid only three instalments i.e., up to 30.09.2016. Thereafter, there was a default in payment of the last three instalments, besides adding to the arrears of rent from July 2016 to December 2016. Thus, the learned counsel for the revision petitioner/landlord points out that the rent due from July 2016 to December 2016 is Rs.25,41,534/-.

6. It is argued by the learned counsel for the landlord/revision petitioner that since the very inception of the lease i.e., from 2009 itself, the respondent/tenant was highly irregular in payment of the lease amount. It may be that, the tenant is facing a rough weather in his business, but they have been wilfully defaulting in the payment of the aforementioned rental amount from 01.12.2011. In fact, the revision petitioner/landlord has adjusted the default amount from the security deposit given at the time of inception of the lease. Even after adjusting the security deposit, the tenant is in arrears of payment of rent. In spite of orders passed under Sections 11(3) and 11(4) of the Act, the tenant has been wilfully defaulted in

payment of rent, month after month.

7. As stated earlier, each time only on the memo filed by the landlord, the tenant had been depositing the rent directly by way of RTGS to the landlord's bank account. Once Section 11(4) is invoked, if the tenant commits wilful default even during the pendency of the eviction proceedings despite several opportunities being given to him by the Rent Controller as well as by the Appellate Authority, the tenant is liable to be evicted under Section 11(4) of the Act. Further, as per Section 11(4) of the Act, whenever an eviction petition is filed against the tenant on the ground of wilful default in payment of rent, the tenant is required to deposit all arrears of rent due, in respect of the building with the Rent Controller or the Appellate Authority, as the case may be. The tenant is further required to pay or deposit the rent, which may subsequently fall due in respect of the building, until the termination of the proceedings. Even such deposit of rent is required to be paid within the time provided and in the manner prescribed. If the deposit is not made by the

tenant, the Rent Controller or the Appellate Authority, as the case may be, unless the tenant shows sufficient cause, to the contrary, shall stop all the proceedings and pass an order of eviction against the tenant.

8. In the case on hand, as narrated above, despite the order passed in the application under Section 11(4) of the Act, the tenant had been defaulting. Every time, the payment became due, the landlord was compelled to file a memo as a constant reminder to the tenant to pay the amount. Obviously, the proceedings has not been terminated and it is pending before the Rent Controller. While so, even in the affidavit filed by the Director of the respondent/tenant in the company petitioner, it is admitted that there was an arrears of Rs.87,63,521/- as on 30.11.2016.

9. In such conspectus of the case, the question that has to be seen is whether the tenant has shown sufficient cause for non payment of the rent, as contemplated under Section 11(4) of the Act for the delay or default?

10. Both the Courts below have found that whatever payment made by the tenant was certainly with a delay. But 'sufficient cause' necessarily implies the element of sincerity, bona fide and reasonableness. The tenant has to show the reason for not paying the rent, which would be for a sufficient cause.

11. Viewed in this light, the conduct of the tenant in this case for his non-payment of rent on time, is without sufficient cause.

12. When an order is passed under Section 11(4) of the Act, it may be said that the order passed by the Appellate Authority is wrong. Even assuming that the quantum of the rent is not correct, the tenant is bound to pay the rent, pending proceeding and adjust the same, in case of any difference in subsequent dues. The respondent/tenant is under the statutory obligation to continue to pay the rent as and when it becomes due, even without any application or memo being filed. The

Appellate Authority had failed to note that even as on the date of the passing of the order in RCA No.490 of 2014, the tenant was in arrears of rent from September 2014 to December 2014. When the tenant had defaulted from performing its duty, by remitting the rent, the Appellate Authority ought to have stopped all further proceedings and ordered eviction. When the tenant persistently defaults, during the pendency of the proceedings by either paying at irregular intervals or defaulted in payment, then the Court has to stop further proceedings and ordered eviction.

13. As per the materials available on record, it is clear that even as on the date of filing of the petition under Section 11(4) of the Act or even on the date of passing of the order under Section 11(4), the respondent/tenant was in arrears of lease rentals that were payable by it.

14. Inasmuch as both the Courts below had manifestly erred in applying the principles of the Statute and the dicta of the Hon'ble Supreme court in several cases, this Court is of the view that the Civil Revision Petition has to be allowed by setting aside

the order passed by both the Courts below. Even pending this Civil Revision Petition, this Court vide order dated 23.01.2017 by way of giving one more opportunity to the respondent/tenant had directed the tenant to pay the admitted arrears of rent in a sum of Rs.55,00,000/- as on 31.12.2016 and the monthly rent payable at Rs.4,23,586/- plus other taxes on or before 27.02.2017 with a further observation that if the respondent/tenant fails to comply with the above said order, final orders will be passed in the main case.

15. It is brought to the notice of this Court by the learned counsel for the petitioner/landlord that not even a single pie has been paid by the respondent/tenant.

16. For all the foregoing reasons, the order passed by the Rent Control Appellate Authority in RCA No.490 of 2014 confirming the order passed by the Rent Controller in the Memo filed in RCOP No.2472 of 2012 is set aside. Further as per the earlier order passed by the learned XI Judge, Court of Small Causes, Chennai [Rent Controller] in M.P.No. 218 of 2013 dated

29.08.2013, all further proceedings in the Rent Control Original Petition is stopped and that the petitioner/landlord is entitled to an order of eviction.

17. In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

14.03.2017

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Index: yes/No

Internet: yes

To

1. The IX Judge, Court of Small Causes

[Rent Control Appellate Authority], Chennai

2. The XI Judge, Court of Small Causes

[Rent Controller] Chennai

PUSHPA SATHYANARAYANA,J.,

vj2

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