

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.487 of 2014
and M.P.No.1 of 2014

C.K.Azeez

.. Petitioner

Vs.

N.Venkatesh

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 05.02.2014 made in M.P.No.504 of 2013 in R.C.A.No.255 of 2012 on the file of the VIIth Court of Small Causes/Rent Control Appellate Authority, Chennai.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.P.Gopalan

ORDER

Civil Revision Petition is filed against the fair and decreetal

order dated 05.02.2014 made in M.P.No.504 of 2013 in R.C.A.No.255 of 2012 on the file of the VIIth Court of Small Causes/Rent Control Appellate Authority, Chennai.

2.The respondent as a landlord has filed a petition in R.C.O.P.No.1808 of 2009 for eviction on the ground of wilful default. After contest, the said petition was allowed, against which, the petitioner/tenant has preferred R.C.A.No.255 of 2012 along with the petition in M.P.No.201 of 2012 to stay the order passed in R.C.O.P.No.1808 of 2009. Thereafter, the respondent/landlord has filed M.P.No.504 of 2013 to order payment out of the sum of Rs.1,48,000/- deposited towards rental arrears on 06.06.2012 in M.P.No.201 of 2012 in R.C.A.No.255 of 2012. The Rent Control Appellate Authority after hearing both sides allowed the petition, challenging the same, the present revision is preferred by the petitioner/tenant.

3.Learned counsel for the petitioner/tenant would submit that the monthly rent is only Rs.6,000/- and not Rs.10,000/-. The petitioner has paid entire rent and so far there is no arrears of rent. But the learned Rent Controller has disbelieved the same and

ordered eviction. Therefore, the petitioner has preferred R.C.A.No.255 of 2012 along with the stay petition in M.P.No.201 of 2012. The Rent Control Appellate Authority has granted stay on condition to deposit the balance rent of Rs.4,000/- from April 2009 till 12.06.2012, which amounting Rs.1,48,000/- and the same was deposited by the petitioner on 06.06.2012. Then the respondent/landlord has filed M.P.No.504 of 2013 to withdraw the amount and that petition was allowed, against which, the present revision is preferred.

4.Learned counsel for the petitioner would further submit that the dispute is whether the rent is Rs.10,000/- or Rs.6,000/-. Even though the Rent Controller had upheld that the rent is Rs.10,000/-, it can be decided only in R.C.A. i.e. what is the contractual rent and whether the rent is Rs.6,000/- or Rs.10,000/-. If the Rent Control Appellate Authority comes to the conclusion that the rent is Rs.6,000/-, the petitioner/tenant would be succeeded in the appeal. At that time, it is very difficult for him to recover the amount from the landlord. That factum was not considered by the learned Rent Control Appellate Authority. Hence, he prays for allowing the revision.

5. Resisting the same, learned counsel for the respondent/landlord would submit that the monthly rent is fixed as Rs.10,000/-, but the petitioner/tenant has not paid the amount regularly and he has committed the wilful default of payment of rent. Therefore, he has filed the RCOP for eviction on the ground of wilful default and that eviction is ordered. He would further submit that it is true, the amount deposited by the petitioner/tenant is the differential amount from Rs.10,000/- to Rs.6,000/-. After depositing of Rs.1,48,000/- on 06.06.2012, the petitioner/tenant has not deposited the differential amount till date. If the petitioner will be deposited the amount till the disposal of the appeal, he would surely recover the same after the disposal of appeal. However, he prays for dismissal of the revision.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. The respondent as the landlord has filed R.C.O.P. for eviction on the ground of wilful default stating that the contractual rent is Rs.10,000/-, but the petitioner/tenant has paid Rs.6,000/-

only, so there is arrears of rent. Even though the petitioner/tenant has raised the defence that the contractual rent is only Rs.6,000/- and not Rs.10,000/- as claimed by the landlord, the said defence was not accepted by the Rent Controller and that he has ordered eviction by holding that the monthly rent is Rs.10,000/-.

8. Aggrieved over the order of eviction, the petitioner/tenant has preferred R.C.A.No.255 of 2012 along with the stay petition in M.P.No.201 of 2012. The Rent Control Appellate Authority has granted stay on condition that the petitioner/tenant shall deposit the differential amount of Rs.4,000/- from the date of petition till May 2012, which amounting Rs.1,48,000/- and the same has been deposited by the petitioner/tenant on 06.06.2012. Thereafter, the respondent/landlord has filed M.P.No.504 of 2013 on 20.07.2013. That petition was allowed with a direction for issuance of cheque for Rs.1,48,000/- in the name of landlord, against which, the present revision is preferred by the petitioner/tenant.

9. According to the petitioner/tenant, the dispute is whether the monthly rent is Rs.10,000/- or Rs.6,000/- and the petitioner/tenant has deposited the differential amount of

Rs.4,000/-. If the petitioner will be succeeded in the R.C.A., he could not recover the deposited amount from the landlord. That factum was not considered by the Rent Control Appellate Authority.

10.Considering the aforestated facts and circumstances of the case, I am of the view that the Rent Control Appellate Authority without considering the above aspect ordered for issuance of cheque to the landlord. As already stated that if the tenant will be succeeded in the appeal, he would be entitled to withdraw the deposited amount. If the landlord will be succeeded in the appeal, he can be withdrawn the deposited amount. In such circumstances, the fair and decreetal order passed by the Rent Control Appellate Authority is liable to be set aside and it is hereby set aside. Furthermore, it is pertinent to note that till May 2012, the petitioner/tenant has deposited the differential amount. Thereafter, he did not deposit the differential amount of Rs.4,000/-. Hence the petitioner/tenant is directed to deposit the differential amount of Rs.4,000/- from June 2012 till January 2017 within eight weeks from the date of receipt of a copy of this order. Further, the petitioner/tenant is directed to deposit the amount every succeeding month before the Court till the disposal of R.C.A.

11. With the above direction, the Civil Revision Petition is disposed of. Since R.C.A.No.255 of 2012 is pending from 2012 onwards, the learned Rent Control Appellate Authority is directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2017

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Index: Yes/No

Note:

Registry to issue order copy on 14.02.2017

To

VIIth Court of Small Causes

Rent Control Appellate Authority, Chennai.

R.MALA,J.

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