

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.473 of 2011

K.Sudarsan

.. Petitioner

Vs.

Sha Magajee Asaldass,
office at No.69, Govindappa Naicken Street,
Chennai-79.

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act, 1960, against the Order and Decreetal Order dated 09.08.2010 passed by the learned VII Small Causes Judge the Rent Control Appellate Authority, Chennai in RCA.No.301 of 2002, reversing the Order and Decreetal Order dated 15.03.2002, passed in RCOP.No.2697 of 1998 by the learned Rent Controller, XIV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.N.Nagu Sah

For Respondent : Mr.H.Kishore

ORDER

The petitioner/landlord is the civil revision petitioner before this Court, challenging the order passed in RCA.No.301 of 2002 in RCOP.No.2697 of 1998, dated 09.08.2010, on the file of the learned VII Small Causes Judge the Rent Control Appellate Authority, Chennai.

2.The case of the petitioner/landlord is that the respondent is a tenant under the petitioner premises at No.69, Govindappa Naicken Street, Chennai-1, for the monthly rent of Rs.3,000/-. The property is situated in the ground floor shop under the petitioner, should pay the rental amount according to English Calendar month.

3.After the death of the petitioner's father G.Kanniah Chetty, the rents were withheld by the respondent on account of the illegal claim made by the petitioner's mother and sister. Therefore, this petitioner has filed R.C.O.P.No.130 of 1997 and the same was dismissed on 08.10.1997, by the learned XIth Small Causes Court, Chennai.

4.The petitioner has also come forward by saying that the fair rent for the petition premises was fixed at Rs.538/- per month in the

proceedings taken by the deceased G.Kannaiah Chetty, who is the father of the petitioner and subsequently there was an agreement in and by which, the respondent was paid Rs.538/- by way of cheque and the balance by way of cash and taking advantage of the death of G.Kanniah in the rival claim made by the mother and sister of the petitioner, the respondent is taking a contention that the rent payable is only a sum of Rs.538/- and in response to the notice dated 10.01.1998 requiring the respondent to pay the arrears due from 01.08.1996 to 31.12.1997 by totally 17 months which were withheld deliberately by the respondent. The respondent/tenant also sent a reply dated 15.01.1998 enclosing the cheques towards the rent for the period 01.08.1996 to 31.12.1997 and the same was received by the petitioner without prejudice to his rights.

5. Due to the pendency of the legal proceedings between the petitioner and the respondent/tenant and during the life time of the petitioner's father as early as 1982 onwards, the respondent/tenant with purposely withhold the back portion of the rent, committed wilful default in the payment of the rent at the rate of Rs.538/- per month from 01.01.1998 onwards till date and the respondent committed wilful default for the period from 01.01.1998 to 30.09.1998.

Therefore, the petitioner has filed rent control proceedings in RCOP.No.2697 of 1998 before the learned XIVth Judge, Small Causes Court, Chennai, for eviction of the respondent/tenant.

6.On receipt of the notice a counter affidavit has been filed by the respondent/tenant, denying all the allegations set out in the affidavit.

7.The case of the respondent is that the respondent Sha Magajee Asaldass is a partnership firm and they were represented by its partners (1)Mahendrakumar, (2)Jayanthilal, (3)Gulabibai and (4)Leela bai.

8.It is the further case of the respondent/tenant is that the respondent partnership firm is carrying on business in the ground floor of the premises at No.69, Govindappa Naicken Street, Chennai-1, but the respondent/tenant denied the rental amount of Rs.3,000/- as stated by the petitioner before this Court. The said rental amount is strictly prove by the petitioner/landlord.

9.It is admitted fact that the respondent become tenant under

the father of the petitioner Late G.Kannaiah Chetty, at the time of entering into the agreement between the petitioner and respondent, the rental amount was fixed and thereafter the petitioner's father Late.G.Kannaiah Chetty taking proceedings before the Rent Control Court and fair rent was fixed at Rs.538/- per month. The fair rent was fixed under the Rent Control Proceedings in RCOP.No.3120 of 1979 and thereafter an appeal filed in RCA.No.47 of 1979, the respondent is paying the rent at the rate of Rs.538/-. The respondent has denied that there was no agreement for the monthly rental amount of Rs.3,000/- and he has also denied that the respondent paid Rs.538/- per month and the balance was paid by way of cheque. After ordering the fair rent in the above Rent Control Proceedings, the petitioner filed another petition in RCOP.No.3230 of 1992 for fixation of fair rent. But, due to the fair rent was fixed in the earlier proceedings, the subsequent application was dismissed by the Court.

10.The respondent also states that during the life time of Mr.G.Kannaiah Chetty, this petitioner, who is the son of G.Kannaiah Chetty has filed the Civil Suit in C.S.No.735 of 1994, on the file of this Court, claiming partition and separate possession of his alleged half share in the properties of late G.Kannaiah Chetty. While pendency of

the above Civil Suit, on 09.07.1996, the petitioner's father G.Kannaiah Chetty was died. After the death of deceased G.Kannaiah Chetty, his daughter Sumathi sent a lawyer notice on 04.08.1996 demanded that the respondent to pay the rental amount to G.Varalakshmi and Sumathi, who are the wife and daughter of late G.Kannaiah Chetty. Therefore, the rent for the month of August 1996 paid to the widow G.Varalakshmi, by way of cheque.

11.After that, on 30.08.1996, this petitioner has sent a letter through his counsel that the deed of partition executed on 11.05.1996 and the suit property, 69, Govindappa Naicken Street, Chennai-1, was allotted to the petitioner and he called upon the respondent to pay the rents to him. When the respondent wants to inspect the document dated 11.05.1996, which at one time alleged to be a partition and at another time alleged to a partition by way of Will executed by the deceased G.Kannaiah Chetty in favour of this petitioner, since the petitioner states that a partition and at another time alleged to be a Will. On the other hand, he says that the partition deed and also given the copy of the plaint in C.S.No.735 of 1994, but the petitioner has not been permit the respondent to inspect the property.

12. When the rival claim made by the petitioner on the one hand and G.Varalakshmi and V.R.Sumathi on the other hand, this respondent was forced to file RCOP.No.130 of 1997 against both the petitioner and his mother G.Varalakshmi and R.Sumathi for deposit of rent. But, in the said petition G.Varalakshmi and V.R.Sumathi made an endorsement that they have no objection for allowing the application. But, this petitioner, who was the second respondent in the above proceedings raised the question of maintainability of the application under Section 9 of the Act. Later on, the said RCOP.No.130 of 1997 was finally dismissed on 03.10.1997 holding that under Section 9(3) of the Act, the authority has not been presented.

13. After the decision of the RCOP.No.130 of 1997, the petitioner's mother G.Varalakshmi and his sister V.R.Sumathi, demanded the rent by issuing a notice dated 02.12.1997 through their counsel and on the other hand, the petitioner sent another lawyer notice on 10.01.1998, demanded the respondent to pay the rent. Therefore, this respondent paid the rent by way of cheques bearing Nos.(1) 340408 dated 18.11.1997 for Rs.3,766/-; (2) 340407 dated 18.11.1997 for Rs.4,304/- and (3) 340411 dated 13.01.1998 for a sum of Rs.1,076/- in all amounting to Rs.9,140/- towards the rent

payable from 01.08.1996 to 31.12.1997 at the rate of Rs.538/-. The said payment was received without any demur by the petitioner. As such, there was double payment towards the rent for the month of August 1996.

14. After the payment of the said amount, this petitioner's mother and sister has issued another lawyer notice on 20.01.1998 stating that the partition suit filed by the petitioner in C.S.No.735 of 1994, is pending and this Court not at all given any direction to collect the rents by the petitioner and therefore due to pendency of the suit, demanding the rents not to pay the arrears amount. But, the petitioner again on 26.01.1998 sent a notice, but the same was replied by the respondent, due to the continuous demand made by the petitioner on one hand and his mother and sister are another hand, the respondent has paid the rents into the saving bank account of Mahendrakumar, partner of the firm month after month as follows as, but the rival claims again and again threatened the respondent demanding the rents as follows which was already paid:

1. Rent for January 98 paid into bank on 20.02.1998.
2. Rent for February 98 paid into bank on 13.03.1998.
3. Rent for March 98 paid into bank on 15.04.1998.

4. Rent for April 98 paid into bank on 14.05.1998.
5. Rent for May 98 paid into bank on 10.06.1998.
6. Rent for June 98 paid into bank on 16.07.1998.
7. Rent for July 98 paid into bank on 11.08.1998.
8. Rent for August 98 paid into bank on 11.09.1998.
9. Rent for September 98 paid into bank on 23.10.1998.
10. Rent for October 98 paid into bank on 12.11.1998.
11. Rent for November 98 paid into bank on 14.12.1998.
12. Rent for December 98 paid into bank on 08.01.1999.

15. The respondent also came forward by saying that immediately on receipt of the notice from the Rent Control Court in RCOP.No.2697 of 1998 and before the first hearing date, the respondent has issued a cheque bearing No.340415 dated 25.01.1999 for a sum of Rs.6,456/- towards rents from 01.01.1998 to 31.12.1998. Therefore, this respondent says that there is no default much less wilful default, since the respondent has paid the rent to the petitioner on the first hearing date as till that date the claimants viz., G.Varalakshmi and V.R.Sumathi had not taken any steps to prove their claim. Therefore, the respondent/tenant has prayed for dismissal of the Rent Control Proceedings.

16. On the side of the petitioner/landlord, PW1 Mr. Sudarsan was examined and Mr. Mahendrakumar, on the respondent's side, the documents which were marked as Exs. P1 to P7 produced by the petitioner and Exs. R1 to R24 produced by the respondent/tenant. Considering both side case, the learned Rent Controller has allowed the above Rent Control Proceeding and ordered for eviction and directed the respondent to vacate the premises within a period of two months. Challenging the said order dated 15.03.2002, the respondent/tenant has filed an appeal before the Rent Control Appellate Authority viz., VII Judge, Small Causes Court, Chennai in RCA.No.301 of 2002.

17. The learned Rent Control Appellate Authority has considered that after the death of the petitioner's father, it is seen from the evidence and documents of both the parties that there was a dispute between the petitioner and his mother and sister with regard to the claim and counter claim of the rent for the petition premises by exchange of several legal notices and such a dispute is not denied by both the parties.

18.The learned Appellate Authority also considered that after continuous demand by both the parties namely the petitioner on one hand and his mother and sister on the other hand, this respondent has sent 3 cheques for the period of rent from 01.08.1996 to 31.12.1997 and the title of the petition premises was not decided in the Civil Suit in C.S.No.735 of 1994 and they have filed an application to direct all the tenants including the respondent to deposit the rental arrears in C.S.No.735 of 1994 and the Will dated 08.03.1996 executed by late Kannaiah Chetty have been filed in the Court to get probate and the same is pending and call upon the respondent not to pay the rents to the petitioner.

19.The learned Judge also states that after the above said proceedings, the respondent has deposited the rent into the Savings Bank Account of his partner, month by month for the period from 31.03.1997 to 08.01.1999 under Ex.R20, since the RCOP was filed on 16.11.1998 under Section 10(2)(i) and the petitioner states that the respondent has committed wilful default in payment of rent for the period from 01.01.1998 to 30.09.1998.

20.Admittedly, there was no rental arrears upto December 1997.

Since the respondent is under the bonafide doubt as to the person who is entitled to receive the rent in respect to the petition premises he did not pay the rent till the date of filing of RCOP and deposited the same in his account and on the first hearing date i.e. on 29.01.1999, the respondent paid the entire rent.

21.The learned Judge also considered that when the respondent has deposited the entire rental arrears before the first hearing date of the RCOP along with the other factors that the respondent is committing default in payment of rent not due to supine indifference as discussed above and he has offered valid explanation for the delay in the payment of the rent and has paid the entire rental arrears at the first hearing of case, it cannot be said that the tenant has committed wilful default. Therefore, the learned Rent Control Appellate Authority not at all appreciated the facts of the case and evidence on record in its proper perspective and set aside the judgment and decree in RCOP.No.2697 of 1998, dated 15.03.2002 and allowed the Rent Control Appeal in RCA.No.301 of 2002 on 09.08.2010 filed by the tenant. Challenging the said order, this petitioner/landlord has filed the present civil revision petition before this Court.

22.I heard Mr.N.Nagu Sah, learned counsel appearing for the petitioner and Mr.H.Kishore, learned counsel appearing for the respondent and perused the entire records.

23.It is admitted fact that the petitioner is the landlord of the deceased Kannaiah chetty, who is the father of the petitioner. During the life time of the petitioner's father, the petitioner has filed a Civil Suit in C.S.No.735 of 1994, against his father deceased G.Kannaiah Chetty and while pendency of the said Civil Suit, the petitioner's father was died on 09.07.1996. After the death of the petitioner's father, who is the original landlord namely G.Kannaiah chetty, the son, who is the petitioner herein of the petition premises is one hand and the deceased wife and daughter on the other hand were claimed and demanded the rental amount from the respondent/tenant. On continuous demand made by both the parties, the respondent was not paid the rents to the petitioner, since the Civil Suit in C.S.No.735 of 1994 is also pending before this Court, the same is not decided, who is the original owner of the petition premises.

24.The learned counsel appearing for the petitioner has produced two judgments in the case of:

(i) ***C.K.R.Murugan v. T.S.Arunagiri and another*** reported in ***1999 (1) MLJ 154***, it is stated as follows:

“(A) Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Sec.10(2)(i) – Petition for eviction on ground of wilful default in payment of rent – Default admitted – Burden of proving that it was not wilful or wanton, is on tenant- Burden not discharged – Wilfulness can be presumed.

Once the default is admitted, it is for the tenant to prove that the default was neither wilful nor wanton, or deliberate, and that he was not aware of the legal consequences arising therefrom. There is no case by tenant that he was prevented from discharging his contractual or statutory obligations. If that be so, there is a presumption of wilful default.

(B) Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Sec.25 – Revision under – Decision of appellate authority illegal, improper and irregular – High Court, can invoke revisional powers.”

(ii) ***S.Vanitha v. E.Kuppusamy*** reported in **1999 (3) MLJ**

511, it is stated as follows:

"Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Sec.8(5) and 10(2)(i) – Tenant filing proceedings under Sec.8(5) – Depositing rents in her own bank account – Landlord filing petition for eviction – Held, it is the duty of the tenant to see that rent does not fall in arrears – Depositing rents in tenant's name in bank is not proper – Default in payment of rents is wilful.

Sec.10(2)(i) of the Act says that the rent will have to be paid as and when it becomes due, and the payment will have to be made within 15 days after the expiry of the time fixed in the agreement of tenancy, or, in the absence of such an agreement, by the last day of the month next following that for which the rent is payable. On a reading of Secs.8(5) and 10(2)(i) of the Act, even in case where a landlord refuses to receive rent remitted by money order, the obligation of the tenant to deposit the rent as and when it becomes due continues. Since it is the tenant who has moved the court to exonerate himself from the penal consequences of default, it is his duty to see that the rent

does not fall in arrears. Even this deposit cannot be said to be proper deposit in view of the statutory provision under Sec.8(5) of the Act. Under Sec.8(5) of the Act, the tenant is not entitled to deposit the rent in a bank, and that too in his name. The rent will have to be deposited before the controller as and when it become due. Deposit made by the tenant from November, 1991, and that too irregularly cannot be said to be in terms of Sec.8(5) of the Act. From the correspondence and also from the admission of the Petitioner herein, it is clear that from November, 1991 rent was not paid. The reason for non-payment of rent from November, 1991 till the order was passed in R.C.O.P.No.681 of 1990 is not stated in the reply notice. If she had deposited the entire rent till the order in the petition under Sec.8(5) was passed, there would have been some justification in her contention about the absence of clear and categorical direction from court. There is a statutory obligation under Sec.8(5) of the Act to deposit the rent as and when it becomes due. The contention that the petitioner (tenant) was waiting for some direction in the order passed by the Rent Controller, is only an

afterthought.”

25.Per contra, the learned counsel appearing for the respondent produced a judgment in the case of **Chandrasekar v. M.Lalitha** reported in **(2010) 7 MLJ 348**, it is stated as follows:

“Mere default in payment of rent would not constitute 'wilful default' and to constitute 'wilful default', the mental element of wilfulness is absolutely necessary.”

26.The petitioner was initiated the Rent Control Proceedings in RCOP.No.2697 of 1998 under Section 10(2)(i) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, as amended by Act 23/73 amended Act 1/1980, the petitioner without any other way has deposited the entire arrears as demanded by the petitioner for the period from 01.01.1998 to 30.12.1998, before the first hearing of the above Rent Control Proceedings. The Hon'ble Apex Court and this Court in various judgments has very clearly held that if the tenant has default in payment of the rent, the Rent Control Proceedings has to be initiated by the landlord and in the first hearing of the case if the tenant is deposited the entire arrears, it is not amounts to default. In the case on hand, this respondent/tenant before the first hearing has

deposited the entire arrears of the rent by way of cheque and therefore, it is made clear that the respondent/tenant has not default in payment of rent.

27.This Court has very categorically held that before the first hearing of the Rent Control Proceedings, if the tenant has deposited the entire arrears of amount then it would not be amounts to default in payment of rent. Therefore, the order of the Appellate Authority is well considered order and it is not necessary for the interference by this Court. Therefore, the order of the Rent Control Appellate Authority in RCOP.No.2697 of 1998 is not liable to be set aside.

28.In the result, this Civil Revision Petition is dismissed, by confirming the order passed in R.C.A.No.301 of 2003, dated 09.08.2010, on the file of the VII Small Causes Court, the Rent Control Appellate Authority, Chennai. No costs.

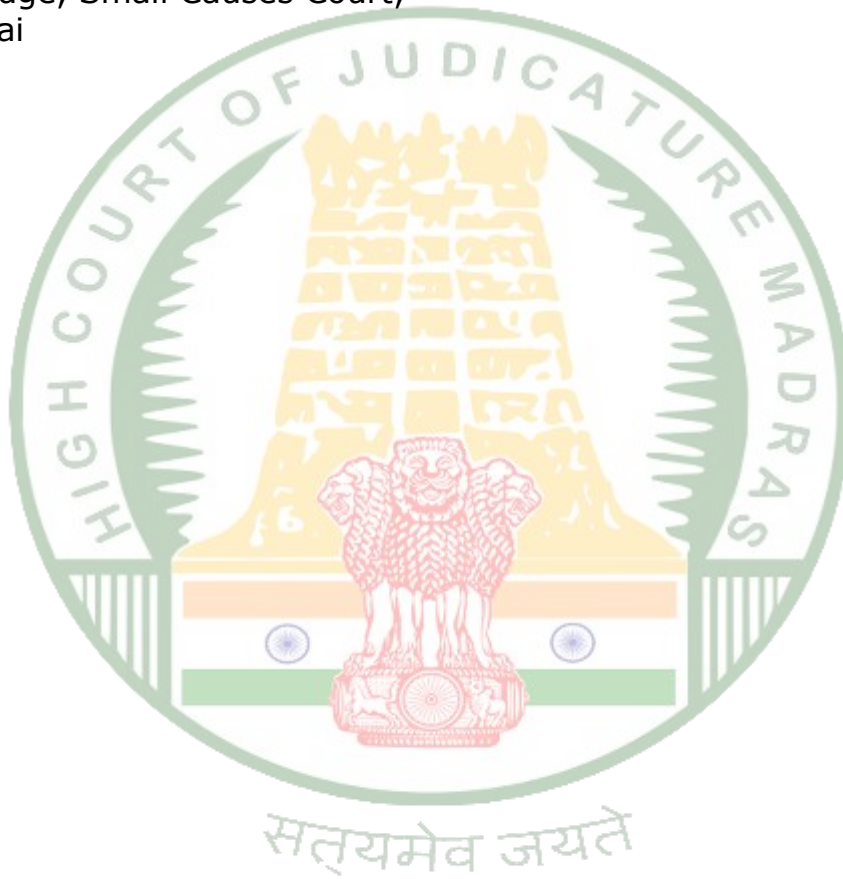
Note:Issue order copy on 13.04.2018
Index:Yes
Speaking Order

vs

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To

- 1.The VII Small Causes Judge /
Rent Control Appellate Authority,
Chennai.
- 2.The Rent Controller,
XIV Judge, Small Causes Court,
Chennai



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.473 of 2011

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