

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.389 of 2015

Sandhya Rao

.. Petitioner

Vs.

BP.Sharat Chandran

.. Respondent

(Cause title accepted vide order of Court dated 22.12.2014 made in M.P.No.1 of 2014 in CRP.SR.No. 10812 of 2014)

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 18/60, as amended by Act 23/73 and Act, 1/80), against the judgment and decree dated 10.10.2013 made in R.C.A.No.247 of 2010 on the file of the VIII Small Causes Court, Chennai, reversing the fair and decretal order dated 08.03.2010 made in R.C.O.P.No.1963 of 2008 on the file of the XV Small Causes Court, Chennai.

For Petitioner : Mr.A.Kavimani

For Respondent : Mr.G.Saravana Kumar

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 10.10.2013 made in R.C.A.No.247 of 2010 on the file of the VIII Small Causes Court, Chennai, reversing the fair and decretal order dated 08.03.2010 made in R.C.O.P.No.1963 of 2008 on the file of the XV Small Causes Court, Chennai.

2. The petitioner is landlord and respondent is tenant. The petitioner filed R.C.O.P.No.1963 of 2008 for eviction of the respondent on the ground of wilful default and cease to occupy. According to the petitioner, respondent is a tenant in respect of the petition premises bearing Flat No.8, 3rd floor, Venkatakrishna Nivas, No.8, Rajachar street, T.Nagar, Chennai-600 017, on a monthly rent of Rs.7,500/- (Rs.5,000/- towards rent and Rs.2,500/- towards maintenance) and the respondent paid a sum of Rs.48,000/- as advance. The respondent did not pay the rent from January 2008 to July 2008 amounting to Rs.52,500/-. After adjusting the rental arrears from the advance amount of Rs.48,000/- retaining one

month rent as advance, respondent is still due and liable to pay rental arrears of Rs.12,000/- as on July 2008. The respondent kept the petition premises locked continuously from January 2008 onwards more than the statutory period without any reason and has ceased to occupy the petition premises for a continuous period of seven months. The petitioner sent a notice dated 24.06.2008 terminating the tenancy of the respondent with the expiry of 30.06.2008 and the same was returned with an endorsement "left". For the above reason, the petitioner has filed said R.C.O.P. for eviction on the ground of wilful default and cease to occupy.

3. The respondent filed counter affidavit and denied that he has paid advance of Rs.48,000/-. There was an agreement between the petitioner and respondent to adjust the monthly rent of Rs.7,500/- from advance amount of Rs.48,000/- from January 2008 and after adjusting the advance amount, the respondent could not pay the monthly rent for July and August 2008, due to the sudden death of his brother-in-law and father-in-law. The petitioner started demanding enhanced rent without any valid reason. The respondent refused to accept the demand of the enhanced rent. Due to that, the petitioner filed present R.C.O.P. with an ulterior motive for

letting out the petition premises to the third party. It is not correct to state that there was arrears of rent of Rs.12,500/- due and payable on the date of filing petition. On the other hand, only a sum of Rs.4,500/- is due and payable by the respondent. The respondent tendered a sum of Rs.19,500/- on 23.10.2008 i.e., the first date of hearing. The learned counsel for the petitioner refused to receive the same and respondent deposited the said amount with ICICI Bank account of the petitioner as per the rental agreement and continued to pay rent every month. The respondent denied that he had ceased to occupy the petition premises from January 2008. On the other hand, he was away for few days during July and August 2008. The petitioner has come out with false case. The respondent also denied that the advocate notice alleged to have been issued to the respondent on 24.06.2008 and the same was returned with an endorsement "left".

4. Before the learned Rent Controller, power agent of the petitioner was examined as P.W.1 and marked ten documents as Exs.P1 to P10 and respondent examined himself as R.W.1 and marked 11 documents as Exs.R1 to R11.

5. The learned Rent Controller considering the pleadings and oral and documentary evidence, ordered eviction holding that the respondent has committed wilful default and also the respondent ceased to occupy the petition premises from January 2008.

6. Against the said order dated 08.03.2010 made in R.C.O.P.No.1963 of 2008, the respondent filed R.C.A.No.247 of 2010 on the file of the XV Small Causes Court, Chennai.

7. Before the learned Appellate Authority, respondent marked additional documents as Exs.R12 to R17.

8. The learned Appellate Authority independently considering the materials on record and order of the learned Rent Controller, allowed R.C.A. and set aside the order of the learned Rent Controller holding that the petitioner failed to prove that the respondent has committed wilful default and ceased to occupy the petition premises.

9. Against the said Judgment and decree dated 10.10.2013

made in R.C.A.No.247 of 2010 reversing the order of the learned Rent Controller dated 08.03.2010 made in R.C.O.P.No.1963 of 2008, the present Civil Revision Petition is filed by the petitioner/landlord.

10. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

11. The petitioner has filed R.C.O.P. for eviction on the ground of wilful default and cease to occupy for more than the statutory period. According to the petitioner, respondent failed to pay the rent from January 2008 onwards and committed wilful default. According to the respondent, it was agreed between the petitioner and respondent that advance amount of Rs.48,000/- can be adjusted for monthly rent payable from January 2008 onwards and on the date of filing of the R.C.O.P., only a sum of Rs.4,500/- was due and payable by the respondent. Due to the sudden death of respondent's brother-in-law and father-in-law, he could not pay the monthly rent for the month of July and August 2008 in time. He tendered Rs.19,500/- on the first date of hearing on 23.10.2008. The counsel for the petitioner refused to receive the said amount and the respondent deposited the same into ICICI Bank account of

the petitioner, as the counsel for the petitioner refused to receive the same. The reason given by the respondent for non payment of rent from January 2008 is not a valid ground and he has not substantiated that the petitioner agreed for adjustment of monthly rent payable from January 2008 from the advance amount of Rs.48,000/-. Even if the petitioner has agreed for such adjustment, he is entitled to retain one month rent as advance. The respondent has not tendered entire arrears of rent on the date of first hearing date on 23.10.2008.

12. The learned Rent Controller considering the averments made in the petition, counter statement and evidence of parties held that the respondent has committed wilful default and did not tender the entire arrears of rent on the date of hearing. The learned Appellate Authority reversed the order of the learned Rent Controller on the ground that the petitioner ought to have given correct calculation of arrears of rent, when the respondent tendered Rs.19,500/- on the first hearing date on 23.10.2008. The learned Appellate Authority on presumption and assumption has held that had the petitioner given correct calculation, the respondent would have paid balance arrears of rent of Rs.7,500/- also. The reason

given by the learned Appellate Authority to reverse the findings of the learned Rent Controller that the respondent has committed wilful default is erroneous and not valid. The learned Appellate Authority also failed to take note of the contention of the petitioner that the respondent ceased to occupy the petition premises from January 2008 and respondent failed to pay the monthly rent from January 2008.

13. Considering all the above facts, it is clear that the respondent has committed wilful default by not paying rent from January 2008. As far as the contention of the petitioner that the respondent ceased to occupy the petition premises is concerned, the petitioner issued notice dated 24.06.2008 through her counsel to produce the electricity card for payment of electricity charges. The respondent produced the same and the same was marked as Ex.P10. It is seen from the impugned order and Ex.P10 that electricity connection was disconnected in the month of March 2008 and subsequently, it was restored on 27.08.2008. From Ex.P10, it is seen that as noted by the learned Rent Controller, electricity charge was only minimum charge, electricity connection was disconnected in the month of March 2008 and it was subsequently restored on

27.08.2008. This would clearly show that the petitioner was not in occupation of the petition premises from January 2008 onwards as claimed by the petitioner. The respondent denied that he ceased to occupy the petition premises from January 2008 onwards. According to the respondent, he was away from the petition premises only for few days. The respondent has not denied that electricity connection was disconnected in the month of March 2008 and subsequently, it was restored on 27.08.2008 and from March 2008, only minimum charge was recorded in the electricity card.

14. The learned Rent Controller considering all the above facts and as per Ex.P10 and Ex.R12 held that the respondent ceased to occupy the petition premises from January 2008. The learned Appellate Authority reversed the findings of the learned Rent Controller on the ground that the respondent has explained his absence from the petition premises. The learned Appellate Authority failed to consider the contention of the petitioner that the respondent ceased to occupy petition premises from January 2008 and substantiated his contention by calling upon the respondent to produce meter reading card, which was marked as Ex.P10. According to the respondent, he was away from the petition

premises only for few days during July and August 2008. The learned Appellate Authority accepted this explanation of the respondent, but failed to see that the respondent has not disputed Exs.P10 and R12/electricity consumption card that electricity connection was disconnected in the month of March 2008 and subsequently, it was restored on 27.08.2008 and only the minimum charges were recorded from March 2008 and August 2008.

15. For the reasons stated above, judgment and decree of the learned Appellate Authority dated 10.10.2013 made in R.C.A.No.247 of 2010 is set aside and order of the learned Rent Controller dated 08.03.2010 made in R.C.O.P.No.1963 of 2008 is confirmed. The Civil Revision Petition is allowed. No costs.

22.12.2017

Index : Yes/No

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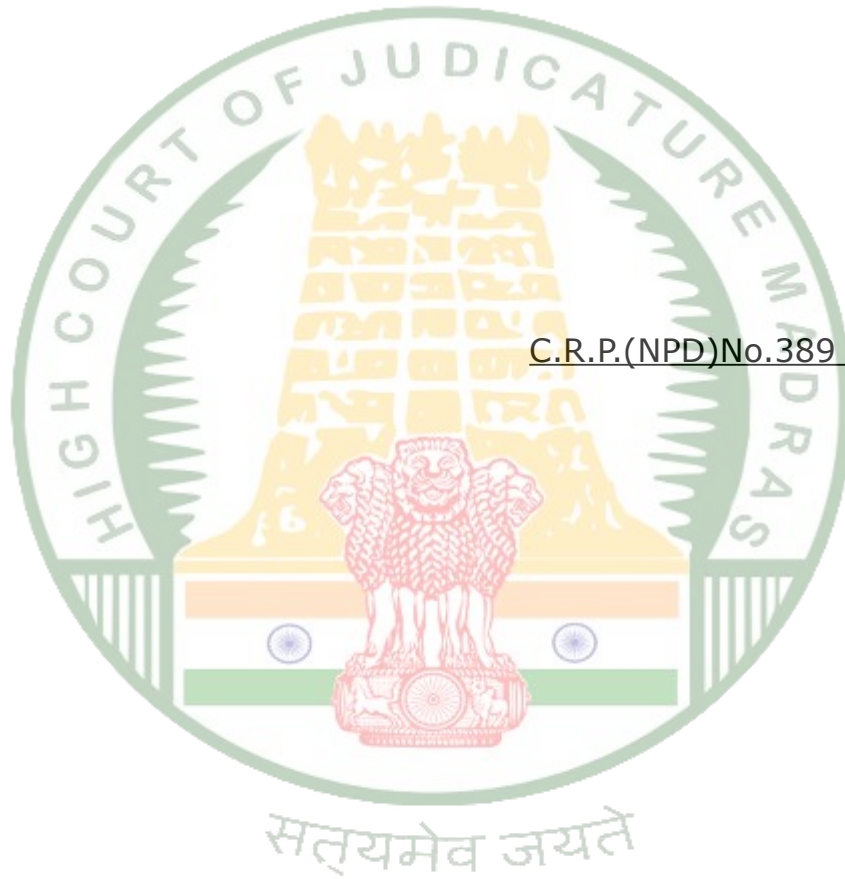
To

- 1.XV Judge, Small Causes Court, Chennai.
- 2.VIII Judge, Small Causes Court, Chennai.

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V.M.VELUMANI, J.

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