

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.12.2016

Pronounced on 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1686 of 2007

S.Viswanathan

.. Petitioner

Vs.

1.K.Ramachandran(Deceased)

2.R.Padmavathi

3.R.Sathiamurthi

4.Vijayalakshmi

5.R.Muruganandham

6.Jothilakshmi

7.Revathikumari

8.R.Vijayavenkatesh

..Respondents

(Respondents 2 to 8 brought on record as LRs
of the deceased sole respondent vide order
of Court dated 11.06.2014 made in
M.P.No.1 of 2014 in CRP(NPD)No.1686 of 2007)

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act 1960 as amended by Act 23 of 1973, against the fair and decreetal orders dated 23.06.2000 in RCOP.No.2192 of 1998 on the file of the Rent Controller (XI Small Causes Court), Chennai as reversed in the fair and decreetal orders dated 19.07.2006 in RCA.No.585 of 2000 on the file of the Rent Controller Appellate Authority (VII Small Causes Court), Chennai.

For Petitioner : Mr.M.L.Ganesh,

For Respondents : Mr.M.Balasubramanian (for R8)

O R D E R

The Revision Petitioner is the landlord of the portion of the building in respect of Shop No.106, N.S.K.Salai, Arcot Road, Vadapalani, Chennai-26. The 1st respondent was the original tenant and during the pendency, he was died. Subsequently by taking steps the L.R.s of the 1st respondent got impleaded.

2.The short facts of the case is that the respondent/tenant failed and neglected to pay the monthly rent from 01.04.1998 to 31.08.1998. The case of the revision petitioner is that in spite of repeated demand and lawyer notice dated 04.09.1998, the defaulted payment of rent was not paid. It is not in dispute that the monthly rent is a sum of Rs.3,500/- in the relevant point of time. Simply it can be said that for the default of payment of 5 months rent the eviction petition filed under Section 10(2)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act by the landlord on the ground of willful default. It is to be noted here that and also admitted on either side on the date of the first hearing before the learned Rent Controller, the total arrears of Rs.17,500/- was paid the tenant /1st respondent

and the same was accepted by the landlord. However, the landlord prayed before the learned Rent Controller for the order of eviction on the ground of willful default.

3.However, counter statement was filed by the respondent/tenant and submitted that he was the tenant under the revision petitioner/landlord since 1966. In addition to that he has also explained that at the time of inception as tenant, the monthly rent was a sum of Rs.350/- along with an advance amount of Rs.500/-. Periodically the monthly rent was revised and at the time of filing the RCOP, the monthly rent was a sum of Rs.3500/-. The further case of the 1st respondent/tenant is that though on 16.08.1996 the revision petitioner landlord caused a notice stated that the petition mentioned property was in a delabilated condition and the same was required for demolition and reconstruction. Further, he replied for the notice of the revision petitioner that the total premises of the building is consisting of 5 shops and presently the 1st respondent was requested to shift to the another shop on the southern side. As the said shop is in a smaller extent, it is not continent to the 1st respondent/tenant to run his business. It is contended by the 1st respondent/tenant that though he tendered the monthly rent for the period from April 1998 to September 1998, it was refused to receive by the landlord.

Further, as the wife of the R1/tenant was fallen into sickness, he was unable to deposit the rent in the Court and for that reason, he did not cause any reply for the legal notice.

4.By considering the application filed by the landlord, the counter statement of the tenant and also the oral and documentary evidence advanced on either side, the learned Rent Controller accepted the case of the landlord and ordered eviction by the order dated 23.06.2000. Feeling aggrieved over the order of eviction, the 1st respondent/tenant filed R.C.A. No.585 of 2000 before the Rent Control Appellate Authority. Hence, the order of the eviction was set aside by allowing the Rent Control Appeal by the Judgment dated 19.07.2006 by the Rent Control Appellate Authority (VIIth Small Causes Court, Chennai.)

5.Now the challenge is made before this Court is that the landlord has preferred the instant Civil Revision Petition as against the Judgment dated 19.07.2006. The point before this Court is whether the period of 5 months in making default to pay the monthly rent can be construed as default or not? Whether the default is properly and reasonably explained by the 1st respondent/tenant. In addition to that whether the conduct of the 1st respondent in paying

the monthly rent for about 33 years can be taken into consideration.

6.It is not in dispute that for the default of 5 months the instant civil revision petition is filed. Similarly it is not in dispute that R1/tenant has been tenant for more than 3 decades and he used to tender the monthly rent without any default in those period. However, the case of the revision petitioner/landlord is the 1st respondent is a defaulter and did not tender the monthly rent till the 1st date of hearing before the learned Rent Controller. However, it is the case of the 1st respondent/tenant that on the date of the first hearing itself before the Tribunal, he tendered the entire arrears of the monthly rent. Moreover while filing application under Section 10(2)(i) of the Act the landlord has not pleaded that he was in the habit of issuing receipt for the receiving of monthly rent. On the other hand, the first respondent/tenant has specifically pleaded that the landlord is not in the habit of issuing rental receipt for every month. So it is clear that no rent receipt for the receiving of monthly rent given by the landlord.

7.Further, the case of the 1st respondent/tenant is that though he tried to tender the monthly rent for the defaulted period, it was refused by the landlord. Moreover, he justified that as his wife was

taken into sickness, he was unable to send any reply to the legal notice of the landlord and to deposit the rent to the Court. At this juncture, this Court is assessed the conduct of the 1st respondent/tenant, since he was regular in paying the monthly rent more than the period of 3 decades without any default, reliance can be placed upon the contention raised in his counter statement with regard to the unavoidable circumstances crippled him in paying the monthly rent. On the other hand, the specific contention of the tenant is that he took efforts to tender the disputed monthly rents. So, this Court come to a conclusion that since the default period is only 5 months and the total arrears were paid on the first date of hearing the conduct of the tenant is to be taken into account by equating his previous habit of tendering the monthly rent for more than a period of 3 decades. So, the 1st respondent/tenant justified his case by giving reasonable and proper explanation. So, he cannot be held as a defaulter.

8. In support of the case of the tenant/1st respondent reliance is placed in the Judgment in the case of **Mohammed Arif and 2 others v. K.P.R.Jafarullah** reported in **1998 (2) LW 610** as follows:

"7. From the abovesaid facts it will be clear that the tenants had paid the rent even before the effective date

of hearing. The learned counsel appearing for the respondent/landlord has cited a number of decisions to show that the payment of rent subsequently will not cure the defect already committed by the tenants. But, after considering all those decisions and the recent decision of the Apex Court AR.Lakshmanan, J., in 1996 (2) MLJ 579 = 1996-2-LW-525 (Abdul Hameed v. Sultan Abdul Kader) has held as follows:

“In my opinion of course the Appellate Authority has failed to take into account that to constitute willful default, the default should be intentional, deliberate and with full knowledge of the legal consequences flowing therefrom. Admittedly, the entire areas as on the date of the petition was paid along with the counter affidavit on the very first hearing. This would show that absolutely there is no willful default in the payment of rent”

In view of the above dictum and on the basis of the facts stated above, I have to come to the conclusion that the findings of the authorities below that the tenants had committed default in payment of rent wilfully cannot be sustained in law. So, in this regard the orders of the courts below cannot be sustained and they are hereby set

aside.”

9.The learned counsel appearing for the revision petitioner/ landlord has placed reliance the following decision:

- 1) Manu/TN/0113/2006
- 2) CDJ 2007 MHC 3163
- 3) CDJ 2007 MHC 209
- 4) Manu/TN/7079/2007
- 5) Manu/TN/0387/2013
- 6) Manu/TN/2240/2005

10.All the above judgments were held that when the rent was not paid and the rent was received by the landlord, the tenant might have invoke the procedure under Section 8(5) of the Act for depositing the amount in the Court by following the procedure as contemplated in the said provision. But, the case on hand has not clearly proved that the respondent/tenant has not paid the rent from 01.04.1998 to 31.08.1998, since the respondent/tenant has paid the arrears of the rent at the first hearing of the Rent Control case.

11.While taking into consideration of the above said authorities, this Court is come to a conclusion that it is for the revisional Court to

come to an independent conclusion that whether the tenant was satisfied his default by adducing reasonable and proper explanation. One thing is enough to defer with the findings of the above said Judgments that the case on hand, the landlord/petitioner is not in the habit of issuing receipts for the receiving monthly rents.

12. Therefore, in my considered opinion is that the Rent Control Appellate Authority has passed well considered order in RCA.No.585 of 2000 dated 19.07.2006. Hence, this Court does not find any irregularity or illegality in the said order warranting interference by this Court.

13. In the result, this civil revision petition is dismissed, by confirming the order of Rent Control Appellate Authority in RCA.No.585 of 2000, dated 19.07.2006. No costs.

31.01.2017

Index:Yes
Internet:Yes

vs

To

1. The Rent Controller (XI Small Causes Court),

Chennai.

2.The Rent Controller Appellate Authority
(VII Small Causes Court), Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.1686 of 2007**

31.01.2017