

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)Nos.1948 and 1949 of 2009

Lakshmi Ranga Complex

rep. by its Partners

1.K.R.Kandasamy

2.R.Shanmughasundaram

.. Petitioners in both CRPs

Vs.

Umadevi

..Respondent in both CRPs

Prayer in CRP(NPD)No.1948 of 2009: Civil Revision Petition filed under Section 25 of Tamilnadu Building Lease and Rent Control Act, against the Order and Decree dated 10.02.2009 made in R.C.A.No.83 of 2006 on the file of the Learned Principal Subordinate Judge, Coimbatore, modifying the order and Decree dated 03.08.2006 made in R.C.O.P.No.206 of 2001 on the file of Learned Rent Controller and District Munsif, Coimbatore.

Prayer in CRP(NPD)No.1949 of 2009: Civil Revision Petition filed under Section 25 of Tamilnadu Building Lease and Rent Control Act, against the Order and Decree dated 10.02.2009 made in R.C.A.No.84 of 2006 on the file of the Learned Principal Subordinate Judge, Coimbatore, confirming the Order and Decree dated 03.08.2006 made

in R.C.O.P.No.206 of 2001 on the file of Learned Rent Controller and District Munsif, Coimbatore.

For Petitioners : Mr.T.R.Rajaraman
(In both CRPs)

For Respondent : Mr.Saravanabhavan
(In both CRPs)

COMMON ORDER

The above two revision petitions are filed by the landlords against the tenant. The tenant in both the civil revision petition is one and the same and the petition premises also one and the same and issue involved in both the civil revision petition is common and therefore both civil revision petitions are heard together and common order is passed.

2.The brief fact stated in this revision petition is that, the revision petitioners are the owner of the petition premises bearing D.No.63, Cross Cut Road, Ganthipuram, Coimbatore-12 which is a commercial complex known as Lakshmi Ranga Complex. The above premise was leased out to the respondent herein for non-residential purpose from 01.04.1985 at the monthly rent of Rs.2,000/-. The

tenancy was for 11 months and the respondent paid an advance amount of Rs.65,000/-. Since, the respondent herein/tenant committed default in payment of rent from 01.07.1998 onwards, the revision petitioners filed a suit against respondent herein in O.S.No.648 of 1990 on the file of the Sub Court, Coimbatore, to eject the tenant from petition property. Since construction of building was within five years and therefore the suit for ejection was filed by the revision petitioner and the same was not pressed subsequently and accordingly the suit was dismissed by order dated 18.09.2001. Thereafter the revision petitioner firm filed eviction petition in R.C.O.P.No.206 of 2001 and fixation of fair rent petition in R.C.O.P.No.208 of 2001 against the respondent herein under section 10(2)(i) and 10(3)(a)(iii) and section 4 of the Tamilnadu Buildings (Lease and Rent) Control Act. At the time of tenancy the monthly rent was fixed at Rs.2,000/- and now the nearby shops would fetch the monthly rent of Rs.7,000/-. Further the petition property situated in a busy commercial area of Coimbatore City. Hence the Petition for fixation of fair rent at the rate of Rs.12,500/- per month was sought for by the revision petitioner herein.

3.Per contra, the respondent herein/tenant contended that he is ready and willing for a reasonable enhancement of rent. The claim of

revision petitioner is that the petition property would fetch a monthly rent of Rs.12,500/- is not at all correct and the actual intention of revision petitioner is only to evict the respondent herein. Hence the respondent herein prays to dismiss the revision petition. The learned rent controller considered the oral and documentary evidence adduced on either side was pleased to fix the fair rent for the petition premises at the rate of Rs.5,500/- per month and the same has to be paid from the date of petition.

4.The landlords filed R.C.O.P.No.206 of 2001 against the respondent herein before the Rent Controller (District Munsif Court), Coimbatore for eviction on the ground of Willful default and owners occupation. The revision petitioners also filed R.C.O.P.No.208 of 2001 against the respondent herein before the same court for fixation for rent to the petition mentioned at the rate of Rs. 12,500/- per month with effect from 01.08.2001. In both the R.C.O.Ps separate orders were pronounced by the learned rent controller by order and decree dated 03.08.2006. The learned rent controller was pleased to allowed the R.C.O.P.No.208 of 2001 and fixed fair rent of Rs. 5,500/- per month to the petition premises from the date of petition and dismissed R.C.O.P.No.206 of 2001 and thereby rejected the order of eviction.

5.As against the order fixation of fair rent the tenant filed separate appeal in R.C.A.No.4 of 2007, and aggrieved over the quantum of rent, the landlords also filed appeal in R.C.A.No.83 of 2006, before the learned Rent Controller Appellate Authority (Principal Sub-Court), Coimbatore. The learned Rent Controller Appellate Authority taken up both the appeals together and passed a common order dated 10.02.2009. The learned rent controller appellate authority dismissed R.C.A.No.4 of 2007 and allowed R.C.A.No.83 of 2006, thereby enhanced the fair rent fixed by the learned Rent Controller Appellate Authority from Rs.5,500/- to Rs.6,260 per month.

6.As for as the eviction petition is concerned, the learned rent controller by order and decree dated 03.08.2006 dismissed the eviction petition. Aggrieved over the same the landlord/revision petitioner filed R.C.A.No.84 of 2006, before rent controller appellate authority, Coimbatore and the same was dismissed by order and decree dated 10.02.2009. Aggrieved over the same, the landlords preferred present civil revision petition No.1949 of 2009.

7.The petitioners herein seeking eviction of the respondent herein on two grounds. The first ground for eviction is willful default

committed by the respondent. In the instant case, both side admitted facts are that the monthly rent is Rs.2,000/- and also advance amount of Rs.65,000/- received by the revision petitioners. The tenancy commenced from 01.04.1985. According to the revision petitioners, the respondent herein was irregular in payment of rent from 01.07.1998. As on 31.08.2001 the total arrears of rent was Rs.1,94,350/- and the same is willful and the respondent is liable to be eviction on the ground of willful default under section 10(2)(1) of the Tamilnadu Buildings (Lease and Rent) Control Act. The respondent has not taken any steps to deposit the rent and not followed the procedure as contemplated under section 8(5) of the Act. The further contention of the revision petitioners is that the payments of arrears of rent in lump sum will not absolve tenant from willful default committed by him. In this regard, the Learned Counsel for the revision petitioner relied on a Judgment reported in **2015 (2) CTC 763** in the case of **S.Rajasekar and another v. Sartaj Begum and others**. Therefore the findings rendered by the Learned rent controller and Appellate Authority rejecting eviction on the ground that the tenant had deposited the total arrears amount of Rs.1,94,350/- before first hearing is highly arbitrary. The said findings are totally perverse and unsustainable in law and so, it is liable to be set aside. Pending eviction proceedings the tenant has not paid the

rent regularly.

8.Per contra, the Learned Counsel for the respondent herein contended that the entire arrears of rent that fell due as on the date of the petition was deposited into Court immediately on receipt of Summon. Therefore, the default cannot be termed as willful default, and hence the order of the learned Rent Controller and Appellate Authority are perfectly correct and the same not required interference by this Court.

9.The next ground for seeking eviction of the respondent herein is that the petition premises is required for own use and occupation of the revision petitioners for the purpose of carrying on business for having petty shop. From the evidence adduced on either side, it is revealed that the 1st petitioner herein is carrying on petty shop business and the building in which he is carrying on business in a small building which is not that of him and he is not owning any other non-residential buildings in the city. The respondent herein also admitted the fact of having petty shop by the 1st petitioner herein, but contented that the requirement is not bonafide one.

10. From the both side submissions, it is revealed that the respondent herein as tenant committed default in payment of rent. As held in the above Judgment of this Court, mere deposit of arrears of rent in the 1st hearing of eviction petition will not absolve the respondent herein from willful default committed by him. Further, during the course of the argument, this Court put question regarding payment of the rent during the pendency of eviction proceedings, the Learned Counsel for the respondent herein informed this Court that despite sending letter by him to the respondent herein there was no response from him. This would itself show the conduct of the tenant's malafide intention. Therefore, the above said conduct of the respondent herein for not responding to his counsel regarding payment of arrears of rent during the pendency of eviction proceedings to willful default and this Court hold that the revision petitioners are entitled for eviction on the ground of willful default.

11. As for as owners occupation is concerned, the fact remains that the 1st petitioner is running a petty shop and the same was also accepted by the respondent herein. However, the Rent Controller as well as the Appellate Authority without proper application of facts and evidence held that the requirements of the Landlords are not

bonafide. With regard to own use and occupation this court in a judgment reported in **2014 (1) CTC 361 (Sironmani v. C.D. Anna Sholly)** wherein in para 8 it is held as follows:

“As regards the term 'carrying on business' is concerned, the Appellate Authority relied on the decision of this Court reported in (Sivanraj vs. Essakkimuthu) 1999 2 CTC 215 wherein it was held that it does not mean actual carrying on business. It is sufficient if the landlord take some steps for the purpose of carrying on business. This proposition of law was reiterated by this Court in another decision of this Court reported in (Jagatrakshagan (deceased) and others vs. N. Futaree Bai and others) 2000 (3) Law Weekly 195 wherein it was held that "carrying on business" does not necessarily mean all steps required for carrying on business to be taken. It will be sufficient if even one step is taken and proved”.

12.The said findings is liable to be set aside and the eviction is also ordered on the ground of own use occupation.

13.In the result, C.R.P.No.1949 of 2009 is allowed and the order and decree dated 10.02.2009 made in R.C.A.No.84 of 2006 on the file

of the learned Principal Subordinate Judge, Coimbatore, confirming the order and decree dated 03.08.2006 made in R.C.O.P.No.206 of 2001 on the file of House Rent Controller and District Munsif, Coimbatore are set aside. The respondent is directed to vacate premises within a period of two months from today.

14.As for as C.R.P.No.1948 of 2009 is concerned, it is filed by the landlords as against the quantum of fair rent fixed by the Rent Control Appellate Authority.

15.According to the revision petitioners, the respondent herein was inducted as tenant to the petition mentioned premises on a monthly rent of Rs.2,000/-. The petition mentioned premise is a commercial area and its total extent is 480 square feet. The said rent was not increased after the inception of tenancy i.e after 1981. The petition premise is situated at D.No.63, Cross Cut Road, Gandhipuram, Coimbatore which is a prime area and nearby the petition premises there are banks, textiles, office, Zimzon, Titan watch show room, Singapore Plaza, Municipal Market, Schools, Residential Sivanantha Colony, and Kannan Departmental Stores etc, are located. Therefore the revision petitioners contented that the petition premises would fetch the monthly rent at the rate of

Rs.12,500/- per month.

16.Whereas, the respondent herein contented that the nearby shop situated adjacent to the petition premises could not fetch Rs.7,000/- towards rent per month as alleged by the revision petitioners. The revision petitioners have not filed any document to prove their imaginary claim. Therefore the respondent contented that the petition mentioned premises will not fetch the monthly rent of Rs.12,500/- as claimed by the revision petitioners and the said claim is exorbitant.

17.Considering the rival submissions, the Learned rent Controller fixed the fair rent of Rs.5,500/- per month, to the petition premises by order and decree dated 03.08.2006. Aggrieved over the quantum of fair rent, the revision petitioners filed appeal in R.C.A.No.83 of 2006 for enhancement of rent. The tenant also filed appeal as against the order of the learned Rent Controller, by question the fixation of fair rent in R.C.A.No.4 of 2007 before the Rent Control Appellate Authority/ Principal Sub-Court, Coimbatore. The learned Rent Control Appellate Authority upon consideration of argument on both side and also by considering the oral and documentary evidences enhanced the fair rent from Rs.5,500/- to

Rs.6,260/- by order and decree dated 10.02.2009. Aggrieved over the quantum, the revision petitioners filed this Civil revision Petitioner seeking for enhancement of fair rent.

18. Now the point for consideration is whether the fair rent fixed by the learned Rent Controller Appellate Authority require enhancement or not? In this case the tenancy commenced on 01.04.1985 and the same is a non-residential building measuring an extent of 480 square feet. At the time of tenancy the agreed monthly rent was Rs.2,000/-. The respondent herein is carrying on business in footwear under the name and style of "Shoe Palace". It is also not in dispute that the petition mentioned premises is located in a prime area of Gandhipurm, Coimbatore City. It is also further admitted fact that the rent was not increased after 1981. The present R.C.O.P is filed in the year 2001 for fixation of fair rent after 20 years, now we are in 2017. Further the petition mentioned premise is RCC roof building. Under the above said facts and circumstances, this Court is of the considered view that the petition mentioned premises definitely would fetch the monthly rent of Rs.7,500/-. In fine, this Civil Revision Petition is allowed by fixing the fair rent at the rate of Rs.7,500/- per month and the same shall be paid by the tenant/ respondent from the date of petition.

19.In the result, this C.R.P.No.1948 of 2009 is allowed by modifying the order and decree made in R.C.A.No.83 of 2006 dated 10.02.2009, on the file of the Rent Control Appellate Authority/ Principal Sub-Court, Coimbatore, by fixing the fair rent at the rate of Rs.7,500/- per month and the same shall be paid by the tenant from the date of petition. There is no order as to cost.

01.02.2017

Note:Issue order copy on 25.05.2017

Internet:Yes

Index:Yes

vs

To

- 1.The Principal Subordinate Judge,
Coimbatore.
- 2.The Rent Controller and District Munsif,
Coimbatore.

M.V.MURALIDARAN, J.

VS

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