

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on 07.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1434 of 2012
and
M.P.No.1 of 2012**

K.R.Parthiban

.. Petitioner

Vs.

M/s.Trishla

Represented by its Partners

1.Sri Shamji Hansraj

2.Vinod Kumar S.Savla

3.Kiran Kumar S.Savla

4.Sharat Kumar S.Savla

..Respondents

(Respondents 2 to 4 are Partners
of the First Respondent Firm.)

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 & I/1990), against the Judgment and Decree dated 10.08.2011 made in R.C.A.No.1154 of 2004 passed by the learned VIII Judge, Court of Small Causes Court (Appellate Authority) Chennai, confirming the Fair and Decreetal order dated 26.07.2004 made in RCOP.No.114 of 2002 passed by the learned Rent Controller, (XV Judge, Court of Small Causes) at Chennai.

For Petitioner : Mr.M.Balasubramanian

For Respondents : Mr.S.Suresh Kumar

ORDER

The landlord is the civil revision petitioner before this Court, challenging the order passed in R.C.A.No.1154 of 2004 passed by the learned VIII Judge, Court of Small Causes (Appellate Authority) Chennai, dated 10.08.2011, confirming the order in RCOP.No.1154 of 2004 by the learned Rent Controller Appellate Authority / VIII Judge, Small Causes Court, Chennai dated 10.08.2011.

2.The case of the petitioner is that the respondent is a tenant under the petitioner in respect of the Ground Floor Shop Portion bearing Old Door No.134, New Door No.231, Royapettah High Road, Mylapore, Chennai-4, on a monthly rent of Rs.3,000/- excluding electricity charges. The purpose of the lease is for non-residential activity for carrying on business in Ready-Made Garments and Hosieries and the tenancy is according to English calendar on month to month basis and the rent is payable on or before 5th of every English Calendar month.

3.The further case of the petitioner is that the respondent had willfully and deliberately not paid the rents from April 1998 to

November 2001 and the act of non-payment of rent is willful, deliberate and hence the respondent is liable to be evicted on the ground of willful default in payment of rents from April 1998 to November 2001.

4.Further case of the petitioner is that he is running a business Stainless Steel Vessels and other house hold utensils under the name and style of M/s.K.Ramanathan and Co., in the Ground Floor Shop at Old No.131, New Door No.225, Royapettah High Road, Mylapore, Chennai-4 and the place where the said company is running is not sufficient to meet out the expanded business activities since the said place is only about 550 sq. ft. He has also stated that there are several offers from reputed Home Appliance Companies for Dealership and all of them are insisting on spacious accommodation of not less than 1,500 sq. ft. half space in the ground floor facing Royapettah High Road, for the show room and apart from that they must insist on having a spacious godown. In fact, the petitioner had applied for the agency with one Meera Industries and other companies.

5.Therefore, the petition mentioned property is bonafidely in need for the entire shop portion under the occupation of the

respondent at Old No.134, New Door No.231, Royapettah High Road, Chennai-4, in the ground floor admeasuring 1500 sq. ft. by way of additional accommodation for the expansion of the petitioner's present business at Old No.131, New Door No.225, R.H.Road, Chennai-4, by getting dealership and agencies from Rama Home Needs Products and the products of Meera Industries and other Agencies.

6.In fact, when the petitioner made demand to the respondent and also the other tenant, who is doing business in M/s.Madura Fabrics, other shop at old Door No.134, New Door No.231, N.H.Road, Chennai-4, from November 1998 to vacate and handover the possession of their respective portion under their occupation for the purpose of expansion of the petitioner's business by getting additional agencies and also on the ground that the present accommodation is not sufficient to meet out the current business demands and the respondent has refused to comply with the legitimate demand.

7.Therefore, the petitioner has filed RCOP.No.114 of 2002 before the XV Judge, Small Causes Court, Chennai (Rent Controller, Chennai) for eviction on the ground of willful default and Additional accommodation.

8. On receipt of notice in the above Rent Control proceedings, this respondent, who is the tenant has filed his counter denying the allegations set out in the petition by the petitioner.

9. This respondent states that the petition is not maintainable either in law or on the facts and circumstances of the case. The respondent also states that the petitioner has given misleading facts in the petition and the partner of the respondent is not residing at No.3, Balakrishna Road, Chennai-4 and the petitioner has deliberately given a false address for service of the respondent with ulterior motives to get an order in the petition behind the back of the respondent. Therefore, the petitioner is guilty of suggestion facto and suppresso veri.

10. The respondent admits that he is the tenant under the petitioner in respect of the petition shop at Old Door No.134, New Door No.231, Royapettah High Road, Mylapore, Chennai-4 and the monthly rent for the premises was fixed at Rs.3,000/- per month at present and the respondent is paying the electricity charges as per sub-meter reading.

11.This respondent also states that he is very regular in payment of the monthly rent and upto the month of May 2003 the rent has been paid. Therefore, he denied the allegations that the respondent wilfully and deliberately failed to pay rents from April 1998 to November 2001. Therefore, he contended that the petitioner was adopting illegal tactics to create a false case of wilful default against this respondent.

12.This respondent also states that the monthly rent for the above said shop was originally paid by way of cheques and the cheques for the monthly rent were delivered to the petitioner at his shop at old Door No.131, New Door No.225, Royapettah High Road, Chennai-14. This respondent also states that the staff of the shop usually received the cheques and signed a letter delivery book maintained by the respondent and the petitioner is not in the habit of issuing receipts for the rent received. Therefore, the respondent states that this was the mode of practice for tender of rent ever since inception of the tenancy.

13.When the respondent applied for a Statement of Accounts from the South Indian Bank, Chennai-4, in connection with their

accounting purposes in the month of April 2002 and on perusal of the Statement of account, the respondent came to understand that the cheques issued by them to the petitioner towards monthly rent for the above said shop for the period of April 1998 to November 2001 have not been encashed by the petitioner. Therefore, this respondent apprehends that the petitioner had evaded to encash the cheques with ulterior motives and the petitioner was continuously trying to evict the respondent by application of force and by coercive tactics. Therefore, this respondent reasonably apprehended that the evasion to encash the cheques issued by the respondent and received by the petitioner towards monthly rent might be towards an attempt to create a false case of wilful default against the respondent. The respondent had already paid the monthly rent for the period from April 1998 to March 2002 by way of cheques and the total value of the cheques issued for the abovesaid period is Rs.1,44,000/-. Therefore, with a view to caution the petitioner about the above said failure and evasion on the part of the petitioner to encash the cheques issued towards monthly rent, the respondent issued a notice dated 03.05.2002 to the petitioner calling upon with a request to encash the cheques already issued by the respondent and received by the petitioner towards monthly rent for the above said shop for the period from April 1998 to

March 2002 or to return the cheques already issued by the respondent and received by the petitioner towards monthly rent for the above said shop for the period from April 1998 to March 2002 and encash the cheque for Rs.1,44,000/- enclosed along with the notice dated 03.05.2002 towards value of the aforesaid cheques or to specify within ten days from the date of receipt of the notice dated 03.05.2002, a Bank into which the value of the cheques issued by the respondent and received by the petitioner towards monthly rent for the above said shop for the period from April 1998 to March 2002 and the future rents, which subsequently became due in respect of the above shop might be deposited.

14. Though the above notice was received by the petitioner along with cheque for Rs.1,44,000/-, however, the petitioner did not issue receipt for the said sum received by the petitioner towards monthly rent and the petitioner also did not return the cheques issued by the respondent towards monthly rent for the period from April 1998 to March 2002 as requested in the notice dated 03.05.2002. The respondent also states that subsequent to the issuance of notice dated 03.05.2002 to the petitioner, the respondent paid the rent for the month of April and May 2002 on 04.05.2002 and 05.06.2002

respectively by way of cheques bearing No.81363 dated 04.05.2002 and 81364 for Rs.2,000/- and Rs.1,000/- and 81366 dated 05.06.2002 and 81367 dated 05.06.2002 for Rs.2,000/- and Rs.1,000/- respectively. Narrating the above facts, this respondent has filed the detailed counter, which is running 13 pages and prayed for dismissal of the RCOP.

15.On behalf of the petitioner/landlord, the petitioner Mr.K.R.Parthiban was examined and 7 documents were marked and on behalf of the respondent, the 2nd partner of the Company Mr.Vinothkumar S.Chawla was examined and 7 documents were marked.

16.Considering both sides, the learned Rent Controller namely XV Judge, Court of Small Causes, Chennai was pleased to dismissed the RCOP.No.114 of 2002 on 26.07.2004 on the ground that the petitioner has not proved the willful default since it was not the habit of the petitioner for issuing rental receipt to the respondent.

17.The learned Judge also states that the petitioner with a wilful motive has not encashed the cheque which was received as monthly

rent from April 1998 to November 2001 and thereafter only the respondent has issued notice on 03.05.2002 to the petitioner along with the cheque for Rs.1,44,000/-, which was rent for the period from 01.04.1998 to 30.03.2002 and even after receipt of Ex.R6 notice, the petitioner has not issued receipt and hence the respondent has issued cheque for the monthly rent of April and May 2002 by way of cheques, which was entered in the delivery book.

18.The learned Judge also states that after payment of the said amount of Rs.1,44,000/-, this respondent has paid the monthly rent of April and May 2002 by way of cheques, which was received and as on date, there was no arrears of rent and there was no wilful default.

19.In respect of owner's occupation, the learned Judge says that the petitioner/landlord has not proved with documentary evidence and oral evidence. Therefore, the learned Rent Controller states that for both willful default and additional accommodation grounds have not been proved by the petitioner/landlord and accordingly dismissed the petition on 26.07.2004.

20.Challenging the said judgment and decree in RCOP.No.114 of

2002, dated 26.07.2004, this petitioner/landlord has filed an appeal in RCA.No.1154 of 2004 before the Rent Control Appellate Authority namely VIII Court of Small Causes, Chennai, on the ground that the Rent Controller has failed to note that the respondent/tenant has committed willful default on payment of rent for 44 months i.e. from April 1998 to November 2001, specially when lumpsum payment was made for 44 months upto May 2002 for Rs.1,44,000/- by way of pay order. Therefore, the petitioner raised a ground in the appeal that the respondent/tenant's payments of Rs.1,44,000/- for 44 months due rent would clearly proved the respondent/tenant has committed willful default.

21.The petitioner also raised the ground in the appeal stating that the respondent/tenant ought to have taken appropriate steps to pay the rents every month regularly to the landlord and even in case of refusal of the petitioner/landlord, it is for the tenant to invoke Section 8 of the Tamil Nadu Buildings (Lease and Rent) Control Act, but he failed to invoke the said provision throughout. The petitioner in the appeal stated that by citing the Judgment passed by this Court in the case of The Government of Tamil Nadu, rep. By its Secretary to Government, Finance (L.F.) Department, Fort St. George, Chennai-600

009 and another v. J.Ramasamy and another reported in 2002 (2) CTC Page 577, in which the act of a tenant without resorting to Section 8(5) of the Rent Control Act, but withholding the rent for months together amounts to willful default.

22.The petitioner also raised the grounds for additional accommodation namely the owners occupation was not considered by the Rent Controller, since the petitioner is doing business under the name and style of K.Ramanathan & Co., in the same complex for quite a number of years with a high reputation among his customers, and by way of expansion of his business, he requires additional space to display the Home Appliance Products for obtaining agencies.

23.The further case of this petitioner in the appeal is that though the petitioner has proved in all aspects that for the eviction of the respondent on the ground that an additional accommodation was not considered properly by the learned Rent Controller for the reasons that there are 4 shops owning by the petitioner/landlord in the same area with one and only TNGST Registration Number, cannot be a ground for rejecting the Appellant's claim for additional accommodation rather this aspect will only add strength to the aspect of relative hardship in

favour of the petitioner/landlord and not in favour of the respondent/tenant. He has also states that to following the decision in the case of Rajan Srinivasan, Chennai v. Ramji Srinivasan and another reported in 2002 (2) MLJ Page 691, the learned Appellate Judge ought to have ordered eviction.

24.The petitioner also raised the ground stating that the point for determination in rent control proceedings, by considering extraneous matters like the filing of a suit for damages, injunction suit, pending on the file of the Civil Court, Criminal case between the parties etc., which have no relevance with regard to determination of the grounds of willful default in payment of rent and additional accommodation.

25.Considering the petitioner's appeal, the learned VIII Small Causes Court/Appellate Authority was pleased to dismiss RCA.No.1154 of 2004 on 10.08.2011, on the ground that the learned Rent Controller properly considered the case of the petitioner in respect of willful default and additional accommodation, since the petitioner/ landlord has not properly proved his case with oral and documentary evidences.

26.The learned Rent Control Appellate Authority also states that

when the petitioner filed the claim under Section 10(3)(c) once he should satisfy the Court that the essential requirement of additional accommodation is bonafide, but in the case on hand, the petitioner has not proved by relevant document and admitted evidence that the petitioner is really in need of the petition mentioned premises.

27.As far as the eviction on the point of willful default is concerned the petitioner specifically claimed the rent for the month of April 1998 to November 2001. The petitioner is not in the habit of issuing rental receipt. The appellate authority also considered when the respondent has issued the cheque for the monthly rent from 01.04.1998 to 30.03.2002, but the petitioner has deliberately not encashed the cheques and thereafter the respondent has issued notice along with the cheque for Rs.1,44,000/-, which is the rent for the period from 01.04.1998 to 30.03.2002. But, even then, the petitioner has not issued any receipt. As per the evidence from Ex.P14 series, this respondent has sent the rent by way of money order and the same was received by the petitioner.

28.The learned Judge also considered the order passed by the Hon'ble Supreme Court reported in 1999 (7) SCC 338 in which the

Hon'ble Supreme Court held that " but if the default has occasioned on account of ignorance, accident or compulsion or circumstances beyond the control of the tenant, it cannot be termed as wilful default. This has to be determined as a question of fact on the facts and in the circumstances of each case the same is considered in this instant case. Hence the Court finally comes to the conclusion that there is no arrears of rent and as such the question of wilful default does not arise in this case."

29.The learned Judge also considered yet another judgment produced by the respondent in the case of Hindustan Petroleum Corporation Limited, Bombay, represented by its Power Agent, U.M.Ghatge and another v. B.Saravanan and others reported in 1997 2 MLJ 32, wherein this Court held that

"For Section 10(3)(c) to be applicable, the structure or building must be occupied by both landlord and tenant, it is the occupation by both landlord and tenant in one structure that is contemplated under Section 10(3)(c). It is not the ownership of the building that matters. Even if the landlord happens to be the owner of two adjoining buildings, that will not come under Section 10(3)(c)."

By applying the above said judgments, it is made clear that the respondent and the petitioner are carrying on business in two different buildings having two different door numbers. Therefore, the petitioner has not made out any case for willful default as well as additional occupation. Hence, considering the nature of the case and points raised by both parties, the Rent Control Appellate Authority was pleased to dismiss the Rent Control Appeal by confirming the order passed in RCOP.No.114 of 2002.

30.Now, the petitioner challenging both the orders, has filed the above civil revision petition before this Court.

31.It is the case of the petitioner/landlord that both the Courts have failed to consider the willful default, for the reason that once when the petitioner fails to pay the monthly rent of 44 months from April 1998 to November 2001 and without invoking the provision under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, but with-holding rents for 44 months, it is nothing but a supine indifference on the part of the respondent/tenant warranting eviction on the ground of willful default in payment of rents. The

petitioner/landlord raised the grounds stating that the respondent/tenant sent the rent by way of cheques every month and the same were not encashed, but without proper application of the facts and law, the Courts below ought to have held that the respondent/tenant being a leading business firm and being assessed to Income-tax, is duty bound to verify whether rents sent by way of cheques were encashed or not but with holding the rents for 44 months without resorting to section 8 of the Rent Control Act is nothing but a willful act of default in payment of rents and ought to have ordered eviction of the respondent/ tenant.

32.The petitioner/landlord also raised grounds that the petitioner has been doing business under the name and style of K.Ramanathan and Co., in the same complex for quite a number of years with a high reputation among the customers and by way of expansion of business, the landlord requires additional space to display the Home Appliance Products for obtaining agencies. The petitioner/landlord also states that both the Courts below failed to consider that the respondent has a shop at Door No.130, Royapettah High Road, Luz, apart from having show-room of their own near Kamadenu Theatre in No.179, Luz Church Road, Mylapore, Chennai-4, which is situated 100 metres away

from the petition premises. The petitioner/landlord also states that both the Courts below failed to see that the petitioner having four shops in the same area with one and only TNGST Registration Number, cannot be a ground for rejecting the appellant's claim for additional accommodation, rather this aspect will only add strength to the aspect of relative hardship in favour of the appellant/landlord and not in favour of the respondent/tenant. The petitioner/landlord also states that both the Courts have not considered the judgment of this Court and the Hon'ble Apex Court and rejected his request. Therefore, the petitioner prayed this Court to set aside the orders of both the Courts and allow the civil revision petition and evicting the respondent/tenant from the petitioner premises.

33.Per contra, the learned counsel appearing for the respondent/tenant argued that both the Courts very clearly held that the petitioner/landlord has not proved the willful default as well as the additional accommodation. The learned counsel for the respondent also reiterated that the petitioner has not encashed the cheques issued by the respondent from April 1998 to November 2001, which was later on paid by total lumpsum of Rs.1,44,000/-, which was received without any protest and the same was encashed. The learned counsel

appearing for the respondent also argued that all the cheques issued for the rental payments for the period of April 1998 to November 2001, to the staff of the petitioner's shop and got entry in the entry book was not at all denied by the petitioner. The petitioner/landlord also not proved the additional accommodation since they have four shops in the same area. Therefore, the respondent prayed this Court for dismissal of the civil revision petition.

34.I heard Mr.M.Balasubramanian, learned counsel appearing for the petitioner and Mr.S.Suresh Kumar, learned counsel appearing for the respondents.

35.Admittedly, the petitioner has let out the property comprised in this petition on a monthly rent of Rs.3,000/- excluding the electricity charges for non-residential purpose from 1998 onwards. When the respondent has paid the monthly rent by way of cheque and the cheque was handed over to the petitioner's staff of the shop, they have also made on the endorsement for the receipt of the cheque and encashed the cheque for every month previously and for the period of April 1998 to November 2001, allegedly cheques were issued to the petitioner's staff of the shop.

36.The respondent/tenant has stated that he was regular in payment of rent of Rs.3,000/- per month to the petitioner/landlord by way of issuing cheques to the staff of the company which belongs to the petitioner and later on they encashed the cheques. But, from April 1998 to November 2001, the petitioner has not encashed the said cheques, later on which was known by the respondent and when they applied for the statement of accounts in the month of April 2002, at that time only the respondent came to know that the cheques issued for the month of April 1998 to November 2002 were not encashed by the petitioner, with the only purpose to evict this respondent from the petition premises. Therefore on 03.05.2002, he has issued lawyer notice to the petitioner by enclosing the cheques for a sum of Rs.1,44,000/- in respect of the rent for the period from April 1998 to November 2001. Later on, the respondent has paid the monthly rent for the period from April 1998 to November 2002 by way of cheque which was also received by the petitioner, but without making any protest and encashed all the cheques. Therefore, it is made clear that there is no wilful default of the respondent for the payment of rent for the period from April 1998 to November 2001.

37. On the other ground of additional accommodation, this petitioner/ landlord has stated that the petitioner companies who are dealing with Home Appliances require minimum 1500 sq. ft. Building to exhibit their products and the petitioner shop is only 600 sq. ft. and for the said purpose, the petitioner requires additional accommodation of the premises in occupation of the respondent/tenant.

38. The learned counsel appearing for the petitioner also made his submissions, who has also filed written arguments to that effect stating that the respondent has issued notice dated 03.05.2002 for four months after filing of the eviction petition by enclosing a pay order for Rs.1,44,000/- and to encash after three years eight months or to return the alleged 44 cheques given to the employee of the petitioner/landlord every month and also to disclose the Bank account number to deposit the rent into Court. Therefore, the petitioner ignored the said notice, since it is issued only after four months of filing eviction petition but however received the money order sent subsequently.

39. The petitioner/landlord also states that as far as the additional accommodation is concerned the petitioner requires the

premises for his expansion of Home Appliances business. Two of the companies offered agency where in the petitioner's brother are directors and the Rent Controller erred in rejecting the same. The Rent Control Appellate Authority simply confirmed the decision of the Rent Controller. The Rent Control Appellate Authority has not even considered the additional document filed i.e. the letter dated 30.07.2003 given by M/s.T.T.K. Prestige Limited. When the respondent has rendered the rent by way of cheque for more than 44 months, which was not encashed by the petitioner/landlord for the period from 01.04.1998 to 30.03.2001. It is an admitted fact that the petitioner has not issued any notice for demanding the arrears of rent and eviction of the respondent. But, the respondent alone was sent a notice dated 03.05.2002, that after verifying the bank statement of accounts, the petitioner with ulterior motive has not encashed the cheques, since the cheques issued for the monthly rents of 44 months for a sum of Rs.1,44,000/- by way of pay order by the tenant from 01.04.1998 to 30.03.2002, was received and encashed by the petitioner/landlord without any protest. Therefore, it is made clear that there is no willful default on the part of the respondent, since the petitioner encashed the cheques issued for Rs.1,44,000/- and for the period of April and May 2002.

40. Apart from this, this Court and the Hon'ble Apex Court in various judgments clearly held that when the respondent has rendered the rent even at the time of first hearing of the Rent Controller proceedings which was accepted by the landlord, it would not amount to willful default. It is the considered opinion of the Court that this Court should not see the cases on the technical view of the matter and if the landlord accepts the amount sent by way of money orders or by way of cheques to deposit the arrears of rents sent by the tenant, the same shall be considered relevant to decide the dispute between the parties.

41. The rent control legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions and equitable consideration should have no place in such matters.

42. As far as the case on hand is concerned, it is not the case of the petitioner that the respondent has failed to pay the monthly rent

and he has not attempted to receive the receipt of the rent. If the petitioner has not received the rent, then this respondent can invoke the provision under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, but, on the other hand, the respondent has issued cheques for 44 months from April 1998 to November 2001, which was received by the staff of the petitioner company and they were entered in the entry but were not encashed and later on the respondent has issued a lawyer notice on 03.05.2002 by enclosing a cheque for amount of Rs.1,44,000/- which was encashed by the petitioner without any protest. Later on, the respondent also sent monthly rent for April and May 2002 by way of money order, which was also received by the petitioner/landlord. Therefore, there is no question to invoke the provision under Section 8 of the Act and the act of the respondent/tenant could not be termed as willful default.

43.The other ground of additional accommodation has not been proved by the petitioner/landlord. It is admitted fact that to prove the claim under Section 10(3)(c), the petitioner/landlord should satisfy the Court that the essential requirement of additional accommodation must be proved, but in the case on hand, the petitioner has not proved by relevant document and admitted evidence that the petitioner is

really in need of the petition mentioned premises.

44.For proving the ground of additional accommodation, the petitioner was not in a position to invite agencies by summoning official witnesses and marking through him Ex.C1 and C2 certificate of registration under Tamil Nadu General Sales Tax Act relating to Rama Home Needs Private Limited. Besides Assessment orders in the year 2001-2002, the Ex.C5 Central Tax returns from 01.04.2002 to 31.03.2003. Ex.C4 monthly returns from 01.04.2002 to 31.01.2004 and on perusal of Exs.P1, P2, Ex.C1, C2, C4 and C5, it is made clear that the respondent established that the said concerned are not marketable and as such the reason for additional accommodation is not a bonafide requirement. Hence, the decision given to rely on by the petitioner has no application to the facts of the instant case.

45.The petitioner has produced two judgments rendered by this Court as follows: (1) A.S.Mahaboob Huss v. Jayaraman and 6 others reported in 1999 – 1 – L.W. 659 “Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), S.10(2)(i) and S.8. – Wilful default – Refusal of Money Order by landlord – Tenant has to follow the procedure prescribed, and if it is not followed, non payment of rent will

have to be considered as wilful default. Payment of property tax by tenant can be accepted as defence only if the landlord has given permission for such payment.

Held: It is rightly contended by the learned counsel for the petitioner, when the tenants have not paid the rent and also have not taken any steps to deposit the rent invoking Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the non-payment of rent will be considered as willful only. Even if the landlord refuses to receive the rent, the tenants have to follow the procedure and if such procedure is not followed, the non-payment of rent should be considered only as a willful default.

4.As rightly contended by the learned counsel for the petitioner, when the tenants have not paid the rent and also have not taken any steps to deposit the rent invoking Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the non-payment of rent will be considered as willful only. He raised a contention that payment of property tax without his permission cannot be a ground for the tenants to contend that

they have not committed wilful default.

6.As held by the Apex Court in Molly Joseph Nish v. George Sebastian Joy (1997 (1) M.L.J. 109) that even if the landlord refuses to receive the rent, the tenants have to follow the procedure and if such procedure is not followed, the non-payment of rent should be considered only as a wilful default.

(2) T.Gopalsamy and another v. R.Renganathan and others, another unreported judgment relied upon as follows:

“Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960 as amended by Act XXIII of 1973), Sec.10(2)(i) – Wilful default – Tenant depositing the rent in the proceedings already came to amend – Landlord received the rent without prejudice – Deposit made in court whether valid tender – Tenant whether committed wilful default – Deposit made not in accordance with statutory provision – Not valid – Tenants have committed wilful default – Eviction ordered.

Under Sec.10 of the Act, a duty is cast on the tenant to tender

the rent to landlord. Rent becomes arrear if the rent is not tendered to landlord within 15 days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable. Sec.8 of the Act deals with consequence where landlord refuses to issue receipt or refuses to receive rent. Sec.8(1) says whenever landlord receives any payment towards rent or advance, he shall issue a receipt duly signed by him for the actual amount of rent or advance received by him. Sec.8(2) says that where landlord refuses to accept or evades the receipt of rent lawfully payable to him, the tenant may by notice in writing, require landlord to specify within ten days from the date of receipt of notice by him, a bank into which the rent may be deposited to the credit of landlord. If landlord specifies the bank, tenant shall deposit the rent as and when it becomes due in that account till he gets further instructions of landlord. As per Sec.8(4), if landlord does not specify bank, tenant is bound to remit the rent to landlord by money order, after deducting the money order commission.

In spite of sending rent by money order, if landlord refuses to accept the same, tenant can deposit the amount in court under Sec.8(5) of the Act. In view of the statutory provisions, can it be said that the deposit made in court is valid tender?"

"28.In a recent decision rendered by my learned brother Justice Raman in the decision reported in Vasantha Leela v. N.Vadivelu Chettiar, (1998) 3 C.T.C. 467, it was held that when there is litigation between parties, it is foremost duty of the tenant to pay rent in time and any default committed by tenant in not paying rent in time will amount to wilful default.

29.In another judgment rendered by my learned brother Justice K.Govindarajan reported in Easwara Rao T. V. N.W.Ansari, (1999) 1 M.L.J. 401: (1999) 1 C.T.C. 221, it was held that unless tenant specifies the conditions under Sec.8(5) of the Act, he is not entitled to make deposit and even if any deposit is made, it cannot be said that he is not a defaulter."

46.On the other hand, the respondent/tenant has produced two judgments rendered by the Hon'ble Supreme Court and by this Court:

(I) reported in 1999 (7) SC 338, wherein it has been held as follows:-

“But if the default has occasioned on account of ignorance, accident on compulsion or circumstances beyond the control of the tenant, it cannot be termed as willful default.

This has to be determined as a question of fact on the facts and in the circumstances of each case the same is considered in this instant case. Hence the court finally comes to the conclusion that there is no arrears of rent as such the question of wilful default does not arise in this case.”

(II) Hindustan Petroleum Corporation Limited, Bombay, represented by its Power Agent, U.M.Ghatge and another v. B.Saravanan and others reported in 1997 2 MLJ 32 held as follows:

“For Section 10(3)(c) to be applicable, the structure or building must be occupied by both landlord and tenant. It is the occupation by both landlord and tenant in one

structure that is contemplated under Sec.10(3)(c). It is not the ownership of the building that matters.

Even if the landlord happens to be the owner of two adjoining buildings, that will not come under Sec.10(3)(c). [Para.10]

It is very clear that the building situated in the schedule premises and the building in the occupation of the landlord can by no stretch of imagination be treated as part of the same structure. [Para.12]

If Sec.10(3)(c) of the Act does not apply, the order of eviction passed by the Authorities below will have to be set aside. [Para.18]"

47.The Hon'ble Apex Court very clearly held in a case in Muralidhar Aggarwal and another v. State of Uttar Pradesh and others reported in 1974 (2) SCC 472 that:

"the provisions of Section 10, and its sub-sections are based on public policy. It is intended to protect the Weaker Sections of the community with a view to ultimately

protecting the interest of the community in general by creating equality of bargaining power. Although the section is purely intended for the protection of tenants only, that protection is based on public policy. In order to get a decree or order for eviction against a tenant, whose tenancy is governed by Rent Control Act, the suitor must make out a case for eviction in accordance with the provisions of the Act."

48. Therefore, in my view, all the above facts and circumstances of the case, for considering the grounds of willful default and Additional Accommodation that were raised, the petitioner/landlord has not satisfactorily proved a case for eviction of the respondent/tenant. Therefore, the orders of the Rent Controller and the Rent Control Appellate Authority does not suffer from any infirmity and there arose no necessity to this Court warranting interference in the same.

49. In the result, this civil revision petition is dismissed by confirming the orders of the learned Rent Control Appellate Authority in RCA.No.1154 of 2004, dated 10.08.2011, confirming the order in RCOP.No.114 of 2002 by the learned Rent Controller, (XV Judge, Court

of Small Causes) Chennai, dated 26.07.2004. No costs.

Consequently, connected miscellaneous petition is closed.

07.02.2017

Index:Yes

Internet:Yes

Note:Issue order copy on 22.03.2017

vs

To

- 1.The VIII Judge, Court of Small Causes Court
(Appellate Authority) Chennai.
- 2.The Rent Controller,
(XV Judge, Court of Small Causes), Chennai.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.1434 of 2012
and
M.P.No.1 of 2012

07.02.2017

<http://www.judis.nic.in>