

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.3180 of 2010
and M.P.No.1 of 2010

Indian Bank
Rep.by its Branch Manager
Venkatapuram Branch
Venkatapuram
Chennai – 600 053.

... Petitioner

Vs

N.Sathyanarayana

... Respondent

Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act against the judgment and decree of the courts in RCA No.5 of 2009 on the file of Sub Court, Poonamallee dated 19.07.2010 in confirming the judgment and decree in RCOP No.9 of 2005 on the file of District Munsif Cum Judicial Magistrate, Ambattur dated 14.10.2008.

For Petitioner : Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia

For Respondent : Mr.N.Pragasam for
M/s.Na.Malai Saravanan

ORDER

This Civil Revision Petition is filed against the judgment and decree of the courts in RCA No.5 of 2009 on the file of Sub Court, Poonamallee dated 19.07.2010 confirming the order in RCOP No.9 of 2005 on the file of District Munsif Cum Judicial Magistrate, Ambattur dated 14.10.2008.

2. The petitioner is the tenant and the respondent is the landlord in RCOP No.9 of 2005 on the file of District Munsif Cum Judicial Magistrate, Ambattur. The respondent filed the above RCOP for eviction of the petitioner on the ground of wilful default in payment of rent. According to the respondent, originally the petition premises was leased out to the petitioner in the year 1991 for a period of five years on a monthly rent of Rs.7,621/- and subsequently extended the lease on a optional period of five years with an enhanced rent of Rs.8,794/- per month which ended in August 2003. After expiry of the lease, the respondent demanded for enhancement of rent but the petitioner did not take any steps to pay the enhanced rent and was dragging on the issue. Due to the same, the respondent demanded the petitioner to vacate the petition premises. The petitioner did not vacate the premises

inspite of repeated demands by the respondent. In such circumstances, the respondent refused to receive the pay order sent by the petitioner towards rent for the month of September 2003. The petitioner, without amicably settling the disputed rent, sent the rent for the month of October 2003, without sending the rent for the month of August & September 2003. The petitioner sent Pay Order for Rs.8,794/- being the rent for June 2004 without sending the arrears of rent and committed wilful default. Hence, the respondent filed RCOP against the petitioner for eviction on the ground of wilful default.

3. The petitioner filed counter and denied all the averments made by the respondent. According to the petitioner, from September 2003, the respondent demanded enhanced rent and negotiations were going on for two years. The respondent was not ready and willing for settlement inspite of efforts taken by the petitioner. The rent sent by the petitioner was returned by the respondent. The petitioner has not committed any wilful default and prayed for dismissal of the RCOP.

4. Before the learned Rent Controller, respondent examined himself as PW1 and marked four documents as Exs.P1 to P4. On

behalf of the petitioner, one Kannan, Branch Manager was examined as RW1 and marked two documents as Exs.R1 & R2. The learned Rent Controller, considering the pleadings, oral and documentary evidence, ordered eviction directing the petitioner to vacate and handover the vacant possession of the petition premises to the respondent, within two months from the date of receipt of copy of the order.

5. Against the said order dated 14.10.2008 made in RCOP No.9 of 2005, the petitioner filed RCA No.5 of 2009 on the file of Sub Court, Poonamallee. The learned Appellate Authority, independently considering the materials on record and order of the learned Rent Controller, dismissed the RCA confirming the order of the learned Rent Controller.

6. Against the said order of dismissal dated 19.07.2010 made in RCA No.5 of 2009, the present Civil Revision Petition has been filed by the petitioner.

7. The learned counsel for the petitioner contended that the courts below failed to properly consider and appreciate Exs.R1 & R2 and admission of the respondent that he refused to receive the rent

by returning the pay order sent by the petitioner stating that he will receive only after enhancement of the rent. The petitioner tendered the rent alongwith counter and the respondent received the same. In view of this fact, the petitioner has not committed any default in payment of rent.

8. Per contra, the learned counsel for the respondent contended that as per lease agreement, after expiry of five years, the lease can be renewed on enhancement of rent, as agreed by the parties. The petitioner was dragging on the issue for more than two years. The petitioner did not pay the monthly rent for August & September 2003 and the same was admitted by RW1 during cross examination. The petitioner has not taken any steps under Section 8 of the Tamil Nadu Buildings (Lease & Rent Control) Act to deposit the rent when the respondent refused to receive the same. This amounts to wilful default and prayed for dismissal of Civil Revision Petition.

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

10. Point for consideration arisen in this Civil Revision Petition is ***whether the petitioner has committed wilful default in payment of rent.***

It is admitted by both the parties that after expiry of lease period, the same can be renewed after enhancement of rent, as agreed by the parties. In the present case, after expiry of lease, there was no agreement for enhancement of rent. It is also admitted fact that for more than two years, after expiry of lease period, the petitioner did not finalise the enhanced rent. Further, RW1, the manager of the petitioner Bank admitted that rent for August & September 2003 was not sent, arrears of rent was paid pending RCOP by pay order dated 14.07.2005 amounting to Rs.1,92,450/- and also admitted that petitioner has not taken any steps for deposit of rent when the respondent refused to receive the rent.

11. From the materials on record, it is seen that the respondent refused to receive the rent on the ground that the petitioner did not finalise the enhanced rent after expiry of lease period of five years, as agreed upon in the lease agreement. When

the landlord refused to receive the rent, it is for the tenant to follow the procedures contemplated under Section 8 of the Tamil Nadu Buildings (Lease & Rent Control) Act. In the present case, the petitioner has not followed the procedures contemplated under Section 8 of the Tamil Nadu Buildings (Lease & Rent Control) Act. Further, the petitioner has failed to pay the monthly rent for August and September 2003. The petitioner has not explained the reason for such non-payment.

11(a) The courts below, after considering the pleadings, oral and documentary evidence, especially the admission of RW1, the manager of the Bank and failure on the part of the petitioner to follow the procedures contemplated under the Act, ordered eviction. The contention of the learned counsel for the petitioner that the petitioner paid the rent alongwith counter and there is no default or wilful default is without merits. Even if the tenant pays arrears of rent on the first day of hearing, he has to explain as to why the rent was not paid regularly in time.

12. In the present case, the petitioner has not explained whether he has taken steps either to deposit in the Bank account of the respondent or to deposit in the court, after obtaining permission

as per Section 8 of the Tamil Nadu Buildings (Lease & Rent Control) Act. In the above said circumstances, there is no irregularity or illegality in the order impugned in this revision warranting interference by this Court.

13. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The petitioner is granted three months time to vacate and hand over the vacant possession of the petition premises to the respondent, from the date of receipt of the copy of the order.

19.12.2017

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To

1. The Subordinate Judge,
Poonamallee.

2. The District Munsif cum Judicial Magistrate
Ambattur.

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V.M.VELUMANI, J.

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