

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 20.04.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

CRP(NPD)No.21 of 2013
and
M.P.No.1 of 2013

S.S.Leather Exports,
Rep. by its Proprietor,
Javeed Alam,
No.49, Thiruvengadam Street,
Periamet, Chennai-600 003.

.. Petitioner

Vs.

M.Sabeena Banu

..Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act 18 of 1960 as Amended by Act 23 of 1973), against the order of the learned Rent Control Appellate Authority, VII Small Causes Court, Chennai, dated 19.11.2012 allowing RCA.No.1029 of 2005, setting aside the order of the learned Rent Controller, XV Small Causes Court, Chennai dated 01.07.2005 made in RCOP.No.2001 of 2004 by ordering eviction on the ground of willful default.

For Petitioner : Mr.Akbar Ali Dhala
for Mr.S.D.S.Philip

For Respondent : Mr.V.Bhiman
for Mr.A.J.Abdul Razak

ORDER

The Petitioner is a tenant under the Respondent herein and he has preferred the instant Civil Revision Petition as he is aggrieved by the order passed in R.C.A.No.1029 of 2005 dated 09.11.2012 by the learned Judge, Court of Small causes, Madras on the ground of willful default in payment of rent by reversing the order passed in R.C.O.P.No.2001 of 2004, on the file of the learned XV Small Causes Court, Chennai.

2.The Respondent herein is landlady; she rented out her building to the Petitioner. But the Petitioner did not pay the rent properly and regularly. Hence, she filed a petition before the learned Small Causes Court, Madras in R.C.O.P.No.2001 of 2004 and sought for the relief of eviction on the ground of willful default. For the sake of convenience, the parties are hereby called as per their capacity before the learned trial court.

3.The case of the Petitioner/land lady is that the respondent/tenant has taken the ground floor and 3rd floor of the premises for rent at the rate of Rs.5,000/- and Rs.1,200/- respectively. Further, the Respondent/Tenant committed default in the payment of rent commenced from 01.10.2001 to 30.09.2004 and the same is willful.

4.The contention of the Respondent/Tenant is that he is not a willful defaulter and further the admitted rent is at a sum of Rs.4,000/- in respect of the ground floor and a sum of Rs.800/- in respect of the 3rd floor. So, the rent amount as stated by the Petitioner/Landlady as Rs.5,000/- and Rs.1,200/- respectively is not true.

5.The Petitioner/land lady marked Exs.P-1 to Ex.P-15 and the Respondent/Tenant marked Exs.R-1 to Ex.R-3. After the full-fledged trial, the trial court that is the learned Rent Controller, perused all relevant records furnished by either side, dismissed the petition filed by the land lady, by the judgment dated 01.07.2005. As the Petitioner/land lady suffered with and aggrieved by the order passed in R.C.O.P.No.2001 of 2004, she filed an appeal before the learned Judge, Court of Small Causes, Madras in R.C.A.No.1029 of 2005 and

the same was allowed on 19.11.2002. As against the order passed in R.C.A.No.1029 of 2005 dated 19.11.2012, this Civil Revision Petition is filed by the Respondent/Tenant herein.

6.It is seen from the records that before the Learned XVth Small Causes Court Chennai, the Rent Control Original Petition in R.C.O.P.Nos.2001 of 2004, and 2002 of 2004 were filed under Section 10(2)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to evict the Respondent on the ground of willful default. It was the definite case of the Petitioner/Landlady before the Learned Trial Court the Respondent/Tenant is a willful defaulter as he committed default in the payment of monthly rent from 01.10.2002 to 30.08.2004. In spite of repeated demands the rent was not tendered hence the Petitioner/Landlady was constrained to file the aforesaid petition for eviction.

7.Through the counter statement the Respondent denied the averments of the Petitioner by specifically stated that it was the usual practice to collect the rent in lump sum and it is evident that a sum of Rs.28,800/- was paid in once in 6 months. As because of the failure of the Petitioner/Landlady in collecting the monthly rent, there were

arrears for a period from 01.10.2001 to 30.10.2004. Further it is alleged before the Learned Trial Court that no demand was made by the Petitioner/Landlady to collect the rent. So, the Petitioner cannot term the Respondent as defaulter even 10.12.2014 itself the Respondent tendered a sum of Rs.1,48,000/- as rental arrears through a cheque bearing No.434421 dated 10.12.2004 and another cheque was also issued bearing No.434422 for a sum of Rs.29,600/-. However when Respondent sent a cheque for a sum of Rs.28,800/- dated 25.03.2004 cheque bearing No.713364. The said cheque was not received but the same was returned as the premises of the Petitioner was closed as the Petitioner did not inform the respondent about her change of residence and also her telephone number, hence the Respondent was unable to tender the rent. At the same time a sum of Rs.26,000/- was paid by the Respondent as rent advance in respect of the ground and 3rd floors. After considering the rival submissions and appreciated the oral and documentary evidence, the Petition for eviction was dismissed. In fact the quantum of the monthly rent was disputed and in this regard Exhibit P-3, P-4 and P-5, P-6 were relied on about the communication and commencement of the revised rent. At the same time none of the communication was supported by acknowledgment cards. So far that apart the revised proposed rental

agreement Exhibit P-4 was not signed by the Respondent. Though it was admitted by the Respondent that there was default in making the payment of rent but the trial court has found it was not intentional. Further it is also found by the Learned Trial court that the lump sum payment of rents was proved.

8. However, the Petition preferred Rent Control Appeal Nos. 1029 of 2005 and 1030 of 2005 before the learned Appellate Authority the 7th Court of Small Causes at Chennai and the learned Appellate Authority reversing the common order passed by the Trial Court by holding that the Petitioner is a defaulter in view of section 9 of the Act. The appellate authority while reversing the common order of the Trial Court stating that according to Section 9(1) of the Act when the address of the landlord or his authorized agent is not known to the tenant, he may deposit the rent lawfully payable to the landlord in respect of the building, before the Rent Controller in such a manner as may be prescribed, hence, the appellate authority decided that the Respondent is liable for eviction.

9. Feeling aggrieved over the common judgment of the Appellate Authority the tenant has preferred the instant Civil Revision Petition.

10.I heard Mr.Akbar Ali Dhala for Mr.S.D.S.Philip, learned counsel for the petitioner and Mr.V.Bhiman for Mr.A.J.Abdul Razak, learned counsel for the respondent and all the materials available on record are perused.

11.It is the case of the Petitioner that the Respondent is liable for eviction on the ground of willful default as the same is admitted by the Respondent/Tenant. However, it is to be decided that whether the default is willful or not. At this juncture it is useful to refer the judgment relied on by the learned counsel for the revision petitioner as reported in **2013 7 MLJ 701**, wherein it is held that the omission to mention arrears in the notice is to be appreciated with the surrounding circumstances of the case. In the instant case the judgment referred by the learned Counsel for the Respondent in revision petition reported in **2013 8 MLJ 465** has held that the very conduct of the tenant in keeping the rent for continuous of period of 32 months and paying it in pursuant to an interim order of this court would show that his contact coupled with willfulness is not paying the rent is obvious and liable for eviction. However, in another judgment of this court reported in **2012 1 MLJ 431** in case of valid explanation for the belated payment of

rent the case of the defaulter would be taken up for consideration.

12. Here, it is the admitted fact that the revision petitioner is a defaulter to justify that he is not a willful defaulter; the tenant has shown two things. The 1st one is that it is the usual practice that the payment and receipt of monthly rents in lump sum. This aspect is not been denied by the Respondent in the revision petition. The 2nd one is that when the landlady has shifted her residence and phone number, no written communication was given to the tenant. This factor is also admitted by the landlady but in her evidence it is deposed that the change of residence and phone number were orally informed. So, in the considered opinion of this court, the Revision Petitioner cannot be termed as defaulter. More so, under Section 9(1) of the act is having no application. Since admittedly it was the usual practice that the monthly rents were paid in lump sum. Apart from that the lump sum payments on few occasions were accepted by the landlady. So, the question of default has not arisen in this case. This court is unable to term the revision petitioner as defaulter.

13. In the result, this civil revision petition is allowed, by setting aside the order passed in RCA.No.1029 of 2005 dated 19.11.2012, on

the file of the Rent Control Appellate Authority, VII small Causes Court, Chennai, by confirming the order in RCOP.No.2001 of 2004, dated 01.07.2005, on the file of the XV Small Causes Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

20.04.2017

vs

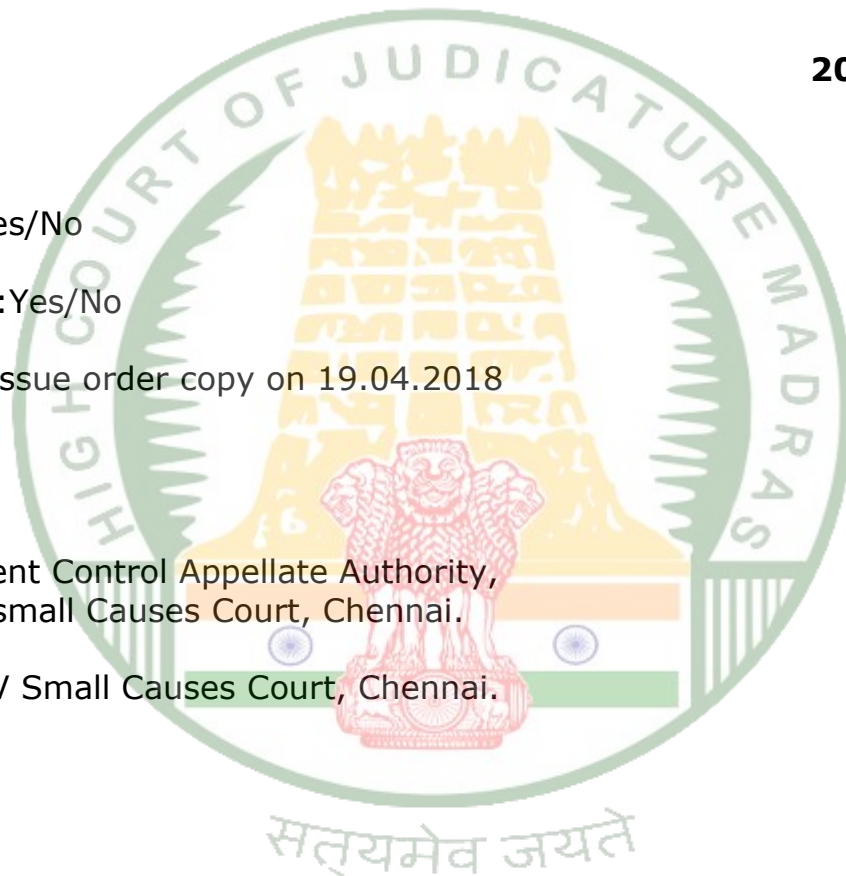
Index:Yes/No

Internet:Yes/No

Note : Issue order copy on 19.04.2018

To

- 1.The Rent Control Appellate Authority,
VII small Causes Court, Chennai.
- 2.The XV Small Causes Court, Chennai.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
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