

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3429 of 2009
& M.P.No.1 of 2009

K.Shoukath Ali

.. Petitioner

Vs.

Chandra

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease & Rent Control Act, against the judgment and decree dated 08.08.2009 passed in R.C.A.No.4 of 2008 on the file of the Rent Control Appellate Authority/Principal Sub Court, Salem confirming the fair and decretal orders dated 13.02.2008 in R.C.O.P.No.36 of 2006 before the Rent Controller/Principal District Munsif's Court, Salem.

For Petitioner : Mr.T.Sezhian

For Respondent : Ms.G.Sumitra
for Mr.K.Jayaraman

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ORDER

This Civil Revision Petition has been filed against the judgment and decree dated 08.08.2009 passed in R.C.A.No.4 of 2008 on the file of the Rent Control Appellate Authority/Principal

Sub Court, Salem confirming the fair and decretal order dated 13.02.2008 made in R.C.O.P.No.36 of 2006 on the file of the Rent Controller/Principal District Munsif's Court, Salem.

2. The petitioner is the tenant and respondent is the landlord. The respondent filed R.C.O.P.No.36 of 2006 on the file of the Rent Controller (Additional District Munsif), Salem, against the petitioner for eviction on the ground of wilful default.

3. According to the respondent, the petitioner is a chronic defaulter and arrears of rent was adjusted from the advance amount from the month of December 2001 to the month of February 2006. The rent from February 2006 has become due and payable by the petitioner and petitioner committed wilful default in payment of rent.

4. The petitioner filed counter statement and denied all the averments made in the petition and submitted that he was paying the monthly rent without any default. The respondent and her husband filed an Insolvency Proceedings in I.P.No.56 of 2000, on the file of the Principal Subordinate Court, Salem to declare the

respondent as an insolvent. The petitioner had issued Ex.P1 notice dated 20.02.2006 stating that he will be paying the rent to the Official Receiver from February 2006. The petitioner filed R.C.O.P.No.15 of 2006 on the file of the learned Rent Controller (II Additional District Munsif), Salem, seeking for permission to deposit the rent into Court. The said R.C.O.P. was dismissed, directing the petitioner to approach the Revenue Divisional Officer, Salem. The petitioner filed fresh petition before the Revenue Divisional Officer, Salem on 17.05.2006. He had deposited the arrears of rent from February 2006 to October 2006 for ten months and therefore, he is not in arrears of rent and has not committed any wilful default. The respondent only with an intention to evict the petitioner has come out with the false case.

5. Before the learned Rent Controller, respondent examined herself as P.W.1 and marked four documents as Exs.P.1 to P.4. The petitioner examined himself as R.W.1 and marked 11 documents as Exs.R.1 to R.11.

6. The learned Rent Controller considering the pleadings, oral and documentary evidence and materials on record, held that the

petitioner, without any valid reason, without any notice from official receiver, failed to pay the rent to the respondent and thereby committed wilful default and allowed the R.C.O.P.No.15 of 2006 ordering eviction directing the petitioner to handover the possession within two months from the date of that order.

7. The petitioner filed R.C.A.No.4 of 2008 against the said order dated 06.03.2006 made in R.C.O.No.15 of 2006 on the file of the Principal Sub Court (Rent Control Appellate Authority), Salem.

8. The learned Appellate Authority independently considering the pleadings, oral and documentary evidence and order of the learned Rent Controller dismissed the R.C.A, directing the petitioner to vacate and handover the possession to the respondent within a period of two months from the date of that order.

9. Against the said order dated 08.08.2009 made in R.C.A.No.4 of 2008, confirming the order dated 13.02.2008 made in R.C.O.P.No.36 of 2006, the petitioner has come out with the present civil revision petition.

10. The learned counsel appearing for the petitioner submitted that there was no arrears of rent and petitioner has not committed any wilful default. The Courts below had erroneously held that the petitioner committed wilful default. The petitioner deposited the rent into Court. Therefore there is no default much less wilful default.

11. Per contra, the learned counsel appearing for the respondent submitted that the petitioner default in payment of rent. Arrears of rent was adjusted from the advance amount paid by the petitioner and even after that adjustment, petitioner failed to pay the rent and committed wilful default. The petitioner refused to pay the rent from February 2006, on the ground that he is going to deposit the rent with the Official Receiver. But he failed to deposit the rent with the Official Receiver. The petitioner has also not deposited the rent every month into Court. No notice was given to the respondent about the deposit of rent into Court. The Courts below have considered all the above facts and allowed the R.C.O.P and dismissed the R.C.A by giving valid reason.

12. Heard learned counsel appearing for both sides and

perused the materials available on record.

13. From the materials available on record, it is seen that the petitioner has not paid rent from December 2001 and respondent adjusted the rent payable by the petitioner from the advance amount, till January 2006. Even after adjustment of entire amount, the petitioner failed to pay the rent to the respondent. By Ex.P1 notice dated 20.02.2006, the petitioner informed the respondent that he would be paying the monthly rent to the Official Receiver. At that point of time, the petitioner did not receive any notice from the Official Receiver to deposit the rent payable to the respondent with the Official Receiver. The Official Receiver issued notice only on 09.10.2007, which was marked as Ex.R.1. Even though the petitioner informed the respondent that he would be paying monthly rent from February 2006 to the Official Receiver, he has not done so. Subsequently, he filed R.C.O.P.No.15 of 2006 for permission to deposit the rent into Court. The said R.C.O.P was dismissed. It is not the case of the petitioner that he tendered the rent to the respondent, he refused to receive the same, refused to disclose his bank account and then only, he filed R.C.O.P.No.15 of 2006 for permission to deposit the rent. Without any notice to the respondent, the said R.C.O.P was also filed and the R.C.O.P. was

also dismissed.

14. The learned Appellate Authority, considering the materials available on record, concluded that the petitioner failed to deposit the rent every month, but deposited 10 months rent in one lump sum. Before the learned Rent Controller, the petitioner subsequently submitted that the monthly rent was paid through his advocate to the respondent. The said averments were denied by the respondent and petitioner has not filed any document to show that pending R.C.O.P, he has paid rent regularly. The Courts below, considering all the above facts came to the conclusion that the petitioner has committed wilful default and had given valid reason for coming to the said conclusion and ordered eviction. There is no illegality or irregularity warranting interference by this Court with the order of the Courts below.

15. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2017

Index : Yes/No

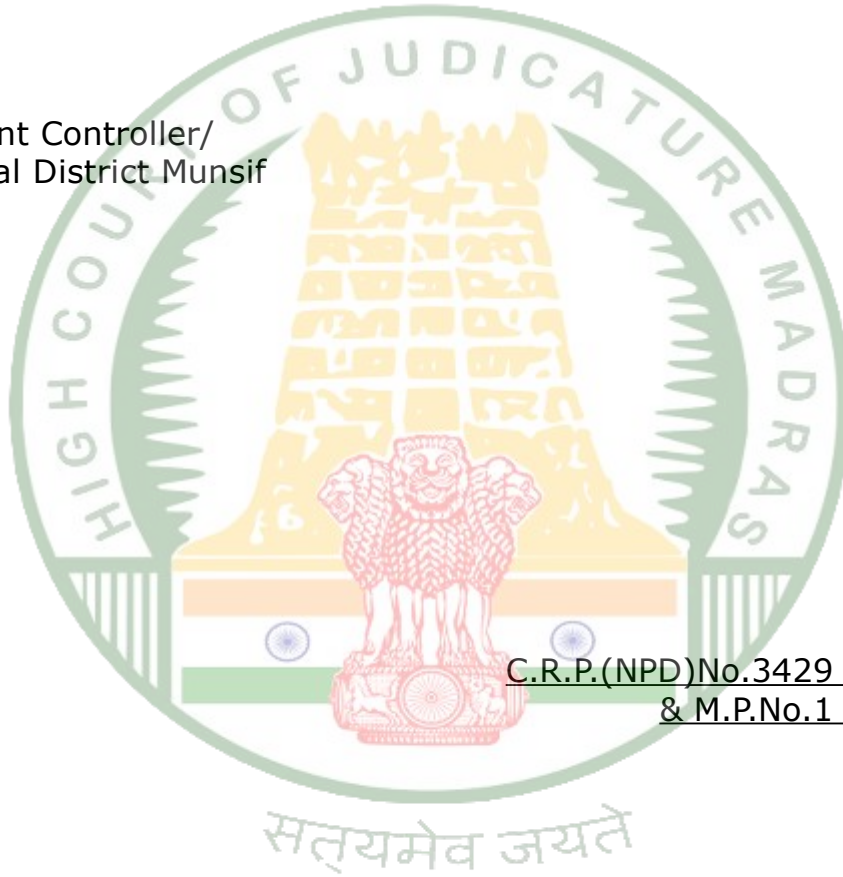
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V.M.VELUMANI, J.

dm

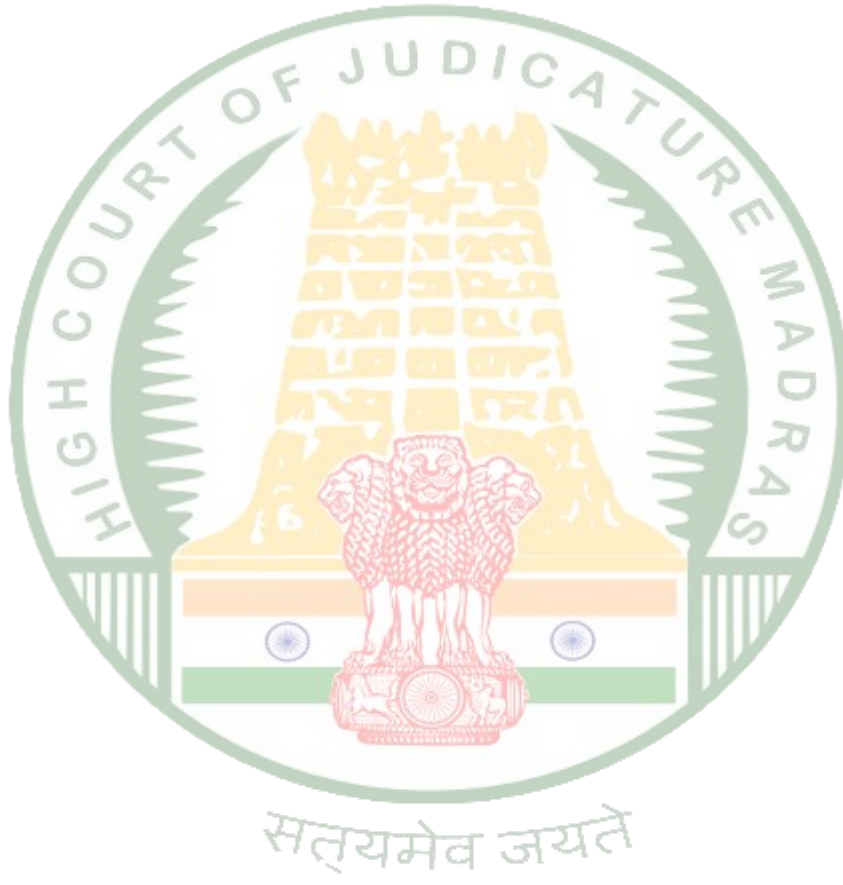
To

The Rent Controller/
Principal District Munsif
Salem.



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