

IN THE HIGH COURT OF JUDICATE AT MADRAS**Dated: 24.02.2017****CORAM****THE HON'BLE MR.JUSTICE M.V.MURALIDARAN****CRP(NPD)No.2342 of 2012****and****M.P.No.1 of 2012**

S.M.Pari

... Petitioner

Vs.

A.George Vedanayagam

... Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the order dated 03.04.2012 in RCA.No.26 of 2011 passed by the learned Sub-Ordinate Judge, Tambaram, confirming the order dated 30.09.2010 passed in RCOP.No.18 of 2009 on the file of the Rent Controller/District Munsif Court, Tambaram.

For Petitioner : Mr.S.Gunaseelan

For Respondent : Mr.G.Vijayakumar

ORDER

The instant Civil Revision Petition is preferred by the Tenant as against the Judgment passed in R.C.A.No.26 of 2011 dated 03.04.2012 by the learned Subordinate Judge, Tambaram. Further, the Landlord filed Rent Control Original petition in R.C.O.P.No.18 of 2009 before the learned Rent Controller, Tambaram and the same was allowed by the Decree and Judgment dated 30.09.2010 and as against the decree and Judgment passed in R.C.O.P.No.18 of 2009, the aforesaid R.C.A. was filed by Tenant who is the Revision Petitioner herein.

2. According to the learned counsel for the Revision petitioner that the Landlord to prove his case examined himself as PW-1 before the learned Rent Control Tribunal and marked exhibits P1 to P4. However on the side of the tenant, he examined himself as RW-1 and also marked exhibits R1 to R6. Further, the eviction petition was filed on the ground of willful default and in the petition filed in the R.C.O.P., the Landlord averred that the Tenant was inducted into the petition building in the year 1993, by fixed a sum of Rs.1,500/- as monthly rent for non-residential purpose. Thereafter the rent was periodically revised and at the time of filing the R.C.O.P., the monthly rent was at a sum of Rs.3000/-. Further it is admitted that a sum of Rs. 25,000/-

was fixed as advance and in order to look after the affairs of the building, the Landlord appointed one K.G.Ragavan as his power agent. The said Ragavan used to collect rents from the tenants. Subsequently the Power of Attorney was been cancelled as the said power agent acted against the interest of the Principal. At the same time the Landlord requested his tenants to vacate the petition property as the tenants failed to tender the monthly rent for a period from September 2007 to March 2009. So, the Landlord by invoking section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act filed the above eviction petition. By appreciating the evidence and other documents the learned Rent Controller came to the conclusion that the tenant is a defaulter and eviction was ordered accordingly, by granting 3 months time.

3.The further case of the Revision Petitioner/Tenant is that the tenant by challenging the fair and decreetal order passed in R.C.O.P.No.18 of 2009 preferred appeal in R.C.A.No.26 of 2011 on the file of the learned Subordinate Judge, Tambaram. However, the learned Rent Control Appellate Authority, by appreciating the overall evidence, facts and circumstances dismissed the R.C.A.No.26 of 2011 by the judgment dated 03.04.2012. Thereafter, the present Civil Revision Petition is filed by raising substantial grounds. It is contended

by the learned Counsel for Revision Petitioner/Tenant that though the Rent Control Original Petition was filed by the landlord on the ground of willful default the Tribunals below have failed to consider the specific admission of the Landlord in his evidence that the landlord refused to receive the monthly rent when payment was made in September, 2007. So, the Revision petitioner/Tenant cannot be either fixed or termed as defaulter. It is also brought to the notice of this Court that as a bonafide tenant; the Revision Petitioner/Tenant was without any fail deposited the periodical monthly rents on the file of the R.C.O.P.No.1 of 2008 which was as per the order of the learned Court concerned. Further, an original suit in O.S.No.433 of 2007 was filed by the tenant which would according to the learned counsel amply prove that the Revision Petitioner/Tenant is not a defaulter, but he has taken due steps not only to protect his tenancy but also taken due steps to tender the monthly rents. So, being a revisional Court, this Court is to appreciate the legality of the fair and decretal order passed by the Tribunals below.

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4.On the other hand, the learned Counsel for the Respondent/Landlord would submit that the orders passed by the learned tribunals below have left no grounds to interfere into the

same. Further, he also canvassed that both the tribunals below have very well considered the evidence, facts and circumstance of the case which would leave no ground to interfere into the same. Apart from that it is also pointed out by the learned counsel for the respondent that in tendering the monthly rent the Revision Petitioner/Tenant has not followed the procedures as contemplated in the subsections of Section 8 of The Tamil Nadu Buildings (Lease and Rent Control) Act. According to the learned counsel, it is a settled legal position that the violation of the procedures as contemplated under section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act would disentitle the tenant to avail the benefit as provided in the act, therefore the fair and decreetal order passed by learned Tribunals below would legally sustainable which need no interference. Hence he prays for the dismissal of the revision petition.

5.I heard Mr.S.Gunaseelan, learned counsel for the petitioner and Mr.G.Vijayakumar, learned counsel for the respondent and the materials available on record are perused.

6.It is the admitted fact that Landlord is the owner of the non-residential building wherein the revision petitioner was inducted as Tenant. However, according to the petition filed in R.C.O.P.No.18 of

2009 even after repeated demands, the tenant did not tender the admitted monthly rent a sum of Rs.3,000/- from the period from September 2007 to March 2009. So, the case of the landlord is that he was constrained to file the Rent Control Original Petition which was allowed in his favour. Therefore, the only question is to be decided by this Court is to ascertain as to whether the tenant can be termed as a defaulter.

7.It is the admitted fact the Tenant has filed R.C.O.P.No.1 of 2008 on the file of learned Rent Controller, Tambaram and the same was allowed. Thereafter on the direction of the tribunal concerned the revision petitioner herein deposited the admitted rent. So, the reason adduced for the filing of the R.C.O.P.No.18/2009 itself is unnecessary that is on the ground that the tenant has committed willful default in making payment of monthly rent. It is rightly brought to the notice of this Court even in the cross examination of Respondent/Landlord (i.e.) PW-1 in the R.C.O.P.No.18 of 2009 saying that “nrg;lk;gh; khjk; 2007-k; tUlk; vjph;kDjhuh; vd;dplk; thlifia nfhLj;jhh;> ehd; thq;fkWj;Njd; vd;why; rhpjhd;” This piece of evidence would enough even to disprove the case of the Respondent/Landlord. Further, it is false to allege that only because of the refusal in tendering the monthly rent, the

Respondent/Landlord was constrained to file R.C.O.P.No.18 of 2009 is unsustainable. Here the scrutiny of the evidence of PW-1 would show that owing to the denial of the Respondent/Landlord to receive the monthly rent, the tenant was constrained to file R.C.O.P.No.1 of 2008 for the deposit of the monthly rent. At the same time unfortunately, this vital aspect has not been properly appreciated by the tribunal below in its true sphere.

8.It is the settled legal position that the landlord is entitled to invoke the provisions of Tamil Nadu (Buildings Lease and Rent Control) Act, when the tenant even after demand committed default in tendering the monthly rent. On the other hand it must be borne in mind that the Landlord would not approach the Court saying that on one hand the tenant failed to tender monthly rent and on the other hand admittedly that he only denied to receive the monthly rent. In such an event no trustworthy can be placed on the evidence of the Respondent/Landlord. So, I find legal force on the grounds raised by the revision petitioner and the same is entitled to be considered.

9.In the result, this Civil Revision Petition is allowed by setting aside the order passed in RCA.No.26 of 2011 dated 03.04.2012 by the learned Subordinate Judge, Tambaram, confirming the order passed in

RCOP.No.18 of 2009, dated 30.09.2010 by the Rent Controller/District Munsif Court, Tambaram. No costs. Consequently, connected miscellaneous petition is closed.

24.02.2017

vs

Note:Issue order copy on 28.01.2019

Index:Yes

Internet:Yes

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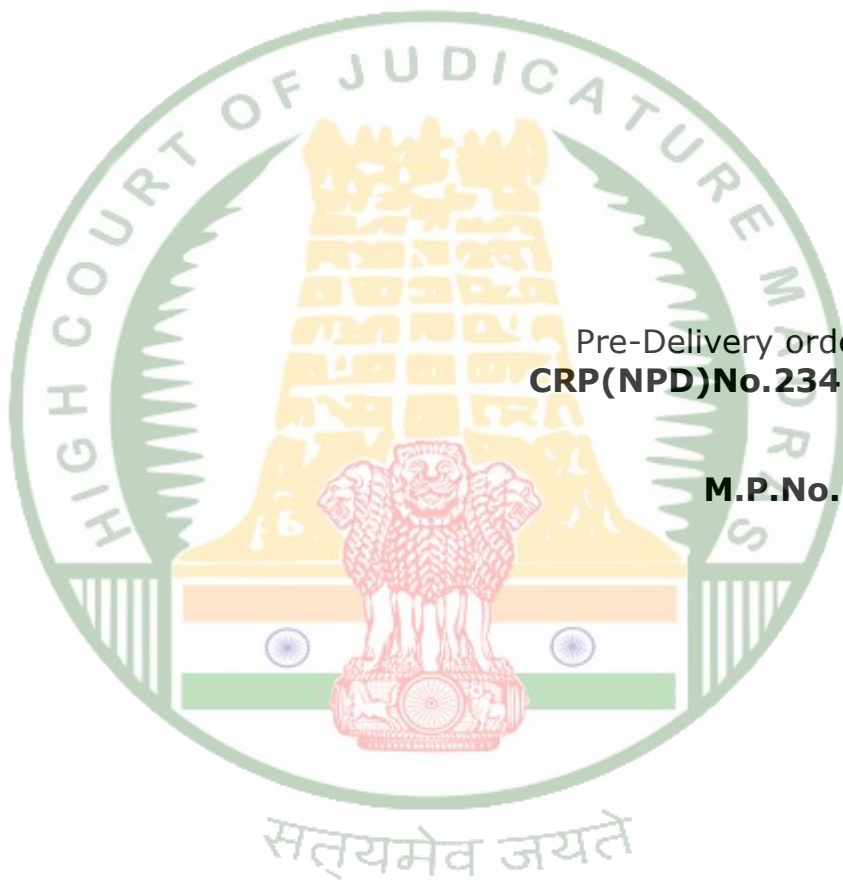
- 1.The Rent Controller/District Munsif Court,
Tambaram.
- 2.The Subordinate Judge, Tambaram.



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M.V.MURALIDARAN,J.

VS



Pre-Delivery order made in
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and
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