

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2017

DELIVERED ON : 24.04.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD) No.2898 of 2013

Bala Venkatram (Deceased)

1.Shahul Hameed
2.G.Prakash

.. Petitioners

(Cause title accepted vide order of the Court
Dt. 24.7.2013 in M.P.No.1 of 2013 in
CRP SR. 52041 of 2013)

Vs.

K.Mahalakshmi

.. Respondent

Revision filed under Article 227 of Constitution of India against the fair and decretal order dated 20.2.2013 in R.C.A.No.1 of 2012 on the file of Rent Control Appellate Authority allowing the appeal and partly reversing fair and decretal order dated 29.10.2011 made in R.C.O.P.No.4 of 2018 on the file of the Rent Controller and District Munsif, Pollachi.

For Petitioners : Mr.N.A.Nissar Ahmed

For Respondent : Mr.Mukunth
For M/s.Sarvabhauman Associates

ORDER

This revision is directed against the order dated 20.02.2013 passed in R.C.A.No.1 of 2012 on the file of the Rent Control Appellate Authority/Sub-Court, Pollachi, allowing the appeal and partly reversing the order dated 29.10.2011 made in R.C.O.P.No.4 of 2008 on the file of the Rent Controller/District Munsif, Pollachi.

2. The respondent herein is the landlord and one Bala Venkatram (first respondent in the RCOP) was the actual tenant and Sahul Hammeed (second respondent in the RCOP) is the subtenant.

3. The respondent landlady filed R.C.O.P.No.4 of 2008 under Section 10(2)(i), 10(2)(ii)(a) (b) and 10(2)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "*the said Act*") alleging that the petition mentioned premises belonged to her and the same was leased to one Bala Venkatram for a monthly rent of Rs.11,000/- for running Best Mark Super Market, vide lease deed dated 23.05.2007. According to the petitioner, an advance amount of Rs.1,00,000/- was paid and the rent was payable on 7th day of every English calendar month.

4. The case of the respondent landlady is that Bala Venkatram paid rent till September 2007 and thereafter, he committed default in payment of rent. The said Bala Venkatram (first respondent in the RCOP) sublet the petition mentioned premises to one Sahul Hammeed (second respondent in the RCOP) and Sahul Hammeed is running a business under the name and style Amutham Super Market. It is alleged that Bala Venkatram was acting against the terms and conditions of the lease and also committed wilful default in payment of rent. Hence, the landlady has filed the original petition seeking eviction of the respondents in the RCOP.

5. Resisting the petition, the first respondent in RCOP filed a counter stating that the landlady had received the rent till December 2007 and that the first respondent has no necessity to get permission from the landlady for running business in any other name. Since the landlady was trying to vacate the respondents in the RCOP from the petition mentioned premises, they filed O.S.No.122 of 2008 for permanent injunction. According to the first respondent in RCOP, they are running Amutham Super Market in the petition mentioned property. There are many branches namely Amutham Jewellery, Amutham Foods, Amutham Electronics, Amutham Textiles etc. Since

respondents in the RCOP refused to give the business in the name of the landlady, the petitioner has filed the petition with ulterior motive.

6. Resisting the petition, the second respondent in the RCOP has filed the similar counter stating that there are no arrears of rent.

7. Upon consideration of the rival submissions, the learned Rent Controller, dismissed the petition. Aggrieved by the same, the landlady preferred R.C.A.No.1 of 2012. The learned Rent Control Appellate Authority, upon hearing both sides, set aside the order of the Rent Controller in part and thereby allowed the petition filed under Section 10(2) (i) and 10(2)(iii)(a)(b) and dismissed the petition filed under Section 10(2) (iii) of the said Act.

8. Aggrieved by the same, the legal heir of Bala Venkatram and the second respondent in the RCOP petition have preferred the present Civil Revision Petition.

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9. I heard Mr.N.A.Nissar Ahmed, learned counsel for the petitioners and Mr.Mukunth for M/s.Sarvabhauman Associates, learned counsel appearing for the respondent and perused the materials

available on record.

10. The learned counsel for petitioners, who are respondents in the original petition, submitted that the Rent Control Appellate Authority went wrong in allowing the appeal, thereby ordering eviction. In fact, there was no wilful default in payment of rent. He submitted that the landlady has failed to prove the alleged sublet and that the learned Rent Control Appellate Authority ordered eviction on the basis of conjectures and surmises.

11. The learned counsel for the respondent landlady, who is the petitioner in the original petition, submitted that the order of Rent Control Appellate Authority is well considered one and only upon consideration of the rival submissions, the Rent Control Appellate Authority ordered eviction on the ground of sublet also. He submitted that when the tenant had executed agreement in favour of the landlord, they cannot be absolved of wilful default in payment of rents. Further, any deposit of rents without legal requirement being followed will not amount to valid tender.

12. To be noted, after pronouncement of the order in R.C.A.No.1

of 2012, the first respondent in the original petition reported dead. The second respondent in the original petition was arrayed as first respondent in this revision and one G.Prakash, who is stated to be the legal heir of the first respondent in the original petition, have filed the present revision. Accordingly, the cause title of the second petitioner was amended and there is no objection and or dispute in this behalf from the side of the petitioner in the original petition.

13. The point that arises for consideration in this Civil Revision Petition is whether the learned Rent Control Appellate Authority was right in partly allowing the appeal filed by the petitioners on the ground of wilful default and subletting the petition mentioned premises?

14. It is to be noted that as against the order of the Appellate Authority rejecting the ground qua Section 10(2)(iii) of the said Act, the petitioner has not preferred any appeal.

15. It is the case of the landlady that she leased the petition mentioned premises to the first respondent in RCOP on 23.05.2007 for running Super Market under the name and style "Best Mark Super

Market” and the rents were paid till September 2007. Without permission of the landlady, the first respondent in RCOP sublet the premises to the second respondent in RCOP and the second respondent in RCOP is running the business under the name and style “Amutham Super Market”. Therefore, there is wilful default in payment of rent and also the first respondent in RCOP has not acted as per the lease deed dated 23.05.2007.

16. Per contra, it is case of the respondents in RCOP that they have paid the rent promptly and in order to change the name of the business, it is not necessary to obtain permission from the landlady. When the landlady tried to evict the respondents from the petition mentioned premises, the respondents have filed O.S.No.122 of 2008 for permanent injunction not to evict them except by due process of law. It is the further case of the respondents that they are paying rent in the Court.

17. Qua sublet alleged by the landlady, the learned Rent Control Appellate Authority, while answering that question, held that when there was no proof showing that the second respondent in RCOP was tenant under the landlady and similarly when there was no proof to

show that the first respondent in RCOP acted against Ex.P1 and sublet the petition mentioned premises to the second respondent in RCOP, it is presumed that the first respondent in RCOP had sublet the petition mentioned premises contrary to the lease deed and therefore, the respondents in the original petition are liable to be evicted. Such a finding of the learned Rent Control Appellate Authority is without any basis. Admittedly, Ex.P1 is the copy of a legal notice dated 12.02.2008 issued to the first respondent in RCOP, and based on which, how the learned Rent Control Appellate Authority could arrive at such finding.

18. According to the landlady, contrary to the lease deed, the respondents in the RCOP are running the business. It is the say of the respondents in RCOP that they are running Amutham Super Market, which owns many branches, namely Amutham Jewellery, Amutham Foods, Amutham Electronics, Amutham Textiles etc. Since the request of the landlady to give the business to her was denied, the landlady had filed the original petition for eviction of the respondents in RCOP on false grounds.

19. Upon analysing the oral and documentary evidence adduced

before the trial Court, the trial Court has rightly dismissed the original petition. The learned Rent Control Appellate Authority went wrong in allowing the petition for eviction under Sections 10(2)(i) and 10(2)(ii)(a)(b) of the said Act. Therefore, the respondents in RCOP were right in saying that only on the assumption, the learned Rent Control Appellate Authority came to the conclusion that the first respondent in RCOP sublet the petition mentioned premises to the second respondent in the original petition.

20. Coming to the point of wilful default allegedly committed by the respondents in RCOP, the learned Rent Control Appellate Authority held that the first respondent in RCOP has not taken steps to deposit the rent into Court as per Section 8 of the said Act. On the other hand, the respondents in RCOP deposited the rent into Court. The learned Rent Control Appellate Authority, finally held that the respondents in RCOP have committed wilful default in payment of rent.

21. In the order under revision, the learned Rent Control Appellate Authority held that the tenant has right to request the landlady to receive the rent and the landlady is bound to issue receipt for the same. It was held that since the petitioner in RCOP is not the

owner of the petition mentioned property, the tenants/respondents were not in a position to pay the rent.

22. On perusal of the order under revision, I find that the learned Rent Control Appellate Authority held that the trial Court without examining the material records placed before it, observed that the tenants have wilfully failed to pay the rent.

23. On a thorough reading of the pleadings as well as the order under revision and also the order of the trial Court, I find that there is no concrete proof to show that the respondents in the RCOP, particularly, the first respondent committed default in payment of rent.

24. It is pertinent to note that the landlady initiated rent control proceedings on 17.04.2008. Before that when the landlady was trying to evict the respondents from the petition mentioned premises, the respondents in RCOP have filed O.S.No.122 of 2008, wherein they have filed I.A.No.462 of 2008 seeking permission to deposit the rent into the Court. Pursuant to the lodgement schedule issued by the Court, they have deposited the rent into the Court.

25. As stated above, since the landlady has not filed any appeal challenging the dismissal of the petition filed under Section 10(2)(iii) of the said Act, the order of the learned Rent Control Appellate Authority on the grounds of subletting of the petition mentioned property and the wilful default in payment of rent are liable to be set aside.

26. In the result, this Civil Revision Petition is allowed, by setting aside the order passed in R.C.A.No.1 of 2012, dated 20.02.2013, on the file of the Rent Control Appellate Authority/Sub-Court, Pollachi, allowing the appeal and partly reversing fair and decretal order dated 29.10.2011 made in R.C.O.P.No.4 of 2008 on the file of the Rent Controller/District Munsif, Pollachi. Consequently, connected miscellaneous petition is closed. No costs.

24.04.2017

Note: Issue order copy on 20.04.2018
vs

Index : Yes
Internet : Yes

To

1. The Rent Controller,
Pollachi.
2. The Rent Control Appellate Authority,
Pollachi.

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M.V.MURALIDARAN,J.

VS



Pre-Delivery order made in
C.R.P.(NPD)No.2898 of 2013

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