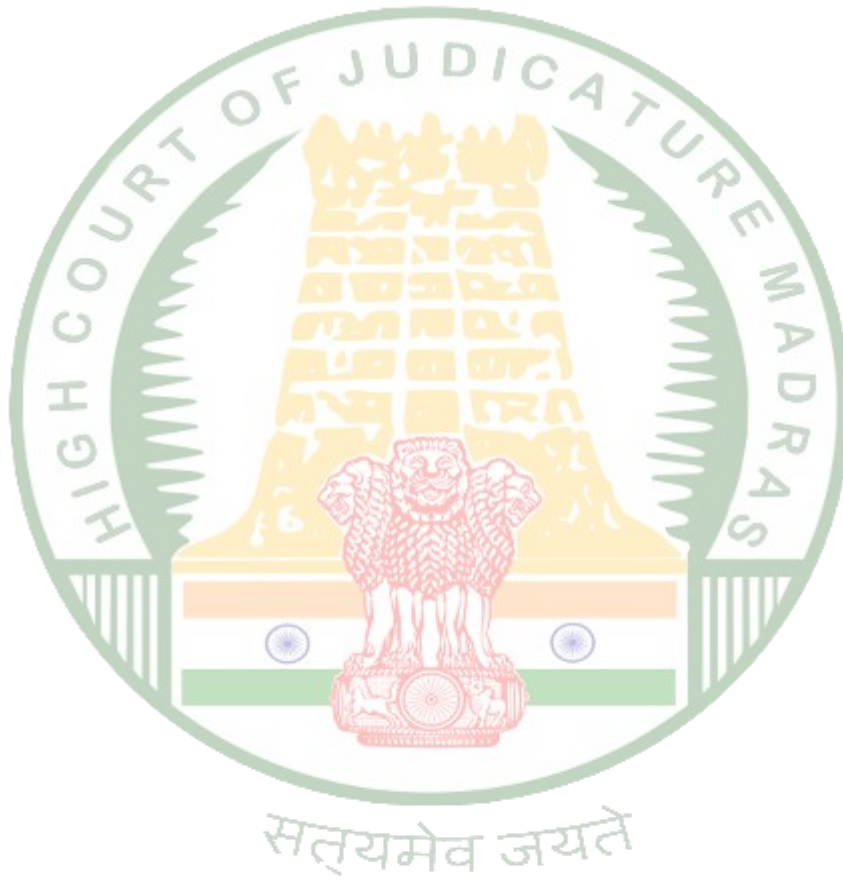




WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**C.R.P.(NPD) No.2836 of 2012
and
M.P.No.1 of 2012**

Pushpa Devi

... Petitioner

-Vs-

1.G.Vijayalakshmi

2.D.Umamaheswari

3.G.Venkateswaran

4.R.Vasanthi

5.G.Saravanakumar

... Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973), against the decree and judgment of the learned VIII Judge, Court of Small Causes at Madras in RCA.No.765 of 2007 dated 20.10.2011 confirming the order and decree in RCOP.No.296 of 2007 dated 25.09.2007, on the file of X Judge, Court of Small Causes at Chennai.

For Petitioner : Mr.P.K.Sivasubramaniam

For Respondents : Mr.L.Rajasekar

ORDER

The instant Civil Revision Petition has been preferred by the unsuccessful tenant in both the Courts below. Further the Civil Revision Petition is preferred as against the decree and judgment of the learned VIIIth Court of Small Causes at Chennai in R.C.A.No.765 of 2007 dated 20.10.2011 which confirmed the order of the learned Xth Judge, Court of Small Causes at Chennai in R.C.O.P.No.296 of 2007 dated 25.09.2017.

2.The case of the revision petitioner in brief as follows:

The Respondent/Landlord filed the Rent Control Original Petition in R.C.O.P.No.296 of 2007 under section 10 2(1) of Tamil Nadu Buildings (Lease and Rent Control Act) for eviction on the ground willful default. The tenancy and the quantum of monthly rent were admitted. Further the tenancy is for non-residential purpose also admitted. The respondent/Landlord filed the eviction petition as the revision petitioner/Tenant failed to tender the admitted rent from April

2006 to December 2006. On the day of filing of the eviction petition, a sum of Rs.10,035/- was shown as arrears payable to the landlord.

3.The learned counsel for the revision petitioner would submit that the Courts below have not considered the admitted fact that the rent was collected by the landlord through a collecting agent and the rent was used to collect by the agent by every 3 or 4 months. Apart from that the Courts below have not considered the fact that the issuance of cheque dated 13.02.2007 was not considered in its perspective manner but mechanically the Courts below have ordered eviction, hence he prays to set-aside the judgment and decree passed in R.C.A.No.765 of 2007 dated 20.10.2007.

4.Per contra, the learned counsel for the Respondent/Landlord would contend that the mode of tendering the admitted rent by the revision petitioner cannot be accepted as a valid tender. Moreover, the admitted case of the revision petitioner itself is that he has sent the cheque in February, 2007 for a sum of Rs.12,265/- could not be termed as a valid tender of rent. It is for the tenant to tender the monthly rent by every succeeding months. In case of default in tendering the rent, he cannot justify his act of default either by way of

lump sum payment or by way of lump sum deposit in the Court even on the day of 1st hearing. Hence he prays for the dismissal of the Civil Revision Petition.

5.I heard Mr.P.K.Sivasubramaniam, learned counsel for the petitioner and Mr.L.Rajasekar, learned counsel for the respondents and perused the materials available on record.

6.The short point has arisen for the consideration in the Civil Revision Petition is that whether eviction can be ordered in the case of lump sum payment as admitted in the instant case? In this connection it is useful to refer the explanation arrayed by section 10 of Act 23 of 1973 in the Tamil Nadu Buildings (Lease and Rent Control) Act which reads as follows:

“For the purpose of this sub-section, default to pay or tender rent shall be construed as willful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the landlord claiming the rent.”

7.The explanation would squarely applicable to the instant case.

8.It is admitted that the Respondent/Landlord caused a letter on 26.02.2007 to the revision petitioner stating that the money order sent by the revision petitioner was returned. However no notice was given by the Respondent/Landlord as per the explanation referred above.

9.Admittedly the Respondent/Landlord filed the Rent Control Original Petition under the Act by terming the revision petitioner as willful defaulter. However, the act mandates that as per the explanation that the failure of tendering the monthly rent after the prior notice of two months as per the explanation for the claiming of rent could term or place the tenant as defaulter in case of his non-payment of rent. The case on hand does not show that any notice was sent as mandated in the Act. However both the Courts below have not answered the mandatory requirements. Hence in the absence of any such notice no tenant can be termed as a defaulter. On the other hand, if the tenant does not come under the definition of willful defaulter then the law does not support the landlord to evict the tenant on the ground of willful default in paying the monthly rent.

10.In the result, this Civil Revision Petition is allowed by setting aside the decree and judgment passed in RCA.No.765 of 2007 dated 20.10.2011, on the file of the learned VIII Judge, Court of Small Causes, Madras, confirming the order and decree in RCOP.No.296 of 2007 dated 25.09.2007, on the file of the learned X Judge, Court of Small Causes, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2017

vs

Note:Issue order copy on 30.01.2019

Index:Yes

Internet:Yes

To

1.The VIII Judge, Court of Small Causes, Chennai.

2.The X Judge, Court of Small Causes, Chennai.

WEB COPY

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
C.R.P.(NPD) No.2836 of 2012
and
M.P.No.1 of 2012**

03.03.2017

WEB COPY