

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.02.2017

CORAM

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

C.R.P.(NPD) No.3080 of 2012
and
M.P.No.1 of 2012

Kewal Chand .. Petitioner

vs

V.Govindarajulu Naidu (died)

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 (Lease and Rent Control) Act, 1960 as amended under Act 23, 1973, as against the judgment passed by the VIII Judge, Court of Small Causes in R.C.A.No.764 of 2007, dated 20.10.2011, confirming the order passed by the Rent Controller (X Judge), Court of Small Causes, Chennai in R.C.O.P.No.295 of 2007 dated 25.09.2007.

For Petitioner : Mr.P.K.Sivasubramaniam

For Respondents : Mr.L.Rajasekar

ORDER

This Civil Revision Petition has been filed by the petitioner against the judgment passed by the learned VIII Judge, Court of Small Causes in R.C.A.No.764 of 2007, dated 20.10.2011, confirming the order passed by the learned Rent Controller (X Judge), Court of Small Causes, Chennai in R.C.O.P.No.295 of 2007 dated 25.09.2007.

2. The petitioner is the tenant and the respondents are landlords. Originally, R.C.O.P.No.295 of 2007 was filed by the father of the respondents viz., V.Govindarajulu Naidu under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "*the said Act*") against the petitioner for eviction on the ground of wilful default for the period from September 2006 to December 2006 and directing the petitioner to quit and handover the vacant possession of the petition premises.

3. For the sake of convenience, the petitioner is referred to as tenant and the respondents are referred to as landlords.

4. In the Original Petition, the deceased landlord

V.Govindarajulu Naidu averred that the Kewal Chand was a tenant under him for the petition mentioned shop and the tenancy was for non-residential purpose on a monthly rent of Rs.830/- per month in respect of the first floor in Shop N.46, premises No.75, V.G.N. Complex, Wall Tax Road, Chennai-3. The tenant paid rent upto August 2006, for which the landlord had issued receipt for the rent paid by him or through his servant. Thereafter, the tenant committed default in payment of rent from September 2006 to December 2006. Despite repeated demands made by the landlord, the tenant has not paid arrears of rent of Rs.4,500/-. Since the tenant wilfully and deliberately failed and neglected to pay the monthly rents, the landlord V.Govindarajulu Naidu filed the above petition for eviction.

5. Resisting the petition, the tenant filed counter stating that the landlord has employed a rent collecting clerk, who has been collecting rent from all tenants and rents were collected every three months or four months. The landlord collected rents upto January 2007 and deliberately avoided to receive the same subsequently. It is incorrect to state that the tenant paid rent upto August 2006 and has not paid the rent from September 2006 to December 2006 inspite of repeated demands. The tenant sent the rent by a cheque dated

31.7.2007 along with the covering letter dated 5.2.2007 for the rent due upto January 2007 and the same was acknowledged by the landlord. It is stated that on the first hearing date i.e., on 9.3.2007, a cheque for Rs.830/- being the rent for February 2007 was tendered and it was not accepted. The landlord has no mind to receive the rent and he is interested in taking legal proceedings on vexatious ground. There was no wilful default in payment of rent for the period alleged by the landlord and prayed for dismissal of the petition.

6. Before the Rent Controller, the original landlord Govindarajulu Naidu was examined as P.W.1 and Exs.P1 and P2 were marked. On the side of the tenant, one K.Shreyansh was examined as R.W.1 and Exs.R1 to R3 were marked.

7. Upon consideration of the oral and documentary evidence, the Rent Controller ordered eviction of the tenant from the petition mentioned shop within a period of two months. Aggrieved by the same, the tenant preferred R.C.A.No.764 of 2007. By the judgment dated 20.10.2011, the Rent Control Appellate Authority, dismissed the appeal and confirmed the order of the Rent Controller. The Rent Control Appellate Authority granted two months time to the tenant for

eviction. Assailing the judgment of the Rent Control Appellate Authority confirming the order of the Rent Controller, the tenant has filed the present Civil Revision Petition.

8. The learned counsel for the tenant (respondent in O.P.) submitted that the deceased landlord having received the rent by cheque for the default period under Ex.P2-covering letter, the tenant has no legal right to avail the statutory remedy under Section 8 of the said Act. He would submit that in Ex.P2, the tenant has categorically stated that he was not well and kept the shop closed and cheque for Rs.4,150/- was sent on 05.2.2007 and the same was acknowledged by the landlord. He would submit that while the tenant paid the rent for four months, an advance amount of Rs.34,500/- was lying with the landlord.

9. The learned counsel further submitted that subsequent to the filing of the eviction petition, the tenant had been paying the monthly rent of Rs.830/- regularly without any delay or default. He submitted that failure to take proceedings under Section 8 of the said Act is the main ground on which Courts below have held that the default for four months is wilful even though it was admittedly,

received by the landlord before serving notice or first hearing date i.e., on 9.3.2007.

10. Per contra, the learned counsel for the landlords submitted that the tenant had neglected to pay rents from the month of September 2006 to December 2006 and he is a wilful defaulter in payment of rent. He would submit that the counterfoils for payment of monthly rent for the relevant period does not reflect the payment of monthly rent for the crucial period for which the landlord had initiated rent control proceedings.

11. The learned counsel further submitted that having found the tenant is a wilful defaulter in payment of rents to the landlord, the Rent Controller ordered eviction, which was confirmed by the Appellate Authority. The Courts below concurrently held that the tenant had defaulted in payment of rents. Therefore, there is no perversity in the decision of Courts below and prayed for dismissal of the Civil Revision Petition.

12. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials

available on record.

13. The question falling for consideration is whether on the facts of the case, the tenant had committed wilful default in payment of rent and whether the judgment passed by the Appellate Authority is liable to be set aside.

14. Pending R.C.A.No.764 of 2007, the landlord V.Govindarajulu Naidu died and his legal heirs were brought on record as respondents 2 to 6 therein. Now they have been arrayed as respondents 1 to 5 in this Civil Revision Petition.

15. The grievance of the deceased landlord before the Rent Controller is that the tenant defaulted in payment of rent from September 2006 to December 2006. On the other hand, it is the say of the tenant before the Rent Controller that the V.Govindarajulu Naidu had employed a rent collecting clerk, who used to collect rents once in three months or four months and issued receipt some time later. When the rent collecting clerk stopped from collecting the rent, the tenant approached the V.Govindarajulu Naidu and asked him to receive the rent, but the landlord V.Govindarajulu Naidu refused to

receive rents and as a result for the past two years, rents were not collected. The aforesaid pleading of the tenant would clearly show that he had failed to pay the rent regularly. Assuming that the landlord V.Govindarajulu Naidu refused to receive the rent, it is always open to the tenant to pay the rent in the manner prescribed under the Act.

16. According to the tenant, for the period in question, the tenant had committed default and the same has been paid by him and the landlord V.Govindarajulu Naidu also acknowledged the receipt of rents.

17. In the counterfoils of rental receipt issued for the month of October to December 2006, it has been clearly stated that the landlord receiving the rent without prejudice to the eviction petition filed by him. It is also clear from Exs.P1 and P2 that rents from September 2006 to January 2007 was paid by the tenant only through cheque along with covering letter dated 05.2.2007.

18. As rightly held by the Rent Controller, there is no dispute qua tenancy and quantum of rent. The dispute is with regard to non-

payment of rents by the tenant from September 2006 to December 2006. Though the tenant contended that he approached the landlord V.Govindarajulu Naidu several times for paying rent, the landlord was not willing to receive rents. When the landlord refuse to receive the rent, immediately, the tenant ought to have issued notice to the landlord calling upon him to furnish the bank details and after getting details, the tenant has to deposit the rent into the account of the tenant. If the landlord fails to furnish bank details, the tenant has to take steps to deposit the rent into Court in accordance with the said Act.

19. Section 8 of the said Act provides that in case the landlord refuses to receive rent tendered by the tenant, the tenant can call upon the landlord to name a bank where he can deposit it and if he fails to do so the tenant can send it by money order and if even the money order is not received the tenant can deposit the rent before the Rent Controller. Admittedly, in the present case, the tenant has not exercised his right given under Section 8 of the said Act. Therefore, this Court is of the view that failure to resort to Section 8(1) to (5) of the said Act would constitute wilful default.

20. The learned counsel for the tenant argued that the tenant had paid an advance amount of Rs.34,500/- to the landlord V.Govindarajulu Naidu and the said amount of rental advance is much more than the arrears claimed. Therefore, the landlord can very well adjust arrears of rent from the advance amount lying in the hands of the landlord V.Govindarajulu Naidu, which is liable to be refunded.

21. Admittedly, there is no proof to show that the tenant had paid advance amount of Rs.34,500/- to the landlord V.Govindarajulu Naidu. Further, the tenant has not made any claim to adjust the arrears from the advance amount, if any, lying with the landlord. There is no proof filed by the tenant to show that there was automatic adjustments of advance amount.

22. By relying upon the decision of the Hon'ble Supreme Court in *K.Narasimharao v. T.M..Nasimuddin Ahmed*, reported in 1996 (II) CTC 78, the learned counsel for the tenant contended that the landlord is entitled to receive only one month agreed rent by way of advance and any amount paid in excess of agreed rent of one month by way of advance shall be refunded by the landlord to the tenant or adjusted towards rent.

23. In *K.Narasimharao v. T.M..Nasimuddin Ahmed* (supra), the Hon'ble Supreme Court held:

"9. There is no illegality attaching to the payment of the excess amount by the tenant to the landlord and a legally enforceable right clearly flows from the provision to the tenant. The pari delicto principle is, therefore, clearly excluded for the purpose of envisaging the consequences of an excess amount being taken by the landlord from the tenant because the provision requires the landlord to refund that excess amount. ..."

24. As stated supra, there is no proof to show that advance amount of Rs.34,500/- was paid by the tenant and the same is lying with the landlords. There is also no proof to show that the tenant made a claim to adjust the rent arrears from the advance amount, if any, lying with the landlords. In the counter, the tenant has not stated anything. In the facts and circumstances of the case, the decision relied upon by the tenant in *K.Narasimharao v. T.M..Nasimuddin Ahmed* (supra) will not be applicable to the case of the tenant.

25. The learned counsel for the tenant submitted that Shop

No.46 was taken by the tenant on a monthly rent of Rs.830/-. By producing xerox copy of rent receipts from the months January 2012 to August 2012, the learned counsel further submitted that during the pendency of R.C.A.No.764 of 2007, V.Govindarajulu Naidu died and his legal heirs were brought on record as respondents 2 to 6 in R.C.A.No.764 of 2007 and the respondents 2 to 6 in R.C.A.No.764 of 2007 continue to receive rents till date and issued printed rent receipts by G.Venkateswaran, son of late Govindarajulu Naidu.

26. On a perusal of the xerox copy of rent receipts produced by the tenant, it is seen that in the rent receipts itself, it has been clearly stated that 'without prejudice', the landlord receiving the rent. The rent receipts produced by the tenant relate to the year 2012. But the default committed by the tenant relates to the year 2006. *Prima facie*, the landlord established that the tenant had committed default in payment of rent from September 2006 to December 2006 and the Courts below have rightly held that the tenant had committed default in payment of rent. The subsequent payment of rent by sending rents by way of cheque in accumulated manner also amounts to wilful default in payment of rent.

27. It appears that at the time of initiation of the rent control proceedings, there was litigation pending between the landlord and the tenant for fixation of fair rent. Therefore, it is the bounden duty of the tenant to pay the rent whenever it has become due without any default. The copy of rent receipts produced by the tenant before this Court would show that he used to pay rent two months once. Further, this Court finds from rent receipt dated 17.7.2012 that the tenant had paid rent for the month of May 2012 in July 2012. There is no valid reason given by the tenant for non-payment of rent every month. Having failed to prove the payment of monthly rent for the period in question, as rightly held by Courts below, the tenant cannot expect any lenient consideration.

28. From the materials available on record and on the finding of Courts below, it is clear that the act of the tenant in not paying the rent clearly indicates that he was a wilful defaulter in payment of rent. This Court is of the view that Courts below have rightly come to the conclusion that the tenant had committed wilful default. No valid grounds have been made out to interfere with the concurrent findings of Courts below and the Civil Revision Petition is liable to be dismissed.

29. In the result, the Civil Revision Petition is dismissed by confirming the judgment in R.C.A.No.764 of 2007, dated 20.10.2011 passed by the learned Rent Control Appellate Authority (VIII Judge, Court of Small Causes) Chennai and the order in R.C.O.P.No.295 of 2007, dated 25.9.2007 passed by the learned Rent Controller (X Judge, Court of Small Causes) Chennai.

It is to be noted that by an order dated 20.01.2014 in M.P.No.1 of 2012 in C.R.P.No.3080 of 2012, this Court granted an order of interim stay of operation of the judgment in R.C.A.No.764 of 2007 pending disposal of the Civil Revision Petition until further orders. Since this Court is dismissing the Civil Revision Petition filed by the tenant, the tenant is directed to vacate the premises and hand over vacant shop to the landlords within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

17.02.2017

Note: Issue order copy on 22.01.2019
vs

Index : Yes

To

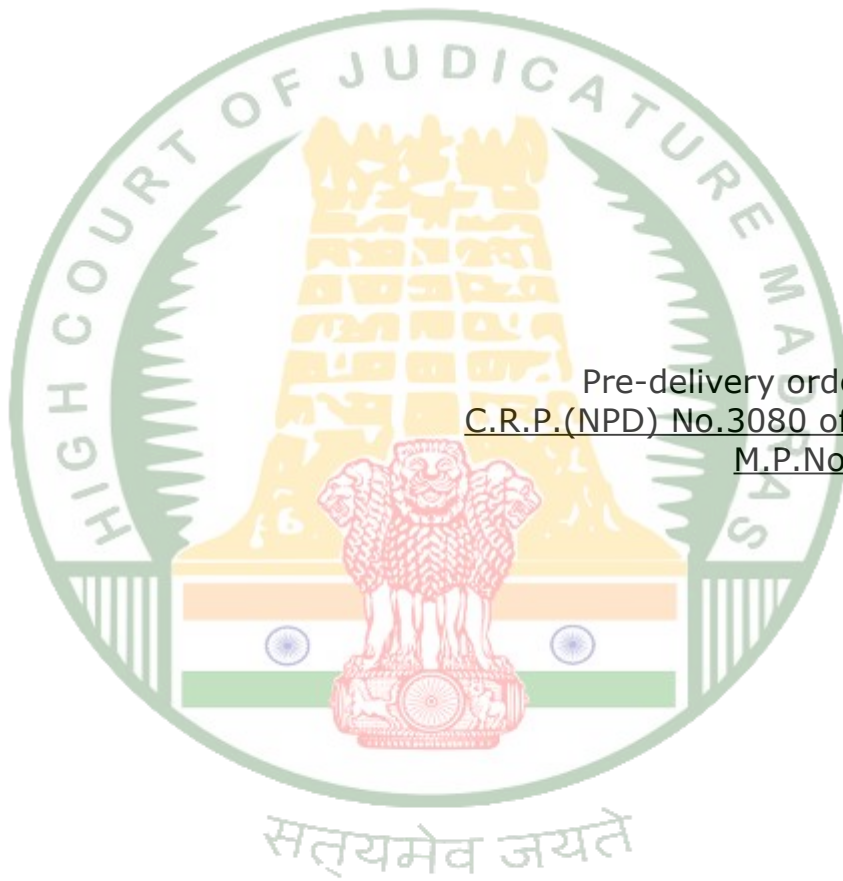
- 1.The VIII Judge,
Court of Small Causes,
Chennai.
- 2.The X Judge,
Court of Small Causes,
Chennai.



WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(NPD) No.3080 of 2012 and
M.P.No.1 of 2012

WEB COPY

17.02.2017