

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.88 of 2010
and M.P.No.1 of 2010**

Judgment reserved on 09.08.2017	Judgment pronounced on 29.08.2017
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1.Vasantha Maliga
2.Baskar

...

Petitioners

Vs

1.N.Bacherlal
2.Madhamalar
3.Latha

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order in RCA No.43 of 1993 dated 08.09.2009 on the file of the Rent Control Appellate Authority, Villupuram allowing and reversing the fair and decreetal order in RCOP No.7 of 1992 dated 06.08.1993 on the file of the Rent Controller, Villupuram.

For Petitioners : Mr.N.Suresh

For Respondents : Mr.J.Ramakrishnan
for Mr.P.Kannan for R1

No appearance for R2 & R3

ORDER

This Civil Revision Petition is filed against the fair and decreetal order in RCA No.43 of 1993 dated 08.09.2009 on the file of the Rent Control Appellate Authority, Villupuram allowing and reversing the fair and decreetal order in RCPP No.7 of 1992 dated 06.08.1993 on the file of the Rent Controller, Villupuram.

2. The petitioners are the wife and son of late Subash Chandra Bose who was the tenant of the petition premises under the first respondent. The first respondent is the landlord and the respondents 2 & 3 are daughters of late Subash Chandra Bose. The parties are referred to as arrayed in the RCOP.

3. The landlord filed RCOP No.7 of 1992 on the file of Rent Controller, Villupuram for eviction of the tenant on the ground of wilful default, act of waste and for owners occupation. According to the landlord, the tenant was occupying the petition premises on a monthly rent of Rs.250/- and was running a flour mill in the front portion of the petition premises. The tenant was initially paying the rent regularly and he did not pay the rent from 01.02.1991 till the date of filing of RCOP, a sum of Rs.3500/- was the arrears of rent. When the landlord

demanded the rent from the tenant, during August 1991, the tenant sent a money order and stated that the rent is due only from August 1991. Hence, the landlord refused to receive the rent. The landlord is having account in respect of the rent paid by the tenant. It is not correct to state that the tenant has not committed wilful default in paying the rent. The tenant also caused damages to the petition premises and he is not maintaining the petition premises properly. The landlord's eldest son is employed in the cement business run by his paternal uncle and he has got a registration certificate for running cement business on his own. The landlord sent notice through his Advocate calling upon the tenant to vacate and deliver the vacant possession. The tenant sent reply through his Advocate containing false averments.

4. The tenant filed counter statement and denied the averments stating that rent is due and payable only from 01.02.1991 to 31.03.1992 and also denied that tenant is having note book in which the landlord will acknowledge the receipt of rent paid by the tenant and denied that when landlord demanded rent, the tenant sent rent by Money Order and that the landlord did not spent any amount for maintenance. There is no arrears of rent. When the tenant tendered

the rent, the landlord refused to receive the same. Only on the refusal of the rent by the landlord, the tenant sent the rent by Money Order. The landlord refused to receive the Money Order. Hence, the tenant deposited the rent from October 1991 till date in the Savings Bank Account No.557 in Indian Bank. The tenant denied that petition premises is required for the business of landlord's eldest son and also stated that the landlord is owning other buildings.

5. Before the Rent Controller, the landlord and his eldest son were examined PWs1 & 2. The landlord marked four documents. The tenant examined himself as RW1 and marked seven documents as Ex.R1 to R7. The learned Rent Controller, considering the pleadings, oral and documentary evidence, judgments relied on by the learned counsel for the tenant and arguments of the learned counsel for the parties, dismissed the RCOP holding that the tenant has not committed any wilful default and also held that the landlord has not proved act of waste and petition premises is required for the business of his eldest son.

6. Against the said order dated 06.08.1993 made in RCOP No.7 of 1992 on the file of District Munsif, Villupuram, the landlord filed RCA

No.43 of 1993 on the file of Principal Subordinate Judge, Villupuram. Pending RCA, the tenant Subash Chandra Bose died. The wife, son and two daughters of Subash Chandra Bose and two daughters were impleaded as legal heirs of the deceased tenant.

7. The learned Appellate Authority, independently considering all the materials on record, order of the learned Rent Controller and the arguments of the learned counsel for the parties and judgments relied on by them, allowed the RCA and ordered eviction on the ground of wilful default and owner's occupation and confirmed the order of dismissal of RCOP on the ground of act of waste. Against the said order dated 08.09.2009 made in RCA No.43 of 1993, the present Civil Revision Petition has been filed.

8. The learned counsel for the tenant submitted that the tenant has not committed any wilful default. The landlord has not proved that the rent is due from 01.02.1991. Ex.A1 is a self certified document and landlord did not mention the same in the petition and did not file the same alongwith the petition. The Appellate Authority failed to see that rent is due only from October 1991 and when the tenant tendered the same, the landlord refused to receive the same. The tenant sent

the rent by Money Order and the landlord refused to receive the said Money Order also. Hence, after refusal by the landlord, the tenant deposited the rent regularly from October 1991 till filing of the RCOP into his Savings Bank Account No.557, maintained with Indian Bank. In view of the same, the tenant has not committed any wilful default.

9. The findings of the learned Appellate Authority that tenant has committed wilful default and he has not followed the procedures contemplated under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act is erroneous. The said Section is only an enabling provision and it is not mandatory. The intention of the tenant in depositing the rent in the Bank Account is bonafide and taking into consideration all these facts, in entirety, the Appellate Authority ought to have held that the tenant did not commit any default or wilful default. The learned Appellate Authority failed to see that the landlord did not prove the requirement of petition premises for the business of his eldest son. The landlord also has not proved that his son is working with his paternal uncle who is doing cement business, apart from producing Ex.A4.

10. The learned counsel further submitted that the landlord has not complied with the proviso to Section 10 (2) (i) of the Tamil Nadu Buildings (Lease & Rent control) Act. The landlord has not issued any notice calling upon the tenant to pay the rent within sixty days. The learned counsel for the tenant relied on the following judgments -

(i) 1992 (2) MLJ 337 [R.Srinivasan v. V.Thangaraju and others]

9. I have already noticed in this case that the finding of fact rendered by the Appellate Authority is that the tenant had been sending the rent month after month by money order to the landlord and he has been persistently refusing the same; the tenant in each case opened a bank account and went on crediting the same month after month with monthly rent due and on the Rent Control Petition being filed, the money was withdrawn and paid in to court. The judgment in [Rajalinga Chettiar v. Nataraja Mudaliar](#) (1995) 2 L.W. 211, after analysing all the judgments for and against, had laid down that [Section 8](#) is only an enabling provision and not a mandatory requirement. In that situation, if the conduct of the tenant in each case is tested, then by no stretch of imagination could it be said that the tenant is guilty of wilful default. The conduct of the tenant as a whole with all the circumstances attended to it, should be taken into account and analysed to find out whether any wilfulness on the part of the tenant would be inferred or not. On facts in each case on hand, the learned single Judge of this Court in [Minor Rqjakumari v. N.V. Natarajan](#) (1994) 1 L.W. 340, had held that there could not be any wilful default as such in the payment of rents. Under these circumstances, I am in entire agreement with the

Appellate Authority in each of these two cases wherein it has been held that the tenant is not guilty of wilful default in payment of the rent. Accordingly, that finding is sustained.

(ii) 1985 (1) SCC 591 [S.Sundaram Pillai and others v. V.R.Pattabiraman and others]

The aforesaid Acts undoubtedly contemplate that a default simpliciter would not be sufficient to evict the tenant but it must further be shown that the default was not wilful. The Act, however is silent on the mode and the manner in which a court may decide as to what is wilful and what is not wilful. Thus, the Act has left it to the courts to decide this question. So far as the Tamil Nadu Act is concerned, it clearly defines as to what is 'wilful default'. Proviso to s. 10 (2) of the Act runs thus:

"Provided that in any case falling under clause

(i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected."

(iii) 1976 TNLJ 72 [Thaiyalnayagi Ammal & Others v. Ayyama Chettiar]

When the application for eviction founded on that hypothesis came up for hearing, she proved her bonafides by producing evidence to the effect ; that since the rents by money order were refused, she had

to deposit the same in the Savings Bank Account in a Post Office.

(iv) 2002 (4) SCC 204 [Raja Muthukone (Dead) by Lrs v. T.Gopalasami and another]

6. *The submission made on behalf of the landlord that even if two months' notice for payment of rent is given still it will be open to the Controller under proviso to determine the question of default, was discarded by Fazal Ali, J. by placing on record his opinion that such a view, if accepted, would render the very object of explanation otiose and nugatory. The same submission which was expressly discarded in the case of S. Sundaram Pillai (supra) has been advanced before us and obviously we cannot entertain the same. In the case at hand, once the landlord gave a notice to the tenant claiming the rent in arrears, he should have waited for a period of two months from the date of service of notice and it is only on non-payment of non-tender of rent within the period of two months that the landlord could have initiated the proceedings for eviction on the ground of wilful default and then it would have been for the tenant to satisfy the Rent Controller that in spite of non-payment of rent for a period of two months from the date of service of notice, he was not a defaulter for reasons. In the present case, there is the additional fact that before the initiation of the proceedings for eviction, the factum of the tenant having deposited the rent in the Court, though in the proceedings which had stood terminated, was brought to the notice of the landlord and the landlord having initiated the proceeding for eviction withdrew the amount of rent and on the date when he sought for withdrawal, a period of two months from the date of notice had not expired. In such circumstances, in view of the law laid down in the case of S. Sundaram Pillai (supra) the tenant cannot be held to be a wilful defaulter.*

(v) 2003 (3) SCC 282 [Chordia Automobiles v. S.Moosa and others]

7..... The statute has given a benefit to a tenant viz., if there is default in payment of rent and a notice is sent by the landlord of such default, then the default would mature into a wilful default only if the default continues in other words the defaulted amount is not paid within a period of two months from the date of notice. In the present case, notice was sent on 9.8.1989, thus the said two months would have expired only on the 9.10.1989. In other words, in case the tenant could have paid the said amount within this period, it would not be a case of wilful default. We find in the present case after sending the said notice, the landlord did not wait for the expiry of the said period and before that filed the eviction petition R.C.O.P. No. 2963 of 1989 on 20.9.1989 alleging the wilful default and further if the suit itself was filed before the said period there could be no question of sending any reply to the said notice.

(vi) 1993 (1) LW 356 [Ramalingam Pillai (died) and 7 others v. Murugesan and another]

9. It is common ground that there was no pleading to the effect that PW1 for whose benefit the suit premises was bonafide required, has no other non-residential building of his own in the same city. Of course, he has vaguely stated in the evidence that he does not own any other shop.

11. Per contra, the learned counsel appearing for the landlord submitted that the tenant has committed wilful default in payment of rent from 01.02.1991 onwards inspite of repeated demands and when the landlord demanded the rent, the tenant sent Money Order stating that the rent is due only from August 1991. In view of the same, the landlord refused to receive the Money Order sent by the tenant. The tenant did not take any steps under Section 8 of the Tamil Nadu Buildings (Lease & Rent Control) Act to deposit the rent into the Court. The deposit made by the tenant in his own account without depositing the rent into the Court is violating the procedures contemplated under Section 8 of the Act which amounts to wilful default. The landlord is maintaining book in which entries are made as and when the tenants pay the rent which was marked as Ex.A3 which clearly shows that the tenant has committed wilful default, without any reason from 01.02.1991 onwards. The tenant was not regularly paying the rent in his bank account also. The passbook produced by the tenant marked as Ex.B6 shows that for the month of November 1991, he did not deposit the rent.

12. The Appellate Authority has properly appreciated these facts and by giving valid reason has held that the tenant has committed wilful default. The landlord's eldest son is working in the cement business carried on by his paternal uncle / landlord's younger brother. The petition premises is required for cement business to be carried on by the eldest son of the landlord. The landlord's eldest son has got registration certificate for carrying on cement business which is marked as Ex.A4. The learned counsel for the landlord submitted that even after Appellate Authority allowed the RCA, the tenant did not pay the rent and subsequent conduct of the tenant has also to be taken while deciding the issue of wilful default. It is for the tenant to prove that he has paid rent regularly without any default and legal heirs of the tenant had erroneously shifted the burden on the landlord. The learned counsel for the landlord, in support of his contention, relied on the following judgments -

(i) 1997 (1) MLJ 109 (SC) [M.Bhaskar v. J.Venkatarama Naidu rep.by his power of attorney holder A.Narayanaswamy Naidu]

4. If he finds that the landlord is evading the payment of rent, procedure has been prescribed under Section 8 of the Act to issue notice to the landlord to name the bank and if he does not name the bank, the tenant has to file an application before

the Rent Controller for permission to deposit the rents The appellant did not avail of that remedy. The omission to avail of the procedure under Section 11 does not disentitle the landlord to seek eviction for willful default.

(ii) AIR 2003 SC 153 [E.Palanisamy v. Planisamy (D) by LR's and others]

5. Mr.Sampath, the learned counsel for the appellant argued that since the appellant-tenant had deposited the arrears of rent in Court, it should be taken as compliance of Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the Court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the Court for permission to deposit the arrears of rent. Since there is a substantial compliance of Section 8 in as much as the arrears of rent stand deposited in Court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance of the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in

court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh v. Ganpat Lal & Another* reported in 1996 (1) SCC 243 and *M.Bhaskar v. J. Venkatarama Naidu* reported in 1996 (6) SCC 228.

8. Admittedly the tenant did not follow the procedure prescribed under *Section 8*. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in *Section 8*. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straightaway invoking *Section 8* (5) of the Act without following the procedure contained in the earlier sub-sections i.e. sub-sections (2), (3) and (4) of *Section 8*. Therefore, we are of the considered view that the eviction order passed against appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises in pursuance of the High Court judgment.

(iii) Vol. 79 LW 600 [A.M. Chakrapani Reddiar v. Issa Muniratnam Chetti]

I am unable to see how it can be said that merely because the default is only for one month, it could straightaway be deemed to be not wilful.

(iv) Vol.93 LW 549 [Marudachala Udayar v. Dhandapani]

4. The case of the landlord is that there was a failure by the tenant to pay the rents continuously from March, 1973 to July, 1974. The tenant would urge that he has paid the rents. To test the case of the parties in such a context, the Court should first endeavour to apply the provisions of the very statute under which the proceedings are initiated for eviction. Very salutary provision is incorporated in the Act and that is Section 8.

5. The delay on the part of the landlord to claim the arrears is being taken as a factor against him. Such a factor cannot, in the instant case, be taken for negating the case of the landlord when he seeks eviction of the tenant on the ground of arrears of rent, especially when proof of the payment of arrears is lacking.

(v) 2007 (4) CTC 492 [N.Thangavel and another v. N.Chellam]

6. In the present case, the rent controller in both the eviction petitions found that the brothers/tenants who are occupying the properties for nine years without taking steps to deposit the rent when the rents sent by them by Money Order were returned by their sister. Sec.8 of the Act has been enacted for the purpose of enabling a tenant to deposit the rent before the controller when the landlady refused to accept the rent or evades the issue of a receipt for any payment of rent.

7. Now it has been repeatedly held by this court and the Supreme Court that Sec.8 is mandatory and the sub-clauses are to be followed strictly before depositing the rent before the controller. Therefore

the rent controller has correctly held that both the brothers are liable to be evicted on the ground of wilful default as no steps have been taken by them to deposit the rent under Sec.8(5) of the Act.

(vi) 2009 (7) SCC 658 [Sarla Goel and ors. v. Kishan Chand]

28. From a conjoint reading of this provision referred to herein above and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the Legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.

29. In other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may", in our view, was used by the Legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them.

(vii) 2011 (MWN) Civil 540 [Rangaiah Chetty & others v. Feroz Khanon (deceased) and others]

9. The learned counsel for the landlord would correctly and convincingly, explain and expound the dictum as found laid down in the cited Division Bench judgment by pointing out that the facts and circumstances involved in that case were entirely different from the one involved in these cases. Further more, the subsequent categorical precedents emanated from the Hon'ble Apex Court would be to the effect that when there is refusal to receive the rent by the landlord, then the tenant is duty bound to resort to **Section 8(5)** of the Act and it cannot be left at the option or whims and fancies of the tenant. As such, I would like to agree with the submission made by the learned counsel for the landlord. Here in these cases the tenants on coming to know of the refusal of the rent by the erstwhile landlord should have taken steps to file application under **Section 8(5)** of the Act.

(viii) 2012 (4) LW 120 [M.Rajasekaran v. T.Harichandra Lal]

10. A mere poring over and perusal of the above precedents would clearly highlight that it is the bounden duty of the tenant, by adhering to **Section 8(5)** of the Act to deposit the rent. But in this case, admittedly, the tenant did not do so.

(ix) 2013 (8) MLJ 465 [K.Ugrapandian v. K.E.Ramalingam]

16. Per contra, the learned counsel appearing for the petitioner submitted that he has in fact paid a sum of Rs.1,03,200/- by way of demand draft for the period from 01.01.2010 to 31.08.2012, for a period of 32 months in compliance with the order passed by

this Court, dated 14.09.2012 made in M.P.No. 1 of 2013 in this Civil Revision Petition. The very conduct of the tenant in keeping the rent for continuous period of 32 months, commencing from 01.01.2010 to 31.08.2012 and paying it in pursuant to an interim order of this Court would show that his conduct coupled with wilfulness in not paying the rent is obvious and liable for eviction even by taking this subsequent conduct. In fact, the learned Rent Controller as well as the Appellate Authority have found that the tenant has not paid the rent, even after filing of the RCOP and during the pendency of those proceedings before the Court below.

17. At this juncture, it is useful to refer to the decision in K.Karupiah Vs. B.Kubendran reported in 2009 (2) CTC 595, wherein the learned Single Judge of this Court has found that subsequent conduct of the tenant in not paying the rents even after filing of the revision, has to be considered as wilful default and liable to be evicted on that reason also.

**(x) 2014 (3) MWN) Civil 769 [Goyal MG Gases Ltd.
v. MPI Exports Private Limited]**

7.2. A perusal of paragraph 13 of the judgment of the learned Rent Control Appellate Authority, discussing documents under Exs.P-5 to P-11, would reveal that the landlord intends to commence a new business and the requirement is bonafide. Therefore, the contention of the learned counsel that it is a mere desire on the part of the landlord to commence the business has no substance. Crossing the level of desire, the landlord has taken steps which would indicate that his real intention is to start a new business.

**(xi) Order of this Court dated 27.10.2014 in CRP (MD)
Nos.2119 & 2120 of 2013**

8. The learned counsel for the petitioner argued that the Courts below failed to consider that the respondent is already having a Tiffin Centre and the respondent's son is running the said Tiffin Centre. The Courts below erred in holding that the intention of the respondent to start a Tiffin Centre for his son, shows his bona fide requirement. The learned counsel for the petitioner further contended that the petitioner is running Mobile Shop from 2004 and invested huge amounts. If the petitioner is evicted, he would be put to severe hardship and the Courts below failed to consider this aspect. The hardship of the petitioner would be more than the advantage to the respondent. As far as the permission to deposit the rent into Court is concerned, the learned counsel for the petitioner argued that the respondent refused to accept the rent, when he handed over in person, refused to receive the rent sent by money order and refused to furnish the details of Bank Account. These facts were proved by the petitioner and hence, the Courts below ought to have allowed the petitioner's R.C.O.P. and appeal and permitted him to deposit the rent into Court.

**(xii) Order of this Court dated 21.04.2006 in CRP (PD)
(MD) No.1306 of 2015**

18. As far as the question of owner's occupation is concerned, the respondent has pleaded that petition premises is required for establishing the business of her son and daughter. The respondent let in evidence to show that her son and daughter have training in tailoring. The contention of the petitioner that respondent did not plead for owner's occupation and did not furnish the details is contrary to

pleadings and evidence and hence, not entitled to evict the petitioner is untenable.

19. Secondly, the contention of the learned counsel for the respondent that claim of the respondent for owner's occupation is malafide on the ground that claim of wilful default and damages to petition premises were rejected is not acceptable. The respondent proved requirement of owner's occupation and Courts below have held that the requirement as bonafide requirement. The petitioner before the Courts below contended that respondent has another property next to her property and hence the plea of owner's occupation is malafide. The said contention has been rightly rejected as the tenant cannot dictate terms to the landlord and state that other property is better suited than petition premises.

20. The learned counsel for the petitioner relied on the Judgments and referred to above and contended that respondent failed to plead and furnish details with regard to owner's occupation and therefore, Courts below erred in ordering eviction. On the other hand, the learned counsel for the respondent relied on the Judgments and contended that petitioner aware of the issue with regard to claim of respondent that petition premises is required for her own occupation for establishing tailoring business of her son and daughter and both the parties have let in evidence. Therefore, the Courts below have rightly considered this issue on merits and decided the same in favour of the respondent and there is no error in the said finding. This contention of the learned counsel for the respondent has considerable force.

21. The petitioner as well as respondent let in evidence with regard to claim of owner's occupation. The petitioner has alleged that respondent owns another vacant site next to her house which is more suitable to the business of the son and daughter of respondent rather than petition premises. It is well settled that quoting wrong provision of law or not quoting provisions of law or not furnishing the details of claim in rent control proceedings will not

be fatal to the claim of petitioner. The Judgments relied on by the counsel for the petitioner do not advance the case of the petitioner. On the other hand, the Judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case.

(xiii) 2016 (3) SCC 343 Boorugu Mahadev and Sons & Anr. v. Sirigiri Narasingh Rao & Ors.

23) As observed *supra*, the first appellate Court having recorded categorical findings that the relationship of landlord-tenant was proved and secondly, the respondents had committed a willful default in payment of monthly rent and its arrears from 01.06.1987, these findings were binding on the High Court while deciding the revision petition. It was more so when these findings did not suffer with any jurisdictional error which alone would have entitled the High Court to interfere.

13. The point for consideration in this Civil Revision Petition are -

(i) Whether the deposit made by the tenant in his Savings Bank Account No.557 in Indian Bank, without following the procedures contemplated under Section 8 of the Act would amount to proper payment of the rent and will not be deemed as wilful default.

(ii) Whether the landlord has proved bonafide requirement of petition premises to start the business of his eldest son.

14. The landlord have claimed that the tenant committed wilful default from 01.02.1991 and when the landlord demanded payment of rent, the tenant sent the same by Money Order stating that the rent is due only for the month of August 1991. In view of the same, the landlord refused to receive the rent. According to the tenant, rent was due only from October 1991. The landlord refused to receive the rent when tendered in person and refused to receive the same when sent by Money Order also. In the said circumstances, deposit made by the tenant in his Savings Bank Account No.557 regularly is a valid deposit which amounts to payment of rent regularly and tenant has not committed any wilful default. It is an admitted fact that the tenant did not follow the procedures contemplated as per Section 8 of the Act. According to the tenant, Section 8 of the Act is only an enabling provision and it is not mandatory and relied on the judgments referred to above.

15. On the contrary, the learned counsel appearing for the landlord relied on the judgments of this Court as well as Hon'ble Apex Court and submitted that Section 8 of the Act is a mandatory provision and failure to follow each and every steps will amount to invalid deposit. A reading of the judgment of this Court as well as Hon'ble

Apex Court makes it very clear that when the landlord refuses to receive the rent, the tenant has to follow the provisions contemplated under Section 8 of the Act and the procedures contemplated in the said Section is mandatory. In view of the judgments of the Hon'ble Apex Court reported in AIR 2003 SC 153, 2005 (7) SCC 211 & 2009 (7) SCC 658 and decision of this Court reported in 2007 (4) CTC 492 and 2011 (1) MWN (Civil) 540 referred to above, I hold that when the landlord refused to receive the rent for any reason whatsoever, the tenant has to follow the procedures contemplated under Section 8 of the Act and deposit the rent into Court, after obtaining necessary orders from the competent court. The said section is mandatory and it is not a procedural or enabling provision. In view of the subsequent judgments of the Hon'ble Apex Court, the decision of the Single Judge of this Court reported in **1999 (2) MLJ 337** cited *supra* holding that Section 8 is not mandatory and the same is only enabling provision is no longer good law.

16. The learned Rent Controller has committed an irregularity in not properly appreciating Section 8 (2) and 8 (5) of the Act and erred in holding that the deposit made by the tenant in his personal Savings Bank Account as valid deposit and that tenant has not committed any

wilful default. The learned counsel for the landlord pointed out from Ex.B6 that the tenant has not deposited the rent for the month of November 1991. The contention the learned counsel for the landlord that even if one month rent is not paid, it will amount to wilful default has considerable force. The learned Judge of this Court in the judgment reported in **Vol.79 LW 600**, cited supra, has held that even default in payment of one month rent will amount to wilful default. The entire facts and circumstances have to be taken into consideration to decide whether there is default in payment of rent which amounts to wilful default. The tenant must follow the proper procedure in paying or depositing the rent when landlord refuses to receive the same. In the present case, the tenant has not followed the procedure contemplated under Section 8 of the Act to deposit the rent when the landlord refused to receive the same. The learned counsel for the landlord submitted that after RCA has been allowed, the tenant failed to deposit the rent. The learned counsel for the tenant has not produced any document to disprove this contention of the learned counsel for the landlord.

17. It is well settled that subsequent event also can be taken into account while deciding the issue in the proceedings. The failure on the

part of the tenant to pay the rent to the landlord or to deposit the same into court, after obtaining order subsequent to allowing of RCA and pending CRP, would also amount to wilful default. The landlord has sought to vacate the tenant on the ground of owner's occupation. According to the landlord, his son is working under his paternal uncle in the cement business carried on by his uncle. The landlord's eldest son intend to carry on his own cement business and the petition premises is most suitable for the same. The landlord's eldest son has obtained registration certificate in his name. The learned Rent Controller rejected this contention on the ground that the landlord has not proved that his son is working with his paternal uncle and intention of the landlord is not bonafide.

18. The learned Rent Controller has not properly appreciated the evidence let in by the landlord and his son as PWs1 & 2 and Ex.A4, the registration certificate, while rejecting the contention of the landlord . The landlord has stated that the petition premises is required to start the business of his eldest son. His son was examined as PW2 and registration certificate was marked as Ex.P4 which shows that more than intention, the landlord and his son had taken steps to start the business. The learned Appellate Authority, appreciated these facts and

held that the requirement of the landlord for owner's occupation to start business is bonafide and reversed the finding of the learned Rent Controller by giving cogent and valid reason.

19. In the Civil Revision Petition, the learned counsel for the tenant submitted that the landlord has not stated in the petition that his son is not carrying on business in his own building. Having failed to plead so, it is not open to the landlord to let in evidence to prove that his son requires the petition premises for his business. The learned counsel for the tenant relied on the judgment reported in **1993 (1) LW 356** cited supra, to substantiate his contention. The said contention of the learned counsel for the tenant is untenable. The judgment relied on by the learned counsel for the tenant is not applicable to the facts of the present case.

20. On the other hand, the contention of the learned counsel for the landlord that parties have let in evidence with regard to requirement of petition premises as well as his son PW2 with regard to properties owned by the landlord and his son has considerable force. The tenant has not proved that landlord's eldest son is carrying on business whatsoever and that he is carrying on such business in his

own building. The learned counsel for the landlord relied on the order of this Court dated 21.04.2016 made in CRP (MD) No.1306 of 2015 delivered by me, regarding bonafide requirement, wherein in Para 20 of the said order it has been held that when parties have let in evidence with regard to owner's occupation, it is not open to the tenant to raise a plea that the landlord did not plead that petition premises is required for owner's occupation.

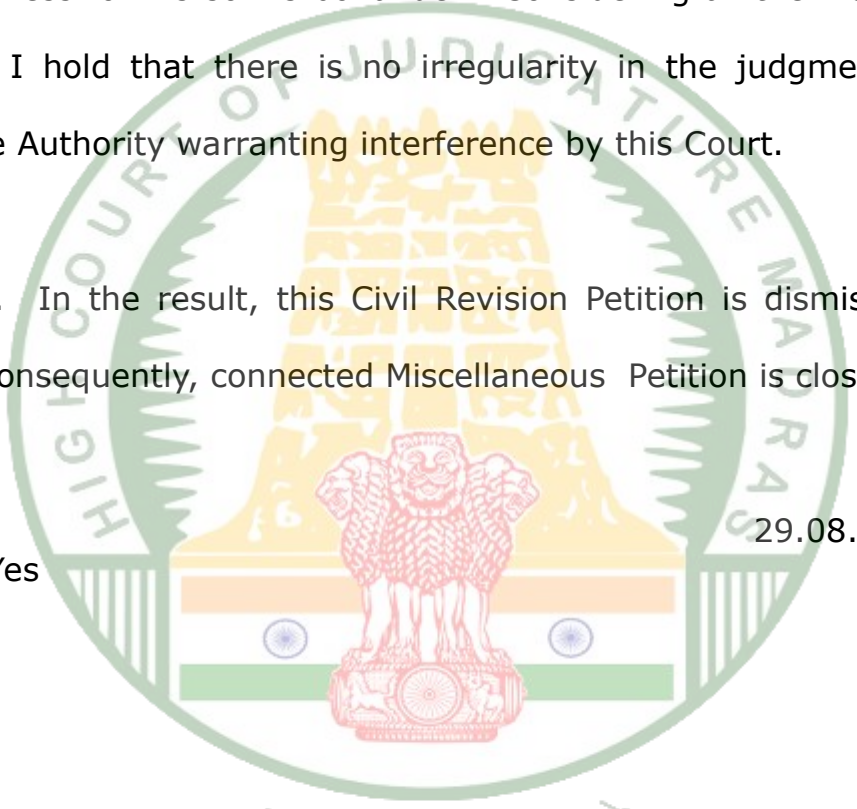
21. In the present case, the landlord's eldest son has obtained registration certificate for carrying on the cement business and marked the same as Ex.A4. The landlord and his son have taken steps to start the business and therefore it cannot be held that the requirement of the landlord is not bonafide and their contention to start a new business. In the judgment reported in **2014 (3) MWC (Civil) 769** cited supra, this Court has considered the documents filed as Exs.P5 to P11 and held that the landlord has taken steps which would indicate that his real intention is to start a new business. This decision is clearly applicable to the facts of the present case. The learned Rent Controller has committed an irregularity in holding that the landlord failed to prove that his son is working with his paternal uncle and business belongs to his paternal uncle and rejected the contention of

the landlord. On the other hand, the Appellate Authority has rightly held that the issue is whether the petition premises is required for own business and whether such requirement is bonafide or not. The Appellate Authority has held that requirement of the landlord to start a new business for his son is bonafide. Considering all the materials in entirety, I hold that there is no irregularity in the judgment of the Appellate Authority warranting interference by this Court.

22. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.08.2017

Index : Yes
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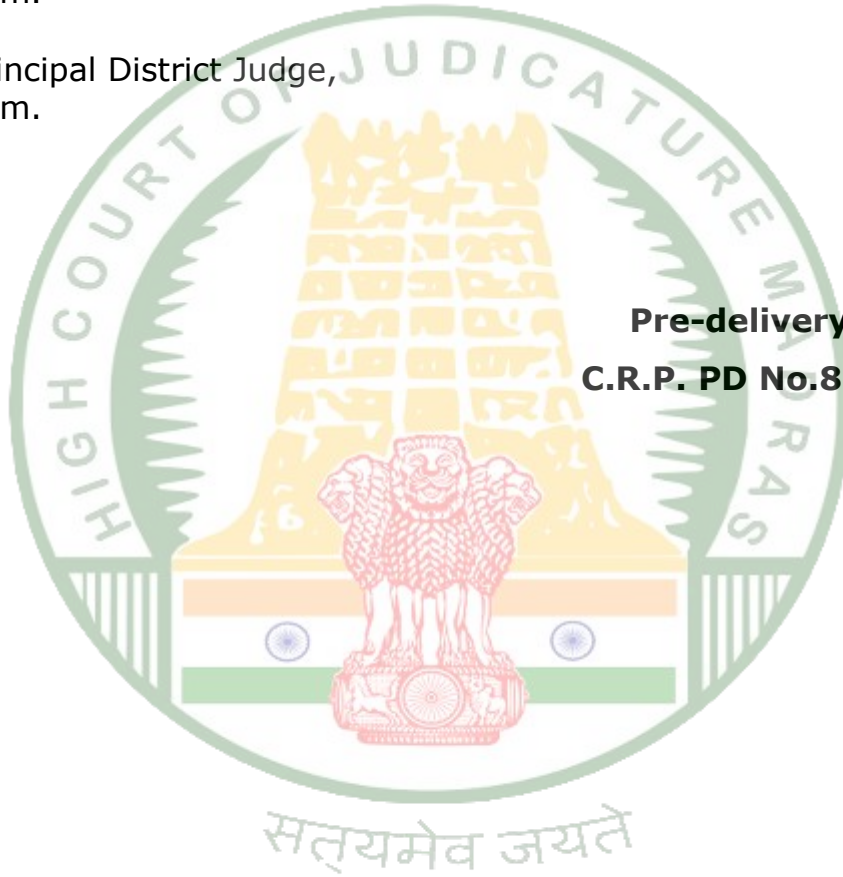
V.M.VELUMANI, J.

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To

1.The Principal Subordinate Judge
Villupuram.

2.The Principal District Judge,
Villupuram.



**Pre-delivery order in
C.R.P. PD No.88 of 2010**

29.08.2017

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