

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.908 of 2008

A.Vellingiri

... Petitioner

Vs.

1.V.Ganapathy (deceased)

2.Palaniyammal @ Myilaathal

3.G.Natarajan

4.G.Mohanasundaram

5.G.Nandakumar

6.Manjula Devi

7.G.Karivaradharaj Perumalsamy @ Selvam

... Respondents

(RR2 to 7 brought on record as legal heirs of the deceased 1st respondent vide order of Court dated 18.11.2016 made in M.P.Nos.1 to 3 of 2010 in C.R.P.NPD.No.908 of 2008)

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18/1960 as amended by Act XIII of 1973 and 1/80, against the fair and decretal order dated 05.01.2008 made in I.A.No.96 of 2007 in R.C.A.No.3 of 2007

on the file of the Subordinate Court, Pollachi.

For Petitioner	: Mr.M.Sriram
R1 and R2	: Died
For R3 and R6	: Mr.N.Thiagarajan
For R4	: Not ready in notice
For R5	: Mr.S.Pattabiraman
For R7	: Mr.J.K.Ezhilarasu

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 05.01.2008 made in I.A.No.96 of 2007 in R.C.A.No.3 of 2007 on the file of the Subordinate Court, Pollachi.

2. The petitioner is landlord and first respondent is tenant. The first respondent died and his legal heirs were impleaded as respondents 2 to 7. The petitioner filed R.C.O.P.No.6 of 2004 on the file of the District Munsif Court (Rent Controller), Pollachi, for eviction on the ground of wilful default and owners occupation. The deceased first respondent denied landlord – tenant relationship. The learned Rent Controller held that there exist landlord - tenant relationship, first respondent had committed wilful default and ordered eviction on the ground of wilful default and owners occupation. Against the said order dated 20.04.2007 made in

R.C.O.P.No.6 of 2004, the deceased first respondent filed R.C.A.No.3 of 2007 on the file of the Subordinate Court (Appellate Authority), Pollachi. In the said R.C.A., the petitioner filed I.A.No.96 of 2007 under Section 11 of Tamil Nadu Buildings (Lease and Control) Act, for a direction to the deceased first respondent to deposit the arrears of rent into Court and if the deceased first respondent failed to comply with the order, stop all further proceedings in R.C.A.No.3 of 2007 and for a direction to the deceased first respondent to put the petitioner in possession of the petition premises.

3. The learned Appellate Authority considering the judgment relied on by the parties, dismissed the said application filed by the petitioner on the ground that issue in the appeal is whether there exist landlord – tenant relationship between petitioner and first respondent and appeal is the continuation of original proceedings.

4. Against the said order of dismissal dated 05.01.2008 made in I.A.No.96 of 2007 in R.C.A.No.3 of 2007, the present Civil Revision Petition is filed by the petitioner/landlord.

5. The learned counsel for the petitioner contended that the learned Appellate Authority failed to consider the scope of Section 11 of the Tamil Nadu Buildings (Lease and Control) Act and without following the procedure, dismissed the application. The learned Appellate Authority failed to see that the learned Rent Controller held that the petitioner proved that he is the owner of the petition premises and the deceased first respondent failed to prove his contention that he is the owner of the petition premises. As per Section 11 of the Act, the landlord can file application even during pendency of the RCOP filed for eviction on the ground of wilful default. The learned Rent Controller has to decide only the question whether there is any arrears of rent and cannot decide whether there exist landlord – tenant relationship. Mere denial of title, the tenant cannot deny to pay the rent. The learned Rent Controller has to given a finding that the monthly rent is payable at Rs.2,500/-, admittedly, the deceased first respondent did not pay the rent. In support of his contention, the learned counsel for the petitioner relied on the following judgment reported in **1993 Vol LW 236 (S.Rathinammal v. Ayyavu);**

"8. The point involved in this revision petition is that when the respondent before the Controller or the appellant before the Appellate Authority, namely the tenant, denies the title of the landlady, can the Statutory Authorities under the Act, during the pendency of the proceedings, invoke Section 11 of the Act, or should such denial alone be a sufficient ground to disable the statutory authorities from passing orders under Section 11 of the Act?

.. ..

.. .. 12. Further, it will be also pertinent to note that if Section 11 of the Act cannot be invoked, a tenant would be enabled to avoid payment of rent on a mere plea taken in the counter that the landlord does not have title to the property or that there is no relationship of landlord and tenant existing between them. In cases, where the tenants have committed wilful default, or where the landlords have filed petitions for owners' occupation or demolition and reconstruction or in cases where tenants have committed injury to the properties which would constitute a ground for eviction, tenants being fully aware of the ultimate result of the petition, would avoid payment of arrears of rent and also the monthly rents during the pendency of the proceedings, by inducting in the petition a simple claim that the landlord has no title and there is no existence of landlord and tenant relationship between them. This will only lead to an abuse of the process of the Court. ..
.. "

6. Per contra, the learned counsel for the respondents 3 and 6 submitted that the issue whether the landlord – tenant relationship exists between the parties has to be decided by the learned Appellate Authority. Till such issue is decided, the deceased first respondent is not liable to pay or deposit the alleged arrears of rent. Depositing arrears of rent is not a condition precedent for filing appeal or perusing the appeal by tenant. In support of his contention, the learned counsel for the respondents 3 and 6 relied on the following judgment reported in **2002 I L.W. 133 (M/S.A.Rafeeq Ahmed and Co.rep. by its partner K.Muktar Ahamed v. M/S.Montari Leather Ltd., rep. by its Chairman and Managing Director);**

“74. A reading of Section 11(3) and (4) with Section 11(1) would show that there is a purpose behind the said provision. The view that the deposit should be made as a condition precedent for preferring an appeal would mean restricting the appeal or denying the remedy of appeal, which the statute has provided for. Such a denial of appeal remedy could be, if at all, only in terms of the statutory provision, which is not the case here. In a given case where substantial amount is claimed as

arrears which is disputed by the respondent and the dispute being bonafide, if the deposit is to be considered as a condition precedent, then it would result in deprivation of an appeal remedy. That is not the intendment or object of the Legislative provision. Even in a case where a direction is issued under Section 11(4) and when such a direction is challenged by invoking the remedy of appeal under Section 23, the contention that as a condition precedent the direction should be complied with by the tenant by depositing the amount as arrived at by the Rent Controller and if the tenant is required to deposit, then it would mean deprivation of a remedy of appeal, which again is not the intendment of the Legislature. Neither Section 11(3) or (4), nor Section 23 would justify such a construction, viz., that rents claimed by the landlord or as adjudicated by the orders of the Rent Controller should be deposited as a condition precedent for preferring an appeal, or else the appeal cannot be entertained at all."

WEB COPY

7. Heard the learned counsel for the petitioner as well as the respondents 3 and 6 and respondents 5 & 7 and perused the materials available on record.

8. The issue in the Civil Revision Petition is whether when the appeal is pending with regard to question of landlord – tenant relationship, the tenant can be directed to deposit the arrears of rent.

9. Section 11 of the Tamil Nadu Buildings (Lease and Control) Act provides remedy to landlord to seek an order to direct the tenant to deposit arrears of rent and if tenant fails to deposit the rent within the time limit granted by the Court, the proceedings has to be stopped and eviction has to be ordered. Section 11 of the Tamil Nadu Buildings (Lease and Control) Act reads as follows:

Section 11:

"11.Payment or deposit of rent during the pendency of proceedings for eviction.____No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 23 against any order made by the Controller on the application, unless he has paid or pays to the landlord, or deposits with the Controller or the Appellate Authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposits, and continues to pay

or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the Appellate Authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1) the Controller or the Appellate Authority as the case may be, shall on application, made to him either by the tenant or by the landlord and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the Appellate Authority, as the case may be."

10. A reading of Section 11 of the Act makes it clear that when the landlord files application under Section 11, the learned

Rent Controller has to decide whether there is any arrears of rent and if there is any arrears, the Court has power to direct the tenant to deposit the rent within the time limit fixed by the Court. It is also provided in the said Section that if tenant fails to comply with the order, he is not entitled to agitate his case any further. The Court has to stop all further proceedings and order eviction. The application under Section 11 of the Act can be filed either before the learned Rent Controller or before the learned Appellate Authority or during pendency of the Civil Revision Petition.

11. In the present case, the deceased first respondent has denied the title of the petitioner and landlord – tenant relationship between the parties. The learned Rent Controller rejected the said contention of the deceased first respondent and held that there exist landlord – tenant relationship. The said order is challenged in the appeal. In the judgment reported in **1993 Vol LW 236 (S.Rathinammal v. Ayyavu)**, which is relied on by the learned counsel for the petitioner, a similar issue was considered by this Court. This Court following the judgment of the Hon'ble Apex Court held that when the issue of existence of the landlord – tenant relationship is agitated before the learned Appellate Authority, the

learned Appellate Authority can direct the tenant to deposit the arrears of rent. This Court in the said decision referred to the judgment of the Hon'ble Apex Court reported in 1963 2 SCJ 475, held that the tenant by denying title of landlord is not entitled to stop payment of any rent. A reading of the said decision clearly proves that directing the tenant to deposit rent pending appeal will benefit both landlord and tenant, when the proceedings are ultimately decided one way or other.

12. In the present case, the learned Rent Controller has held that there exist landlord – tenant relationship between the parties. The tenant is liable to deposit the rent into Court and tenant is directed to deposit arrears of rent and to deposit the rent every month. The learned Appellate Authority erred in dismissing the application filed by the petitioner on the ground that the appeal is continuation of the original proceedings and issue whether there exists landlord – tenant relationship has to be decided in the appeal. The learned Appellate Authority failed to see that the deceased first respondent is squatting the property without payment of any rent. The learned Appellate Authority failed to consider that the learned Rent Controller has on merits held that respondent/tenant failed to

prove that he is the owner and the learned Rent Controller held that there exists landlord – tenant relationship. The decision relied on by the learned counsel for the respondents 3 and 6 are not applicable to the facts of the present case, as the petitioner has filed application under Section 11 of the Act for a direction to the first respondent to deposit the rent pending appeal. The decision relied on by the learned counsel for the petitioner reported in **1993 Vol LW 236 (S.Rathinammal v. Ayyavu)** is squarely applicable to the facts of the present case, wherein in the similar circumstance, this Court directed the tenant to deposit the rent following the judgment of the Hon'ble Apex Court.

13. For the above reason, order of the learned Appellate Authority dated 05.01.2008 made in I.A.No.96 of 2007 in R.C.A.No.3 of 2007 is set aside and the respondents 2 to 7 are directed to deposit arrears of rent up to date within a period of four weeks from the date of receipt of a copy of this order, to the credit of R.C.O.P.No.6 of 2004 and continue to deposit the rent till the disposal of the R.C.A. If the respondents 2 to 7 fail to deposit the arrears of rent or fail to deposit the monthly rent continuously, the learned Appellate Authority is directed to follow the procedure

contemplated under Section 11 of the Act and dismiss appeal filed by the respondents. With the above direction, the Civil Revision Petition is allowed. No costs.

21.12.2017

Index:Yes/No

kj

To

The Subordinate Judge, Pollachi.



WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(NPD)No.908 of 2008

21.12.2017

WEB COPY