

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**C.R.P.(NPD) No.4666 of 2012
and
M.P.No.1 of 2012**

G.Kamala

... Petitioner

-Vs-

S.Natarajan

... Respondent

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 order and decreetal order dated 08.08.2012 passed in R.C.A.No.18 of 2011 on the file of the Subordinate Judge, Poonamallee, confirming the order and decreetal order dated 27.06.2011 passed in RCOP.No.24 of 2010 on the file of the Principal District Munsif-cum-Rent Controller, Poonamallee.

For Petitioner : Mr.R.Ponnusamy

For Respondent : Mr.R.Sundarakamesh Marthand

ORDER

The impugned judgment and decree passed in R.C.A.No.18 of 2011 on the file of learned Subordinate Judge, Poonamallee dated 08.08.2012 which confirmed the fair and decretal order passed in R.C.O.P.No.24 of 2010 on the file of learned District Munsif-cum-Rent Controller, Poonamallee dated 27.06.2011, is the subject in the Civil Revision Petition.

2.The case of the revision petitioner is that the Courts below have not considered the refusal of the landlord to receive the rent and the tendering of rent by way of money order has not been considered in respect of September and October 2009. It is also the case of the revision petitioner before the learned Trial Court that the tendering of the monthly rent from September 2009 to June 2009 at the rate of Rs.1,500/- per month through Demand Draft dated 26.10.2010 received by the petitioner along with other incidental expenses also. Apart from that another Demand Draft dated 15.09.2010 for the month of August 2010 and September 2010 were also received.

Further the interim injunction granted in her favour in O.S.No.91 of 2010 as against the landlord was also not been considered. Therefore the Rent Control Original Petition under section 10(2)(i) of the Tamil Nadu Rent Control Act could be devoid of merits.

3.Apart from that the legal notice dated 11.09.2009 to the revision petitioner alleged that the rent was due from the month of December 2008, but the learned counsel for the revision petitioner would submit that even for the September 2010 the Demand Draft for the payment of rent was received by the landlord as per Exs.R1 to R7 would show the rent was paid up to January 2011. Moreover as per Ex.P-13, the reply notice of the revision petitioner would show that there was no arrear at all in making the monthly rent. However, all these material points are not been considered and the petition filed under Section 10(2)(i) of Act ought to have been dismissed by the learned Rent Control Authority.

4.Apart from that the learned Counsel for the revision petitioner would submit that when the revision petitioner could not be termed as a defaulter in view of the receipt of the monthly rents by way of Demand Draft the Judgment and decree of the Courts below are liable

to be set-aside.

5.Per contra, the learned counsel for the respondent would contend that when the original rent agreement Ex-P1 has a stipulation that the monthly rent is to be paid at the completion of the respective months, the belated payment itself would bring the tenant under the definition of defaulter. The stand taken by the revision petitioner that the Respondent/Landlord has accepted the Demand Draft would absolve his liability from making regular monthly tendering of rent is liable to be discarded. Moreover he also pointed out that the receipt of the Demand Draft by the landlord is his right as he is entitled to collect the monthly rent from his tenant. Apart from that it is also the contention of the learned counsel for the respondent that the dismissal of the Rent Control Original Petition on the ground of wrongful use and causing nuisance would not help the tenant for the simple reason that it is for the will of the landlord to file appeal. In the instant case as eviction was ordered on another two grounds, it was not necessary for the landlord to file appeal. Hence he prays for the dismissal of the Civil Revision Petition.

6.I heard Mr.R.Ponnusamy, learned counsel for the petitioner

and Mr.R.Sundarakamesh Marthand, learned counsel for the respondent and perused the entire materials available on record.

7.It is the case that R.C.O.P.No.24 of 2010 was filed by the landlord to evict the revision petitioner on four grounds. One among the four grounds is willful default. However, by considering the merits and demerits of the case the fair and decreetal order passed in R.C.O.P.No.24 of 2010 by the learned Rent Controller was allowed the same on 27.06.2011. In the Rent Control Original Petition proceedings, Ex.P12 dated 11.09.2009 the certified copy of legal notice given by the landlord to the revision petitioner was given for which reply notice was also sent by the revision petitioner which is marked as Ex.P-13.

8.The point for consideration in the instant Civil Revision Petition is that as to whether as per the explanation added in Section 10 of the Tamil Nadu Buildings Lease and Rent Control Act the revision petitioner can be termed as defaulter or not. In this case the respondent landlord has not denied the receipt of rents by way of demand drafts as per Ex.R-7 on various dates. However, on 11.09.2009 the demand notice Ex.P-12 was caused by the landlord. On the other hand reply was given on 24.09.2009 and the payment of rents for the month

September 2009 onwards have been received by the landlord. As per the explanation it is defined as follows:

“The Default to pay or tender the rents shall be construed as willful if the default by the tenant in the payment or tender of rent continuous after the issue of two months notice by the landlord claiming the rents.”

9. Here, in the instant case immediately after the demand of the rent by the landlord the rent was tendered and the same was accepted by the landlord without any objection. So, in the considered opinion, the term defaulter will have no application in the instant case as against the revision petitioner. Since this Court has decided that the revision petitioner cannot be termed as a defaulter. The judgment and decree passed by the Rent Control Appellate Authority needs interference. Accordingly, the findings are set-aside.

10. In the result, this civil revision petition is allowed by setting aside the order and decretal order passed in RCA.No.18 of 2011 dated 08.08.2012, on the file of the learned Subordinate Judge, Poonamalle, confirming the order and decretal order in RCOP.No.24 of 2010, dated 27.06.2011, on the file of the learned Principal District

Munsif-cum-Rent Controller, Poonamallee. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2017

vs

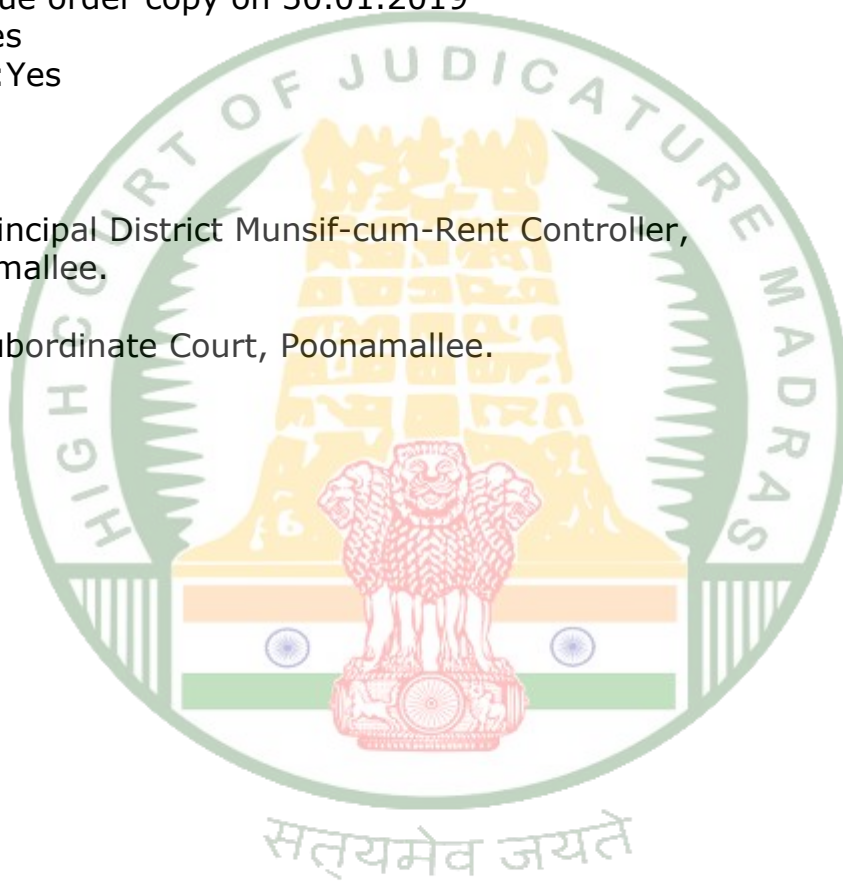
Note: Issue order copy on 30.01.2019

Index: Yes

Internet: Yes

To

1. The Principal District Munsif-cum-Rent Controller, Poonamallee.
2. The Subordinate Court, Poonamallee.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
C.R.P.(NPD) No.4666 of 2012
and
M.P.No.1 of 2012**

03.03.2017

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