

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.587 of 2012

and

M.P.No.1 of 2012

R.Hemalatha

.. Petitioner

Vs.

J.Indirani

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decreetal order dated 25.01.2012 made in M.P.No.52 of 2011 in R.C.O.P.No.3 of 2009 by the learned District Munsif cum Rent Control Court, Ambattur.

For Petitioner : Mr.R.Ramesh

For Respondent : Mr.P.V.Vasanthakumar

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order passed in M.P.No.52 of 2011 in R.C.O.P.No.3 of 2009 dated 25.01.2012 on the file of the District Munsif cum Rent Control Court at Ambattur.

2.The Petitioner is the Tenant under the Respondent and Respondent in the application filed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent) Control Act. The said Application was filed to direct the petitioner/Tenant to deposit the arrears of rent, a sum of Rs.1,80,000/- for 20 months from July, 09 to February, 2011 and also for the future monthly rents i.e., at a sum of Rs.9,000/- per month failing which put the Petitioner in possession of the petition mentioned building.

3.After considering the rival submissions on either side, the Learned Rent Controller/District Munsiff, Ambattur as per his order dated 25.01.2012 in M.P.No.52 of 2011 in R.C.O.P.No.3 of 2009 directed the Revision Petitioner/Tenant to pay a sum of Rs.2,61,000/-

being the rental arrears from, July 2009 to November, 2011 at the rate of Rs.9,000/- per month on or before 13.12.2012. Apart from that the said application was allowed with a further condition that in default of the deposit of arrears of rent all further proceedings of the main Rent Control Original Petition will be stopped and eviction will be ordered.

4. Aggrieved over the order passed in the M.P.No.52 of 2011 in R.C.O.P.No.3 of 2009, the instant Revision is preferred by the Tenant stating that the rented premises initially was used for residential purpose and after the execution of rental agreement dated 31.03.2008 the same was started to use for Non-residential purpose and this factor would be decided in trial, but the learned Rent Controller failed to consider the same. Further another ground is raised in respect of the jurisdiction of the concerned Court. Yet another ground is that the learned Rent Controller failed to consider that a charitable trust run by the Petitioner in the premises accommodating, poor and aged persons including mentally affected and destitute persons who are completely under the care of the Petitioner. Further, it is also one of the averments that the revision petitioner herein had already filed an application under Section 11(4) of the said Act in M.P.No.72 of 2009

and the same was allowed. So, once again for the very same relief the filing of M.P.No.52 of 2011 is not maintainable. Moreover the order of learned Rent Controller is not correct in directing the Petitioner to pay a sum of Rs.2,61,000/- instead of the prayer is only for Rs.1,80,000/-.

5.At the same time, on the side of the landlady, on 09.01.2017 a calculation memo is filed showing the balance amount is at a sum of Rs.6,41,000/-, as on the date of memo.

6.Now the question before this Court is whether the learned Rent Controller has passed the impugned order is in accordance with law or not. In this regard before going into the merits of the case it is relevant to record here that the Revision Petitioner herself has taken out an application before the learned Rent Controller to deposit the rent admittedly a sum of Rs.9,000/- per month. But absolutely no proof is filed as to whether the admitted rent has been paid or not. Apart from that the Revision Petitioner cannot justify her act without paying the accepted monthly rent.

7.I heard Mr.R.Ramesh, learned counsel appearing for the petitioner and Mr.P.V.Vasanthakumar, learned counsel appearing for

the respondent and all the relevant records are perused.

8.It is not in dispute that the existence of Landlord and Tenant relationship. At the same time as the instant Revision Petition is arising out of the order passed in the application under section 11(4) of the Act, it is useful to refer the provision hereunder:

“If any Tenant fails to pay or to deposit the rent as aforesaid the controller or the appellatant authority as the case may be, unless the Tenant sufficient cause, to the contrary stop all further proceedings and make an order direct the Tenant to put the landlord in possession of the building”.

9.Therefore, it is made clear that if any Tenant fails to pay or to deposit the rent as aforesaid, the Provision under Section 11(4) can be invoked. Here the learned counsel for the petitioner contended that the Revision Petitioner herself has already taken out an application for the deposit of arrears of rent, wherein it is clearly admitted the period from which the monthly rent is due and the quantum of rent is at a sum of Rs.9,000/- per month. So, he has made his prime submissions that the instant application under Section 11(4) of the Act is not

maintainable and the learned Rent Controller without gone into the vital aspect has mechanically allowed the same and directed the revision petitioner/tenant to deposit the arrears of rent.

10.It is shock to note here that the admitted case of the revision petitioner herself is that the monthly rent is at a sum of Rs.9,000/- and by admitting the same in the application in M.P.No.72 of 2009 was filed, but to justify her act, no calculation memo is filed as to whether any rent is paid after the filing of the said M.P.No.72 of 2009. So, the intention of the Revision Petitioner is very clear that she has no intention to make the payment of the admitted monthly rent. For this simple reason alone would suffice to reject the prayer of the revision petitioner, at the same time, in the interest of justice, the other grounds raised in the civil revision petition is also answered as follows.

11.It is the further submission of the learned counsel for the petitioner that the learned Rent Controller has no jurisdiction to entertain the application. Such a plea cannot be taken on for two simple reasons. The first one is that no application has taken out by the revision petitioner/tenant before the learned Rent Controller and the second one is that by admitting the jurisdiction, the revision

petitioner herself has already filed an application under Section 11(4) of the Act. So, without filing any such application before the Court concerned, such a plea cannot be taken in the revision proceedings. Moreover, the aforesaid provision makes no bar for successive applications, but would define that "*If any Tenant fails to pay or to deposit the rent*" then the landlady is entitled to take out such application if the admitted rent is not paid.

12. That apart, nowhere the Revision Petitioner has justified her default in making the payment of the admitted monthly rents. Simply filed an application for the deposit of rent will never absolve the liability of payment of rents. The conduct of the Revision Petitioner would show that she pretends to be too smart without remitting the admitted rent.

13. On the other hand, the findings of the learned Rent Controller are not liable for any interference as the findings of the Learned Trial Court is based on the available records. Further, absolutely no justifiable ground is raised to invoke the revisional powers of this Court to interfere in the findings of the learned Rent Controller.

14. In the result, this Civil Revision Petition is dismissed with a direction to the revision petitioner to deposit the arrears of the admitted monthly rent in RCOP.No.3 of 2009 pending before the learned Rent Controller/District Munsiff, Ambattur within a period of four weeks from the date of receipt of a copy of this order, failing which, the learned Rent Controller/District Munsiff, Amabttur is directed to proceed with further and to finalize the proceedings of the Rent Control Original Petition and to dispose of the same in accordance with law within a period of two months thereafter. There is no order as to costs, though this is fit case to impose costs upon the revision petitioner, but the above direction would suffice to meet the ends of justice. Consequently, connected miscellaneous petition is closed.

30.08.2017

vs

Index:Yes

Speaking order

To

The District Munsif cum Rent Control Court,
Ambattur.

M.V.MURALIDARAN,J.

VS



**Pre-Delivery order made in
CRP(PD)No.587 of 2012
and
M.P.No.1 of 2012**

WEB COPY

30.08.2017