



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2017
(Reserved on 15.03.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.2090 of 2014

and

M.P (MD) No.2 of 2014

Parvatham ... Petitioner/ Respondent/Landlord

vs.

1) S.Shankar (Died)

2) S.Vanaja

... Respondents / Tenant

(R2 was brought on record as LR of the deceased sole respondent vide order dated 15.2.16 made in M.P.1 & 2/15 in CRP No.2090 of 2014)

Prayer :- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decreetal order dated 24.09.2013 passed in RCA.No.22 of 2010 on the file of the Principal Subordinate Judge (Rent Control Appellate Authority), Tiruchirappalli, reversing the fair and decreetal order dated 18.10.2010 passed in I.A.No.463 of 2009 in RCOP.No.62 of 2008 on the file of I Additional District Munsif(Rent Controller), Tiruchirappalli.

For Petitioner : Ms.J.Maria Roseline

For R2 : Mr.C.Vakeeswaran

ORDER

The revision petitioner is the landlady in the schedule mentioned property in the petition. She has initiated eviction proceedings against the 1st respondent in RCOP.No.62 of 2008, on the ground of wilful default and demolition and re-construction.

2.Pending rent control proceedings, she has filed an interlocutory application I.A.No.463/2009 under Section 11(3) of the Tamil Nadu Buildings(Lease and Rent Control) Act, 1960 (hereinafter referred to as, 'the Act', on the ground that the monthly rent of Rs.2,000/- not paid by the 1st respondent/tenant from the month of December 2005. Hence, he must be directed to deposit the arrears of rent running to the tune of Rs.84,000/-.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The Trial Court allowed the application and directed the 1st



respondent/tenant to pay Rs.84,000/- within one month, failing which, all further proceedings in RCOP.No.62 of 2008 shall be stopped and eviction will be ordered forthwith.

4. Aggrieved by the abovesaid order, the tenant has preferred the rent control appeal questioning the legality of the order, on the ground that the monthly rent for the demised premises was only Rs.800/- and it has to be adjusted towards the advance and the money spent toward construction of wall in the demised building with the consent of the landlady.

5. Further, it was contended the agreed rent is being deposited in the suit filed by him against the landlady, for not to evict him without due process of law. Therefore, the order of the Rent Controller to deposit Rs.84,000/- is erroneous and unjust.

6. The appellate authority, after hearing the parties, allowed the appeal and set aside the order of the Rent Controller in I.A.No.463/09, with a direction to the Rent Controller to decide the dispute over the rent in the main rent control proceedings and dispose of the case, as expeditiously as possible, preferably within a period of four months.

7. Assailing the order of the appellate authority, the present revision petition is filed.

8. The learned counsel for the revision petitioner submitted that the appellate authority failed to take note of the payment of rent made by the tenant at Rs.2000/- per month. The money order sent by the tenant at the rate of Rs.2,000/- per month not been taken note of by the appellate authority and by setting aside the well considered order of the Rent Controller, the appellate authority has given a premium to the defaulting tenant and has allowed him to squat over the property without paying any rent, thereby grave miscarriage of justice has been caused to the revision petitioner/landlady.

9. Per contra, the counsel for the respondents submitted that the admitted rent of Rs.800/- is being paid in the suit account O.S.No.904/06 filed by the tenant. Therefore, there is no default in payment of rent and there is no necessity to entertain the application under Section 11(3) of the Act.

10. Before advertent to the rival submissions, it is relevant to extract below Sections 8(5) and 11(3) of the Act:-

''Section 8.(1) Every landlord who receives any payment towards rent or advance shall issue a receipt, duly signed by him of the actual amount of rent or advance received by him.

(2) Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in



respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant to the credit of the landlord:

Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within [five kilometres] of the limits thereof.

Explanation.-It shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

(3) If the landlord specifies a bank as aforesaid the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the money order commission.

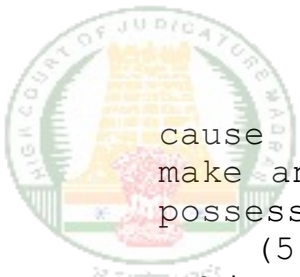
(5) If the landlord refuses to receive the rent remitted by Money Order under sub-section (4), the tenant may deposit the rent before the Rent Controller and continue to deposit with him any rent which may subsequently become due in respect of the building.'

'Section 11 (1). 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 deposit, 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.''

11. This Court, on considering the rival submission and the scope and ambit of Section 8(5) of the Act, is of the opinion that when there is a procedure laid down under law for the party concerned to follow, that procedure alone should be followed. Any other mode adopted cannot be considered as true compliance. If the tenant is aggrieved of refusal to receive rent by the landlady, he should have approached the concerned Rent Controller for deposit of rent. Civil Court is not a forum. Further, in the absence of any direction by the Civil Court to deposit the rent, voluntarily depositing the rent in that Court will not amount to tendering of rent or deposit of rent.

12. From the evidence, it could be seen that except the Civil Court deposit receipt Ex.R11, there is no other document to show that either the tenant was directed to deposit rent in the Civil Court in the abovesaid suit account and or he is regularly depositing the rent pursuant to order by the Civil Court.

13. Regarding the dispute over the quantum of rent, it is immaterial. As pointed out by the Rent Controller, it is only the true spirit of paying the rent without default and not the rent what to be payable. In this case, it is evidently proved that from December 2005, there is no payment of rent in the manner known to law. If the respondent/tenant is really a bona fide tenant, he should have at least tendered the admitted rent and should have resorted to the legal process contemplated under the Act. Having failed to do so, he cannot have the protection of law.

14. The order of the appellate authority is totally contrary to the provisions of the Act and hence, it is perverse. By allowing the RCA, the appellate authority has provided scope for the tenant to squat over the property till date, without tendering any rent. At least, the appellate authority ought to have ensured that pending litigation, the tenant tenders the admitted rent without fail. Contrarily, the appellate authority has just set aside the order and given a vague instruction to the Rent Controller, to dispose of the RCOP within four months. This direction itself is contra to the spirit of Section 11(3) of the Act. Since the appellate authority's order is ex facie illegal and perverse, it is liable to be set aside.



15. This Court finds that the tenant has wilfully failed to pay the rent in the manner known to law and is in enjoyment of the property without tendering the rent since December 2005.

16. Hence, this Civil Revision Petition is allowed. The 2nd respondent is directed to vacate the premises and hand over the premises to the revision petitioner/landlady within four months. No costs. Consequently, M.P(MD)No.2 of 2014 is closed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1) The Principal Subordinate Judge
(Rent Control Appellate Authority),
Tiruchirappalli.

2) The I Additional District Munsif
(Rent Controller),
Tiruchirappalli.

3) The Record Keeper,
V.R. Section,

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.J.Maria Roseline, Advocate, SR No. 15653

+1 CC to M/s.C.Vakeeswaran, Advocate, SR No. 15784

nbi

PSM/RR/03.04.2017/5P/6C

CRP (NPD) (MD) No.2090 of 2014

17.03.2017