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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2017

(Reserved on 25.04.2017)

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.2414 of 2014

and

MP (MD) No.1 of 2015

1) G.A.Ramakrishnan

2) G.R.Sankarlala

... Petitioners/Appellants/Landlords

vs.

S.Kamaraj

... Respondent/Respondent/Tenant

Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the judgment and decree dated 09.09.2014 passed in RCA.No.20/2013 by the Principal Subordinate Judge and Rent Control Appellate Authority, Madurai Town confirming the order passed in RCOP.No.52 of 2012 dated 28.02.2013 on the file of the Principal District Munsif Court and Rent Control Authority, Madurai Town.

For Petitioners : Mr.T.R.Subramanian

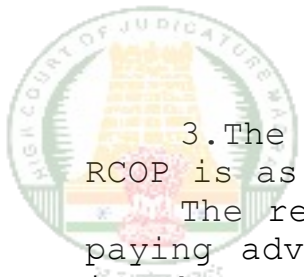
For Respondent : Mrs.Jessi Jeeva Priya

ORDER

This revision is arising out of the concurrent findings against the landlord in his petition for eviction on the ground of wilful default, owner's occupation, demolition and re-construction.

2.The pleadings as found in the petition for eviction are as under:-

The revision petitioners are father and son. The respondent is the tenant under them. The petition premises is let out to him for non residential purpose on a monthly rent of Rs.250/- initially and later increased to Rs.1,100/-. The 1st petitioner sold out a portion of the property to 2nd petitioner and tenancy of the respondent was attorned in favour of the 2nd petitioner. From 01.10.2009 to 29.02.2012, the respondent is at fault in paying the rent. The respondent to avoid paying rent has filed suit O.S.No.84/2012 alleging threat of forcible eviction and also filed RCOP.No.38/12 seeking permission to deposit the rent. The 2nd petitioner is running a business in the remaining property. The portion in occupation of the respondent is required for additional accommodation. Further, the revision petitioners are ready to demolish and reconstruct the building. Hence, RCOP.No.52/12 for eviction of the tenant was filed.



3.The case of the respondent/tenant as found in his counter in RCOP is as under:-

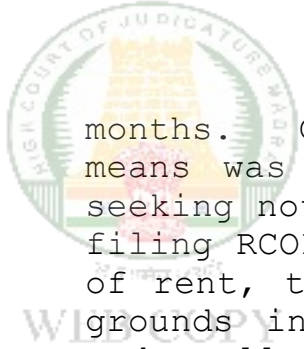
The respondent came as tenant in the year 1991 for rent after paying advance of Rs.20,000/-. The rental agreement was renewed in the year 2003. The landlord was not in the habit of giving rental receipt except making an entry in a pocket note book kept with him. The 2nd petitioner is not carrying on any business. He has no intention of demolish the building. All the allegations of the petitioners are denied as false. They refused to receive the rent when duly tendered which forced the respondent to file RCOP.No.38/12 seeking permission to deposit the rent. The petitioners tried to evict him by force and illegally, hence, he filed O.S.No.84/12 for permanent injunction not to evict him without following the due process of law.

4.After examining the witnesses and the documents relied by the parties, the Rent Controller dismissed the eviction petition. On appeal, the Rent Control Appellate Authority confirmed the order of the Rent Controller.

5.The aggrieved landlord through this revision petition is now questioning the legality of the order passed by the Courts below on the ground that the belated payment of rent, refusal to pay rent despite demand, depositing the rent in the Bank account without the Court's direction amount to default. Ex.R11-receipt for depositing the rent in the bank account, is not the proper tender of rent and the deposit made not at the instance of the Court's direction. While so, such an act of depositing the rent in the bank account instead of tendering it to the landlord or obtaining leave of the court ought not to have been considered as proper tender of rent.

6.It is further contended that when there is no evidence to prove the payment of rent for the period from 01.10.2009 to 29.02.2012, the Courts below ought not to have dismissed the petition for eviction. The reasoning of the Rent Controller that the landlord did not take any steps for non payment of rent from November 2009 and therefore, no default in payment of rent is perverse. The pocket note book maintained for payment of rent is with the custody of the tenant which is ceased to be the normal practice followed by the landlords. Failure of the tenant to produce the note book leads to adverse inference against the tenant.

7.The learned counsel for the respondent submitted that there is no perversity in the orders of the Court below. While the landlord alleges default in payment of rent by the tenant from 01.10.2009 to 29.02.2012, he did not take any legal recourse like issuance of notice or filing of petition either for recovery of rent or for eviction on the ground of wilful default for about 29



months. Only after the attempt to evict by force and illegal means was prevented by the tenant by filing suit on 25.01.2012 seeking not to evict him without due process of law and also after filing RCOP.No.38/12 on 27.02.2012, seeking permission for deposit of rent, the present RCOP.No.52/2012 has been filed with multiple grounds including wilful default of rent with invented grounds. Had really there was any default in payment of rent, the landlord should have approached the Court at the earliest and not after the suit and the petition filed by the tenant to protect his right of tenancy and to prevent illegal eviction against law.

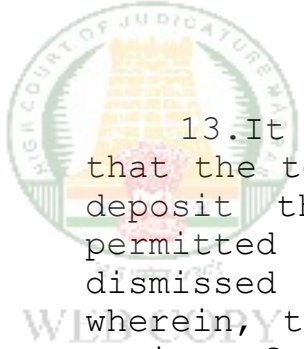
8. According to the respondent/tenant, till November 2011, he was paying the rent regularly to the landlord and the payment duly entered in the pocket note book kept with the 1st petitioner. The 1st petitioner refused to accept the rent for the month of December 2011 when tendered. Further, the landlord attempted illegal eviction which led to filing of injunction suit and the petition to deposit the rent.

9. The landlord who owns the entire building with many portions vacant, with *mala fide* intention sought the portion in occupation of the respondent stating false reason. The plea of additional accommodation, demolition and reconstruction are inconsistent to each other. Therefore, the findings of the Courts below are unassailable.

10. In this case, tenancy is accepted. Monthly rent of Rs.1,100/- is also accepted. The point raised by the landlord is that the respondent/tenant did not pay rent from 01.10.2009 to 29.02.2012, but rushed to Court with false plea. Both the landlord and the tenant admit that receipt for payment of rent never used to be given. The payment of rent is used to be recorded in a pocket note book. The custody of the pocket note book is under dispute. While the landlord says it is with the tenant, the tenant says the pocket note is with the landlord. Under normal circumstances, the person who pays the rent should keep record for his payment.

11. Regarding the payment of rent, the case of the respondent/tenant is that on refusal to receive the rent, he approached the Rent Controller and sought permission to deposit the past rent for the month of December 2011 and January 2012 and future rent. The fact remains that after filing the petition, the tenant has not paid the future rent except seeking permission of the Court to deposit the same. It is seen from Ex.R11, the tenant had been depositing the rent in a separate bank account.

12. The Rent Controller has not taken note of this default, but, relying upon the non production of the pocket note alleged to be in possession of the landlord, has concluded that failure on the part of the landlord to take minimum measures for evicting the tenant on the ground of wilful default should be presumed against



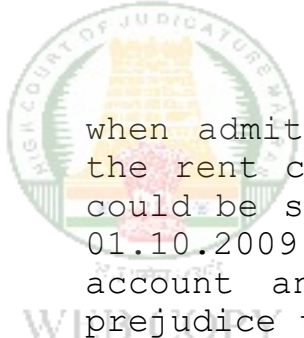
13. It is now pointed out by the counsel for the petitioners that the tenant after filing RCOP.No.38/12, conveniently failed to deposit the rent under the pretext that the Court has not permitted him to deposit the rent. When the Rent Controller dismissed the eviction petition, the landlord filed RCA.No.20/13 wherein, the subsequent default of the tenant was brought to the notice of the Rent Control Appellate Authority. Only thereafter, the tenant deposited Rs.48,400/- being the rental arrears for the period between 01.10.2009 to 31.05.2013 which includes arrears of rent from June 2013 to July 2015. No plausible explanation legally permissible was given by the tenant for the default in payment of rent for a long period covering nearly 26 months.

14. As pointed out earlier, the person who pays the rent should have some record for the payment of rent. The burden of proving the non payment cannot be shifted to the landlord when admittedly a pocket note was maintained for payment of rent. Further, the tenant claims that he was depositing the rent in a separate bank account and receipt for depositing the rent is marked as Ex.R11. The Rent Controller relying upon Ex.R11, has held that there is no wilful default. In so far as the plea of additional accommodation, demolition and re-construction, the Rent Controller and the Appellate Authority have rejected the plea on the ground that they are inconsistent and there is no material to show that the landlord has made any preparatory efforts to demolish and reconstruct.

15. From the records, it could be seen that when the landlord has preferred appeal RCA.No.20/13 aggrieved by the order passed by the Rent Controller, Interlocutory Application No.122/13 has been filed in the said RCA, wherein, the tenant has deposited the arrears of rent from 01.10.2009 to 31.05.2013 and the same has been withdrawn by the landlord without prejudice to his interest. This arrears amount includes the period subsequent to filing of RCOP.

16. On 12.04.2017, when the revision petition was taken up for final disposal, the counsel representing the revision petitioners submitted that the tenant is not depositing the rent as per the order passed in RCOP.No.38/12. The said fact was denied by the respondent counsel and on the next hearing date, i.e., 25.04.2017, the respondent counsel produced the copy of the Lodgement Schedule indicating payment of rent till April 2017.

17. From the receipts produced by the respondent, it is clear that the respondent/tenant has never been in default atleast after instituting RCOP.No.38/12. In so far as the earlier period is concerned, there is no evidence to hold either the payment of rent or non payment of rent. In any event, even if there is any default in payment of rent, it cannot be treated as wilful default



when admittedly the landlord had no habit of issuing receipt for the rent collected. Furthermore, from the Lodgement Schedule, it could be seen that the alleged rental arrears for the period from 01.10.2009 till 31.05.2013 has been deposited in RCA.No.20/13 account and the landlord has also withdrawn the same without prejudice to his interest.

18.Further, it could be seen from the order passed in RCOP.No.38/12, the Rent Controller by order dated 12.09.2016, has permitted the tenant to deposit the rent and since then, there is no default. When the landlord refused to receive the rent and all attempts made by the tenant to tender the rent failed, there is no other go for a *bona fide* tenant except to approach the Court and seek for permission to deposit the rent. No doubt, there is a delay in passing order permitting the tenant to deposit the rent in the Court. However, to show his *bona fide*, the tenant has deposited the money in a separate bank account and immediately after the order passed by the Rent Controller as well as the Rent Control Appellate Authority, he has deposited the same and continued to deposit the rent every month.

19.Under these circumstances, there is no palpable wilful default in payment of rent. Therefore, there is no reason to interfere in the well considered orders of the Courts below.

Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

ASSISTANT REGISTRAR(AE)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1)The Principal Subordinate Judge,
Rent Control Appellate Authority,
Madurai Town.

2)The District Munsif,Rent Controller,
Madurai Town.

+1 CC TO MR.T.R.SUBRAMANIAN, ADVOCATE, SR NO.55889

nbi

MAS/SV-MMS:17.05.2017:5P-4C

Pre-Delivery order made in
CRP(NPD) (MD)No.2414 of 2014
05.05.2017