



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.06.2017

CORAM :

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(PD) (MD)Nos.2469 of 2016
and
C.M.P(MD) .No.11635 of 2016

P.Thibursian Roche : Petitioner/Plaintiff.

vs.

Thommai Rajan : Respondent/Defendant.

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 17.08.2016 passed in I.A.No.94 of 2015 in O.S.No.26 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.R.J.Karthick
For Respondent : No appearance

ORDER

Notice served on the counsel who represent the respondent in the Trial Court. None appeared on behalf of the respondent.

2.This revision petition is directed against the dismissal of the I.A.No.94 of 2015, dated 17.08.2016, filed by the plaintiff seeking leave of the Court to deposit the rent in the Court, since, the respondent / land lord has refused to receive the rent.

3.The factual matrix of the case is that the revision petitioner claims himself as a tenant under the respondent in respect of the suit schedule property. He had been regularly paying the rent till the end of 2014. When he tendered the rent on 12.01.2015, the defendant refused to receive the rent on the premise that the lease tenure has expired and also refused to renew the lease.

4.Contending that the respondent locked the premises through his men and agent forcibly, the suit came to be filed for injunction restraining the respondent or his men and agent from forcibly evicting the revision petitioner herein without following due process of law. In the said suit I.A.No.94 of 2015, has been filed seeking leave of the Court to deposit the admitted rent of Rs.1000/- per month.



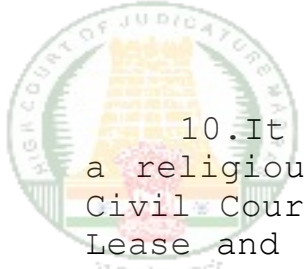
5.The respondent herein has filed counter in the Interlocutory Application, contending that the relief to deposit the rent cannot be sought in the suit and only the Tamil Nadu Building Lease and Rent Control Act, 1960 is applicable and remedy can be sought only under the said Act. Since the lease period of three years expired, the petitioner is only an encroacher upon the suit property.

6.The Trial Court after considering the rival contention has accepted the plea of the respondent and has held that admittedly the lease period of three years expired on 30.12.2014 and the land lord has refused to renew the lease. Therefore, without extension of lease, the revision petitioner is in occupation of the suit property, which tantamount to encroachment. Hence, he is not entitled for the relief sought.

7.Aggrieved by the said order, the present revision petition has been filed on the ground that even an encroacher or trespasser is bound to pay the rent/mesne profits to the owner of the suit property as per the dictum laid down by the Honourable Supreme Court in 2012(5) SCC 370 - Maria Margarida Sequeira Fernandes V. Erasmo Jack De Sequeira and the respondent being a religious institution, Tamil Nadu Building Lease and Rent Control Act is exempted. Therefore, the Civil Court is the only forum to seek redressal by the revision petitioner and he has rightly approached the Civil Court for injunction restraining the landlord from evicting him by force without following the due process of law. Incidentally, to avoid allegation of willful default in payment to rent and to show his bonafide, he has taken out an application to deposit the rent in the Court. Therefore, the order of the Trial Court is bad in law, which warrants interference.

8.Notice to the respondent through his counsel appearing in the Trial Court served. Despite notice no representation for the respondent either in person or through counsel.

9.On perusing the pleadings and the impugned order, prima facie it appears that the revision petitioner entered into an rental agreement with the respondent and has set up a small scale industries in the demise premises and running trade in the said premises since 2011. No doubt, the lease period is three years and it expired by 30.12.2014. The respondent herein has not initiated any eviction proceedings by serving termination notice to the revision petitioner. While so, the revision petitioner is tenant holding over and he can not be treated as a trespasser as decided by the Trial Court. The Trial Court has wrongly understood the status of the revision petitioner and termed him as the trespasser and for that reason it has declined to entertain the application seeking leave of the Court to deposit the rent.



10. It is also to be placed on record that the respondent being a religious institution, the revision petitioner has resorted to Civil Court due to bar under section 29 of Tamil Nadu Building Lease and Rent Control Act. Hence, he has sought for leave of the Court to deposit the rent without prejudice to the maintainability of suit to avoid repercussion and to protect his interest from facing eviction for willful default. It is just and necessary to permit him to deposit the admitted monthly rent, till the disposal of the suit. Though the respondent has not appeared before this Court to contest the revision petition, it is always open to the revision petitioner to agitate all the issues including the maintainability of the suit and the right of the revision petitioner to occupy the premises and any other matter arising out of the suit.

11. As a result, the impugned order of the Trial court passed in I.A.No.94 of 2015, dated 17.08.2016 in O.S.No.26 of 2015 is set aside and the revision petition is allowed. The petitioner is directed to deposit the arrears of the rent in three monthly installments and continue to deposit the rent regularly on or before the 5th day of every month subject to the outcome of the suit and also given liberty to the respondent to withdraw the amount so deposited, without prejudice to his contention in his counter, if the respondent is advised to do so. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To
The Principal District Munsif, Thoothukudi.

+1CC to M/S.R.J.Karthick, Advocate, SR.No. 59849

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