



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2018

Pronounced on: 09.10.2018

WEB COPY

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THE HON'BLE Ms.JUSTICE P.T.ASHA

C.R.P. (NPD) No.1757 of 2005
& C.M.P. No.15585 of 2005

Mani's Institute of Commerce,
represented by its Proprietor,
R.Sathiamurthy

... Petitioner

Vs.

P.Srikanth

... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act of XVIII of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 praying against the Judgment and decree of the Learned VII Judge, Court of Small Causes Madras dated 04.04.2005 passed in R.C.A.No.213 of 1999 confirming the order and decretal order of the learned XV Judge, Court of Small Causes, Madras, dated 30.10.1998. in RCOP.NO.1316 of 1996.

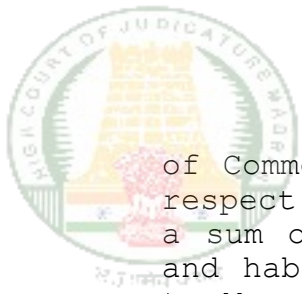
For Petitioner : Mr.R.Neelakandan
For Respondent : Mr.V.Manokaran

O R D E R

The above Civil Revision Petition is filed challenging the order passed by the VII Small Causes, Judge (Appellate Authority) Madras, confirming the order of the XV Small Causes Judge, (Rent Controller) Madras in R.C.O.P.No.1316 of 1996 in and by which the authorities below have ordered the eviction of the revision petitioner from the petition premises on the ground of wilful default.

2. A brief resume of the facts preceeding the filing of this Civil Revision Petition is as follows:-

The respondent herein had filed R.C.O.P.No.1316 of 1996 on the file of the Rent Controller, Chennai stating that the revision petitioner, who is the tenant in respect of the petition premises, was in arrears for the period of August-1995 to May-1996. The respondent would contend that the premises was let out for the non-residential purpose of running a Institute



of Commerce to the revision petitioner who had been a tenant in respect of the portion for over 45 years. The monthly rent was a sum of Rs.700/-. The revision petitioner has been a chronic and habitual defaulter in payment of rents and from August-1995 to May-1996 for the period of 10 months the revision petitioner had not tendered the rents and the rent for June-1996 which was the month on which the Rent Control Petition was filed had also fallen in due.

3. The revision petitioner has filed a counter in which he had submitted that the petition premises originally belonged to one L.A.Parthasarathy, the father of the respondent and he was tendering rents to the said L.A.Parthasarathy. After his death, the owner of the property was the Estate of L.A.Parthasarathy and not the respondent herein. The revision petitioner would further submit that he was in habit for issuing the cheque in favour of the Estate of L.A.Parthasarathy and in August-1995 when the cheque was tendered, the respondent refused to receive the same and demanded a higher rent of Rs.1,200/- and also directed the revision petitioner to pay the rents in his name, which was refused by the revision petitioner. The revision petitioner submits that he had tendered two cheques for Rs.7,000/- and Rs.700/- on the first hearing date i.e., 26.07.1996 but since there was no sitting, the case was adjourned on 14.08.1996. Once again the respondent had brought the cheques but neither the counsel nor the respondent were present and therefore the cheques could be handed over to the respondent counsel only on the next hearing date i.e., 10.09.1996. Therefore, on 10.09.1996 the revision petitioner had cleared the entire arrears. He would submit that he was not in arrears of rents in respect of the petition premises. During cross examination, the revision petitioner would admit that he has not issued any notice to the landlord after the cheques issued by him were refused by the respondent herein. He would also admit that only on 10.09.1996 he had handed over the two cheques for a sum of Rs.7,000/- and Rs.700/- to the counsel appearing for the respondent herein.

4. The Rent Controller, after perusing the evidence and the documents came to the conclusion that the revision petitioner was a defaulter in paying the rents for the period of August-1995 to May-1996 and the default was wilful. The Rent Controller has observed that no steps for depositing the rents had been taken by the revision petitioner and further he has not let in any evidence to show that prior to August-1995, he had been issuing cheques in the name of Estate L.A.Parthasarathy by producing the bank statements and the Rent Controller held that the defence taken by the revision petitioner was one that was created to explain away the default. The Learned Rent Controller, therefore ordered eviction.



5. Challenging this order, the revision petitioner had filed R.C.A.No.213 of 1999 on the file of Learned VII Small Causes Judge, [Appellate Authority], Chennai.

6. The Appellate Authority also held the default by the revision petitioner to be a wilful one particularly when the revision petitioner had not let in any evidence whatsoever to show the steps taken by him to pay the rents after it was refused to be received by the respondent herein. The Appellate Authority therefore confirmed the order of eviction passed by the Rent Controller. It is challenging this concurrent order of eviction that the revision petitioner is before this Court.

7. Mr.R.Neelakandan appearing on behalf of the revision petitioner would submit that there is no default much less a wilful default on the part of the revision petitioner since he had tendered the rent on the very next hearing since he was unable to tender the rent on the first hearing on account of the counsel for the respondent not being available. He would further argue that the entire dispute on account of which there was a non-payment of rents was on account of the fact that the revision petitioner was not knowing the name of the person in whose name the rents have to be tendered it was in these circumstances, the learned counsel would argue, that there was an arrear. Therefore, he would submit that though there is a default, the said default is not wilful, warranting the eviction of the revision petitioner.

8. Mr.V.Manoharan appearing on behalf of the respondent landlord would contend that the revision petitioner had not only committed the default in payment of rents for the period August-1995 to May-1996, his default continues as no rents have been paid after 2009 by the revision petitioner which according to him is a subsequent event that this Court should take note of. He further argued that the entire premises has been become dilapidated and the stairway leading to the petition premises is also very precariously perched and the use of the building would result in some damage to human life as the revision petitioner is running the Typing Institute in the said premises. He also informed this Court that the Corporation of Chennai has issued two notices to the respondent/landlord directing him to demolish the building and since the revision petitioner is squatting on the property, the respondent is unable to demolish the building.

9. Heard the submissions of both the counsel. It is an admitted fact that the revision petitioner had not paid the rents for the period of August-1995 to May-1996. The revision petitioner would justify the non-payment on the ground that the respondent had refused to receive the said cheque since he had demanded the payment in his individual name whereas the revision



petitioner was paying the rent in the name of the Estate L.A.Parthasarathy. The revision petitioner has not able to explain as to why he had not taken any steps to deposit the rents into the Court on account of this confusion with reference to the name of the landlord. In fact no steps whatsoever has been taken in this direction by the revision petitioner. Further when the matter was posted on the first hearing date i.e., 27.06.1996 the revision petitioner had not tendered the rent thereafter the matter was posted on 14.08.1996, on that day also the rent was not tendered, it was only on the third hearing namely on 10.09.1996 when the rent, that too for the period of August-1995 to May-1996 alone was tendered. This clearly shows that the revision petitioner has wilful defaulted in the payment of rents. This Court has also taken note of the subsequent event which was brought to the notice of this Court by the learned counsel for the respondent that with effect from the year 2009, the revision petitioner has stopped paying the rent totally. Therefore considering the supine indifference in payments manifested by the revision petitioner this Court does not find any reason for interfering with the order of the authorities below.

10. In the result, the Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed. In the course of his submissions, the counsel for the petitioner had represented that in the event of the Court dismissing the Civil Revision Petition, the respondent should be given six months time for vacating the premises. The respondent counsel would submit that already the revision petitioner is not running his business in the petition premises and therefore six months was a long period and therefore he should only be granted four months time for vacating the premises. This Court is of the view that the respondent should be given five months time from the date of receipt of a copy of this order to vacate the premises however, the respondent shall give an undertaking that he will vacate the premises within the period of five months and shall continue to pay the rents till then. In the event of the revision petitioner not filing such an affidavit of undertaking, he shall be evicted from the premises after the expiry of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm



To

1. The Learned VII Judge, Small Causes Court, Chennai.
2. The Learned XV Judge, Small Causes Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras-104

+1cc to Mr.V.Manokaran, Advocate, S.R.No.69868

C.R.P. (NPD) No.1757 of 2005

NRL (CO)
CS/13/12/2018