

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.11.2018

Delivered on: 07.12.2018

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD)No.2395 of 2013
and M.P.No.1 of 2013

S.P.Arunachalam
 Ground Floor, Old No.45, New No.101,
 Bharathi Salai (Pycrofts Road),
 Triplicane, Chennai – 600 005 ...Petitioner

vs.

1.Mahabooba
 2.Ali Fathima
 3.S.A.S. Mohamed Ali Jinnah
 4.Kalwath Sahra
 5.Saharani
 6.Siddi Mohideen Fathima
*All residing at New No.129, Kajanayagam Street,
 Melapalayam, Tirunelveli* ...Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent) Control Act, against the Judgment and Decree dated 04/03/2013 passed in RCA.No.498 of 2010 on the file of VIII Judge, Small Causes Court, Chennai confirming the eviction order passed in RCOP.No.1354/2009 dated 21/06/2010 by XIII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.S.J.Jagadev

For Respondents : Mr.K.V.Sundarajan for R1 to R6

ORDER

The instant revision has been filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 as amended by Act 23 of 1973, challenging the judgment and decree dated 04.03.2013 passed in RCA No.498 of 2010, on the file of the VIII Judge Small Causes Court, Chennai, confirming the eviction order passed in RCOP.No.1354 of 2009 dated 21.06.2010 by the XIII Judge Small Causes Court, Chennai.

2.The brief facts leading to the filing of the instant revision are as follows:

(i)The petitioner is a tenant under the respondents in respect of one shop in the eastern side at ground floor at Old No.45, New No.101, Bharathi Salai (Pycrofts Road), Triplicane, Chennai - 600 005. The respondents who are the landlords filed a petition under Section 10(2)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 as amended Act 23 of 1973, against the petitioner for eviction on the ground of wilful default in the payment of the rent.

(ii)It is the case of the respondents that the petitioner failed to pay the rent from January 2009 to June 2009 (six months) despite various reminders and therefore, the petitioner has

committed wilful default in the payment of the rent. The petitioner has also filed a counter statement disputing the contentions of the respondents and stating that arrears of rent for the period from January 2009 to June 2009 was paid in lump sum to the respondents on 06.08.2009 and the monthly rent for the said period was not paid on time only due to the reason that Mr.Shahul Hameed, the person who regularly collects the rent on behalf of the respondents did not collect the same as he did not have the duly signed rental receipts from the respondents.

(iii)Further, the petitioner has stated that the respondents have not given credit for the rental advance of Rs.10,000/- available with them, which was paid by the petitioner on 11.12.2003. Therefore, according to the petitioner, there was no delay in the payment of the rents to the respondents and there is no wilful default as alleged by the respondents.

3.By a judgment and decree dated 21.06.2010, passed in RCOP No.1354 of 2009 by the XIII Judge, Small Causes Court, Chennai, the Rent Controller allowed the petition filed by the respondents and ordered eviction directing the petitioner to vacate the tenanted premises within two months.

4. Aggrieved by the judgment and decree dated 21.06.2010, passed by the Rent Controller in RCOP No.1354 of 2009, the petitioner filed an appeal before the Rent Control Appellate Authority in RCA.No.498 of 2010. The Appellate Authority namely the VIII Judge, Small Causes Court, Chennai by its judgment dated 04.03.2013 in RCA.No.498 of 2010, dismissed the appeal filed by the petitioner and confirmed the judgment dated 21.06.2010, passed by the Rent Controller in RCOP.No.1354 of 2009.

5. Aggrieved by the dismissal of RCA No.498 of 2010, the instant revision has been filed by the petitioner.

I.Submissions of the learned Counsels:

6. According to the learned Counsel for the petitioner, there is no wilful default committed by the petitioner in the payment of the rent to the respondents. According to him, the delay in payment of the monthly rent by the petitioner to the respondents is not wilful but solely due to the reason that Mr. Shahul Hameed, the rent collector for the respondents refused to collect the rent as he did not have the signed receipts of the respondents. Further, he would submit that the entire arrears of rent from January 2009 to June 2009 was paid by the petitioner to the respondents on 06.08.2009 before the first hearing date of RCOP.No.1354 of 2009.

7.He would also further submit that the respondents have not given credit for the rental advance collected by them from the petitioner on 11.12.2003. According to him, if this amount was given credit to, there are no arrears of rent payable by the petitioner to the respondents. Further, he would submit that the respondents revised the rent payable by the petitioner from Rs.1,300/- to Rs.1,800/- per month, which has also been received by the respondents even after filing of RCOP.No.1354 of 2009. But, in the petition, the respondents have pleaded that the monthly rent payable by the petitioner to the respondents is only Rs.1,300/- per month.

8.According to the learned Counsel, having received an enhanced rent of Rs.1,800/- after filing of RCOP.No.1354 of 2009, the non-payment of the rent for the period from January 2009 to June 2009, which was subsequently paid as a lump sum on 06.08.2009, cannot be treated as wilful default.

9.The learned Counsel for the petitioner drew the attention of this Court to a Single Bench judgment of this Court reported in **1996 2 MLJ 579** for the proposition that once the tenant deposits the entire arrears of rent at the time of filing counter, there is no wilful default in the payment of the rent.

10.The learned Counsel for the petitioner also drew the attention of this Court to a Division Bench judgment of the Madras High Court in the case of **Durgai Ammal vs. R.T.Mani** reported in **1989 1 LW 115** for the proposition that when the landlord refuses to receive the rent sent by the tenant it is his fault. He cannot subsequently say that the tenant has not exercised his right given under Section 8, and, therefore, he must be taken to have committed wilful default.

11.The learned Counsel for the petitioner also drew the attention of this Court to another Single Bench judgment of the Madras High Court in the case of **Yusuff vs. Akbar Ali** reported in **TNLJ 1986 114** for the proposition that when the tenant had paid the property tax because he was called upon to pay the same, the adjustment of the property tax paid by the tenant from and out of the rents payable by him to the landlords will not amount to wilful default in the payment of the rent.

12.According to the learned Counsel, applying the said proposition, the respondents who are the landlords ought to have adjusted the rental advance available with them towards alleged arrears of rent and if it was adjusted, there would have been no

arrears of rent payable by the petitioner to the respondents as on the date of filing of the rent control petition in RCOP No.1354 of 2009. Therefore, relying upon the aforementioned decisions, the learned Counsel for the petitioner would submit that there is no wilful default in the payment of the rent to the respondents.

13.Per contra, the learned Counsel for the respondents/ landlord would submit at the outset that both the Courts below namely the Rent Controller as well as the Rent Control Appellate Authority have held based on the materials and evidence available on record that the petitioner has committed wilful default in the payment of the rent to the respondents.

14.He drew the attention of this Court to the findings of the Rent Controller in RCOP.No.1354 of 2009 and the Appellate Authority in RCA.No.498 of 2010 and submitted that both the Authorities below have held that there is no evidence to prove the reasons stated for non-payment of the rent to the respondents on time.

15.He drew the attention of this Court to the observations recorded by the Rent Controller in its judgment dated 21.06.2010 in

RCOP.No.1354 of 2009, wherein the Rent Controller has observed that the petitioner (RW1) in his evidence has introduced a new case as if he contacted the third respondent but as he was directed to contact his uncle, the petitioner tried to pay the rents to the respondents uncle but the respondent's uncle again evaded to receive the rent which time resulted in delayed payment of rent.

16.The learned Counsel for the respondents drew the attention of this Court to the observations of the Rent Controller in its judgment dated 21.06.2010, passed in RCOP.No.1534 of 2009.

8.Further alleged due period is from February 2009 to June 2009. The respondent contends that the petitioners uncle Shahul Hameed used to collect the rents from the respondent and give the receipts signed by the 3rd petitioner but when he went to pay the rent in the month of March 2009 for February 2009 the petitioners uncle asked him to pay the later as he is not having receipts signed by the 3rd petitioner/PW1. The respondent further contends that as the petitioners uncle promised to receive the rent later he was waiting for the petitioners representatives to collect the rents and on 6.9.09 the 3rd petitioner himself came and collected the rental arrears at the enhance rate. But it is pertinent to note that RW1 in his evidence has introduced a new case that he contacted the 3rd petitioner but as he directed to contact his uncle, the respondent tried to pay the rents to the petitioners uncle, but the petitioners uncle again evaded from receipt of rent so he

could not pay the rents. The fact that the petitioners uncle used to collect the rent and pass receipts there on is admitted fact but the petitioners contends that the respondent only failed to pay the rents. It is pertinent to note that even after the refusal by the petitioners uncle to receive the rents inspite of the direction by the 3rd petitioner, admittedly the respondent has not informed the 3rd petitioner about the same and further the respondent has not taken any steps to pay the rents directly to the petitioners. It is the duty of the tenant to pay the rents without expecting any demand notice from the landlords. But admittedly, even according to the respondent he has not taken any steps to pay the arrears of rent except attempting to pay the rent to petitioners uncle. Hence in view of the above facts and findings it is clear that the respondent has committed default and there is no evidence to prove the reasons stated by the respondent for non payment of rent.

9. The respondent contend that even before the first hearing of the case the 3rd petitioner has come to his shop and collected the rents for the due period at the enhanced rate so there is no default. The respondent relies on Ex.R1 to prove the payment of rent for the period February 2009 to June 2009. The perusal of Ex.R1 disclose that the arrears of rent has been paid by the respondent and the same is admitted by PW1 also. As such it is proved that the rent default period has been paid. The petitioners contend that the said amount has been paid only after filing of the RCOP petition, so the payment of arrears will not defeat the rights of the petitioners. On the other hand, the respondent contends that the arrears has been paid even before receipt of summons. Admittedly the summon has been received only on 10.8.09 and rent has been paid on 6.8.09

itself. Ex.R1 itself, so the respondent is aware of the proceedings on the date of payment of arrears. The respondent admits that case number of this petition has been mentioned thereon in Ex.R1 but contend that the petitioners gave different reasons stating that the said number relates to different dispute. Even assuming that the respondent was not aware of the filing of the eviction petition on the date of payment of rent on 6.8.09 it is obvious to note that he had waited for the landlord to come and receive the rents without taking any steps to pay the same for more than six months. Further even accepting the respondent contention is that the rent was enhanced by the petitioner from Rs.1,300/- to Rs.1,800/- on 6.8.09 there is arrears of rent for six months, but five months rents only has been paid. Hence there is default for one month even on the date of filing hearing date. It is settled law that the payment of arrears on the first hearing and the subsequent payment will not excuse the tenant from wilful default.

17.The learned Counsel for the respondents also drew the attention of this Court to the findings of the Rent Control Appellate Authority in its judgment dated 04.03.2013 in RCA No.498 of 2010.

8.The appellant/tenant has paid the rental arrears only on 6.8.2009 for the period of February 2009 to June 2009 amounting to Rs.9,000/-. It was marked as Ex.R1 in PW1 cross examination. The appellant/tenant was examined as RW1 and Ex.R1 & Ex.R2 were marked in the trial court. The

cross examination dated 22.4.2010 of RW1 is explained the factual aspects. The deposition are as follows:

khhr; 2009y; kDjhuUf;F bjhiyngp K:yk; bjhlh;g[bfhz;L 3k; kDjhuh; \hFy; +kPJ bfhLj;J tpLthh; vd epidj;J ehd; nfl;ftpy;iy. kDjhuh;fspd; bgahpy; ehd; thlif gzj;ij tiunthiyahf mDg;gtpy;iy. MtUila bgah; bjhpahjjhy; mDg;gtpy;iy. It means that the rental arrears has been paid in lump sum manner on 06.08.2009, before the 1st hearing dated 11.9.2009 of trial court proceedings. Subsequently the same has been paid to the respondents/landlords. In this situation the delay payment whether treated as default or wilful default.

9.The appellant/tenant has been following the style of payment of rent to the landlord in succeeding month payment method. Now, the burden shifted to the appellant/tenant to explain his bonafide for delay payment. If the default without any bonafide reason it amounts to wilful default.

10.But the appellant/tenant has not taken any steps for payment of rent for the period from January 2009 to June 2009. He has not utilised the benefits under Sec.8 of the Tamil Nadu Buildings (Lease and Rent Control) Act. The duty of the tenant to pay the monthly rent regularly as prescribed under statue 10(2)(i) without expecting any demand from the landlords in this regard. The rent is paid by the tenant not on mercy ground. It is paid for utilisation of petition premises which was owned by the landlords. The style and payment of rent either agreed in terms or succeeding months. Suppose any inconvenience in payment of rent, in the circumstances the

tenant can utilise the Sec.8 of the Tamil Nadu Buildings (Lease and Rent Control) Act. But any how the legal duty of the tenant cannot shifted or diluted in any averments or any facts.

18.Relying upon the findings of the Rent Controller as well as the Appellate Authority, the learned Counsel for the respondents would submit that in view of the concurrent finding given by the Courts below is based on proper appreciation of evidence, there are no grounds made out by the petitioners to interfere with such concurrent findings.

19.The learned Counsel for the respondents also drew the attention of this Court to a Single Bench judgment of the Madras High Court in the case of **Gumani Bai and Others vs. K.Muthusamy** reported in **2011 1 CTC 526** wherein Madras High Court has held that concurrent findings have been arrived by the Courts below which has been arrived by proper appreciation of oral and documentary evidence on record, the High Court under Section 25 of the Rent Control Act is not an Appellate Court to re-appraise or reverse the concurrent findings of the Courts below. The learned Counsel referred to para 15 of the said judgment which reads as follows:

15. Thus, in view of the concurrent finding arrived at by the Courts below, which according to this Court has been done on proper appreciation of the oral and documentary evidence on record, there are no grounds made out by the Petitioners to interfere with such concurrent findings. Time and again, the Hon'ble Supreme Court while considering the scope and jurisdiction of this Court under Section 25 of the Act held that this Court is not an Appellate Court to re-appraise or reverse the concurrent findings of the Courts below by coming to a different conclusion contrary to the findings arrived at by the Courts below. As held by the Hon'ble Supreme Court, in Sri Rajalakshmi Dyeing Works v. Rangaswamy Chettiar, 1980 (4) SCC 259, and followed by the Hon'ble Supreme Court in the latest decision in Speedline Agencies v. T. Stanes & Co. Ltd., 2010 (4) CTC 573 (SC) : 2010 (6) SCC 257, that the jurisdiction of this Court under Section 25 of the Act may not be as narrow as the power under Section 115, C.P.C. but it is not wide enough to make the High Court a second Court of First Appeal. The findings rendered by the Courts below is based on proper appreciation of evidence and therefore this Court finds no justifiable reasons to interfere with the concurrent findings of the Courts below.

20. Therefore, according to the learned Counsel for the respondents, no ground has been made out by the petitioner for entertaining this revision.

II. Discussion:

21. The instant revision has been filed by the tenant challenging the concurrent findings given by the Rent Controller as well as the Rent Control Appellate Authority holding him to be a wilful defaulter in the payment of the rent to the respondents. It is an admitted fact that the petitioner did not pay the monthly rent on time to the respondents. He had paid arrears of rent payable from January 2009 to June 2009 only on 06.08.2009 on lump sum basis. The Rent Controller has observed that even assuming the petitioner was not aware of the filing of eviction petition on the date of payment of rent on 06.08.2009, it is obvious to note that he had waited for the respondents to come and receive the rents without taking any steps to pay the same for more than six months.

22. The Rent Controller has also further observed that even accepting the petitioners contention that the rent was enhanced by the respondents from Rs.1,300/- to Rs.1,800/- on 06.05.2009, there were arrears of rent for six months, but five months rent alone was paid by the petitioner. Based on these findings, the Rent Controller has come to the conclusion that the petitioner is a wilful defaulter in the payment of rent to the respondents.

23.The Appellate Authority in its judgment dated 04.03.2013 in RCA.No.498 of 2010 has observed that the petitioner has not taken any steps for payment of rent for the period from January 2009 to June 2009. He has not utilized the benefits under Section 8 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 by depositing the rent into Court for the alleged refusal of the respondents to receive the rent. The Appellate Authority has accepted the findings of the Rent Controller in RCOP.No.1354 of 2009 and has dismissed the appeal.

24.In view of the categorical findings given by the Rent Controller as well as the Appellate Authority based on the materials and evidence available on record that the petitioner is a wilful defaulter in the payment of the rent for the reasons aforesaid, the judgments relied upon by the learned Counsel for the petitioner are not applicable to the facts of the instant case. As rightly submitted by the learned Counsel for the respondents when both the Courts below have given a concurrent finding based on materials and evidence available on record that the petitioner is a wilful defaulter in payment of rent to the respondents, this Court cannot re-appreciate the evidence and reverse the concurrent findings in a revision filed under Section 25 of the Tamil Nadu Buildings (Lease &

Rent Control) Act, 1960. The judgment cited by the learned Counsel for the respondent reported in 2011 1 CTC 526 is squarely applicable for the facts of the instant case. This Court cannot re-appraise or reverse the concurrent findings of the Courts below, by coming to a different conclusion since the findings of the Courts below are in accordance with law and were given only based on the materials and evidence available on record.

25. In the result, this Court does not find any merit in the contentions raised by the petitioner. Accordingly, the Civil Revision Petition fails and the same is dismissed. The petitioner shall vacate and handover the vacant possession of the respondents premises within a period of two months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

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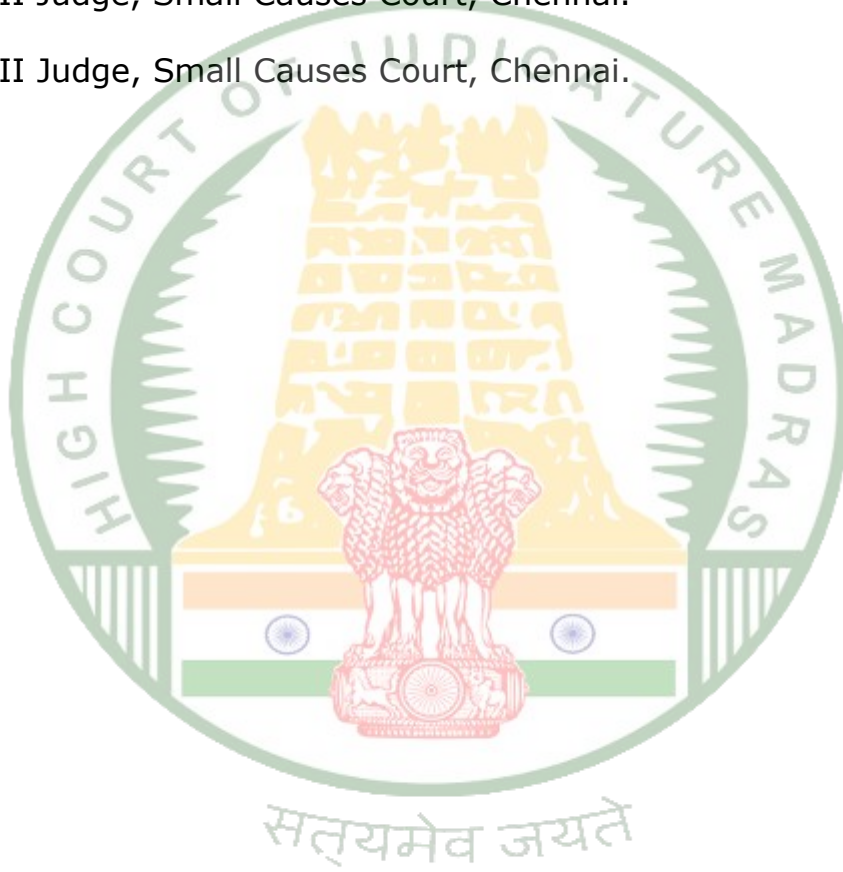
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Index: Yes
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Speaking order/Non-speaking order

To

1.The VIII Judge, Small Causes Court, Chennai.

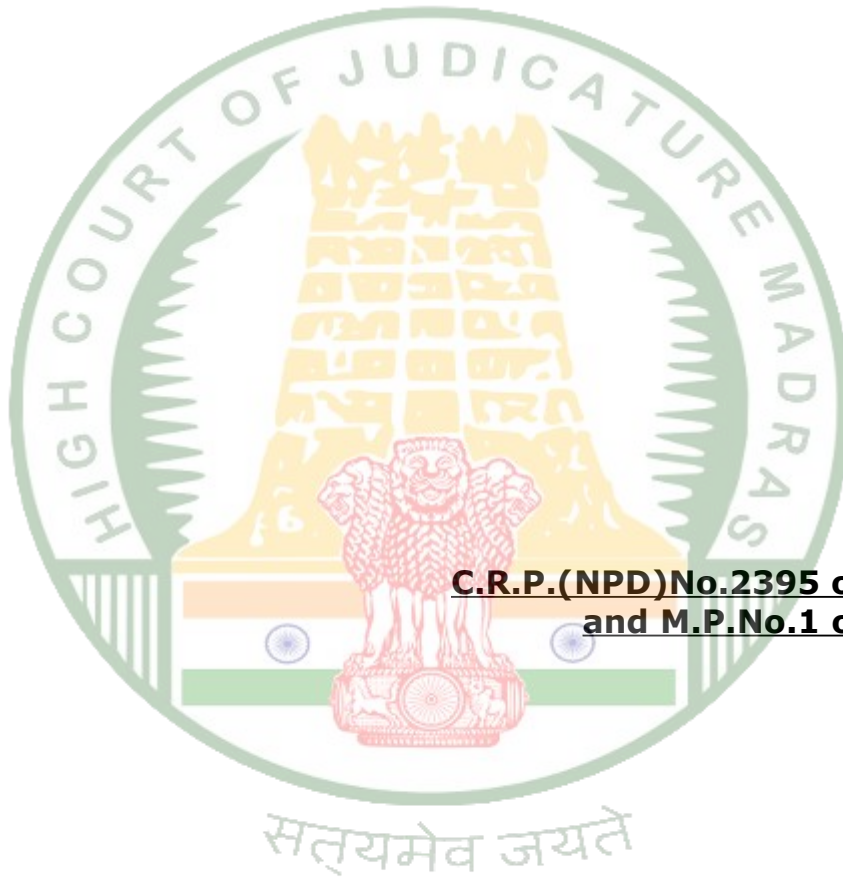
2.The XIII Judge, Small Causes Court, Chennai.



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