

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.2396 of 2013

Selvaraj,
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.516 of 2010 on the file of VIII Judge, Small Causes Court, Chennai confirming the eviction order passed in RCOP.No.1353/2009 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.516 of 2010, on the file of the VIII Judge Small Causes Court, Chennai, confirming the eviction order passed in RCOP.No.1353 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 western 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 only due to the refusal of the respondents to receive the rent, there was a delay in the payment of the rent to the respondents. According to the petitioner, the rents were collected from the petitioner by the Agents of the respondents and they were in the habit of receiving the rent from the petitioner once in two or three months or sometimes four months. According to the petitioner, since nobody came forward to receive the rents, he contacted the third respondent Mr.S.A.S.Mohamed Ali Jinnah to receive the rents for the period from January 2009 to June 2009. But, he did not respond to the same and only after receipt of the hearing notice dated 05.08.2009 from the Rent Controller in RCOP.No.1353 of 2009, he came to know that RCOP has been filed by the respondents which has posted for first hearing on 11.09.2009. According to the petitioner, immediately, the petitioner sent the rents for the aforesaid months by money order but the same was returned on 02.09.2009 as "refused". According to the petitioner, on 11.09.2009, on the date of the first hearing of RCOP.No.1353 of 2009 a sum of Rs.10,000/- was paid to the Counsel for the respondent in the open Court and the said Rs.10,000/- comprised of Rs.9,000/- towards rent from January to

June 2009 and Rs.1,000/- towards part of July 2009 rent. According to the petitioner, subsequently on 29.09.2009, the petitioner paid to the Counsel for the respondents a sum of Rs.500/- towards balance rent for July 2009 and Rs.1,500/- towards August 2009 rent. Therefore, according to the petitioner, there are no arrears of rent payable by him to the respondents and therefore, there is no wilful default in the payment of the rent. It is also the case of the petitioner that the respondents had demanded higher rent amounting to Rs.4,000/- per month for 90 sq.ft. Shop for which the petitioner has accepted to enhance by another Rs.500/- i.e. Rs.2,000/- instead of Rs.1,500/-, but the respondents have not accepted the same.

(iii) It is also the case of the petitioner that as per the instructions of the respondent's agent at Chennai, he paid property tax for I half year 2004-05 to II half year 2006-07 for VI half years to a sum of Rs.6,888/- relating to the entire property at Old No.45, Bharathi Salai Chennai - 600 005 and the said amount has not been repaid by the respondents to the petitioner in spite of repeated reminders and demands. With these averments, the petitioner has stated in his counter statement that there is no wilful default in the payment of rents to the respondents.

3.By a judgment and decree dated 21.06.2010, passed in RCOP.No.1353 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.1353 of 2009, the petitioner filed an appeal before the Rent Control Appellate Authority in RCA.No.516 of 2010. The Appellate Authority namely the VIII Judge, Small Causes Court, Chennai by its judgment dated 04.03.2013 in RCA.No.516 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.1353 of 2009.

5.Aggrieved by the dismissal of RCA.No.516 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.S.A.S.Mohamed Ali Jinnah, the agent for the respondents refused to collect the rent either directly or refused to collect the money order which was returned as "refused". Further, he submits that the entire arrears of rent from January 2009 to June 2009 was paid by the petitioner to the respondents on 11.09.2009 the first hearing date of RCOP.No.1353 of 2009.

7.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.

8.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.

9.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 landlord will not amount to wilful default in the payment of the rent.

10.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.

11.He drew the attention of this Court to the findings of the Rent Controller in RCOP.No.1353 of 2009 and the Appellate Authority in RCA.No.516 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.

12.The learned Counsel for the respondents drew the attention of this Court to the findings of the Rent Controller in its judgment dated 21.06.2010, passed in RCOP.No.1353 of 2009.

In the present case, admittedly the rent arrears is Rs.9,000/- for the period January 2009 to June 2009. But the perusal of Ex.R3 money order receipts disclose that a sum of Rs.10,000/- has been paid towards the rent of January 2009 to July 2009. The admitted quantum of rent is Rs.1500/- and as such the total due comes to Rs.10,500/- but the amount sent by money order is Rs.10,000/-. The reasons stated by the respondent for the same is that Rs.500/- has been deducted as cost of the case which is not permissible as per law and further it is pertinent to note that Ex.R3 has been sent in September 2009 therefore by that time even though August month rent is due the same has not been sent. As such the respondent contention that entire arrears has been paid even before the first hearing date is not correct. Further even on the first hearing date the very same amount of Rs.10,000/- has been tendered in court and it has been received by the petitioner without prejudice his case. As such, the respondent contention is that he has paid the entire arrears on the first hearing date is not correct under the above citation cannot be taken in favour of the respondent.

12.The petitioner contention is that only after filing of the case of the respondent has sent to the rents so he had refused to receive the same. Admittedly, the respondent has received the summons on 10.8.09 and the rent has been sent only on 6.9.09. As such, the petitioners contention is correct and acceptable.

13. The respondent next contention is that the petitioners agent used to collect the rents in lumpsum once in few months and so he thought the petitioners agent would collect the rents in lumpsum for the alleged due period so he did not take any steps to pay the rents. The respondent relies on Ex.R1 to prove the lumpsum payments. The perusal of Ex.R1 disclose that the rent for September 2007 to October 2007 has been paid under one receipt. However, even though the respondent admits that the petitioners used to give receipts for payment of rent no other receipt has been produced to prove lumpsum payments and further even assuming that the petitioners agent used to collect the rents in lumpsum, it is obvious to note that the RW1 claims that the petitioners agent had refused to receive the rent is continued silent waiting for the petitioners agent in lumpsum is not acceptable.

13. 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.516 of 2010.

11. As per the oral evidence of RW1 that there was a telephone conversation between the parties and dispute lightly developed in the telephone conversation. The appellant/tenant was examined as RW1 and Ex.R1 to Ex.R4 were marked in the trial court. The cross examination dated 12.4.2010 of RW1 is explained the factual aspects. The deposition are as follows:

\$dthp 2008 Kjy; xt; bthU khj thlifa[k; mLj;j khjk; 10k; njjpf;Fs; bfhLj;J tpLntd; vd;W brhd;dhy; rhpjhd;. ork;gh; 2008 tiu khjk; U:.1500/- tPjk; thlif bfhLj;J te;njd; vd;why; rhpjhd;. \$dthp 2009f;fhd thlifa bfhLj;JnghJ kDjhuh;fs; cah;j;jp nfl;L thq;f kWj;J tpl;lhh;.

Xt;bthU khj thlifa[k; bfhLf;f brd;nwhk;. Mdhy; thq;f kWj;J
 tpl;lhh;fs;. Cuf;F nghd; bra;J brhd;dngHJ te;J thq;Ftjh
 brhd;dhh;fs;. Mdhy; thq;f tutpy;iy. \hFy; +kPJf;F kzpahh;lh; K:yk;
 thlif gzj;ij mDg;gtpy;iy. \$dthp 2009f;Fg; gpwF xt;bthU khj thlifa[k;
 \hFy; +kPJf;F mDg;g ehd; Kaw;rp bra;atpy;iy. *But the
 appellant/tenant has not taken any steps for payment of rent
 for the period from January 2009 to June 2011. 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.*

14.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.

15.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 when concurrent findings have been arrived at by the Courts below on 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.

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

II. Discussion:

17. 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. According to him, he paid the arrears of rent payable from January 2009 to June 2009 only on 11.09.2009 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 11.09.2009, 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.

18.It is an admitted case of the petitioner that he tendered the arrears of rent for the months of January 2009 to June 2009 only on 11.09.2009, being the date of the first hearing of RCOP. Even according to him, a sum of Rs.10,000/- was paid on 11.09.2009 towards the monthly rents payable from January 2009 to June 2009 and a part of the monthly rent for July 2009. The petitioner has also admitted that subsequently he paid a sum of Rs.500/- + Rs.1,500/- towards the rent for the months of July 2009 and August 2009. It is also pertinent to note Ex.R3 the money order receipt discloses that the arrears of rent was sent only in September 2009. By that time, the August month rent also become due and payable which the petitioner has not paid. The Rent Controller has rightly considered all these factors and has come to the conclusion that the petitioner is a wilful defaulter in the payment of the rent.

19.The Appellate Authority in its judgment dated 04.03.2013 in RCA.No.516 of 2010 has also 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.1353 of 2009 and has dismissed the appeal.

20. 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 to 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.

21. 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. No costs.

07.12.2018

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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ABDUL QUDDHOSE, J.

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To

- 1.The VIII Judge, Small Causes Court, Chennai.
- 2.The XIII Judge, Small Causes Court, Chennai.



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