

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3073 of 2014
& M.P.No.1 of 2014

Sukhraj Barola

.. Petitioner

Vs.

1.D.Ramesh

2.D.Suresh

.. Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree dated 26.06.2014 made in R.C.A.No.458 of 2013 on the file of the VII Small Causes Court, Chennai, confirming the fair and decretal order dated 16.08.2013 made in R.C.O.P.No.1991 of 2012 on the file of the XIII Small Causes Court, Chennai.

For Petitioners

: M/s.R.Basthimal Jambar

For Respondents

: Mr.P.B.Balaji

ORDER

This Civil Revision Petition is filed against the judgment and decree dated 26.06.2014 made in R.C.A.No.458 of 2013 on the file

<http://www.judis.nic.in> of the VII Small Causes Court, Chennai, confirming the fair and

decretal order dated 16.08.2013 made in R.C.O.P.No.1991 of 2012 on the file of the XIII Small Causes Court, Chennai.

2.The petitioner is the tenant and respondents are the landlord in R.C.O.P.No.1991 of 2012 on the file of the XIII Small Causes Court, Chennai. The respondents filed the said R.C.O.P against the petitioner for eviction on the ground of wilful default. According to the respondents, earlier, they filed R.C.O.P.No.1576 of 1999 for fixation of fair rent. The learned Rent Controller, by the judgment dated 18.02.2003, fixed the fair rent at Rs.3,416/-. The learned Appellate Authority, by the judgment dated 21.07.1999, modified the said order and fixed the fair rent at Rs.3,100/-. The petitioner was paying only contractual rent of Rs.500/-. After dismissal of R.C.A.No.458 of 2013, the respondent issued notice giving 15 days time to pay the difference amount. The petitioner received the notice. He neither sent reply, nor paid the arrears of rent. He filed C.R.P.No.1407 of 2009 against the respondents and their mother. When the Civil Revision Petition came up for admission, this Court directed the petitioner to deposit a sum of Rs.1,50,000/- as condition for stay. The petitioner complied with the said order. Subsequently, by the order dated 30.03.2012, this Court dismissed the said Civil Revision Petition, directing the petitioner to

pay the entire arrears of fair rent within a period of eight (8) weeks from the date of receipt of a copy of the order passed in the said Civil Revision Petition. The time granted by this Court has expired on 01.08.2012. The petitioner did not pay the differential amount between the contractual rent and fair rent. The respondent filed present R.C.O.P.No.1991 of 2012 for eviction on the ground of wilful default.

3.The petitioner filed counter statement in the said R.C.O.P and denied all the averments and contended that mother of the respondent, D.Prema is also a co-owner. She was party to the earlier R.C.O.P.No.1576 of 1999 filed for fixation of fair rent. Non-joining of the mother of the respondents, a co-owner, the R.C.O.P.No.1991 of 2012 is not maintainable. The respondents have not sent any calculation memo after dismissal of the Civil Revision Petition, demanding the differential amount between the contractual rent and fair rent. The petitioner was regularly paying the rent and there is no arrears. During the pendency of the R.C.A.No.458 of 2013 and C.R.P.No.1407 of 2009, there was stay and fair rent was finally decided. The money order sent by the petitioner in August 2012 was refused by the respondents. The petitioner himself calculated difference in rent and tendered Rs.2,70,600/- to the

respondents on the first date of hearing. The respondents and their counsel were absent on that day. The learned Rent Controller recorded the tendering of the rent by the petitioner. Subsequently, the counsel for the respondents received the said amount and therefore, prayed for dismissal of the present R.C.O.P.

4. Before the learned Rent Controller, the first respondent examined himself as P.W.1 and marked 5 documents as Exs.A1 to A5. The petitioner examined himself as R.W.1 and marked 8 documents as Exs.R1 to R8.

5. The learned Rent Controller, considering the pleadings, oral and documentary evidence and order of this Court made in C.R.P.No.1407 of 1999, held that the petitioner has committed wilful default and allowed R.C.O.P, ordering eviction.

6. Against the said fair and decretal order dated 16.08.2013 made in R.C.O.P.No.1991 of 2012, the petitioner has filed R.C.A.No.458 of 2013.

7. The learned Appellate Authority independently considering all the materials available on record, judgments relied on by the

parties, by the judgment and decree dated 26.06.2014, dismissed R.C.A, confirming the order of the learned Rent Controller.

8. Against the said judgment and decree dated 26.06.2014 made in R.C.A.No.458 of 2013, confirming the fair and decretal order dated 16.08.2013 made in R.C.O.P.No.1991 of 2012, the present Civil Revision Petition is filed by the petitioner.

9. The learned counsel for the petitioner contended that fixation of fair rent was finalised only when this Court disposed the C.R.P.No.1407 of 1999. After considering the order, the respondents did not issue any notice claiming the payment of differential amount between the contractual rent and fair rent. They have not furnished any calculation memo. The petitioner was regularly paying the rent and money order sent by the petitioner to the respondents was refused by them. The petitioner, on the first date of hearing of R.C.O.P, tendered entire arrears. The respondents refused to receive the arrears of rent. Subsequently, the counsel for the respondents received the rent. The Courts below failed to see that R.C.O.P initiated by the respondent is liable to be dismissed as D.Prema, the mother of the respondents, one of the co-owners was not impleaded as party to the present proceedings. The R.C.O.P.No.1991 of 2012 is

not maintainable as respondents did not give notice calling upon the petitioner to pay the differential rent between the contractual rent and fair rent and prayed for allowing the Civil Revision Petition.

10.Per contra, the learned counsel for the respondents submitted that any one of the co-owners can maintain the R.C.O.P. It is not necessary that all the co-owners must be party to the proceedings. After dismissal of the R.C.A.No.458 of 2013, the respondents called upon the petitioner to pay the differential rent. Without sending any reply or paying the difference amount, the petitioner has filed the C.R.P.No.1407 of 2009. On 30.03.2012, this Court dismissed the said C.R.P.No.1407 of 2009, granting eight weeks time for the petitioner to pay the differential amount between the contractual rent and fair rent, from the date of receipt of a copy of that order. The petitioner after receiving the said order, failed to pay the amount within eight weeks from the date of receipt of a copy of that order. The petitioner has not explained as to why he did not pay the amount as directed by this Court and tendering of the rent on the first hearing of the present R.C.O.P.No.1991 of 2012 will not amount that petitioner has not committed wilful default. The petitioner has not paid even contractual rent for the month of July 2012.

11. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

12. The first contention of the learned counsel for the petitioner is that R.C.O.P.No.1991 of 2012 is not maintainable as one of the co-owners was not joined in the proceedings is without merits. It is not necessary that all the co-owners must join in the proceedings. Any one of the co-owners can file the petition for eviction. The second contention of the learned counsel for the petitioner that petitioner did not pay the differential rent between the contractual rent and fair rent fixed on the ground that respondents did not issue notice demanding differential amount by granting 15 days notice is also without merits. This Court, while dismissing the C.R.P.No.1407 of 2009 filed by the petitioner has granted eight weeks time from the date of receipt of a copy of that order to pay the differential rent between the contractual rent and fair rent. Instead of fifteen days, the petitioner had eight weeks from the date of receipt of a copy of that order. In view of the order of this Court granting eight weeks time to the petitioner to pay the differential amount, the contention of the learned counsel for the petitioner that respondents failed to give fifteen days notice is not

acceptable. Both the Courts below, by appreciating the evidence, held that petitioner was paying only contractual rent and failed to pay even the contractual rent for the month of June 2012. This is a finding on the facts based on the appreciation of the facts by the Courts below. Only when such finding is perverse or contradictory to the evidence on record, this Court can interfere with such finding of facts. In the present case, this Court finds there is no reason to interfere with the finding of the facts of Courts below.

13. For the above reason, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

14. The learned counsel for the petitioner seeks time until April 30, 2018 to vacate the premises and he will file an affidavit of undertaking to that effect. For filing the affidavit of undertaking, post the matter on 16.02.2018.

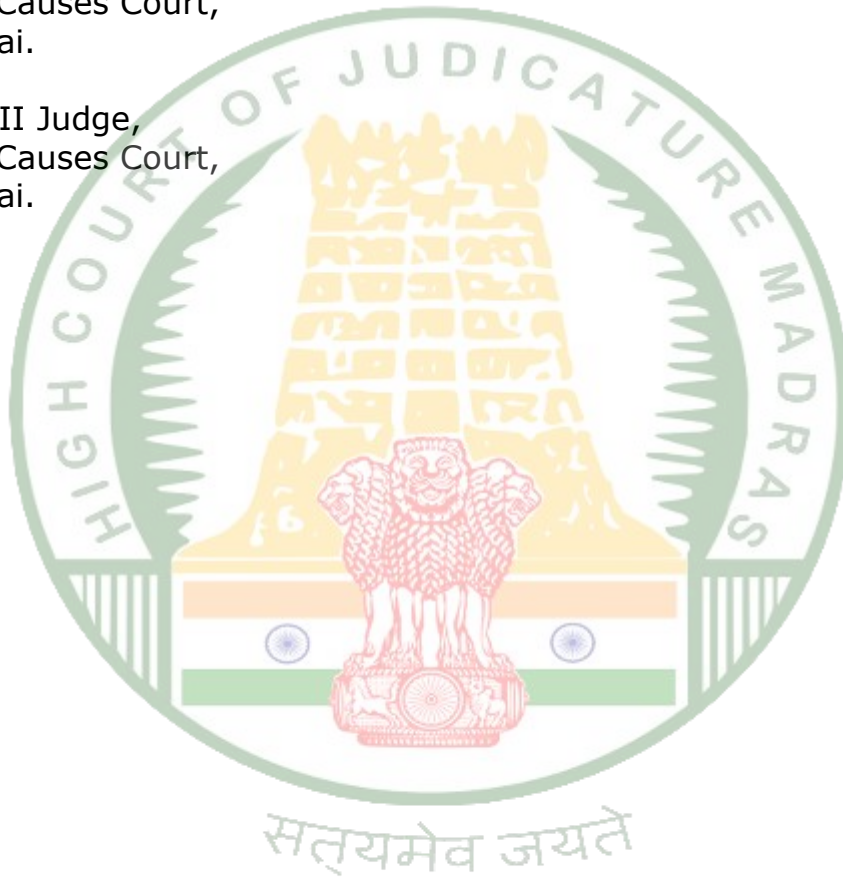
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Index : Yes

Speaking Order/ Non-Speaking Order

To

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



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V.M.VELUMANI,J.

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V.M.VELUMANI,J.

The Civil Revision Petition is posted today for filing affidavit of undertaking by the petitioner. The learned counsel for the petitioner filed an affidavit of undertaking to vacate and deliver vacant possession of the petition premises on or before 30.04.2018. The affidavit of undertaking is taken on file and the same is recorded. The same will be part and parcel of this order. The petitioner is directed to vacate and hand over petition premises to the respondents on or before 30.04.2018.

19.02.2018

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