

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (NPD) No.3485 of 2014

C.Mothichand ... Petitioner

Vs

R.Nandakumar ... Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the judgment and decree passed in RCA No.1 of 2013, the decree dated 18.07.2014 passed by the learned The Principal Sub Judge (Rent Control Appellate Authority) at Mayiladuthurai reversing the judgment and decree passed in RCOP No.2 of 2012, the decree dated 18.12.2012 on the file of the Rent Controller (the Principal District Munsif), Mayiladuthurai.

For petitioner : Mr.A.Aridas

For Respondent : Mr.S.Sounthar

ORDER

This Civil Revision Petition is filed against the judgment and decree passed in RCA No.1 of 2013, the decree dated 18.07.2014 passed by the learned The Principal Sub Judge (Rent Control

Appellate Authority) at Mayiladuthurai reversing the judgment and decree passed in RCOP No.2 of 2012, the decree dated 18.12.2012 on the file of the Rent Controller (the Principal District Munsif), Mayiladuthurai.

2. The petitioner is the landlord and the respondent is the tenant in RCOP No.2 of 2012 on the file of Principal District Munsif, Mayiladuthurai. The petitioner filed the above said RCOP against the respondent for eviction on the ground of wilful default and owner's occupation. According to the petitioner, the respondent and his brother originally took the petition premises for running a medical shop. Subsequently, during middle of the year 2006, the said medical shop was closed and the respondent alone started a xerox and cellphone recharging business in the petition premises. The tenancy is oral and the monthly rent is Rs.2,000/-. The petitioner endorsed the rent receipt in the note book (kachattu) for every month which is in the custody of the respondent. The respondent paid rent upto December 2010 however, stopped paying the rent thereafter. The petitioner issued notice to the respondent on 28.09.2011. The respondent sent reply containing false allegations. The respondent sent a sum of Rs.4000/- claiming monthly rent as Rs.1,000/-. According to the petitioner, monthly

rent is Rs.2,000/- and petitioner adjusted the sum of Rs.4,000/- sent by the respondent towards rent for the month of January and February 2011. A re-joinder was sent by the petitioner to the respondent. The respondent sent a sum of Rs.1,000/- on 01.11.2011, another sum of Rs.1,000/- on 12.12.2011 and Rs.1,000/-. The petitioner adjusted the said amounts towards rent for the month of March 2011 and half monthly rent for April 2011. Till January 2012, arrears of rent is Rs.19,000/- and non-payment of rent by the respondent is wilful and respondent has committed wilful default.

2(a) The son of the petitioner is a computer engineer and he is settled with the petitioner at Mayiladuthurai. The petitioner's son requires the petition premises for running a computer oriented business. The petitioner denied that his son is working in a Multi-National Company at Chennai and stated that the petition premises is required for his personal occupation and his requirement for the same is bonafide. In the said circumstances, the petitioner filed the present RCOP for eviction of the petitioner on the ground of wilful default and owner's occupation.

2 (b) The respondent filed counter statement and stated that he became tenant under the petitioner in the year 1991 and the rent was fixed at Rs.400/- per month. The respondent paid a sum of Rs.40,000/- as advance. In the year 2005, the petitioner demanded an additional sum of Rs.35,000/- as advance and the same was paid by the respondent. The rent was enhanced to Rs.750/- per month and the present rent is Rs.1,000/- per month. The petition shop is measuring only 150 sq.ft. The respondent denied that the rent is Rs.2,000/- and stated that he is paying the rent regularly. The petitioner endorsed the rent receipt in the note book (kachattu) for every month. When the respondent paid the rent for the month of March 2011, the petitioner demanded further sum of Rs.25,000/- as advance. However, the respondent refused to pay the same. Due to the said fact, the petitioner took the rent receipt note book (kachattu) stating that the book will be returned after respondent paying the further advance of Rs.25,000/-. The four months rent was again sent alongwith reply notice and subsequent month rent through banker's cheque and there is no arrears of rent. If the advance amount of Rs.75,000/- is adjusted towards the arrears of rent, if any, there will not be any arrears. The alleged requirement of the petition premises by the petitioner for the occupation of his son is not bonafide as the petitioner's son

is employed in Multi-National Company at Chennai and he is not residing at Mayiladuthurai. There are seven shops in the complex. The petition shop is very small shop (150 sq.ft.). The shop in the first floor fell vacant and the petitioner is in occupation of the said portion. If the requirement of the petitioner is true, he would have occupied the said shop and hence the requirement of the petitioner is not bonafide.

3. Before the Rent Controller, the petitioner examined himself as PW1 and marked six documents as Exs.A1 to A6. The respondent examined himself as RW1 and marked one document as Ex.B1. The learned Rent Controller, considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the parties, allowed the RCOP ordering eviction of the respondent by granting two months to vacate and handover the possession of the petition premises to the petitioner.

4. Against the said order dated 18.12.2012 made in RCOP No.2 of 2012, the respondent filed RCA No.1 of 2013 on the file of Principal Sub Court, Mayiladuthurai. The learned Appellate Authority, independently considering the pleadings, oral and documentary evidence and order of the learned Rent Controller,

allowed the RCA reversing the fair and decretal orders passed in RCOP No.2 of 2012 dated 18.12.2012.

5. Against the said judgment and decree dated 18.07.2014 passed in RCA No.1 of 2013 reversing the judgment and decree dated 18.12.2012 passed in RCOP No.2 of 2012, the present Civil Revision Petition has been filed by the petitioner.

6. The learned counsel for the petitioner contended that the learned Rent Controller has rejected the contention of the respondent that the monthly rent is only Rs.1,000/- and held that the respondent has committed wilful default. When the respondent has admitted that he has paid monthly rent and the petitioner made endorsement in the rent receipt note book (kachattu) at the time of collection of rent, ought to have produced the said book in the evidence. The contention of the respondent that the rent receipt note book was taken away by the petitioner is artificial as the respondent did not complain the same in time. The learned Appellate Authority ought to have seen that it is for the tenant to prove that rent was paid by him and mere oral evidence by him does not prove that he has paid the rent. The respondent failed to examine his brother who was the tenant alongwith the respondent

at the time of inception of the tenancy to prove payment of the amount of Rs.75,000/- as advance. The learned Appellate Authority ought to have seen that the petition premises is required for the business of the petitioner's son and even one step taken by the petitioner's son is sufficient to prove the bonafide requirement of owner's occupation. The respondent having taken a plea that the portion in the complex where the petition premises is situate fell vacant during pendency of the proceedings, failed to prove the said contention. In view of the same, the learned Appellate Authority ought to have rejected the evidence of the respondent. It is not for the tenant to dictate the terms to the landlord as to which portion is fit for his own business.

6(a) In support of his contention, the learned counsel for the petitioner, relied on the judgment of this Court reported in **2017 (3) MWN (civil) 702 [Vasantha Malia v. N.Bacheria]** wherein it has been held as follows -

15. On the contrary, the learned counsel appearing for the landlord relied on the judgments of this Court as well as Hon'ble Apex Court and submitted that [Section 8](#) of the Act is a mandatory provision and failure to follow each and every steps will amount to invalid deposit. A reading of the judgment of this Court as well as Hon'ble Apex Court makes it very clear that when the landlord refuses to receive the rent, the tenant has to follow the provisions contemplated under [Section 8](#) of the Act and the

procedures contemplated in the said Section is mandatory. In view of the judgments of the Hon'ble Apex Court reported in AIR 2003 SC 153, 2005 (7) SCC 211 & 2009 (7) SCC 658 and decision of this Court reported in 2007 (4) CTC 492 and 2011 (1) MWN (Civil) 540 referred to above, I hold that when the landlord refused to receive the rent for any reason whatsoever, the tenant has to follow the procedures contemplated under [Section 8](#) of the Act and deposit the rent into Court, after obtaining necessary orders from the competent court. The said section is mandatory and it is not a procedural or enabling provision. In view of the subsequent judgments of the Hon'ble Apex Court, the decision of the Single Judge of this Court reported in 1999 (2) MLJ 337 cited supra holding that [Section 8](#) is not mandatory and the same is only enabling provision is no longer good law.

16. The learned Rent Controller has committed an irregularity in not properly appreciating [Section 8](#) (2) and 8 (5) of the Act and erred in holding that the deposit made by the tenant in his personal Savings Bank Account as valid deposit and that tenant has not committed any wilful default. The learned counsel for the landlord pointed out from Ex.B6 that the tenant has not deposited the rent for the month of November 1991. The contention the learned counsel for the landlord that even if one month rent is not paid, it will amount to wilful default has considerable force. The learned Judge of this Court in the judgment reported in Vol.79 LW 600, cited supra, has held that even default in payment of one month rent will amount to wilful default. The entire facts and circumstances have to be taken into consideration to decide whether there is default in payment of rent which amounts to wilful default. The tenant must follow the proper procedure in paying or depositing the rent when landlord refuses to receive the same. In the present case, the tenant has not followed the procedure contemplated under [Section 8](#) of the Act to deposit the rent when the landlord refused to receive the same. The learned counsel for the landlord submitted that after RCA has been allowed, the tenant failed to deposit the rent. The learned counsel for the tenant has not produced any document to disprove this contention of the learned counsel for the landlord.

7. Per contra, the learned counsel appearing for the respondent contended that the petitioner failed to prove that the

monthly rent is Rs.2,000/-. The learned Rent Controller, without any evidence held that the monthly rent is Rs.2,000/-. Based on the erroneous conclusion that the monthly rent is Rs.2,000/-, the learned Rent Controller, has held that the respondent has committed wilful default. The learned Appellate Authority has properly appreciated the materials on record, especially Ex.R1 and held that the petitioner failed to prove that monthly rent is Rs.2,000/-. As far as owner's occupation is concerned, the petitioner's son is not residing with the petitioner but he is employed in a multi-National Company in Chennai. The petitioner has not let in any evidence to prove that his son is not employed in Multi-National Company but residing with him.

7(a) In support of his contention, the learned counsel for the respondent relied on the judgment of this Court reported in **2015 (1) MWN (civil) 147 [C.Varahaswamy Chetty (deceased) v. K.M.s.Abdul Kani]** wherein it has been held as follows -

25. The learned counsel appearing for the respondent would contended that mere intention to start a business is not enough without taking any steps to start a business and in support of his contention, the learned counsel relied on two decisions as under:-

1) 1980 MLJ 327 (G.Nagarathnam v. District Library Officer)

2) 1980 MLJ 395 (Kanakavel Pillai v. Drugs and Chemicals).

The relevant portion of the decision reported in 1980 MLJ 327 (G.Nagarathnam v. District Library Officer) reads as under:-

" The expression "carrying on business" has been interpreted by a Division Bench of this Court in Reju Chettiar v. State of Tamil Nadu (1970) 1 MLJ 249 = 82 LW 695 = AIR 1970 Mad. 360. Speaking for the Bench, Veeraswami, C.J., pointed out that the expression "carrying on business" occurring in section 10(3)(a)(iii) may consist of a series of steps and even if one step is proved, the requirement of the section will be satisfied, but if there is no step at all whatever and the matter is only in the stage of intention, it is difficult to bring such a case under section 10(3)(a)(iii). Though it is not actually necessary to prove that the revision petitioner is carrying on a business, if she has taken one step in the series of steps for running a nursery school, her case could have been brought under section 10(3)(a)(iii). But, in this case, the only document filed to show that a step was taken, is Ex.P-5, a pamphlet which shows that a nursery school is run at No.39, Minor Trustpuram. This case hardly be said to be a step taken in the matter of commencing a nursery school. The revision petitioner is yet to commence the nursery school and before that she has published the pamphlet. It is no doubt true that she being a graduate wanted to employ herself by running a nursery school in her own premises and therefore, as regards the intention to start such a school there could be no doubt. But, in this case, no step, whatever, has been taken and the matter is only in the stage of intention. As there is no tangible and concrete evidence of commencement of a nursery school, mere intention to start or carry on a nursery school will not enable the petitioner

to resort to section 10(3)(a)(iii) of the Act. On that view, this revision fails and is dismissed. No costs."

26. In another decision reported in 1980 MLJ 395 (Kanakavel Pillai v. Drugs and Chemicals), wherein discussed various decisions and finally held that mere intention of carrying on business is not enough to evict the tenant and the relevant portion of the decision is extracted as under:-

"From the foregoing, it is clear that apart from merely entertaining an intention of carrying on the business in plastics at Kumbakonam, the petitioner has not taken any other step in furtherance of such carrying on of the business and therefore, the petitioner cannot claim to come within the scope of the expression "carrying on business" in section 10(3)(a)(iii) of the Act and therefore, entitled to recover possession of the building from the respondent herein. The Appellate Authority was therefore right in holding that the petitioner cannot claim the premises in question from the respondent under section 10(3)(a)(iii) of the Act."

27. In the instant case as already discussed, the deceased revision petitioner or his legal heirs (i.e.) revision petitioners 2 and 3 are not at all taking any steps to carrying on business in the petition mention premises. Therefore, as rightly discussed and held by the Rent Control Appellate Authority, the legal heirs of the deceased revision petitioner namely the revision petitioners 2 and 3 have failed to prove the bonafide requirement of the petition mention premises to run a business.

8. Heard the learned counsel for the petitioner as well as

respondent and perused the materials available on record.

9. Points for consideration in the present Civil Revision Petition are -

(i) whether the monthly rent is Rs.2,000/- as claimed by the petitioner and whether the petitioner has committed wilful default ;

(ii) Whether the requirement of the petitioner for owner's occupation is bonafide or not.

Point No.1

9(a) The petitioner has claimed that the monthly rent is Rs.2,000/- and that respondent paid monthly rent upto December 2010 and subsequently committed wilful default. According to the respondent, he has paid rent upto March 2011 and when the petitioner collected the rent, he further demanded a sum of Rs.25,000/- as advance. When the respondent refused to pay further sum of Rs.25,000/- as advance, the petitioner took the rent receipt note book (kachattu) with him and refused to return the same. The petitioner sent notice on 28.02.2011 stating that the respondent committed wilful default from January 2011. The respondent, in the reply notice denied various allegations made by

the petitioner and stated that the monthly rent is Rs.1,000/- only and he has sent Rs.4,000/- being the rent payable by him for the month of June to August 2011. in the said reply, the respondent has also stated that the rent receipt note book (kachattu) was taken by the petitioner when he received the monthly rent for March 2011.

9(b) Even though the petitioner sent rejoinder and reiterated his contention that the monthly rent is Rs.2,000/- and that the petitioner has committed wilful default, he has not denied that he has taken the rent receipt note book (kachattu) as alleged by the respondent. The learned Rent Controller came to the conclusion that the monthly rent will be Rs.2,000/- based on the evidence of the respondent in the cross examination wherein it was admitted that the monthly rent was Rs.1,000/- in the middle of the year 2006, it can be increased every two years. In view of the said statement of the respondent in the cross examination, the learned Rent Controller held that the monthly rent is Rs.2,000/-. This conclusion is only based on the surmises and assumptions. The petitioner who is the landlord has to prove the quantum of rent and in the present case, the petitioner failed to prove that the monthly rent is Rs.2,000/-. Except stating in the petition and in the

evidence, the petitioner has not substantiated the said claim by acceptable evidence.

9(c) The learned Appellate Authority, considered Ex.R1, the rent receipt note book (kachattu) for the period from 01.02.1992 to 31.08.2006. In the said note book, the petitioner has acknowledged receipt of monthly rent but has not mentioned the quantum of monthly rent received by him. In view of the said fact, the learned Appellate Authority held that the petitioner failed to prove that the monthly rent is Rs.2,000/-. The said reasoning of the Appellate Authority is valid and acceptable whereas the learned Rent Controller came to the conclusion that the monthly rent is Rs.2,000/-, without there being any evidence but only on surmises and assumptions. It is for the landlord to prove the quantum of monthly rent and in the present case, the petitioner failed to substantiate his case that the monthly rent is Rs.2,000/-. The learned Rent Controller held that the respondent committed wilful default on the ground that the monthly rent is Rs.2,000/- whereas it is held that the petitioner failed to prove that the monthly rent is Rs.2,000/-. Hence, the finding of the learned Rent Controller is liable to be set aside and the Appellate Authority, by giving valid and cogent reason, rightly set aside the finding of the learned Rent

Controller that the respondent committed wilful default.

Point No.2

9(d) The petitioner seeks petition premises for his own occupation to establish computer oriented business for his son. The respondent has admitted that the petitioner's son is a computer engineer but has stated that the petitioner's son is employed in a Multi-National Company at Chennai and is not residing with the petitioner at Mayiladuthurai. The requirement of the petition premises by the petitioner for his own occupation is not bonafide. The petitioner, in the cross examination has admitted that his son was employed in a Multi-National Company at Chennai two years ago but is now residing with him at Mayiladuthurai and requires the petition premises for his son's business. The petitioner did not examine his son to prove that his son is at present not employed in a Multi-National Company at Chennai and but is residing with him. The learned Rent Controller failed to appreciate this fact and erroneously held that the requirement of the petition premises by of the petitioner for his own occupation is bonafide.

9(e) On the other hand, the Appellate Authority has properly appreciated the evidence of the petitioner in the cross examination

and also the fact that the petitioner is constructing shops opposite to the petition premises for commercial purpose. For the above reason, the Appellate Authority held that the requirement of the petition premises by the petitioner for his son's business is not bonafide. The said finding of the Appellate Authority is based on the factual finding of fact. The learned Appellate Authority is the final court to decide the facts. The revisional court can interfere with the said finding of fact only if the said finding is arbitrary and arrived at without properly appreciating the materials on record or arrived at without there being any material for such finding. In the present case, the Appellate Authority has properly appreciated all the materials on record and reversed the judgment and decree dated 18.12.2012 passed in RCOP No.2 of 2012 by giving cogent and valid reasons. There is no error in the judgment of the Appellate Authority warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No costs.

28.03.2018

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Index : Yes
Speaking/Nonspeaking order

V.M.VELUMANI, J.

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To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The Principal District Munsif Court,
Mayiladuthurai.



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