

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4529 to 4535 of 2014
and M.P.No.1 of 2014

Asokan
Proprietor, M/S.Padhma Enterprises .. Petitioner

Vs.

Subhadrabai Saddharama Niketan Trust
Represented by Trustees

1.V.Govind Krishna Das
2.Lodd Ramgoal .. Respondents

C.R.P.No.4529 of 2014 is filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, against the judgment and decree dated 15.07.2014 made in R.C.A.No.97 of 2013 on the file of the VIII Small Causes Court (Appellate Authority) Chennai, confirming the fair and decretal order dated 15.12.2012 made in R.C.O.P.No.1895 of 2009 on the file of the XII Small Causes Court, (Rent Controller), Chennai.

C.R.P.Nos.4530 to 4535 of 2014 are filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, against the judgment and decree dated 15.07.2014 made in M.P.Nos.134 to 139 of 2014 in R.C.A.No.97 of 2013 on the file of the VIII Small Causes Court, (Appellate Authority) Chennai, confirming the fair and decretal order dated 15.12.2012 made in R.C.O.P.No.1895 of 2009 on the file of the XII Small Causes Court, (Rent Controller), Chennai.

In all C.R.Ps.

For Petitioner : Mr.S.Saravanan

For R1 : Mr.B.R.Ramesh Rapu

For R2 : No appearance

COMMON ORDER

C.R.P.No.4529 of 2014 is filed against the judgment and decree dated 15.07.2014 made in R.C.A.No.97 of 2013 on the file of the VIII Small Causes Court, (Appellate Authority) Chennai, confirming the fair and decretal order dated 15.12.2012 made in R.C.O.P.No.1895 of 2009 on the file of the XII Small Causes Court, (Rent Controller), Chennai.

C.R.P.Nos.4530 to 4535 of 2014 are filed against the judgment and decree dated 15.07.2014 made in M.P.Nos.134 to 139 of 2014 in R.C.A.No.97 of 2013 on the file of the VIII Small Causes Court, (Appellate Authority) Chennai, confirming the fair and decretal order dated 15.12.2012 made in R.C.O.P.No.1895 of 2009 on the file of the XII Small Causes Court, (Rent Controller), Chennai.

2.In all the seven Civil Revision Petitions, the parties and issues are one and the same and therefore, they are disposed of by this common order.

3.The petitioner is tenant and respondents are landlords. The respondents filed R.C.O.P.No.1895 of 2009 for eviction of the petitioner on the ground of wilful default. According to the respondents, the petitioner was tenant under the respondents on a monthly rent of Rs.21,550/- from December 2001. At request of the petitioner, additional portions were constructed and entire building was given to the petitioner on a monthly rent of Rs.27,000/- for three years from 01.04.2003 to 31.03.2006. It was agreed between the parties that after expiry of three years, the rent will be

enhanced by 25% and rent payable by the petitioner will be Rs.33,750/- from 01.04.2006 till 31.03.2009. The petitioner has lastly paid a sum of Rs.30,000/- on 16.12.2008 and subsequently, the petitioner did not pay any rent. Therefore, the respondents have issued notice dated 01.07.2009 to the petitioner. The petitioner was in arrears of Rs.9,36,800/- as on the date of filing of the petition and hence, the respondents have filed the said R.C.O.P.

4. The petitioner filed counter statement and contended that the rent control proceedings is not applicable to the respondents' trust as it is a charitable trust. The monthly rent at the inception of tenancy was Rs.21,550/- in December 2001 and from 01.04.2003, the rent was fixed at Rs.27,000/-. There was no mutual agreement that at the end of three years, the rent will be increased by 25%. The petitioner is not a chronic defaulter and he has paid a huge sum of Rs.15,00,000/- as advance at the time of inception of tenancy and if there is any arrears of rent, it has to be adjusted from the said advance amount. The petitioner and respondents have mutually agreed to pay a sum of Rs.30,000/- on 31.03.2006. The petitioner denied that after 16.12.2008, the petitioner has not paid the rent

and huge amount is due as arrears of rent. There is no question of paying monthly rent at the rate of Rs.42,200/-.

5.Before the learned Rent Controller, first respondent examined himself as P.W.1 and marked 10 documents as Exs.P1 to P10. The petitioner examined himself as R.W.1 and did not mark any document.

6.The learned Rent Controller considering the pleadings, oral and documentary evidence, allowed R.C.O.P. ordering eviction directing the petitioner to vacate and deliver the vacant possession of the petition premises to the respondents.

7.Against the said order dated 15.12.2012 made in R.C.O.P.No.1895 of 2009, the petitioner has filed R.C.A.No.97 of 2013 on the file of the VIII Small Causes Court, Chennai.

8.Before the learned Rent Control Appellate Authority, the petitioner filed M.P.Nos.134 to 139 of 2014 in R.C.A.No.97 of 2013 under Rule 11 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, to reopen the side of the petitioner in R.C.A.No.97 of 2013;

to recall R.W.1 for adducing additional evidence; to direct P.W.1 to produce his personal income tax records, accounts book, all the bank records and statement of accounts from 1999 till date; to receive the documents filed along with the petition as additional evidence; to recall P.W.1 for further cross-examination and to permit the petitioner to adduce additional evidence.

9. According to the petitioner, he was not given any opportunity before the learned Rent Controller to let in evidence, when he was in witness box. The documents relied on by him were not traceable at that time. Subsequently, the same were traced out and the petitioner filed a petition for reopening the case. The learned Rent Controller has rejected the petition without numbering the same and very next day, allowed R.C.O.P. knowing fully well that the learned counsel for the petitioner was not aware of the rejection of the petition filed by the petitioner and thereby, prevented the petitioner from taking further remedy. The petitioner has further contended that at the time of filing R.C.A., the petitioner was busy with the alliance of his daughter and subsequently, his staff, who was in-charge of those documents, misplaced the same. Hence, he

has prayed for allowing the petitions to mark the documents before the learned Rent Control Appellate Authority.

10.The learned Rent Control Appellate Authority by common judgment and order dated 15.07.2014, independently considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, dismissed R.C.A. as well as all the M.Ps.

11.Against the said judgment and order dated 15.07.2014 made in R.C.A.No.97 of 2013 as well as M.P.Nos.134 to 139 of 2014 in R.C.A.No.97 of 2013, confirming the order dated 15.12.2012 made in R.C.O.P.No.1895 of 2009, the present seven Civil Revision Petitions are filed by the petitioner.

12.The learned counsel for the petitioner contended that the respondents' trust is a charitable trust and that the provisions of the Rent Control Act are not applicable to the respondents' trust. The Courts below have failed to appreciate the admission of the respondents that they are not in habit of issuing receipt for the rent received. The respondents have stated that they are maintaining the register with regard to the receipt of rent, but they have not

produced the said register. The petitioner has paid rent regularly and it is not correct to state that after 16.12.2008, the petitioner failed to pay the rent. The petitioner at the time of inception of tenancy, has paid a sum of Rs.15,00,000/- as advance. Even if there is any arrears of rent, the respondents have to adjust the said arrears from the advance amount paid by the petitioner. The learned Rent Controller has failed to give an opportunity to the petitioner to produce the documents and he has filed the present petitions in the appeal to permit him to file those documents for the reliefs stated above. The learned Rent Control Appellate Authority without properly appreciating the facts of the case, dismissed R.C.A. and all the M.Ps. Therefore, the learned counsel for the petitioner has prayed for allowing the Civil Revision Petitions.

13.Per contra, the learned counsel for the first respondent submitted that the respondents' trust is a private trust and it is not a charitable trust. The petitioner did not pay Rs.15,00,000/- as advance. The petitioner has paid rent only by cheque and therefore, question of producing the register with regard to the payment of rent does not arise. Even some of the cheques issued by the petitioner were dishonoured. The petitioner has not proved that he

has paid rent after 16.12.2008. The petitioner is chronic defaulter and huge amount is due as arrears of rent. The learned Rent Control Appellate Authority has properly considering all the facts and rightly dismissed R.C.A. and M.Ps. filed by the petitioner. Therefore, the learned counsel for the first respondent has prayed for dismissal of the Civil Revision Petitions.

14. Heard the learned counsel for the petitioner as well as first respondent and perused the materials available on record. Though notice was served on the second respondent and his name is printed in the cause list, there is no representation on behalf of the second respondent either in person or through his counsel.

15. The points for consideration in the present Civil Revision Petitions are:

- (1) Whether the rent control proceedings is applicable to the respondents' trust?
- (2) Whether the respondents' trust is a charitable trust?
- (3) Whether the petitioner has committed wilful default in payment of rent?

(4) Whether the order of the learned Appellate Authority dismissing M.Ps. filed by the petitioner is valid or not?

16.Point Nos.1 and 2:

Whether the rent control proceedings is applicable to the respondents' trust and Whether the respondents' trust is a charitable trust?

Both the parties are admitting that the petitioner is tenant and respondents are landlords. The petitioner is taking a stand that the rent control proceedings is not applicable to the respondents' trust, in view of the fact that the respondents' trust is a charitable trust. On the other hand, the respondents have stated that it is only a private trust and to substantiate their case, the respondents have marked Exs.A7 to A10, wherein in the earlier proceedings, the respondents' trust was declared as private trust. In addition to that, earlier the petitioner did not pursue the contention that the rent control proceedings is not applicable to the respondents' trust and only after order of eviction, the petitioner started claiming that the rent control proceedings is not applicable. The Courts below have considered the documents Exs.A7 to A10 and held that the respondents' trust is private trust and rent control proceedings is

applicable to the first respondent. There is no irregularity in the said findings of the Courts below warranting interference by this Court.

17.Point No.3:

Whether the petitioner has committed wilful default in payment of rent?

It is not disputed that the petitioner was in habit of paying rent only by cheque. It is not the case of the petitioner that he has paid rent by cash and the respondents did not issue receipt for the same. Further, the learned Rent Controller considering Ex.A6/letter dated 02.11.2009, which shows that after filing of R.C.O.P., the petitioner has taken certain demand drafts for Rs.30,000/- on the same date, held that admittedly, the petitioner has not paid rent for the earlier period. The learned counsel for the petitioner has contended that the petitioner objected to marking of Ex.A6 and without considering the objection, the Courts below have accepted the version of the respondents and held that as per Ex.A6, the petitioner has paid certain amounts by demand drafts and the petitioner even though disputes Ex.A6, has not disputed the payment of amounts by demand drafts. The petitioner has not proved that he has paid rent regularly and there is no arrears of

rent. The petitioner contended that he has paid a sum of Rs.15,00,000/- as advance at the time of inception of tenancy. The respondents have denied this averment. The petitioner has not produced any document to show that he has paid the said sum of Rs.15,00,000/- as advance. In view of the failure on the part of the petitioner, the Courts below have rejected the claim of the petitioner that he has paid Rs.15,00,000/- as advance. The Courts below have taken note of the fact that the petitioner has paid rent only by cheque and at no point of time, he has paid rent by cash and arrived at a conclusion that the petitioner has committed wilful default in payment of rent. There is no irregularity in the said findings of the Courts below warranting interference by this Court.

18.Point No.4:

Whether the order of the learned Appellate Authority dismissing M.Ps. filed by the petitioner is valid or not?

The petitioner filed M.P.Nos.134 to 139 of 2014 in R.C.A.No.97 of 2013 under Rule 11 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, before the learned Rent Control Appellate Authority, to reopen the side of the petitioner in R.C.A.No.97 of 2013; to recall R.W.1 for adducing additional evidence; to direct P.W.1 to produce

his personal income tax records, accounts book, all the bank records and statement of accounts from 1999 till date; to receive the documents filed along with the petition as additional evidence; to recall P.W.1 for further cross-examination and to permit the petitioner to adduce additional evidence.

19. From the materials available on record, it is seen that the petitioner has not given any valid reason for recalling P.W.1 for further cross-examination. Similarly, the petition filed for a direction to the respondents to produce the documents mentioned therein have no relevance to the issue in the rent control proceedings, when the respondents/landlords have come out with the specific case that the petitioner has committed wilful default, it is for the petitioner to prove that he has paid rent up to date without any default. The petitioner cannot seek any document from the respondents to prove his case. As far as petitions for recalling R.W.1 to adduce additional evidence and for a direction to the respondents to mark all the bank records are concerned, the reasons given by the petitioner are not valid. The R.C.O.P. was allowed on 15.12.2012. The petitioner filed R.C.A. on 21.02.2013 and the present petitions on 03.03.2014.

20.Considering all these facts, I hold that there is no error in the order and judgment of the learned Appellate Authority in dismissing the petitions filed in the appeal and dismissed R.C.A. filed by the petitioner. The Courts below have considered all the materials on record in proper perspective and by elaborate order and judgment have ordered eviction of the petitioner/tenant by giving reasons. There is no irregularity or illegality warranting interference by this Court with the common judgment of the learned Appellate Authority dated 15.07.2014 confirming the orders of the learned Rent Controller and dismissing the M.P.Nos.134 to 139 of 2014.

21.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.03.2018

Index:Yes/No

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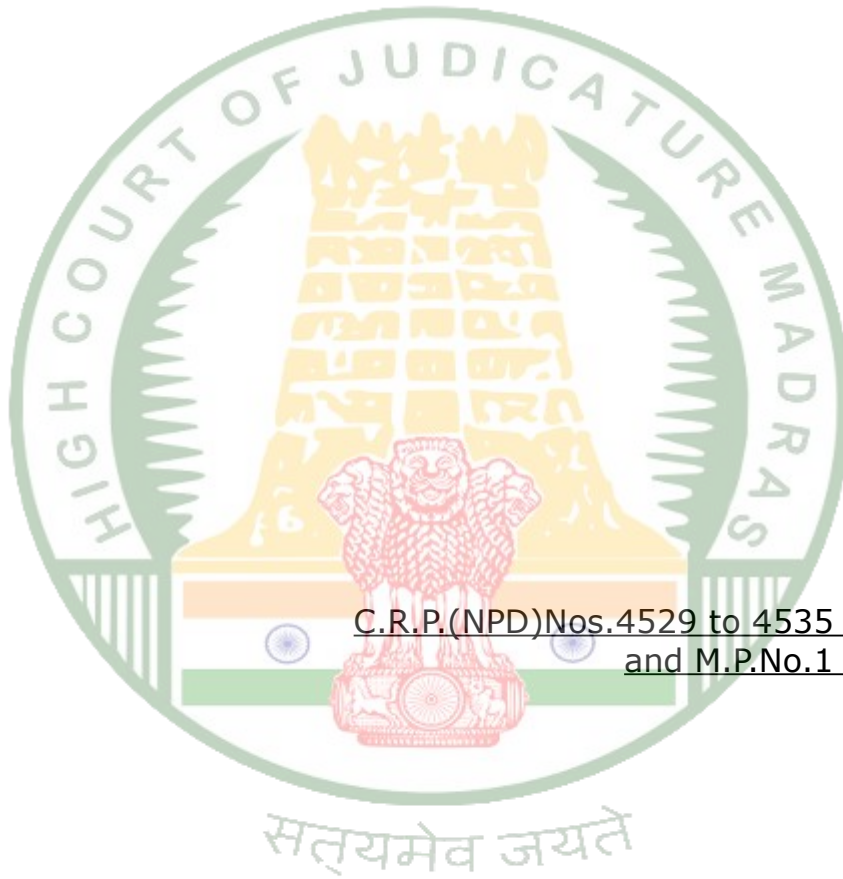
1.VIII Small Causes Court, Chennai.

2.XII Small Causes Court, Chennai.

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V.M.VELUMANI,J.

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