

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CRP (NPD) No.3064 of 2011

Kamarunnisshal Begum

... Petitioner

Vs

S.A.Shajahan Ali

... Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973, to set aside the decree and judgment dated 10.2.2010 made in RCA.No.921 of 2004 on the file of the Court of Small Causes (VIII Judge) (Appellate Authority), Chennai confirming the order and decree dated 16.6.2004 and made in RCOP.No.1048 of 2003 on the file of the Court of Small Causes (XVI Judge), Chennai.

For Petitioner : Mr.S.Sadasivan
for Mr.V.E.Feroz Khan

For Respondent : Mr.V.Lakshminarayanan

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ORDER

The minimum facts that are necessary for the disposal of this revision may be stated as follows :

- The petitioner is a landlady of a certain non-residential building, which she has leased out to the respondent herein sometime in

February, 1992. The tenant has left a Security Deposit of Rs.40,000/- with the revision petitioner which is refundable on the termination of lease. But after the commencement of tenancy, the tenant almost immediately started adjusting the rent for next 39 months and accordingly deducted it from the Security Deposit. The relationship has not been comfortable between the landlord and tenant, and the tenant had moved the Rent Controller in RCOP.No.2732 of 1992 for fixation of fair rent, which the Rent Controller has determined at Rs.1,052/- per month, and this order was later confirmed by the Appellate Authority as well.

- There were also subsequent default in payment of rent and consequent to which, the petitioner had moved the Rent Controller in RCOP.No.986 of 1993 for eviction of the tenant on the ground of wilful default. This was dismissed by the learned X Judge, Court of Small Causes vide order dated 31.07.1997 on the ground that the retention of substantial sum as advance by the petitioner would enure to the credit of the respondent.

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- Even thereafter, the situation does not improve vastly and the tenant pursued a pattern of paying monthly rents as lumpsum amount cumulatively for 3-4 months. However, from 01.10.2002 he has been continuously in default.

- The revision petitioner thereafter filed RCOP.No.1048 of 2003

before the XVI Judge, Court of Small Causes, Chennai for eviction of the respondent on the ground of wilful default. This was resisted by the respondent primarily on the ground that even prior to his first appearance before the Court, the tenant has issued a cheque by Registered Post with acknowledgement due for a sum of Rs.9,312/- and this amount was received by the petitioner on 04.7.2003 without demur, and hence it is not open to the petitioner to contend that the respondent has committed wilful default in the matter of payment of rent. The rent is being paid upto date and there is not even any default subsequently.

- The learned Rent Controller in his order dated 16.06.2004 has recorded this fact and has held that in cases where notice demanding arrears of rent was not issued, it will be for the landlady to make out a case for wilful default by the tenant, failing which, the Rent Controller may exercise his discretion under the proviso to Section 10(2) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. The learned Rent Controller has relied on the authority reported in **(2003) 10 SCC Page 610** and thereupon has come to the conclusion that the petitioner has not proved her case with substantial evidence. This order was challenged by the revision petitioner/landlady in R.C.A.No.921 of 2004 and the Rent Control Appellate Authority Vide its order dated 10.02.2010 confirmed the order passed by the Rent Controller in RCOP.No.1048/2003. This order of the Appellate Authority is now in challenge in this revision.

2. Mr.S.Sadasivan, learned counsel appearing on behalf of the petitioner argued that while the respondent/tenant does not deny that he had committed default, yet in order to establish that he had not committed wilful default, he has issued a cheque dated 04.07.2003 along with a covering letter in Ext.R-2, but safely he has not produced the acknowledgement card sent by the revision petitioner in order to establish as to when exactly the said mail was dispatched to the revision petitioner. This, in other words would mean, that the said amount might not have been dispatched on the day the respondent claims. The learned counsel also submitted that the conduct of the tenant right from the commencement of tenancy is such that he frequently violated the obligation to pay rent promptly before the 5th day of every succeeding month. He suo moto created his own pattern of making payments in lumpsum towards rent for few months, and this is contrary to his contractual obligation and that this conduct of the tenant must also be taken into consideration in determining whether that the default of the tenant was wilful or not.

3. Per contra, Mr.V.Lakshminarayanan, learned counsel for the respondent/tenant would submit that the scheme of the Rent Control Act does not make every kind of default a wilful default, that, the wilful nature of the default must be understood as per the Explanation provided to Section 10(2) of the Act and also the proviso. Further, since the Rent Controller has exercised his discretion within the proviso to Section 10(2)

<http://www.judis.nic.in> of the Act, the said order has become conclusive and it is not subject to

the revisional jurisdiction of this Court. He relied on the ratio of the authority in ***Hindustan Petroleum Corporation Ltd., Vs. Dilbahar Singh*** [2014(6) MLJ 591] = [2014 (5) CTC 217]. As per the ratio declared in the the said authority, the High Court may not exercise its revisional jurisdiction unless the finding of facts by the Courts below is perverse or it has got its law wrong. Inasmuch as the Rent Controller has exercised his discretion without any degree of perversity, nor is there any indication that he has not applied law to the facts before it. This case is one which fits in all fours within the ratio declared by the Supreme Court.

4. On a careful weighing of rival submissions, this Court tend to lean in favour of the respondent/tenant than in favour of the petitioner. It is true that the tenant was in default, but what converts such default into wilful default and when it shifts the burden on the tenant to prove that he is not wilful defaulter, is only when he continuously at default in paying rent even after receiving notice for payment of rent as contemplated in explanation to 10(2) of the Act. The provision reads as below :

Eviction of tenants –

(1).....
.....

(2) *A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. In the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied -*

(i) that the tenant has not paid or tendered

the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, or

5. The learned counsel for the petitioner very strongly contended that the failure of the tenant to produce the acknowledgement card would imply that the cheque which he had issued for Rs.9,312/- was antedated. Secondly, it is also his responsibility to establish that this rent corresponds to the period during which he is in default. On both the grounds, this Court is not impressed with the argument for the simple reason that it is a case of the revision petitioner that her tenant was on default only from 01.10.2002. Therefore, it is all a question of spreading the cheque amount over the period from 01.10.2002 and not to any period prior to that. As to his first point about non-production of acknowledgement card is concerned, it is too weak an argument to establish the wilful nature of default.

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6. This apart, in paragraph No.45 of the judgment in **Hindustan Petroleum Corporation Ltd., Vs. Dilbahar Singh** [2014(6) MLJ 591] = [2014 (5) CTC 217], the Hon'ble Supreme Court has held as under :

45.
 The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that, event

.....
 The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

7. This Court finds that there is no error either in the orders of the Rent

Controller or of the Appellate Authority nor any element of perversity or mis-application of law could be detected. Therefore, this case is not fit for this Court to interfere in revision. Consequently, this petition is dismissed. No costs.

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Index : Yes/No

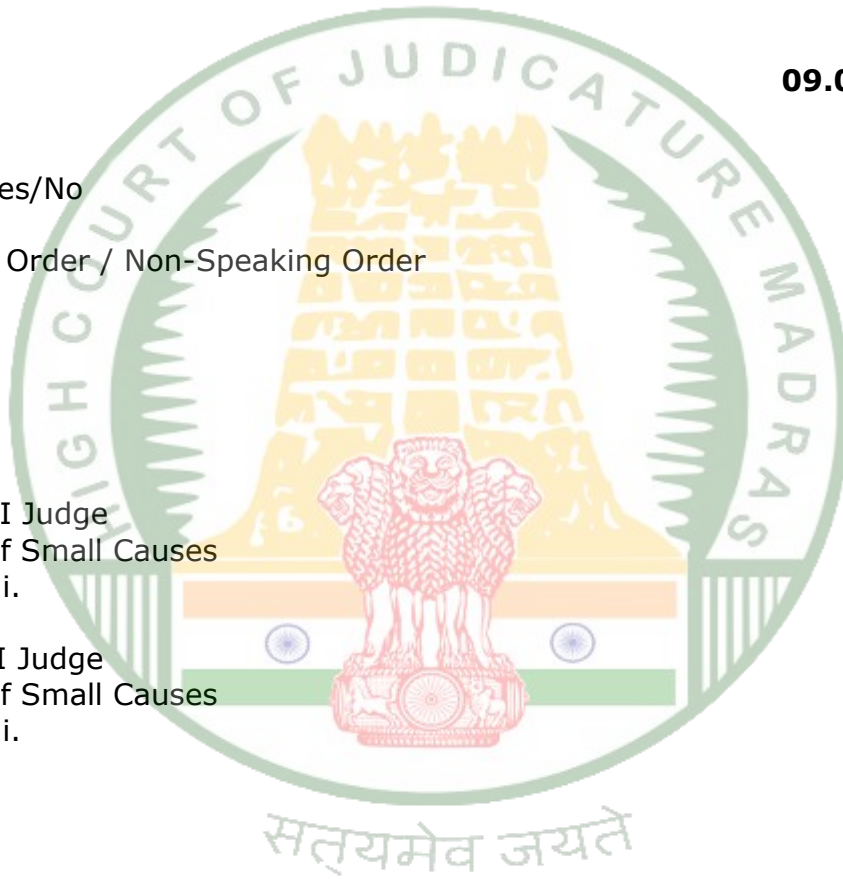
Speaking Order / Non-Speaking Order

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To:

1.The VIII Judge
Court of Small Causes
Chennai.

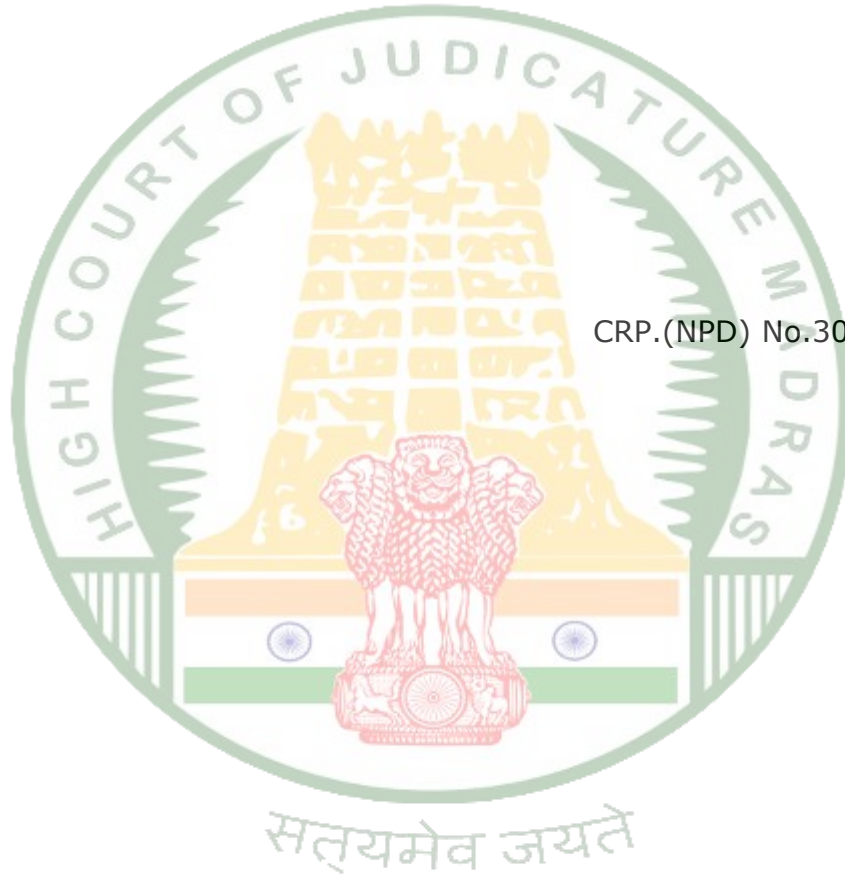
2.The XVI Judge
Court of Small Causes
Chennai.



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N.SESHASAYEE, J.,

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