

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1690 to 1692 of 2015
and M.P.No.1 of 2015

M.Srinivasan alias M.S.Vasan

..Petitioner in
all the 3 CRPs.

Vs.

V.Sivakumar

.. Respondent in
all the 3 CRPs.

PRAYER: Civil Revision Petitions are filed under Section 25(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980, against the judgment and decree dated 23.02.2015 in R.C.A.No.382 of 2001 (CRP.No.1690 of 2015), R.C.A.No.383 of 2001 (CRP.No.1691 of 2015) and M.P.No.107 of 2015 in R.C.A.No.382 of 2001 (CRP.No.1692 of 2015) on the file of the VII Judge, Small Causes Court, Chennai, confirming the fair and decretal order dated 07.06.2001 in M.P.No.622 of 2000 in R.C.O.P.No.481 of 2000

(CRP.No.1690 of 2015), in R.C.O.P.No.481 of 2000 (C.R.P.No.1691 of 2015) and in R.C.O.P.No.481 of 2000 (CRP.No.1692 of 2015) on the file of the XI Judge, (Rent Controller), Small Causes Court, Chennai.

In both CRPs.

For Petitioner : Mr.A.K.Raghavulu

For Respondent : Mr.S.Ambalavanan

COMMON ORDER

C.R.P.No.1690 of 2015 is filed against the judgment and decree dated 23.02.2015 in R.C.A.No.382 of 2001 on the file of the VII Judge, Small Causes Court, Chennai, confirming the fair and decretal order dated 07.06.2001 in M.P.No.622 of 2000 in R.C.O.P.No.481 of 2000 on the file of the XI Judge, (Rent Controller), Small Causes Court, Chennai.

C.R.P.No.1691 of 2015 is filed against the judgment and decree dated 23.02.2015 in R.C.A.No.383 of 2001 on the file of the VII Judge, Small Causes Court, Chennai, confirming the fair and decretal order dated 07.06.2001 in R.C.O.P.No.481 of 2000 on the file of the XI Judge, (Rent Controller), Small Causes Court, Chennai.

C.R.P.No.1692 of 2015 is filed against the judgment and decree dated 23.02.2015 in M.P.No.107 of 2015 in R.C.A.No.382 of 2001 on the file of the VII Judge, Small Causes Court, Chennai, confirming the fair and decretal order dated 07.06.2001 in R.C.O.P.No.481 of 2000 on the file of the XI Judge, (Rent Controller), Small Causes Court, Chennai.

2. The petitioner is tenant and respondent is landlord. The respondent filed R.C.O.P.No.481 of 2000 on the file of XI Small Causes Court, Chennai, for eviction against the petitioner on the grounds of wilful default and owners occupation. According to the respondent, the petitioner is a tenant under the respondent from the year 1996 on a monthly rent of Rs.5,000/- and paid advance amount of Rs.15,000/-. The petitioner failed to pay the rent from August 1997 and after adjusting the advance amount of Rs.15,000/- for the month of August, September, October 1997, the petitioner has committed default in payment of rent from November 1997. The respondent, his wife and two children are living with his parents along with his married brother in a joint family. The said accommodation is not convenient for the family members of the

respondent and therefore, he required petition premises for his own occupation.

3. The petitioner filed counter statement and denied that he is in arrears of rent and contended that he has paid rent up to date. The respondent has not issued receipt for the rents collected. The respondent is in his bungalow, which has all the amenities and the contention of the respondent that the petition premises is required for his own occupation is not bonafide. The petitioner sent rent of Rs.25,000/- by cheque to the respondent for the month of March 2000 to July 2000. The respondent received the same and encashed the cheque. When the petitioner sent rent for the month of August 2000, the respondent refused to receive the same. The respondent demanded enhanced rent, for which the petitioner refused to pay and filed O.S.No.3901 of 1998 on the file of XII Assistant City Civil Court, Chennai, for injunction restraining the respondent from interfering with his possession and the same was decreed on 21.08.2000. Before the suit was decreed, the respondent issued notice on 07.03.2000 and filed R.C.O.P. against the petitioner on 09.03.2000.

4. Pending R.C.O.P., the respondent filed M.P.No.622 of 2000 in R.C.O.P.No.481 of 2000 under Section 11(4) of the Tamil Nadu (Lease and Rent Control) Act, for a direction to the petitioner to pay a sum of Rs.1,60,000/- being the arrears of rent from the month of November 1997 to June 2000 at the rate of Rs.5,000/- per month, failing which, for a direction to the petitioner to vacate and hand over the vacant possession of the petition premises to the respondent. The learned Rent Controller by order dated 11.04.2001 directed the petitioner to deposit the arrears of rent. The petitioner did not comply with the said order. The learned Rent Controller by the order dated 07.06.2001, stopped the proceedings in R.C.O.P.No.481 of 2000 and ordered eviction.

5. Challenging the order dated 07.06.2001 made in M.P.No.622 of 2000 in R.C.O.P.No.481 of 2000, the petitioner filed R.C.A.No.382 of 2001 and against the order dated 07.06.2001 made in R.C.O.P.No.481 of 2000, the petitioner filed R.C.A.No.383 of 2001 .

6. The learned Appellate Authority by common judgment and decree dated 26.07.2010 dismissed both R.C.A.Nos.382 and 383 of

2001. Challenging the said judgment and decree dated 26.07.2010, the petitioner filed two Civil Revision Petitions in C.R.P.Nos.2852 and 2865 of 2010. This Court by order dated 23.10.2013 disposed of both the Civil Revision Petitions remitting both R.C.A.Nos.382 and 383 of 2001 back to the learned Appellate Authority for fresh consideration. After remand, the petitioner filed M.P.No.107 of 2015 under Rule 11(1) of the Rent Control Rules, seeking permission to adduce additional documentary evidence by marking certified copy of deposition of P.W.1/petitioner and deposition of D.W.1/respondent and judgment in O.S.No.3901 of 1998 on the side of the petitioner.

7. The learned Appellate Authority considering all the materials on record and by common judgment and decree dated 23.02.2015, dismissed R.C.A.Nos.382 and 383 of 2001 and M.P.No.107 of 2015.

8. Against the said common judgment and decree dated 23.02.2015 made in R.C.A.Nos.382 and 383 of 2001 and M.P.No.107 of 2015, the present three Civil Revision Petitions are filed by the petitioner/tenant.

9. The learned counsel for the petitioner contended that the Courts below failed to consider the facts in proper perspective. The respondent has admitted in the evidence in O.S.No.3901 of 1998 that the petitioner has paid rent up to date and there is no arrears. The learned Appellate Authority on erroneous grounds dismissed M.P.No.107 of 2015 filed by the petitioner. The respondent has also admitted that he is not in the habit of issuing receipt for the rent received. The learned Appellate Authority failed to see that the rent sent by the petitioner by cheque was refused by the respondent during pendency of the proceedings and therefore, following the procedure under Section 8 of the Tamil Nadu (Lease and Rent Control) Act, does not arise. The petitioner has deposited entire rent and he is continuing to pay the rent regularly and there is no arrears of rent. The respondent has withdrawn the rent deposited by the petitioner. Therefore, he prayed for allowing of the Civil Revision Petitions.

10. Per contra, the learned counsel for the respondent submitted that the petitioner has committed wilful default and he has not produced any evidence to substantiate his contention that he has paid rent up to date. The Courts below considered all the

materials on record in proper perspective and rejected the contention of the petitioner. As per Section 33 of the Evidence Act, the deposition of living person in another proceedings cannot be marked in subsequent proceedings. He prayed for dismissal of the Civil Revision Petitions.

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

12. The respondent has filed R.C.O.P.No.481 of 2000 for eviction on the grounds of wilful default and owner's occupation. The petitioner filed counter statement and denied that he has committed wilful default. In M.P.No.622 of 2000 filed by the respondent under Section 11(4) of the Tamil Nadu (Lease and Rent Control) Act, the learned Rent Controller held that the petitioner is in arrears of rent to the tune of Rs.1,80,000/- and directed the petitioner to deposit the arrears of rent on or before 06.06.2001 and adjourned the matter to 07.06.2001 for reporting compliance. The petitioner failed to deposit the said amount and the learned Rent Controller, by order dated 07.06.2001 stopped the proceedings in R.C.O.P.No.481 of 2000 and ordered eviction. In R.C.A.No.383 of

2001 filed by the petitioner, he was directed to deposit a sum of Rs.1,00,000/- as a condition for granting stay. The petitioner deposited the said amount. This clearly shows that the petitioner was in arrears of rent, when the respondent filed R.C.O.P.No.481 of 2000 for eviction.

13. The learned counsel for the petitioner contended that the respondent has admitted in the suit O.S.No.3901 of 1998 filed by the petitioner that the petitioner paid rent regularly for three years and no arrears and the same was rejected by the learned Appellate Authority on the ground that in the judgment, the learned Judge has not given clear finding that there is no arrears of rent by the petitioner. On the other hand, the learned Rent Controller has held that it appears to be no arrears of rent.

14. As far as M.P.No.107 of 2015 is concerned, the petitioner sought to mark the deposition of petitioner and respondent in the suit O.S.No.3901 of 1998, which was filed by the petitioner. The petitioner has not given any reason for not marking the same before the learned Rent Controller. As per Section 33 of the Evidence Act, deposition of living person given in another proceedings cannot be

marked in subsequent proceedings. The learned Appellate Authority has considered all the above facts and dismissed M.P.No.107 of 2015 filed by the petitioner. Further, finding of the learned Appellate Authority that when there is a stringent relationship between the parties, the petitioner ought to have initiated proceedings under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, for deposit of rent, is valid and failure on the part of the petitioner to take such step clearly shows that he has committed wilful default. For the above reason, I hold that there is no irregularity or illegality warranting interference by this Court with the judgment and decree of the Courts below. Both the Courts below have given cogent and valid reason.

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

WEB COPY

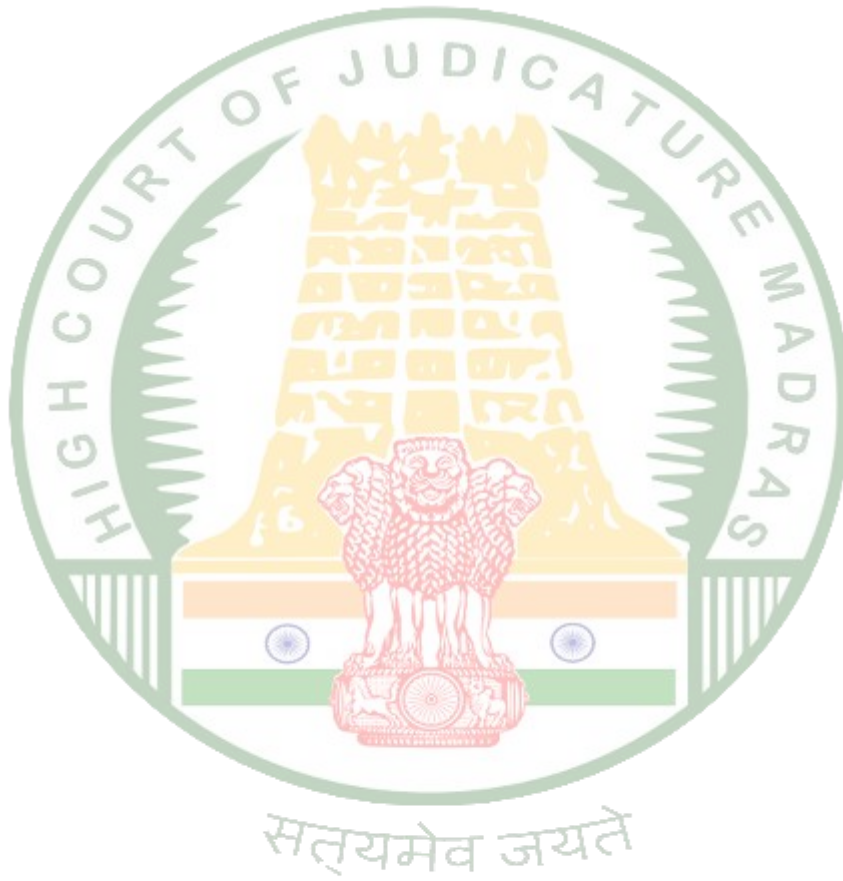
29.01.2018

Index:Yes/No

kj

To

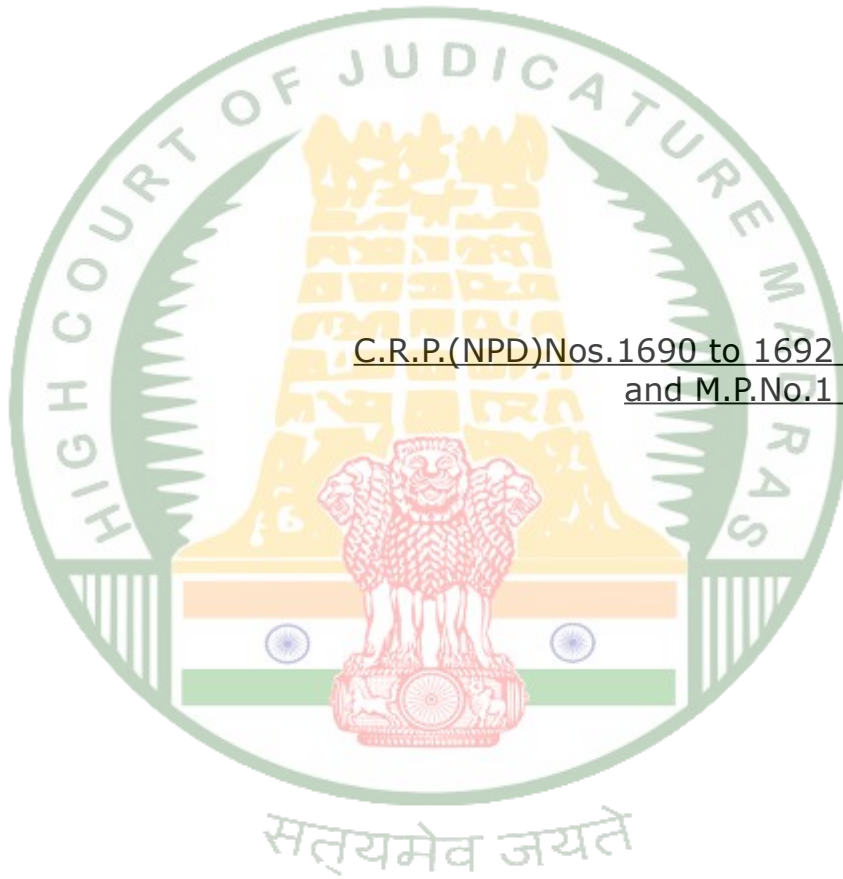
- 1.VII Judge, Small Causes Court, Chennai.
- 2.XI Judge, Small Causes Court, Chennai.



WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(NPD)Nos.1690 to 1692 of 2015
and M.P.No.1 of 2015

29.01.2018

WEB COPY