

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.R.P.(NPD)Nos.4876 to 4881 of 2014**
and M.P.Nos.1,1,1 of 2014

<i>Orders Reserved on</i>	<i>Orders pronounced on</i>
16.03.2018	08.06.2018

Deepak Parekh

.. Petitioner in
C.R.P.Nos.4876 to 4879 of 2014

A.Padmapriya

.. Petitioner in
C.R.P.Nos.4880 & 4881 of 2014

Vs.

Y.Uma Maheswari

.. Respondent in
C.R.P.Nos.4876, 4877, 4880 & 4881 of 2014

Bhuvanesh Kumar

.. Respondent in
C.R.P.Nos.4878 and 4879 of 2014**WEB COPY**

C.R.P.Nos.4876, 4878 and 4880 of 2014 are filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 15.09.2014 made in R.C.A.Nos.586, 584 and 585 of 2013 on the file of the VIII

Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 25.10.2013 made in M.P.Nos.297 to 299 of 2013 in R.C.O.P.Nos.302, 300 and 301 of 2013 on the file of the XII Small Causes Court (Rent Controller), Chennai.

C.R.P.Nos.4877, 4879 and 4881 of 2014 are filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 15.09.2014 made in R.C.A.Nos.61, 63 and 65 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 06.11.2013 made in R.C.O.P.Nos.302, 300 and 301 of 2013 on the file of the XII Small Causes Court (Rent Controller), Chennai.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.B.Thilak Narayanan for
Mr.N.Nandhakumar

COMMON ORDER

C.R.P.Nos.4876, 4878 and 4880 of 2014 are filed against the

judgment and decree dated 15.09.2014 made in R.C.A.Nos.586, 584 and 585 of 2013 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 25.10.2013 made in M.P.Nos.297 to 299 of 2013 in R.C.O.P.Nos.302, 300 and 301 of 2013 on the file of the XII Small Causes Court (Rent Controller), Chennai.

C.R.P.Nos.4877, 4879 and 4881 of 2014 are filed against the judgment and decree dated 15.09.2014 made in R.C.A.Nos.61, 63 and 65 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 06.11.2013 made in R.C.O.P.Nos.302, 300 and 301 of 2013 on the file of the XII Small Causes Court (Rent Controller), Chennai.

2.The issues involved in all the six Civil Revision Petitions are one and the same and hence, they are disposed of by this common order.

3.The petitioners in all the six Civil Revision Petitions are tenants and respondents in all the six Civil Revision Petitions are

landlords. According to the respondents, the petition premises originally belonged to their parents and their parents settled the respective portions on them by the deed of settlement dated 18.05.2012. The petitioners were tenants under the parents of the respondents. After the settlement in favour of the respondents, the same was intimated to the petitioners requesting them to attorn the tenancy in favour of the respondents. The petitioners did not pay the rents from May 2012 till the date of filing of R.C.O.Ps. Further, the properties are required by the respondents for their own use and occupation. For the above reason, the respondents filed three R.C.O.P.Nos.302, 300 and 301 of 2013. Pending said R.C.O.Ps., the respondents filed M.P.Nos.297 to 299 of 2013 in R.C.O.P.Nos.302, 300 and 301 of 2013 under Sections 11(3) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, for a direction to the petitioners to pay the monthly rent from May 2012 to May 2013.

4.The petitioners filed counter affidavits in all the three M.Ps. stating that originally they were tenants under the parents of the respondents and they were regularly paying rent without any default. They have paid huge advance amount amounting to Rs.2,00,000/-, Rs.3,00,000/- and Rs.1,50,000/- in respect of

petition premises to the parents of the respondents. In January 2012, the parents of the respondents asked the petitioners to vacate the petition premises as they want to settle the properties in favour of the respondents and want to hand over vacant possession to them. The petitioners expressed their inability to vacate the petition premises as they have established their business in that locality. The parents of the respondents refused to receive the rent from January 2012, when the petitioners tendered the same. Therefore, the petitioners filed three R.C.O.P.Nos.1186 to 1188 of 2012 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for permission to deposit the rents being January 2012 to March 2012 in respect of the petition premises. While the said three R.C.O.Ps. filed by the petitioners were pending, the respondents have come out with the present R.C.O.P.Nos.302, 300 and 301 of 2013 for eviction of the petitioners. The petitioners have taken steps to pay the rent and they have not committed any default. The respondents have not mentioned anything about the advance amount with their parents. The respondents informed the petitioners about the settlement in their favour only in October 2012 and therefore, the respondents are not entitled to receive the rent from May 2012.

5.Before the learned Rent Controller, both the parties have not let in any oral evidence. The respondents have marked Exs.P1 to P7 and the petitioners did not mark any documents.

6.The learned Rent Controller considering the averments made in the affidavits, counter affidavits and documents marked by the respondents, allowed all the three M.Ps. by separate orders all dated 25.10.2013 directing the petitioners to pay the monthly rents as mentioned in the affidavits from May 2012 till the date of order on or before 06.11.2013 and also directed the petitioners to pay future monthly rent on or before fifth of every month, failing which, further proceedings will be stopped in the main R.C.O.Ps.

7.Against the fair and decretal order dated 25.10.2013 made in M.P.Nos.297 to 299 of 2013 in R.C.O.P.Nos.302, 300 and 301 of 2013, the petitioners filed three R.C.A.Nos.586, 584 and 585 of 2013 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai. In the meanwhile, on 06.11.2013, the learned Rent Controller stopped the proceedings in the main R.C.O.P.Nos.302, 300 and 301 of 2013 as the petitioners have failed

to comply with the order dated 25.10.2013 directing them to pay the rent on or before 06.11.2013, allowed R.C.O.Ps. and ordered eviction.

8. Against the said fair and decretal order dated 06.11.2013 made in R.C.O.P.Nos.302, 300 and 301 of 2013, the petitioners filed R.C.A.Nos.61, 63 and 65 of 2014 respectively on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai.

9. The learned Appellate Authority considering all the materials available on record, judgments relied on by the learned counsel for the respondents, order of the learned Rent Controller and taking into consideration of the advance amount paid by the petitioners, dismissed all the six R.C.As.

10. Against the said common judgment and decree dated 15.09.2014 made in R.C.A.Nos.586, 584 and 585 of 2013 and R.C.A.Nos.61, 63 and 65 of 2014, the petitioners have come out with the present six Civil Revision Petitions viz., C.R.P.Nos.4876, 4878 and 4880 of 2014 and C.R.P.Nos.4877, 4879 and 4881 of 2014 respectively.

11. The learned counsel for the petitioners contended that the Courts below failed to see that the petitioners have filed R.C.O.P.Nos.1186 to 1188 of 2012 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the parents of the respondents for permission to deposit the rent and in the respective R.C.O.Ps., the respondents were impleaded as parties. The R.C.O.Ps. filed by the petitioners under Section 8(5) of the Act are earliest one to show their bonafide on their part. The respondents filed present three R.C.O.Ps. as counter blast for the same. The Appellate Authority failed to take note of the fact that the petitioners deposited the amounts as per orders of Appellate Authority as condition for stay and the Appellate Authority failed to take into consideration the said deposit while arriving at arrears of the rent payable by the petitioners. The Appellate Authority has disposed the main R.C.O.Ps. itself as though the petitioners have committed wilful default in payment of monthly rent. The Appellate Authority erred in not granting time for complying with the order passed by the learned Rent Controller as appeal is continuation of the R.C.O.P. proceedings. The respondents have intimated the petitioners about the settlement deed dated 18.05.2012 in their

favour only in the month of October 2012 and in such circumstances, the Courts below erred in directing the petitioners to pay the arrears of rent from May 2012 onwards. The Courts below have passed the orders in a mechanical manner. The Rent Controller has ordered eviction on 06.11.2013 despite interim stay granted by the Appellate Authority on the same day. The Courts below failed to determine the arrears of amount payable by the petitioners. The Appellate Authority failed to grant time to the petitioners to pay or deposit arrears of rent and thereby committed an error by not following the procedure under Sections 11(3) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. At the time of admission of the Civil Revision Petitions, there was no arrears of rent and this Court granted interim stay without any condition. The petitioners have paid the rent through their advocate to the advocate of the respondents and the delay is only on the part of their advocate in not handing over the rent in time to the advocate of the respondents.

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12.The learned counsel for the respondents contended that originally, the parents of the respondents were owners of the petition premises i.e. three shops. They let out two shops to

Deepak Parekh and one shop to Padmapriya. The rent payable is Rs.23,000/-, Rs.17,000/- and Rs.10,000/- and the advance amount paid is Rs.2,00,000/-, Rs.3,00,000/- and Rs.1,50,000/- in R.C.O.P.Nos.302, 300 and 301 of 2013 respectively. On 18.05.2012, the parents of the respondents settled their respective portions on the respondents. On 19.05.2012 itself, the parents of the respondents intimated the petitioners about the settlement in favour of the respondents and that the respondents have become owners of the petition premises and instructed the petitioners to pay the rent to the respondents. But the petitioners did not pay the rent to the respondents. According to the petitioners, the parents of the respondents refused to receive the rent and therefore, they have filed three R.C.O.P.Nos.1186 to 1188 of 2012 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, for permission to deposit the rent into Court. In spite of the petitioners coming to know that the respondents have become owners of the petition premises in May 2012 itself, the petitioners failed to pay the rent from May 2012. Further, the respondents require the petition premises for their own business. In the said circumstances, the respondents filed R.C.O.P.Nos.302, 300 and 301 of 2013 for eviction of the petitioners from the petition premises on the ground of wilful

default and owner's occupation. In the said R.C.O.Ps., respondents filed M.P.Nos.297 to 299 of 2013 under Sections 11(3) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, for a direction to the petitioners to pay the arrears of rent.

13.The learned counsel for the respondents further contended that the petitioners filed counter affidavits stating that in view of filing of R.C.O.P.Nos.1186 to 1188 of 2012 under Section 8(5) of the Tamil Nadu Building (Lease and Rent Control) Act, they are not liable to pay any rent to the respondents and only if the order passed in the said R.C.O.Ps., they can deposit the rent into Court. They also stated that the parents of the respondents are having advance amount as stated above. It is further submitted that before the learned Rent Controller, the respondents marked Exs.P1 to P7 and proved that the petitioners have not paid rent from May 2012 onwards. Considering all the materials available on record, the learned Rent Controller has rightly held that the petitioners are liable to pay the rent from May 2012 till the date of the order i.e. 25.10.2013. The petitioners were given time till 06.11.2013. The petitioners failed to comply with the said order. Therefore, the learned Rent Controller stopped the proceedings in R.C.O.P.Nos.302,

300 and 301 of 2013 and ordered eviction. Challenging the same, the petitioners filed appeals and contention of the petitioners that they obtained interim stay on complying the conditional order and therefore, they are not liable to pay the rent, is not correct. The petitioners as tenants committed default in payment of rent that too wilful default. The learned Appellate Authority considering the period of default in payment of rent by the petitioners, dismissed the appeals filed by the petitioners. The learned Appellate Authority taking into consideration the advance amount paid by the petitioners held that even after adjusting the excess advance amount, there are arrears of rent payable by the petitioners.

14. It is further contended by the learned counsel for the respondents that against the said common judgment, the petitioners filed the present six Civil Revision Petitions. This Court directed the petitioners to pay arrears of rent within two weeks from the date of the order. The petitioners did not comply with the said order in time. The petitioners sent three demand drafts dated 17.12.2014 along with covering letter dated 05.01.2015. Even by such demand drafts, the petitioners have not cleared entire arrears. The petitioners were directed to pay the arrears of rent by the

learned Rent Controller and also the subsequent rents on or before fifth of every succeeding month. The petitioners after sending the demand drafts on 05.01.2015 paid lump sum only during June 2015 enclosing the demand drafts, which are time barred. At request of the learned counsel for the petitioners, the demand drafts were re-validated in July 2015. Subsequently, the petitioners sent demand drafts in the month of December only. Even after adjusting the balance advance amount and retaining one month rent, after giving credit to all the amounts deposited by the petitioners and amounts paid during pendency of the Civil Revision Petitions, there are arrears of rents payable by the petitioners. The petitioners are bound to pay the rent every month to the respondents, who are their landlords. The contention of the petitioners that they did not attorn the tenancy in favour of the respondents and therefore, they are not liable to pay the rent, is without any merits. The petitioners have not complied the order of the learned Rent Controller, the learned Appellate Authority as well as order of this Court directing the petitioners to pay the arrears of rent. The learned counsel for the respondents in support of his contentions, relied on the following decisions:

- (i) **1998 (III) CTC 467 (Vasantha Leela v. N.Vadivelu**

Chettiar);

"9. First of all, I will take up for consideration the C.R.P.No.441 of 1991 being the application filed by the landlord for eviction of the tenant under Section 10(2)(i) of the Tamil Nadu Building (Lease and Rent Control) Act on the ground of wilful default. There is no dispute between the parties with regard to the rate of rent payable. It is Rs.80 per month. Already with reference to the property for eviction of the tenant a proceeding has been initiated by the landlord under Section 14 in RCOP No.62 of 1985 (CRP.No.48 of 1991). The tenant also filed a suit in O.S.No.683 of 1984 restraining the landlord from interfering with the possession and obtained an order of injunction. The tenant also filed an application in RCOP.No.119 of 1984 for deposit of rent into court. Since the landlord agreed to receive the rent the said application was closed. Therefore it is clear from the above circumstances that the tenant ought to have been diligent in payment of the rent as proceedings have been pending between the parties with reference to the property and his eviction from the property. The tenant ought to have been careful and scrupulous in adhering to his duties as a tenant. The foremost duty of the tenant is to pay the rent in time. Therefore in the context of the litigations that went on between the parties any default committed by

the tenant has to be construed as wilful default. The tenant was aware of the legal consequences of his omission to pay rent. "

(ii) **2009 (2) CTC 595 (K.Karuppiah v. B.Kubendran);**

"12. Even though R.C.O.P.No.1005 of 1999 was filed in the year 1999 there is no material placed before the Rent Controller that even during the pendency of R.C.O.P.No.1005 of 1999, the tenant had paid the rent for the petition schedule building to the landlord without committing any default. Supine in difference of a tenant in payment of rent is to be taken note of in a petition filed under Section 10(2) (i) of the Act in favour of the landlord as laid down in K.N.Gunalan, represented by his power agent Parimelazhagan-v-C.Santhalingam, (1994(1) M.L.J.510, as follows:

" The course of conduct as seen will show that the tenant had been supinely indifferent in the matter of payment of rent. The fact that he has been irregular in making payment raising a false plea that he used to pay only in lumpsum once in a few months will show that he has committed default wilfully". "

(iii) **2016 (3) CTC 731 (K.Rajagopalan v. R.Gnanapandithan);**

"10.3. The Order, dated 05.10.2013, passed

in M.P.No.614 of 2012 in R.C.O.P.No.2076 of 2012 is specific in directing the respondent to deposit future rent as and when they become due to the credit of the R.C.O.P.

10.4. Moreover, de hors the direction from the Court, it is the duty of the Tenant to deposit the rent as and when it is due.

10.5. The Landlord is not expected to file petition under Section 11(3) of the Act, for each and every month, till the Eviction proceedings are over. Therefore, the Order passed by the First Appellate Court suffers from illegality and material irregularity."

15. The learned counsel for the petitioners in his reply submitted that the Appellate Authority has not given time to the petitioners to deposit the rent and did not follow the provisions of Sections 11(3) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The parents of the respondents settled the property on the respondents after receiving notice in the R.C.O.Ps. filed by the petitioners under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The petitioners filed W.P.Nos.3917 and 3918 of 2017 in this Court and as per the orders of this Court dated 27.02.2017, the petitioners have paid the amounts on behalf of the respondents to Chennai Metropolitan

Water Supply and Sewerage Board and also contended that the petitioners also paid property tax to the authority on behalf of the respondents. The amounts paid by the petitioners are to be adjusted towards the rent payable by the petitioners.

16.The learned counsel for the respondents in reply to the same contended that the said amounts were paid by the petitioners during 2017 in spite of informing the petitioners that they are disputing the amounts claimed by the Chennai Metropolitan Water Supply and Sewerage Board and they have taken up the matter with Chennai Metropolitan Water Supply and Sewerage Board. The petitioners have not stated the reason for not paying the monthly rent regularly as per the orders of the Courts below and even during pendency of the Civil Revision Petitions.

17.Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

18.From the materials available on record, it is seen that the parents of the respondents settled the property on the respondents by the settlement deed dated 18.05.2012. According to the

respondents, their parents immediately informed the petitioners about the settlement deed and instructed the petitioners to pay the rent to the respondents from May 2012 onwards. In spite of the same, the petitioners did not pay the rent. The contention of the learned counsel for the petitioners is that the respondents informed about the settlement deed only in October 2012 and the petitioners did not attorn the tenancy in favour of the respondents and therefore, they are not liable to pay the rent from May 2012 and the same are without merits. The contention of the learned counsel for the petitioners that they have already filed R.C.O.P.Nos.1186 to 1188 of 2012 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the parents of the respondents and until orders are passed in the said R.C.O.Ps., the petitioners are not liable to pay the rent, is also without merits. The respondents have produced Ex.R2/counter statement filed by the mother of the respondents in all the R.C.O.Ps. filed by the petitioners, wherein she has stated that she is willing to receive the rent and also the fact that herself and her husband have settled the property in favour of the respondents. In spite of the said counter statement, the petitioners have not paid monthly rent from January 2012 to April 2012 to the parents of the respondents and subsequently from May

2012 to the respondents. It is not the case of the petitioners that they tendered the rent for the month of May 2012 onwards to the respondents and they refused to receive the rent. However, the contention of the petitioners is that the learned Rent Controller did not take into account the counter, wherein it is stated that the advance amount is lying in the hands of the parents of the respondents.

19. According to the petitioners, the Rent Controller ought to have held that after retaining one month rent from and out of the advance amount and adjusted balance advance amount towards rent payable by the petitioners, if the said amount is adjusted, there will not be any arrears of rent payable by the petitioners and the contentions of the learned counsel for the petitioners that the Appellate Authority failed to take into account the amount deposited by the petitioners as a condition for stay and after taking into account the said amount, there will not be any arrears, are without merits. The tenants are bound to pay rents regularly every month, whether the tenants attorn the tenancy in favour of the subsequent landlords or not. In the present case, the petitioners are not disputing the validity of the settlement deeds and that the

respondents are owners and landlords. It is also not the case of the petitioners that they have paid the rent to the parents of the respondents, the erstwhile landlords or tendered the rent to the respondents/landlords after coming to know about the settlement in favour of the respondents and the respondents refused to receive the rent.

20. On 25.10.2013 and 15.09.2014, when the learned Rent Controller and the learned Appellate Authority passed order and judgment that the petitioners were liable to pay the rent for 17 and 33 months respectively, after retaining one month rent as advance, adjusting the balance advance amount and also amounts deposited by the petitioners as a condition for stay, there are arrears of rent payable by the petitioners. Further, as per the order of the learned Rent Controller, the petitioners are liable to pay the rent regularly on or before fifth of every succeeding month and they failed to comply with the said order. This Court in the decision reported in **2016 (3) CTC 731 (K.Rajagopalan v. R.Gnanapandithan)** referred to above held that even if the Courts did not direct the

tenant to pay rents for subsequent months, the tenant has to pay rent every month as the landlord is not expected to file petition under Section 11(3) of the Act every month till eviction proceedings are over. In the present case, even after the learned Rent Controller directed the petitioners to pay rent to subsequent months on or before fifth of every month, the petitioners failed to pay the rent regularly. The contention of the petitioners that there was no order directing the petitioners to pay arrears of rent by this Court and the petitioners voluntarily paid the rent, is not correct. When M.P.Nos.1 of 2014 in Civil Revision Petition Nos.4877, 4879 and 4881 of 2014 for stay were taken up for hearing on 18.12.2014, the learned counsel for the petitioners tendered three demand drafts. This Court by order dated 18.12.2014 directed the petitioners to pay arrears if any within two weeks. The petitioners have not complied with the said order within time granted by this Court. However, from the materials on record, it is seen that the petitioners have not paid monthly rent even during pendency of the R.C.As. as well as pendency of the Civil Revision Petitions. The learned counsel for the respondents have filed counter affidavits to the affidavits filed by the petitioners in this Court and have given details of arrears of rent as on December 2014 and the petitioners have not paid entire

arrears to the respondents. The petitioners have not filed any rejoinder to the counter affidavits denying the details furnished by the respondents.

21.The contention of the learned counsel for the petitioners is that they have paid amounts to the Chennai Metropolitan Water Supply and Sewerage Board and also property tax to the authority and the same was not taken into account and there is no arrears of rent as they have complied with the order of this Court. As rightly pointed out by the learned counsel for the respondents that the said payments were made only during 2017 and the petitioners have not tendered monthly rent regularly till date.

22.The contention of the learned counsel for the petitioners that the Appellate Authority ought to have granted time for payment of arrears of rent is untenable. From the beginning, the petitioners have not paid rent in spite of the demands made by the respondents as well as the order of the learned Rent Controller. In view of the said attitude, the learned Appellate Authority has rightly dismissed the appeals without granting time. The petitioners have failed to comply with the order of the learned Rent Controller directing them

to pay the arrears of rent and therefore, the learned Rent Controller stopped the proceedings and ordered eviction of the respondents and the said order is valid and as per law, which is rightly confirmed by the learned Appellate Authority. There is no error in the judgment and decree dated 15.09.2014 passed by the learned Appellate Authority.

23.In the result, all the six Civil Revision Petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.06.2018

Index : Yes
Speaking/Non speaking order:Yes/No

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To

- 1.VIII Small Causes Court, Chennai.
- 2.XII Small Causes Court, Chennai.

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V.M.VELUMANI,J.

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Pre-delivery order in
C.R.P.(NPD)Nos.4876 to 4881 of 2014
and M.P.Nos.1,1,1 of 2014

08.06.2018

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