

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3777 of 2015
and M.P.No.1 of 2015 and CMP.Nos.5205 & 17499 of 2016

S.Jayaprakash .. Petitioner

Vs.

P.Duraiswamy .. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the judgment and decree dated 07.07.2015 made in R.C.A.No.623 of 2011 over ruling the order dated 21.02.2011 in R.C.O.P.No.1736 of 2009 on the file of the XVI Small Causes Court, Chennai.

For Petitioner : M/S.T.Renu

For Respondent : Mr.R.Baskar

ORDER

This Civil Revision Petition is filed against the judgment and decree dated 07.07.2015 made in R.C.A.No.623 of 2011 over ruling

the order dated 21.02.2011 in R.C.O.P.No.1736 of 2009 on the file of the XVI Small Causes Court, Chennai.

2.The petitioner is tenant and respondent is landlord. The respondent filed R.C.O.P.No.1736 of 2009 on the file of the XVI Small Causes Court, Chennai, against the petitioner on the ground of wilful default, owner's occupation and ceased to occupy. According to the respondent, the petition premises was let out to the petitioner for non-residential purpose on a monthly rent of Rs.3,000/- by executing a lease agreement dated 31.05.1999. The petitioner paid an advance of Rs.1,00,000/-. The lease agreement dated 31.05.1999 was not renewed. The rent was subsequently enhanced to Rs.3,500/- per month and the petitioner paid a sum of Rs.3,500/- per month till April 2008. Subsequently, the petitioner has not paid the rent from May 2008 for a period of 15 months, amounting to Rs.52,500/- and has committed wilful default. The respondent's daughter has completed Computer Science Course and the respondent required the petition premises for his daughter's business. The petitioner initially agreed to vacate the petition premises and subsequently, he did not vacate and was not doing any business in the petition shop. The petitioner kept the shop

closed for more than one year without paying the electricity charges and electricity service connection was disconnected. In the circumstances, the respondent has come out with R.C.O.P.No.1736 of 2009 for eviction of the petitioner from the petition premises.

3.The petitioner filed counter statement and contended that the respondent has refused to receive the rent sent by the petitioner. The petitioner sent the rent by money order. The respondent refused to receive the money order also. The petitioner has paid Rs.1,00,000/- as an advance and another sum of Rs.4,00,000/- to the previous tenant Omega Electronics. The respondent agreed to return the same at the end of the tenancy period. The respondent himself disconnected the electricity supply connection to the petitioner's shop and refused to receive the rent. The respondent used rowdy elements to evict the petitioner from the portion under his occupation. The petitioner is carrying on business in the petition premises and he has not closed the shop. The requirement of the petition premises by the respondent for the business of his daughter is not bonafide and prayed for dismissal of the petition.

4.Before the learned Rent Controller, the respondent was examined as P.W.1 and marked 5 documents as Exs.P1 to P5. The petitioner was examined as R.W.1 and marked 7 documents as Exs.R1 to R7.

5.The learned Rent Controller, considering the pleadings, oral and documentary evidence, dismissed the R.C.O.P. on all the three grounds.

6.Against the said order of dismissal dated 21.02.2011 made in R.C.O.P.No.1736 of 2009, the respondent filed R.C.A.No.623 of 2011 before the VII Small Causes Court, Chennai.

7.The learned Appellate Authority independently considering the fact that subsequent to filing of the petition, the petitioner has not paid the rent regularly and paid arrears of rent to the tune of Rs.1,68,000/- only after the order passed in the application under Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, allowed the R.C.A. and ordered eviction on the ground of wilful default. The learned Appellate Authority has held that the petitioner

has not proved that he has paid Rs.4,00,000/- to Omega Electronics, as contended by the petitioner. The learned Appellate Authority, taking into consideration the fact that the petitioner did not pay the rent regularly pending R.C.A. and judgment relied on by the learned counsel for the respondent, allowed the appeal on the ground of wilful default and rejected the claim of the respondent for eviction on the ground of owner's occupation and ceased to occupy.

8. Against the said judgment and decree dated 07.07.2015 made in R.C.A.No.623 of 2011 over ruling the order dated 21.02.2011 made in R.C.O.P.No.1736 of 2009 on the file of the XVI Small Causes Court, Chennai, the present Civil Revision Petition is filed by the petitioner/tenant.

9. The only point for consideration in the Civil Revision Petition is whether the petitioner has committed wilful default in payment of rent.

10. The learned counsel for the petitioner contended that the petitioner was regular in payment of rent. The respondent refused to receive the rent from May 2008 including the money order sent

by the petitioner. The respondent is having a sum of Rs.1,00,000/- paid by the petitioner as advance. The respondent is entitled to have only one month rent as advance and has to adjust the balance amount towards payment of rent. Further, the petitioner has paid Rs.4,00,000/- to the previous tenant Omega Electronics as per the instruction of the respondent and the respondent agreed to refund the said amount, when the petitioner vacates the premises. Even pending Civil Revision Petition, the respondent refused to receive the demand draft, sent by the petitioner thro' RPAD as per the order of this Court. The petitioner has filed C.M.P.No.5205 of 2016 to modify the order in M.P.No.1 of 2015 in CRP.NPD.No.3777 of 2015 directing the petitioner to deposit the rent for the petition premises to the account of R.C.O.P.No.1736 of 2009, pending Civil Revision Petition. The learned counsel for the petitioner further contended that the learned Appellate Authority failed to consider that the respondent is having Rs.1,00,000/- as advance and the petitioner has not committed any wilful default.

11.Per contra, the learned counsel for the respondent contended that the petitioner has not paid the monthly rent deliberately and committed default in payment of rent, much less

willful default. A sum of Rs.1,00,000/- is a security deposit and refund of that amount is only at the termination of the tenancy as per the lease agreement. The respondent denied that the petitioner has paid Rs.4,00,000/- to the previous tenant i.e. Omega Electronics as per his instruction. Pending proceedings also, the petitioner has not paid the rent regularly. The learned Appellate Authority considering the subsequent event, rightly held that the petitioner has committed wilful default in payment of rent and prayed for dismissal of the Civil Revision Petition.

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

13. The respondent filed R.C.O.P. for eviction of the petitioner on three grounds i.e., wilful default, owner's occupation and ceased to occupy. R.C.O.P. was dismissed by both the courts below on the ground of owner's occupation and ceased to occupy. The respondent has not challenged the said findings. The learned Rent Controller has rejected the contention of the respondent with regard to the wilful default committed by the petitioner and dismissed the R.C.O.P. on all the three grounds. The learned

Appellate Authority has confirmed the order of the Rent Controller on the grounds of owner's occupation and ceased to occupy and allowed the appeal on the ground of wilful default holding that the petitioner has committed wilful default on the ground that the petitioner has not taken any steps by initiating proceedings under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, for depositing the rent into the Court, when the landlord refused to receive the rent. Secondly, the petitioner has not paid the rent regularly, pending R.C.A. The petitioner has paid Rs.1,68,000/- only when he was directed to deposit the said amount in the order made in M.P.No.317 of 2012 filed by the respondent under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, in R.C.A.No.623 of 2011. The learned Appellate Authority held that the petitioner has not proved that he paid Rs.4,00,000/- to previous tenant Omega Electronics as per the instruction of the respondent. The learned Appellate Authority has held that even after adjustment of the advance amount paid by the respondent, there are arrears of rent and taking into account the subsequent event, allowed the appeal on the ground of wilful default.

14.The contention of the learned counsel for the petitioner that the petitioner could not pay the rent only because the respondent refused to receive the rent and also refused to receive the money order sent by the petitioner and therefore, there is no wilful default, is without merits.

15.As per the Tamil Nadu Buildings (Lease and Rent Control) Act, if landlord refuses to receive the rent, the tenant has to follow the procedure contemplated under Section 8 of the Act. As per the said Section, if the landlord refused to receive the rent or money order sent by the tenant, the tenant has to obtain the bank account of the landlord and deposit the rent into said account of the landlord. If the landlord refused to furnish the bank account, the tenant has to file a petition before the Rent Controller for permission to deposit the rent into the Court. The petitioner has not followed any of these procedures. Further it is not the case of the petitioner that pending proceedings before the Rent Controller or Appellate Authority, he tendered the rent in open Court to the respondent and the respondent refused to receive the same.

16.It is well settled that subsequent event also can be taken into account while passing order in the rent control proceedings. The learned Appellate Authority took into consideration the non-payment of rent from May 2008 till order passed in the application filed under Section 11(4) of the Act, which amounted to Rs.2,68,000/- and after deducting Rs.1,00,000/-, directed the petitioner to pay the balance amount of Rs.1,68,000/-. This clearly shows that the petitioner has failed to pay the rent from May 2008 and arrears of rent exceeded the advance amount paid by the petitioner.

17.The contention of the learned counsel for the petitioner that the petitioner has paid Rs.4,00,000/- to the previous tenant Omega Electronics also must be taken into account to find out whether the petitioner has committed wilful default, is without merits. The petitioner has failed to prove that he paid Rs.4,00,000/- to Omega Electronics as per the instruction of the respondent.

18.The learned Appellate Authority considering all the above facts in proper prospective and taking into consideration the

subsequent event, has rightly held that the petitioner committed wilful default and ordered eviction on the ground of wilful default. There is no illegality or irregularity warranting interference by this Court with the judgment and decree dated 07.07.2015 passed by the learned Appellate Authority in R.C.A.No.623 of 2011.

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

07.03.2018

Index:Yes/No
rm/kj

To

1.The XVI Judge,
Court of Small Causes,
Chennai.

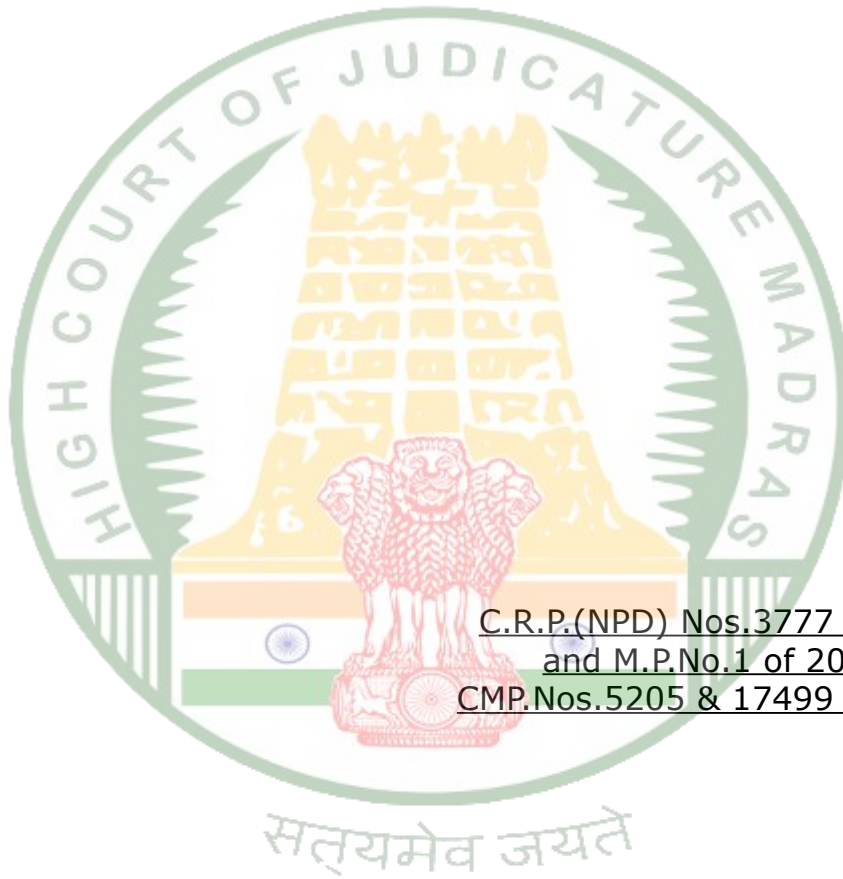
2.The VII Judge,
Court of Small Causes,
Chennai.

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V.M.VELUMANI,J.

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