

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (NPD) No.835 of 2015

S.Murugavel
S/o Subramanian
represented by Power Agent
S.Latha

...

Petitioner

Vs

G.MarksPRIYAN

...

Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the fair and decretal orders passed in RCA No.7 of 2013 dated 09/01/2015 on the file of Court of Principal Subordinate Judge (Rent Control Appellate Authority), Mayiladuthurai, in reversing the fair and decretal orders passed in RCOP No.6 of 2009 dated 05/04/2013 on the file of the court of District Munsif (Rent Controller) Sirkali.

For petitioner : Mr.A.Muthukumar

For Respondent : Mr.C.Veeraraghavan

ORDER

This Civil Revision Petition is filed against judgment and decree made in RCA No.7 of 2013 dated 09/01/2015 on the file of Court of Principal Subordinate Judge (Rent Control Appellate Authority), Mayiladuthurai, in reversing the fair and decretal orders passed in RCOP No.6 of 2009 dated 05/04/2013 on the file of the court of District Munsif (Rent Controller) Sirkali.

2. The petitioner is the landlord and the respondent is the tenant in RCOP No.6 of 2009 on the file of Principal Sub Court, Mayiladuthurai. The petitioner filed the above said RCOP against the respondent for eviction on the ground of wilful default, owner's occupation and different user. According to the petitioner, the petition premises was leased out to the respondent on 18.03.2004 by way of lease agreement on a monthly rent of Rs.1,250/- and on receipt of advance amount of Rs.75,000/- from the respondent. As per the lease agreement, the advance amount shall be returned to respondent on the date of vacating the petition premises. The said agreement was entered into for a period of eleven months. As per the lease agreement, the petition premises was leased out to the respondent for running covering jewellery shop and no other business shall be carried out in the said premises. Further, the

respondent shall not sub-let or encumber the property by way of usufructuary mortgage. The last lease agreement entered into between the petitioner and the respondent was on 16.11.2007. As on date, the monthly rent payable by the respondent is Rs.1500/-. The tenant was initially paying the rent regularly and he did not pay the rent from July 2009 till the date of filing of RCOP. When the petitioner demanded the rent from the respondent, during October 2009, the respondent did not give any reply.

2 (a) Further, the respondent is not running covering jewellery shop in the petition premises as per the lease agreement but he is doing cellphone recharge and other business. The petitioner is a M.Sc. Graduate and since he is unemployed, the petition premises is required by him for running agency business. The petitioner does not have any other property other than the petition premises in the same town. He also does not have any other income and he has to look after his family by doing business. Hence, the petitioner had requested the respondent to vacate and handover the petition premises during October 2009 but the respondent has not given any reply. Hence, the petitioner sent notice to the respondent on 20.10.2009 through his Advocate but the respondent refused to receive the said notice and returned the

same to the petitioner. In the said notice, the petitioner had informed that the lease agreement entered into between the petitioner and the respondent has been cancelled and informed the respondent to hand over the vacant possession of the petition premises within one month from the date of receipt of notice. Since the petitioner went abroad for employment purpose, by way of authorisation dated 24.10.2009, he authorised his wife Tmt.A.Latha as Power Agent to proceed with the case on his behalf. The petitioner also filed I.A.No.8 of 2010 in RCOP No.6 of 2009 to amend the petitioner by including his wife as his Power Agent and the same was allowed on 06.07.2010. For the above reasons, the petitioner prayed for eviction of the respondent on the ground of wilful default, owner's occupation and different user.

2 (b) The respondent filed counter statement and denied the averments stating that the original lease agreement is with the respondent and not with the petitioner, as alleged by him. The respondent has paid an amount of Rs.75,000/- as advance to the petitioner and no receipt has been given for the same. Similarly, the petitioner was not in the habit of giving receipts for payment of rent. Initially, the monthly rent was Rs.1250/- and the respondent is carrying on covering jewellery business in the petition premises.

The last lease agreement entered into between the petitioner and respondent was on 16.11.2007. The monthly rent of the petition premises was subsequently enhanced to Rs.1450/- and it is incorrect to state that the same was Rs.1500/-.

2 (c) It is false to state that the respondent is carrying on other business in the petition premises other than covering jewellery business. It is false to state that the respondent is carrying on cell phone recharge business and the same is an imaginary one. Recharge card business alone is carried on by the respondent with the permission of the petitioner. It is false to state that the respondent is causing damage to the petition premises.

2 (d) The respondent denied that he is in arrears of rent from July 2008. It is false to state that the petitioner requires the petition premises for his own occupation. It is also false to state that the petitioner has no other income. The petitioner frequently travels abroad. It is false to state that during October 2009, the petitioner informed the respondent to vacate the petition premises and it is an imaginary one. It is false to state that the respondent returned the notice sent by the petitioner. When the petitioner sent notice, the respondent was not in town and hence the same was

returned. On coming to know about the notice, the respondent met the petitioner in person and handed over the rent to him and hence, he did not reply for the notice. Thereafter, the respondent had paid rent upto December 2009.

2 (e) The petitioner has filed this petition in January 2010 and hence, the respondent could not pay the rent. The respondent is ready and willing to pay the arrears of rent from January 2010 till date @ Rs.1450/- per month. After the notice also, the petitioner has received rent from the respondent and the lease agreement is in force.

3. The respondent filed additional counter statement on 19.12.2010 denying the averments made in the petition and the petitioner filed reply statement.

4. Before the Rent Controller, the Power Agent of the petitioner S.Latha was examined as PW1 and one Chandra was examined as PW2. Six documents were marked on the side of petitioner as Exs.P1 to P6. The respondent examined himself as RW1 and marked eleven documents as Ex.R1 to R11. The learned Rent Controller, considering the pleadings, oral and documentary

evidence and arguments of the learned counsel for the parties, allowed the RCOP ordering eviction of the respondent by granting two months to vacate and handover the possession of the petition premises to the petitioner.

5. Against the said order dated 05.04.2013 made in RCOP No.6 of 2009, the respondent filed RCA No.7 of 2013 on the file of Principal Sub Court, Mayiladuthurai. The learned Appellate Authority, considering all the materials on record, order of the learned Rent Controller and the arguments of the learned counsel for the parties, allowed the RCA reversing the fair and decretal orders passed in RCOP No.6 of 2009 dated 05/04/2013.

6. Against the said judgment dated 09/01/2015 made in RCA No.7 of 2013 reversing the fair and decretal orders passed in RCOP No.6 of 2009 dated 05/04/2013, the present Civil Revision Petition has been filed by the petitioner.

7. The learned counsel for the petitioner contended that advance amount of Rs.75,000/- paid by respondent is refundable only when respondent vacates the petition premises. It is the security deposit and if any damage is caused by the respondent to

the suit property, the cost of repairing the petition premises has to be deducted from the security deposit. The respondent has not instructed the petitioner to adjust the said amounts towards the rent payable by him. On the other hand, even after filing of RCOP, the respondent was not paying rent regularly but was paying the same irregularly and in lumpsum. The respondent did not pay the monthly rent till petitioner filed petition under Section 11 of the Tamil Nadu Buildings (Lease & Rent Control) Act for a direction to deposit the rent. The respondent paid rent from January 2010 to October 2010 in December 2010 and for the month of April 2011 to June 2012 in lumpsum. The respondent has admitted that he is doing business of sale of cell phones and recharge card. The petition premises was let out only for carrying on the business of covering jewellery and not any other business.

7(a) As per condition in agreement Ex.P5, respondent is not entitled to carry on other business. The interpretation given by the Appellate Authority with regard to different user is erroneous. The respondent has not substantiated his claim that he obtained permission from the petitioner to carry on sale and service of cellphones and sale of recharge card. The petitioner requires the petition premises for his own business. The respondent has not

stated that requirement of petitioner is not bonafide. The respondent has admitted that petitioner was running a medical shop in the petition premises before the same was let out to the respondent. The respondent has also admitted that if time is granted, he will vacate the petition premises.

7(b) The learned counsel for the petitioner contended that respondent has not paid rent from July 2009 to December 2009 and July 2012 to December 2017, i.e. for five years and six months. Further the respondent was paying lumpsum amounts by filing memo marked in RCOP. The respondent has not paid the rents from July 2009 to December 2009 and has not filed memo for having paid the same. The respondent has not insisted the petitioner to adjust the rent payable from and out of the advance amount. As on today, the arrears of rent is more than advance amount of Rs.75,000/-. The court can take subsequent event into account in deciding the issue in the petition. The burden is on the respondent to prove that there is no arrears of rent on date of filing of the petition and subsequently.

7 (c) The learned counsel for the petitioner relied on the following judgments in support of his contention -

(i) 1995 (1) CTC 47 [C.Kailaschand Jain and 2 ors. v. Mohamed Kasim]

9. I am of the view that carrying on Pawn-broker's business in the present case where the building is let out for three other trades is an actionable one inviting eviction under Section 10(2)(ii)(b) of Tamil Nadu Act 18 of 1960. And the Courts below have rightly held in favour of the landlord.

(ii) 2015 (5) CTC 94 [M.Palanisamy v. P.Rajagopalan and anr.]

9. Even assuming that the deposit of rent into Court is true, documents ought to have been filed showing the deposit before the Rent controller. The evidence of the Tenant is that from March 1995 to December 2005 he has to pay the rent. It is not his case that he has already paid the rent. The remittance under Exhibits R5 to R8 only show irregular remittance and not continuous and complete remittance of rent. Therefore, the tenant is liable to be vacated on the ground of wilful default in payment of rent also.

(iii) 2007 (2) MLJ 636 [V.Kannadasan and Ors. v. Sirajunissa Bivi]

18. Eviction was ordered mainly on the ground that the tenants are not regular in payment of rent during the pendency of the proceedings. Subsequent to the filing of the eviction petition, tenants must have come to know that the property had been sold to the respondent/landlady. During the pendency of the eviction petition, the tenants

ought to have been regular in payment of rent. But the tenants have gone to the extent of challenging the sale deed in favour of the respondent/landlady, contending that the sale deed in favour of the landlady is not a valid sale and that the property is inalienable Ponnambalam had no right to convey.

19. As rightly pointed out by the Appellate Authority (in the order dated 31.1.1995), even after filing of the eviction petitions on the ground of wilful default, the tenants were not regular in payment of rent and they sought to adjust the advance paid to Ponnambalam. The tenants have also set up a plea for adjustment of rent towards the alleged expenses incurred by them by repairing the shop and also obtaining electricity service connection.

(iv) 2000 (1) LW 600 S.Subramania Pillai v. D.Thenmohan]

11. When the landlord alleges that rent has not been paid from December 1994, it is for the tenant to prove that he had paid it. It is for the tenant to prove that he has paid the rent, and he has discharged his statutory obligations. A mere swearing by tenant that he has paid the rent is not sufficient. The entire burden is on the tenant to substantiate the same. The landlord can only allege that he has not received the rent, and the person who alleges discharge of rent has to prove the same.

(v) 2000 (3) MLJ 460 [B.Sarojini v. Raheswaru Subramaniam & Ors.

3..... The tenant committed wilful default in the payment of rent for the period from 1.3.1986 to 21.3.1987 amounting to a sum of Rs.2,730. Further, against the purpose for which it was let out, the tenant put the premises to different user, namely for residential purpose.

8. Per contra, the learned counsel for the landlord invited the attention of this Court to the judgments of the Courts below and pointed out that both the courts have recorded a finding concurrently that the tenant was not only in arrears for the period from 1.3.1986 to 31.3.1987, but was also in arrears during the subsequent period namely even after the petition for eviction was filed.

8. Per contra, the learned counsel for the respondent contended that the respondent is not in arrears of rent and is willing to pay the rent. RCOP filed by the petitioner through his wife is not maintainable. The petitioner is not in India and claim of owner's occupation is not maintainable.

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

10. The petitioner has filed RCOP for eviction of the respondent on three grounds viz. wilful default, owner's occupation and different user. As far as wilful default is concerned, admittedly the petitioner is having Rs.75,000/- paid by the respondent as advance. The monthly rent, according to the petitioner is Rs.1,500/- and according to the respondent, it is Rs.1450/-. On the date of filing of the petition, according to the petitioner, rent is due from July 2009. The arrears of rent as on the date was less than

the advance amount paid by the respondent. As per Section 7 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the landlord is entitled to one month rent only as advance. If the tenant has paid more than one month rent, as advance, landlord can retain only one month rent as advance and must refund the balance amount. The tenant has option to request the landlord to adjust the same towards rent payable by him. Even if the tenant has not exercised the option and did not instruct the landlord to adjust the excess amount towards arrears of rent and only when the arrears is more than the advance amount, the landlord can file petition for eviction on the ground of wilful default. On the date of filing of RCOP, arrears by the respondent is less than the advance amount.

11. The learned Rent Controller, considering the averments in the petition and payment by the respondent in lumpsum, the arrears of rent during pendency of RCOP, held that the respondent has committed wilful default. On the other hand, the learned Appellate Authority, considering the scope of Section 7 of the Tamil Nadu Buildings (Lease and Rent Control) Act and the judgment of the Hon'ble Apex Court reported in **1996 (2) LW 159 [K. Narasimha Rao vs T.M. Nasimuddin Ahmed]** and decision of this Court reported in **2013 (7) MLJ 49 [M.K.Selvaraj vs**

Hameed Fathima Ghani] held that even if the tenant does not request the landlord to adjust the rent, the landlord has to adjust the rent and then only can state the petitioner is in arrears of rent, if arrears is more than the advance amount. The learned Appellate Authority, for the above reason held that the respondent has not committed any wilful default.

12. In this Civil Revision Petition, the learned counsel for the petitioner contended that subsequent to filing of RCOP, the respondent has not paid rent from July 2009 to December 2009 and July 2012 to December 2017. Even after adjusting the advance amount, the said arrears is more than the advance amount. The respondent has deliberately did not pay the rent and committed wilful default. The said contention has considerable force. The courts can take into account the subsequent event while deciding the issue in RCOP. The learned counsel for the respondent contended that there is no arrears of rent but at the same time did not dispute the memo of calculation filed by the learned counsel for the petitioner with regard non-payment of rent for the months thereon and submitted that respondent is willing to pay the rent. The learned counsel for the respondent also did not deny the arrears of rent for the months mentioned therein. In view of the

above facts, the respondent has committed default in payment of rent and it is wilful default.

13. As far as different user is concerned, the petitioner has let out the petition premises to the respondent to carry on only covering jewellery business. It is specifically mentioned in the rental agreement that the respondent should not carry on any other business. The respondent has admitted that he is carrying on business of selling cellphones and recharge card. According to the respondent, he is doing the said business with the permission of the petitioner. The respondent has admitted that he did not get permission in writing. In view of this admission, it is clear that the respondent is using the petition premises for the purpose other than for which the petition premises was leased out.

Section 10 (2) (ii) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, reads as follows :

*“used the building for a purpose other than
that for which it was leased”*

13(a) The learned Appellate Authority has erroneously interpreted the said provision that only when a tenant converts non-residential into residential building or vice versa, the said provision will apply. If a tenant changes the nature of business for which the petition premises is let out, it amounts to different user. The decision reported in **1995 (1) CTC 47** relied on by the learned counsel for the petitioner referred to above, is squarely applicable to the facts of the present case. In view of the same, the respondent has violated the condition of rental agreement and is using the petition premises for other purpose than the purpose for which it was let out to him.

14. As far as owner's occupation is concerned, the petitioner has sought for petition premises to establish his own agency business. Earlier to letting out the petition premises to the respondent, the petitioner was running medical shop. The respondent has not denied the contention of the petitioner that petitioner is not owning any other building in the same town. The respondent, in his evidence has stated that if time is granted, he will vacate the petition premises. RCOP is filed in the year 2009 and till date, the respondent has not vacated the premises. The respondent also has not alleged that requirement of petition

premises by the petitioner for his own occupation is not bonafide. The learned Appellate Authority failed to consider this aspect and erroneously rejected the requirement of the petitioner for his own occupation.

15. For the above reasons, the respondent is liable to be evicted on all the three grounds and judgment of the Appellate Authority dated 09/01/2015 made in RCA No.7 of 2013, reversing the order of the learned Rent Controller dated 05/04/2013 made in RCOP No.6 of 2009 is liable to be set aside and it is hereby set aside. The order of the learned Rent Controller dated 05/04/2013 made in RCOP No.6 of 2009 is restored.

16. In the result, this Civil Revision Petition is allowed. No costs.

30.01.2018

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Index : Yes
Speaking/Nonspeaking order

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V.M.VELUMANI, J.

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To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The District Munsif Court,
Sirkali.



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