

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No,3822 of 2009 and
CMP No.1 of 2009

N.Rajasekar

... Petitioner

Vs.

1. K.Damodaran
2. K.Mohandass
3. K.Haridass
4. K.Radha Krishnan
5. K.Manikandan

... Respondents

Prayer Civil Revision petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 1960 as amended by Act 23/73 and 1//80 against the order dated 26.08.2009 passed in RCA No.1 of 2008 by the Subordinate Judge, Udhagamandalam confirming the order dated 07.12.2007 passed in RCOP No.2 of 2004 by the Rent Controller and District Munsiff, Gudalur.

For Revision Petitioner : M/s M.Ravibharathi

For respondent No.1 to 5 : Mr.V.Manoharan

ORDER

This revision petition has been filed against the concurrent findings of the courts below ordering eviction under willful default in payment of rents.

2. The brief facts leading to file the revision petition are as follows. The present revision petitioner is the tenant and the present respondents are the landlords of the building in the rent control proceedings. Originally the subject matter of the building was leased out to the respondent for a monthly rent of Rs.750/- per month, thereafter, enhanced to Rs.1,200/- p.m. The allegation against the respondent is that he failed to pay the rent from the month of January 2004 to April 2004 aggregating to Rs.3,600/- and hence legal notice dated 10.05.2004 was issued to him by the petitioners, to vacate and handover the premises to them on the ground that the building was required to the 2nd petitioner for his own use and occupation.

3. The respondent resisted the RCOP petition by filing counter stating that he is paying monthly rent regularly and in fact, the rent for the month of February 2004 to April 2004 was received by the 4th petitioner and he stated that since the printed receipt book was not yet received from the press, there was a delay in issuance of rent receipt. It is the further contention of the respondent that though the landlords/ the petitioners received monthly rents regularly, they are in the habit of issuing single receipt for reception of rents for various months. The respondent further contended that after receipt of legal notice, he approached the 4th petitioner, who received the rents for the month of February 2004 to April 2004 and he admitted that he received the rents for the said months and that statement was recorded in the tape recorder. Hence, there is no willful default in payment of rent on the part of the respondent and the requirement of the building by the petitioners is not bonafide.

4. Before trial court, on the side of the petitioners, the 2nd and 4th petitioners were examined as PW1 and PW2 and Ex.P1 to Ex.P4 were marked. On the side of the respondent, one witness was examined as RW1 and Ex.R1 to R9 were marked.

5. After analysing the evidence on record, the trial court found that the petitioner committed willful default in payment of rents for the month of February 2004 to April 2004 and the requirement of the building by the petitioners was not bonafide under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and REnt Control) Act and hence, ordered eviction and handing over the possession of the building to the petitioners. Against which, the respondent filed an appeal before the Rent Control Appellate Authority. However, the appeal was dismissed. Hence, the respondent came up with the present revision petition before this court.

6. The learned counsel appearing for the revision petitioner would submit that the evidence of the petitioner clearly indicates that the respondents are in the habit of issuing single receipt for reception of rent for various months and the evidence also indicates that there was no willful default on the part of the petitioner in paying monthly rent. It is the further contention of the counsel that the conversation recorded with regard to the payment of rent for three months i.e. from February 2004 to April 2004 has not been permitted to be marked before the trial court. It is his specific contention that there is no wilful

default in payment of rents by the petitioner and the courts below have not assessed the evidence properly and ordered eviction and hence, prayed for allowing the revision.

7. Whereas, the learned counsel appearing for the respondents would contend that the conduct of the tenant clearly indicate his wilful default in payment of monthly rent and having pleaded that the conversation was recorded, nothing prevented him to produce the tape recorder before the court. The landlords admitted that the petitioner/tenant paid rent upto January 2004 and only from February 2004 to April 2004, he has not paid the rents and if really the land lords have failed to issue rent receipts, nothing prevented the petitioner from depositing the amount immediately. However, it has not been done by the revision petitioner and the courts below rightly found that the petitioner has committed willful default in payment of rent and hence, he prayed for dismissal of the revision petition.

8. It is not disputed by both parties that the revision petitioner is the tenant under the respondents for a monthly rent of Rs.1,200/-. The specific case of the respondents is that till January

2004, the petitioner paid rent and the arrears of rent is only from February 2004 to April 2004. The issuance of legal notice by the respondents to the petitioner and the reply by the petitioner are not in dispute. The contention of the petitioner is that after receipt of legal notice, he met the 4th respondent, who received the rents for the month of February 2004 to April 2004 and he also admitted the receipt of rent and the said conversation was recorded by the petitioner in the tape recorder. It is the further contention of the petitioner that at the time of meeting, the 4th respondent stated that since the printed receipt books were not yet received, he could not issue the receipt.

9. The trial court clearly analysed the evidence of both side and come to the conclusion that the tenant has failed in establishing his contention and held that there is willful default in payment of monthly rent and ordered for eviction. It is to be noted that if really the land lord had failed to issue rent receipts, or in the habit of issuing single receipts for various months, there was no need for the tenant to record the alleged conversation and this type of conduct itself is against the normal human conduct. Admittedly, the landlord issued receipts till January 2004. If the case of the tenant is stated to be

true, he ought to have demanded the receipts immediately. In the event of receipt has not been given by the land lord, the tenant ought to have issued notice in writing and then made deposit of rent in the bank to the credit of the landlord. But, no notice has been issued by the revision petitioner. Merely because on earlier occasion, the landlord issued single receipt for the rent received for various months, that cannot be taken advantage by the tenant and he is bound to pay monthly rent regularly. The tenant infact gone to the extent of recording the conversation in the tape recorder. The trial court has rightly found that no such tape recorder was produced by the tenant which clearly indicates that he committed default willfully and deliberately in paying monthly rent. Hence, when the courts below found the wilful default committed by the petitioner on the basis of analysing the entire evidence, this court sitting in a revision jurisdiction cannot reappreciate the evidence. Accordingly, the revision petition is liable to be dismissed.

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10. In the result,

(i) The civil revision petition is dismissed. No costs. The connected civil miscellaneous petition is closed.

(ii) The orders passed by the courts below are confirmed.

02.04.2019

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Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

To

1. The Subordinate Judge, Udhagamandalam.
2. The Rent Controller and District Munsiff, Gudalur.



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N.SATHISH KUMAR. J.,
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