

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.291 of 2013
& M.P.No.1 of 2013

S.S.Chandran

.. Petitioner

Vs.

R.Lakshmi

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act to set aside the judgment and decree dated 30.03.2012 made in R.C.A.No.2 of 2012 on the file of the Sub Court, Tiruvarur (Rent Control Appellate Authority), confirming the fair and decretal order dated 27.07.2011 made in R.C.O.P.No.4 of 2006 on the file of the District Munsif Court, Tiruvarur (Rent Controller).

For Petitioner : Mr.J.Nandagopal

For Respondent : Mr.P.Raja

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ORDER

This Civil Revision Petition is filed to set aside the judgment and decree dated 30.03.2012 made in R.C.A.No.2 of 2012 on the file of the

Sub Court, Tiruvarur (Rent Control Appellate Authority), confirming the fair and decretal order dated 27.07.2011 made in R.C.O.P.No.4 of 2006 on the file of the District Munsif Court, Tiruvarur (Rent Controller).

2.The petitioner is tenant and respondent is landlady in R.C.O.P.No.4 of 2006 on the file of the District Munsif court, Tiruvarur. The respondent filed the said R.C.O.P for eviction of the petitioner on the ground of wilful default, different user, act of waste and owners occupation. According to the respondent, the petition premises was let out to the petitioner in the year 1992 on a monthly rent of Rs.500/-. Subsequently, in the year 2001, the monthly rent by mutual consent was enhanced to Rs.700/- per month. The petitioner was irregular in payment of rent. After deducting all the amounts paid through money order sent by the petitioner, a sum of Rs.15,300/- was due and payable by the petitioner up to the month of March 2006. The respondent issued a notice dated 18.09.2005 through his Advocate calling upon the petitioner to vacate and handover the vacant possession. The petitioner sent a reply dated 26.09.2005. According to the respondent, the petition premises is let out to the petitioner for residential purpose on a oral tenancy. The petitioner is not residing in

the petition premises for the past 5 years prior to filing of the petition. The petitioner is storing decorative materials by which the petition premises is being damaged. The respondent wants to settle down at Thiruvavarur and therefore, she requires the petition premises for her own use and occupation. Hence, the respondent filed the above R.C.O.P.

3.The petitioner filed counter statement and denied all the averments made in the petition. According to the petitioner, the tenancy is in writing and monthly rent is Rs.450/- and not Rs.500/- as claimed by the respondent. The petitioner has paid a sum of Rs.5000/- as advance to the respondent. The respondent and her daughter used to come and collect the rent. When they are unable to come and collect the rent, the petitioner used to send the rent by money order. The petitioner has paid rent regularly and he has not committed wilful default and there is no arrears of rent. According to the petitioner, when the petition premises was let out in the year 1992, the petitioner was residing in a portion and storing the decorative materials in another portion. By storing decorative materials in another portion, the petition premises is not damaged. The petitioner has not converted the residential building into non-residential building. The respondent's

daughter and son have settled down at Chennai and respondent is residing with them at Chennai as all the facilities are available at Chennai. The respondent's intention is not to settle down in Thiruvavur. She asked the petitioner to purchase the property for a sum of Rs.8,00,000/-. He refused the said offer. In order to sell the property for higher price, the respondent has filed the present R.C.O.P and prayed for dismissal of the petition.

4.Before the learned Rent Controller, the respondent examined herself as P.W.1 and marked 3 documents as Exs.P1 to P3. The petitioner examined himself as R.W.1 and one Kittappa, attesor to Ex.R4 was examined as R.W.2 and marked 19 documents as Exs.R1 to R19.

5.The learned Rent Controller considering the pleadings, oral and documentary evidence, dismissed the R.C.O.P, holding that the tenancy is in writing, monthly rent is Rs.450/- and advance amount is Rs.5000/-. The petitioner has not committed any wilful default. There is no act of waste and rejected the requirement of the respondent for her own occupation on the ground that all the facilities including medical facilities are available in Chennai. Against the said R.C.O.P, the

respondent has filed R.C.A.No.2 of 2012. The learned Appellate Authority independently considering the pleadings, oral, documentary evidence and order of the learned Rent Controller allowed the appeal on the ground of wilful default and owners occupation and dismissed the R.C.A on the ground of different user and act of waste.

6. Against the said judgment and decree dated 30.03.2012 made in R.C.A.No.2 of 2012 in R.C.O.P.No.4 of 2006, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel for the petitioner contended that respondent failed to prove that petitioner committed wilful default. The petitioner used to pay lump sum amount and the respondent received the same without any objection. The learned Appellate Authority is not correct in holding that Ex.R4, the rental agreement is only for 11 years and subsequently, it was not extended. The petitioner has paid the property tax, water tax and all the rent to the respondent and there is no arrears of rent and therefore, there is no wilful default. The learned counsel for the petitioner further contended that the learned Appellate Authority failed to consider the fact that the respondent admitted that she is living in Chennai for long time and hence the claim of the

respondent for her own occupation is not bonafide. The petitioner filed an application in I.A.No.25 of 2006 under Section 11(3) of the Act and deposited the rent into Court and prayed for allowing the Civil Revision Petition.

8.Per contra, the learned counsel for the respondent contended that respondent has let in both oral and documentary evidence to prove the wilful default committed by the petitioner. Even after Ex.R5, the letter relied on by the petitioner asking him to pay the rent every month, the petitioner admittedly did not pay the rent every month and paid the rent in lump sum according to his whims and fancies. The respondent requires the petition premises for her own occupation and she wants to come from Chennai and settle down in Thiruvavarur in her old age. The learned Rent Controller has not considered the pleadings, oral and documentary evidence let in by the respondent properly. The reasons given by the learned Rent Controller is erroneous on the ground that the learned Appellate Authority has appreciated all the materials on record and by giving cogent and valid reason, allowed the appeal. There is no error in the finding of the learned Appellate Authority.

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

10. The respondent sought for eviction on the ground of wilful default, act of waste, different user and owners occupation against the petitioner. The respondent claimed that tenancy is oral tenancy. Initially, the monthly rent was Rs.500/- and subsequently by mutual consent, it was enhanced to Rs.700/-. According to the respondent, the petitioner did not pay the rent regularly and has committed wilful default. On the date of filing of the R.C.O.P, the arrears of rent due on the respondent was Rs.15,300/-. The respondent examined herself as P.W.1 and spoke about this fact and marked Exhibits to substantiate her claim. On the other hand the petitioner claimed that tenancy is in writing and monthly rent is only Rs.450/-. The petitioner marked Ex.R4, the tenancy agreement and examined attesor of the tenancy agreement as R.W.2. The learned Rent Controller rejected the contention of the respondent that signature in Ex.R4 is not her signature. In view of the evidence of R.W.2, held that tenancy is in writing and not oral. The learned Rent Controller failed to consider the fact that Ex.R4, agreement is only for 11 months and no rental

agreement was entered into between the petitioner and respondent subsequently.

11. Similarly, the learned Rent Controller failed to consider that as per the terms of rental agreement, the petitioner has to pay the rent every month. There is no agreement between the parties that petitioner has to pay the property tax, water tax, etc. The petitioner was not authorised to pay these taxes on behalf of the respondent. It is an admitted fact that the petitioner has paid the rent in lump sum at irregular interval and was not regular in payment of rent every month. Even after filing R.C.O.P for eviction of the petitioner, he has not tendered the monthly rent and deposited the same in lump sum. This clearly shows that tenant has committed default in payment of monthly rent and said default is wilful on the fact and circumstances of the present case. The learned Appellate Authority has considered these facts in proper perspective and held that the petitioner has committed wilful default.

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12. As far as the owners occupation is concerned, it is the contention of the respondent that she wants to live in Thiruvavur which is her native place. It is true that respondent has admitted in

examination as P.W.1 that she is living with her son at Chennai. That does not mean that respondent's intention to come to Thiruvavur and live there is not bonafide. The reason given by the petitioner to contend that the intention of the respondent is not bonafide on the ground that Chennai has all facilities including medical facility is not acceptable. The owner of the property may intend to live in her own native place in her old age. Such intention cannot be rejected by accepting the contention of the tenant that landlady wants to evict the petitioner in order to sell the property for higher price. The learned Appellate Authority on consideration of oral evidence of the respondent held that intention of the respondent for owner's occupation is bonafide.

13.The learned Appellate Authority has held that petitioner has committed wilful default. The intention of the respondent for owner's occupation is bonafide by appreciating the facts of the case. There is no perversity or arbitrariness in the said finding, warranting interference by this Court. The finding of the fact can be interfered in revision only when the Courts below have failed to properly appreciate the facts of the case or wrongly appreciated the said facts or failed to

consider the facts. In view of the above reason, I hold that the Civil Revision Petition is devoid of merits and is liable to be dismissed.

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

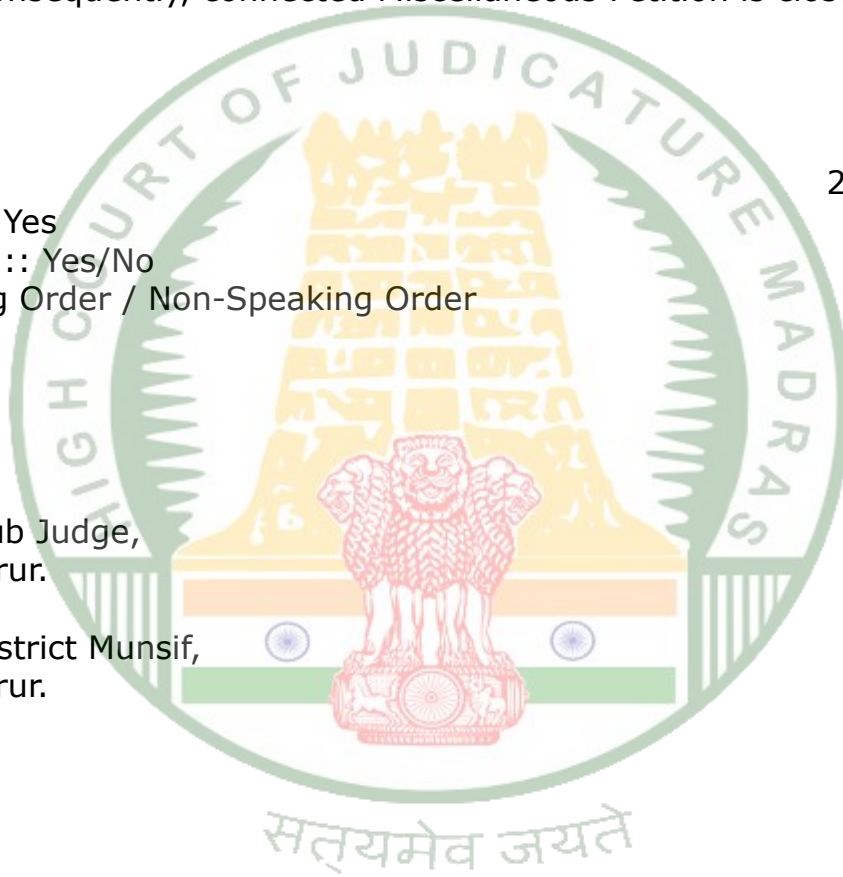
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Speaking Order / Non-Speaking Order
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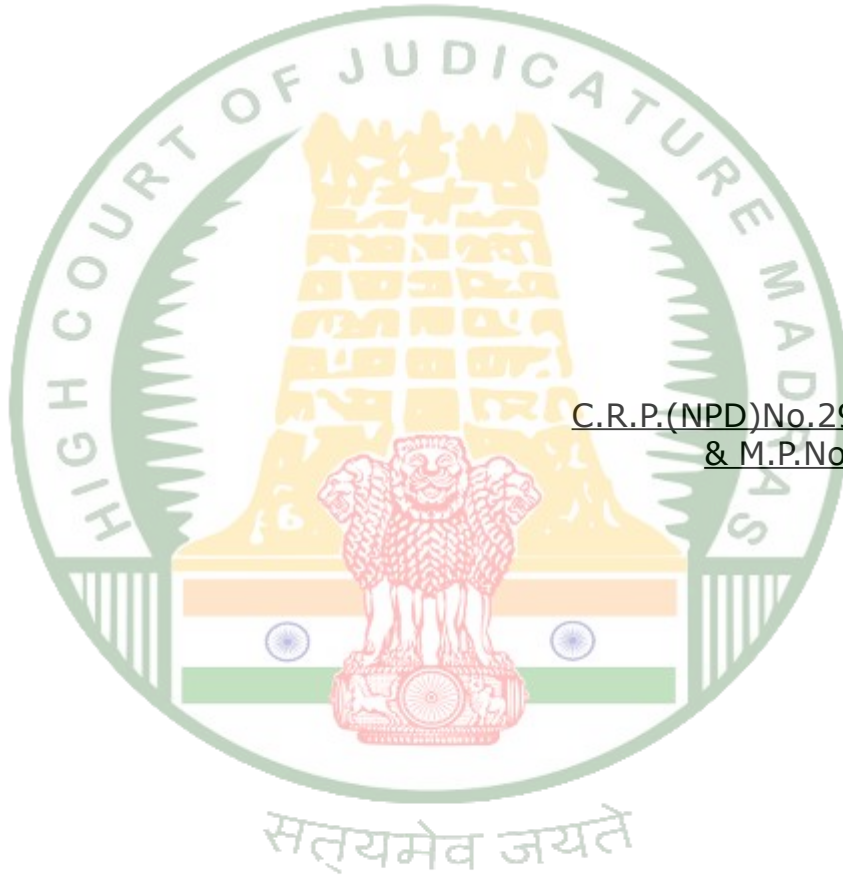
1. The Sub Judge,
Tiruvarur.

2. The District Munsif,
Tiruvarur.



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V.M.VELUMANI,J.
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