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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.03.2018

DELIVERED ON : 28.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.83 of 2018

and

C.M.P. (MD) .No.354 of 2018

K.Suresh Babu : Petitioner/Appellant/
Respondent / tenant

vs.

N.Govindarajan : Respondent/ Respondent/
Petitioner / Landlord

PRAYER : Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent) Control Act, against the judgment, dated 07.10.2017 passed by the learned Rent Control Appellate Authority (Subordinate Judge), Ramanathapuram, made in R.C.A.No.1 of 2016, confirming the order, dated 31.03.2016, passed in R.C.O.P.No.24 of 2013 by the Rent Controller (District Munsif Court), Ramanathapuram.

For Petitioner : Mr.V.Raghavachari

For respondent : Mr.G.Dineshraj

ORDER

This Civil Revision Petition has been filed by the petitioner / tenant as against the judgment, dated 07.10.2017 passed by the learned Rent Control Appellate Authority (Subordinate Judge), Ramanathapuram, whereby and whereunder the eviction order passed by the Court learned Rent Controller was confirmed.

2. The respondent / landlord is the owner of the premises and he let out the said premises to the petitioner for running his pawn broker business on 01.03.2007. The rent for the said premises was fixed at Rs.700/- and a sum of Rs.50,000/- was given by the petitioner / tenant as advance. According to the respondent / landlord, the petitioner / tenant has failed to pay rent from January 2010 onwards and without any valid license, he has been



doing lottery business and gold business. Hence, the respondent / landlord had filed R.C.O.P.No.24 of 2013 seeking to evict the petitioner / tenant on the ground of (a) wilful default, (b) change in user, (c) use of premises for illegal purpose, (d) act of nuisance and (e) owner's occupation. According to the petitioner / tenant, the respondent has received rent till August, 2013 and thereafter, the respondent / landlord has purposefully refused to receive the rent. The Rent Controller, after hearing both sides, has allowed the eviction petition on the ground of wilful default and dismissed the same on all other grounds. Aggrieved by that order, the petitioner / tenant has filed an appeal and the respondent / landlord has filed a cross appeal. The Rent Control Appellate Authority has dismissed the appeal, but partly allowed the cross appeal, thereby confirmed the eviction order on the ground of owner's occupation also. Aggrieved by the said judgment, the petitioner / tenant has filed this civil revision petition.

3. The learned counsel appearing for the petitioner / tenant has submitted that he has paid rent upto the month of August, 2013 and from the month of September 2013, the respondent / landlord refused to receive the rent and therefore, he had attempted to pay rent through Money Order on 19.11.2013. However, the respondent / landlord had deliberately refused to receive the money order only with the mala fide intention to evict the petitioner from the petition mentioned premises. He would further submit that immediately after filing of the RCOP by the respondent / landlord, the petitioner / tenant has filed an application for depositing the rent and the same was allowed by the Rent Controller on 01.09.2014 and based on the said order, he has deposited the entire arrears of rent and thereafter, he has been depositing the rent into the Court without any default. More over, the respondent / landlord could have adjusted the arrears of rent against the advance. But, even after the request made by the petitioner / tenant, the respondent / landlord failed to deduct the rental arrears. Mere non-payment of rent for certain period cannot be stated as willful default. But, the Courts below have erroneously held that the tenant had failed to follow Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Act") and thereby, committed willful default. Hence, the said ground is liable to be thrown out.

4. The learned counsel for the petitioner / tenant would further submit that the respondent has not produced any document to show that his son has completed B.L. course and when he got enrolled as an Advocate and the extent of the petition premises is hardly 80 sq. ft. and in such a tiny area, the office cannot be set up and there is no document produced to show that there is greater urgency and need for petition premises. But, the Rent Control Appellate Authority has erroneously decided the said ground in favour of the respondent / landlord and hence, the eviction order passed by the Rent Control authorities are liable to be set aside. Thus, he prayed to allow the civil revision petition.



5. The learned counsel appearing for the respondent / landlord would submit that though the rent amount of Rs.700/- was fixed in the year 2007, for the past 11 years, the petitioner / tenant has been illegally enjoying the shop by paying the said meagre amount and that the Rent Controller and the Rent Control Appellate Authority have correctly held that the petitioner / tenant has committed wilful default under Section 8 of the Act. He would further submit that though the Rent Controller has rejected the ground of own occupation, the Rent Control Appellate Authority, after analysing the entire evidence, has rightly held that the petition mentioned premises for own use of occupation. Thus, he prayed to set aside the revision petition.

6. Heard the learned counsel for both sides and perused the materials available on record.

7. The question that arises for consideration is

(a) Whether the petitioner / tenant committed wilful default?

(b) Whether the requirement of the respondent / landlord for personal occupation is bona fide?

8. According to the respondent / landlord, the petitioner / tenant has not been paying rent from January, 2010 onwards. As it has not been proved by the respondent / landlord through valid documents and the RCOP was filed only in the year 2013, the Court below has rejected the said contention. However, as the petitioner / tenant himself admitted that from September, 2013, the respondent / landlord had refused to receive the rent, the period of default was taken into consideration from September, 2013.

9. According to the petitioner / tenant, he attempted to pay rent for through money order on 19.11.2013, but the respondent / landlord refused to receive the same and that after filing of the eviction petition by the respondent / landlord, on 11.03.2014, the petitioner / tenant has filed I.A.No.38 of 2014 seeking to deposit the rent before the Court below and the same was allowed on 01.09.2014 and by virtue of the said order, he deposited the entire arrears amount and started to deposit the rent in the Court and as of now, there is no arrears of rent and as the petitioner / tenant has deposited the arrears of rent in the Court, it should be taken as compliance with Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

10. When the similar issue arises for consideration, the Hon'ble Supreme Court in E.Palanisamy Vs. Palanisamy (dead) by LRs. and others, reported in (2003) 1 SCC 123, after extracting Section 8 of the Act, has held in paragraph Nos.3 to 8 as follows:



of The Tamil Nadu Building (Lease & Rent Control Act), 1960 are to be strictly complied with by the tenant before he can seek benefit under the said provisions regarding deposit of rent in the Court. In this connection, relevant provisions of Section 8 of the Act need to be quoted :

"Section 8 : Landlord liable to give receipt for rent or advance - Sub-section (1)..... (2) Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant, to the credit of the landlord.

Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within (five kilometers) of the limits thereof.

Explanation It shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the money order commission.

(5) If the landlord refuses to receive the rent remitted by Money Order under sub-section (4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building."

4. It would be seen from the above provisions that while the landlord is required to issue a notice of default, on refusal by landlord to accept rent, the tenant is required to call upon the landlord by way of a notice to specify the name of a bank in which rent could be deposited by the tenant to the credit of the landlord. If the landlord specifies the name of the Bank to deposit the rent,



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there is an obligation on the part of the tenant to make the deposit of arrears of rent in the account of the landlord. However, if the landlord does not specify the name of a Bank inspite of being called upon by the tenant through a notice, the tenant is required to send the amount of arrears through a money order to the landlord after deducting the commission payable on the money order. If the landlord still refuses to accept the rent, the tenant is entitled to file an application before the Rent Controller seeking permission to deposit the arrears of rent under sub- section (5) of Section 8 of the Act.

5. Mr.Sampath, the learned counsel for the appellant argued that since the appellant-tenant had deposited the arrears of rent in Court, it should be taken as compliance of Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the Court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the Court for permission to deposit the arrears of rent. Since there is a substantial compliance of Section 8 in as much as the arrears of rent stand deposited in Court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance of the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in Kuldeep Singh v. Ganpat Lal & Another reported in 1996 (1) SCC 243



and M.Bhaskar v. J. Venkatarama Naidu reported in 1996 (6) SCC 228.

6.The counsel for appellant did not dispute that the tenant had not fulfilled the conditions prescribed in Section 8 of the Act before making deposit of rent in Court. Hence similar circumstances and while dealing with almost similar provisions contained in the Rajasthan Premises (Control of Rent & Eviction) Act 1950, this Court in Kuldeep Singh v. Ganpat Lal & Another (supra) held:

"8. In the present case, the appellant is seeking to avail of the benefit of the legal fiction under Section 19-A (4) of the Act. It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. [See: Bengal Immunity Co.Ltd. v. State of Bihar (1955) 2 SCR 603 at p.646. The appellant can avail of the benefit of Section 19-A (4) if the deposit of Rs.3600 made by him in the Court of Munsif (South), Udaipur, on 29.10.1982, by way of rent for the months of May 1982 to October 1982, can be treated as a payment under Section 19-A (3) (c) so as to enable the appellant to say that he was not in default in payment of rent. Under Section 19-A (3) (c) the tenant can deposit the rent in the court only if the conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present case. The deposit which was made by the respondent in court on 29.10.1982 cannot, therefore, be regarded as a deposit made in accordance with clause (c) of sub-section (3) of Section 19-A and the appellant cannot avail of the protection of sub-section (4) of Section 19-A and he must be held to have committed default in payment of rent for the months of May 1982 to October 1982. This means that the decree for eviction has been rightly passed against the appellant on account of default in payment of rent for the period of six months."

7. Again in M. Bhaskar v. J. Venkatarama Naidu, (supra) with reference to similar provisions contained in the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, this Court observed that when the landlord is evading payment of rent, the tenant has to follow the procedure prescribed under Section 8 of the Act i.e. to issue notice to the landlord to name the Bank and if he does not name the Bank, the tenant has to file application

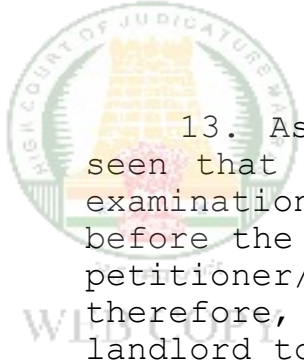


before the Rent Controller for permission to deposit rent. The tenant did not follow that procedure. Omission to avail of the prescribed procedure disentitles the tenant to plead that there was no willful default on his part. The landlord was, therefore, entitled to seek eviction on the ground of willful default in payment of rent on the part of the tenant.

8. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straightaway invoking Section 8 (5) of the Act without following the procedure contained in the earlier sub-sections i.e. sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises in pursuance of the High Court judgment." (emphasis supplied)

11. The above dictum laid down by the Hon'ble Supreme Court is squarely applicable to the facts of this case, as in this case also, though Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 prescribes the procedure to be followed by the tenant while the landlord refusing to receive the rent, the petitioner / tenant has straight away invoked the provision of Section 8(5) of the Act without scrupulously following the earlier step by step procedures contained in Section 8 of the Act. Therefore, I am of the considered view that both the Rent Controller and the Rent Control Appellate Authority has rightly passed the eviction order on the ground of willful default and the same need not be interfered with.

12. Though it is submitted by the learned counsel for the petitioner / tenant that he has paid advance amount of Rs.50,000/- to the respondent / landlord and the same could be adjusted towards arrears of rent, it is seen that nowhere the petitioner / tenant has stated that he has exercised that option, and proved the same and therefore, the said contention is rejected.



13. As far as the own use and occupation is concerned, it is seen that the petitioner / tenant himself admitted in his cross-examination that son of the respondent / landlord is an Advocate and before the Courts below, he has not raised such question. Though the petitioner/tenant submitted that the shop is only 80 sq. ft. and therefore, it is not feasible for the son of the respondent / landlord to run an Advocate Office and he can very well choose other shops in the very same complex for his own use, this Court is of the view that it is the option of the respondent / landlord in which the petitioner / tenant has no say. Though the Rent Controller had rejected the ground of owner's occupation, the Rent Control Appellate Authority has rightly accepted the said ground. This Court does not find any reason to interfere with the said ground also.

14. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Rent Control Appellate Authority /
Subordinate Judge, Ramanathapuram.

2.The Rent Controller / District Munsif,
Ramanathapuram.

+1CC to Mr.V.Raghavachari Advocate in SR.NO.64787.

GCG

DS/JC/SAR-4 :19.06.2018: 8P/4C

order made in
C.R.P. (PD) (MD) No.83 of 2018
28.04.2018