



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2018

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (MD) No.86 of 2018

and

C.M.P. (MD) No.363 of 2018

R.Shanthi

... Revision petitioner/Petitioner/
Respondent/Tenant

Vs.

K.S.Salhal Bivi

... Respondent/Respondent/
Petitioner/Landlady

Prayer: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the fair order and ex-order passed in I.A.No.124 of 2016 in R.C.O.P.No.92 of 2015, dated 17.11.2016 on the file of the learned Principal District Munsif, Madurai Town and to allow the Revision with costs.

For Petitioner : Mr.S.Manohar

JUDGMENT

This Civil Revision petition is filed against the fair order and ex-order passed in I.A.No.124 of 2016 in R.C.O.P.No.92 of 2015, dated 17.11.2016 on the file of the Principal Rent Controller, (Principal District Munsif), Madurai Town, dismissing the petition filed by the petitioner to take up the maintainability of R.C.O.P. No.92 of 2015 as a preliminary issue.

2. Heard the learned counsel appearing for the petitioner.

3. The petitioner is the tenant. Earlier it appears that the respondent/landlady filed a petition in R.C.O.P.No.181 of 2011 for fixing fair rent. The landlady also filed a petition earlier for eviction on the ground of wilful default. In the petition in R.C.O.P.No.181 of 2011, the fair rent was fixed. Aggrieved by the same, the tenant has preferred an Appeal in R.C.A.No.53 of 2014 before the Rent Control Appellate Authority, Principal Subordinate Court, Madurai. During the pendency of the Appeal that was filed by the tenant in R.C.A.No.53 of 2014, the landlady has filed



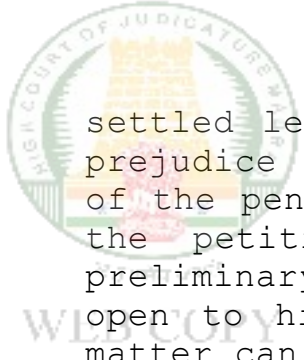
another petition in R.C.O.P.No.92 of 2015 before the Rent Controller (Principal District Munsif), Madurai Town, for wilful default on the ground that the petitioner who is liable to pay the fair rent as fixed by this Court in the earlier proceedings has committed wilful default. During the pendency of this eviction petition, the petitioner/tenant filed an Interlocutory Application in I.A.No.124 of 2016 to decide the maintainability of the petition in R.C.O.P.No.92 of 2015 as a preliminary issue, by stating that a petition for eviction on the ground of wilful default is not maintainable, when the Appeal is pending against the order determining the fair rent for the premises.

4. The lower Court dismissed the petition on the ground that the proceedings is summary in nature and that there is no necessity to decide the issue as a preliminary issue and hence the petition is not maintainable. Aggrieved by the same, the tenant, the Revision petitioner has preferred the above Civil Revision petition.

5. Going by the facts, this Court also found that the petition is not maintainable either on merits or on principle. It is not in dispute that the landlady has filed the petition in R.C.O.P.No.181 of 2011 on the file of the Rent Controller and obtained an order fixing fair rent, the petitioner/tenant is liable to pay rent at the rate fixed by the Court in R.C.O.P.No.181 of 2011 with effect from the date of the petition. It is true that the order passed by the Rent Controller has not reached finality and the Appeal preferred by the petitioner/tenant in R.C.A.No.53 of 2014 is pending before the Rent Control Appellate Authority/Principal Subordinate Court, Madurai. However, the petitioner has not produced any order of Stay passed by the Rent Control Appellate Court during the pendency of the Appeal.

6. As a matter of fact, in the counter affidavit filed by the respondent/landlady, it was pointed that the Appeal was dismissed for default and that it was yet to be restored on file. Hence, practically, the Appeal itself is not alive at the time when the petition is filed by the petitioner/tenant. However, even assuming that an Appeal is pending mere pendency of the Appeal is not an excuse for the petitioner to pay the fair rent fixed by the Court unless the order of Rent Controller fixing fair rent is stayed by the Appellate authority.

7. The respondent/landlady is entitled to collect fair rent which is determined by the Rent Controller earlier. The question that is raised by the tenant is hypothetical, revolve on what happens in case, the tenant succeeds in the Appeal or the quantum of fair rent fixed by the Rent Controller is reduced. The issue need not be decided merely on assumption. By applying the



settled legal principles that mere pendency of the Appeal cannot prejudice the rights of parties, the tenant cannot take advantage of the pendency of the Appeal and question the maintainability of the petition for wilful default by raising the same as a preliminary issue. In case, the tenant succeeds the Appeal, it is open to him to workout his remedy by filing an Appeal and the matter can also be considered by showing *bonafides*.

8. Secondly, this Court is also convinced with the reason given by the lower Court for dismissing the petition. When the proceedings under Tamil Nadu Buildings(Lease and Rent Control) Act, 1960, is summary in nature and the provision of Order 14 Rule 2 of C.P.C., cannot be invoked so as to prolong the proceedings.

9. In that view of the matter, this Court does not find any reason to interfere with the order. Hence, the Civil Revision petition is dismissed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Rent Controller,
(Principal District Munsif), Madurai Town.
2. The Record Keeper, V.R.Section (Two copies)
Madurai Bench of Madras High Court, Madurai.

PMU

VB/KKR/SAR1/02.02.2018/3P/4c

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