



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD) No.404 of 2014

and

M.P. (MD) No.1 of 2014

G.Kamatchi Ammal (Died)

1.G.Nandagopalan

2.Rajarajan

: Petitioners

vs.

Tamil Nadu Medicals

A dissolved Partnership Firm

Represented by its partners

1.K.Govindasamy

2.M.Selvi

3.Amudha

4.Sailarasan

5.Sinthawinakathir

: Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree of the learned Rent Control Appellate Authority-cum-Principal Sub Judge, Thanjavur, dated 20.12.2013, made in RCA No.10 of 2013, setting aside the fair and decreetal order in IA.No.41 of 2012, in I.A.No.52 of 2011 in R.C.O.P.No.8 of 2010, on the file of Rent Controller-cum-District Munsif, Thanjavur.

For Petitioner : Mr.S.Srinivasaraghavan

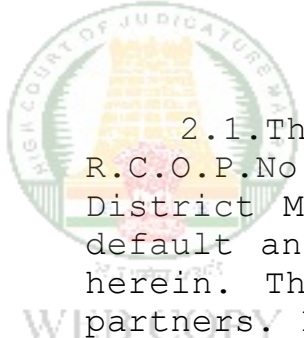
For R1 : Mr.P.Sesubalan Raja

For R3 to R5 : No Appearance

ORDER

The landlords in R.C.O.P.No.8 of 2010, on the file of the Rent Controller-cum-District Munsif, Thanjavur, are the revision petitioners herein.

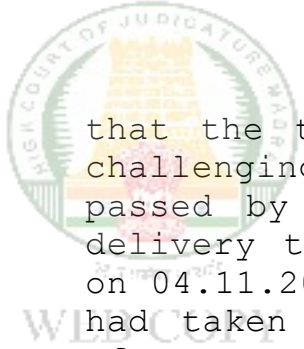
2.The brief facts that are necessary for the disposal of this petition are as follows:



2.1. The revision petitioners as landlords filed a petition in R.C.O.P.No.8 of 2010, on the file of the Rent Controller-cum-District Munsif, Thanjavur, for eviction on the ground of wilful default and for additional occupation, as against the respondents herein. The respondent is a partnership firm represented by its partners. In the eviction petition in R.C.O.P.No.8 of 2012, an ex-parte order was passed on 14.03.2011, directing the tenant to evict the demised premises. The revision petitioners then filed execution petition in E.P.No.66 of 2011, before the District Munsif Court, Thanjavur. However, when the execution petition is pending, the respondents / tenants filed a petition in I.A.No.52 of 2011, to set aside the ex-parte order passed in R.C.O.P.No.8 of 2010. Unfortunately, the said petition was dismissed as abated on 05.12.2012 on the basis of the representation that one of the landlords by name, G.Kamatchi Ammal, the first petitioner in the eviction petition died during the pendency of the proceedings. This order is unwarranted, as death of one of the co-owners, who have filed the petition for eviction, does result in abatement. Further, it is not in dispute that two of the sons of first petitioner in the eviction petition are already on record.

2.2. Though, I.A.No.52 of 2011, can be prosecuted as against the remaining landlords, who are respondents 2 and 3 in the petition, an order was passed on 05.12.2012, dismissing the petition in I.A.No.52 of 2011 as abated. It is also admitted before this Court that the legal heirs of the deceased Kamatchi Ammal, were also on record as petitioners 2 and 3 in R.C.O.P.No.8 of 2010 and they are also respondents 2 and 3 in I.A.No.52 of 2011. Thereafter, the respondent / tenant filed a petition in I.A.No.41 of 2012 in I.A.No.52 of 2011, to set aside the order dismissing the petition in I.A.No.52 of 2011 as abated and to implead the legal heirs of deceased first respondent in the petition. This petition was dismissed by the trial Court holding that it is not necessary to implead the other legal heirs of the deceased. This order is patently illegal and same has been passed by the lower Court unmindful of the legal consequences of the order that was passed earlier, dismissing the petition in I.A.No.52 of 2011 as abated. Aggrieved by the same, the respondents preferred an appeal in R.C.A.No.10 of 2013, before the Rent Control Appellate Authority-cum-District Sub Court, Thanjavur and the same was allowed. Aggrieved by the same, the revision petitioners / landlords have preferred the above civil revision petition.

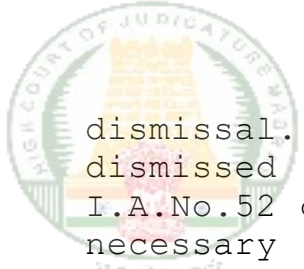
3. The learned Counsel for the revision petitioners submitted that after the ex parte order was passed in R.C.O.P.No.8 of 2011, the landlords filed a petition for delivery. After the order of delivery, possession was taken pursuant to the further order obtained by the revision petitioners for police protection and for break open the lock and to hand over the delivery. It is stated



that the tenant has preferred CRP.(MD)Nos.1667 to 1669 of 2013, challenging the order of delivery and the consequential orders passed by the Rent Controller to enable the landlords to take delivery through Court. When these petitions came up for hearing on 04.11.2013, the respondent / tenant reported that the landlords had taken possession of the property on 27.09.2013. This Court after recording the fact that delivery had been taken through Court, dismissed all the civil revision petitions as infructuous. Referring to the order passed by this Court, the learned Counsel for the petitioners submitted that the tenant / respondent in this petition does not deserve any indulgence after getting the Civil Revision Petitions dismissed. Since delivery has been executed through Court and the tenants themselves reported that delivery was taken through Court, this Court has dismissed all the civil revision petitions as infructuous, it is submitted that it is not open to the tenant to prosecute I.A.No.52 of 2011, to set aside the *ex parte* order. It is further stated that the tenant has closed the business, which was earlier conducted in the demised premises. According to the learned Counsel for the petitioners, the licence granted expired and without drug licence, the respondent cannot carry on business of pharmacy. It is further stated that the tenant has no subsisting interest as the partnership firm carrying on business was dissolved. Hence, the tenant has no subsisting right over the property, which is the subject matter of the civil revision petition.

4.The learned Counsel for the petitioners submitted that the conduct of the tenant in this case is also important. It is pointed out that the tenant remained *ex-parte* and did not cross examine the witnesses, who were examined on behalf of the landlords long back. Even in the *ex parte* order that was passed on 14.03.2011, the respondents have not indicated anything about the pendency of the application in I.A.No.52 of 2011 or I.A.No.41 of 2012 in I.A.No.52 of 2011. Since the order of eviction on the ground of wilful default and additional accommodation is an event, which is certain to follow, having regard to the admitted facts and the tenants are likely to drag on the proceedings further for another round of litigation, it is stated that in the interest of justice, the order of lower Court is liable to be set aside. This Court anxiously considered the submissions of the Counsels on both sides.

5.Having regard to the admitted facts in this case, the application in I.A.No.52 of 2011, which was filed by the tenant, ought not to have been dismissed as abated, as there is no abatement. Even assuming that one of the landlords died during the pendency of eviction petition, other co-owners are parties and they are admittedly the legal heirs of the deceased first petitioner in R.C.O.P.No.8 of 2010. The only remedy, which is open to the tenant was to file a petition to set aside the order of

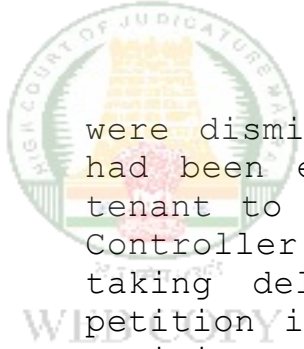


dismissal. The petition in I.A.No.52 of 2011 was inadvertently dismissed as abated and the petition in I.A.No.41 of 2012 in I.A.No.52 of 2012, was dismissed on a flimsy reason that it is not necessary to implead the other legal heirs, as there is no abatement. As a matter of fact, the petition to set aside the *ex parte* order was dismissed as abated. In such circumstances, it is beyond one's comprehension to assign a reason which favours the tenant to allow the petition. The order passed by this Court in C.R.P.Nos.1667 to 1669 of 2013 cannot be a reason to dismiss I.A.No.41 of 2012 in I.A.No.52 of 2011. The tenant has a right to seek restitution in case the *ex parte* order is set aside.

6.All the civil revision petitions in C.R.P.Nos.1667 to 1669 of 2013, were filed by the tenant / respondent and all the petitions before the Rent Controller were filed by the revision petitioners for delivery of possession and for police protection to break open the lock, so as to effect delivery to the landlord. Since the delivery was effected through Court, when the civil revision petitions came up for hearing, it was reported that the civil revision petitions have become infructuous as nothing survives for further adjudication in all these applications. But that does not affect the tenant's right to set aside the *ex parte* order of eviction.

7.The learned Counsel for the petitioners submitted that no liberty was given to the respondent to prosecute I.A.No.52 of 2011 or I.A.No.41 of 2012 in I.A.No.52 of 2011. Merely because liberty was not given or preserved for the respondent / tenant in the earlier revision petitions, their right to prosecute I.A.No.41 of 2012 in I.A.No.52 of 2011 was never given up. In such circumstances, the second contention of the revision petitioners does not hold water. The third submission is about the conduct of the respondent / tenant. This Court do not find any serious misconduct or delaying tactics that can be inferred at this stage against the tenant. The factual findings surely show that the only option that is available to the tenant was to pursue I.A.No.41 of 2012 in I.A.No.52 of 2011.

8.Hence this Court is not able to see any lack of *bona fides* or wilful negligence on the part of the tenant in pursuing the case. As a result, this Court is unable to agree with the learned Counsel for the revision petitioners and is inclined to confirm the order passed by the Rent Control Appellate Authority in R.C.A.No.11 of 2015. As a result, this civil revision petition is dismissed and I.A.No.52 of 2011 in R.C.O.P.No.8 of 2010 on the file of the Rent Controller, Thanjavur is restored. It is brought to the notice of this Court that the respondent / tenant has now filed five applications, which are all in the nature of challenging the delivery that was effected through Court. Having regard to the fact that civil revision petitions filed by them



were dismissed as infructuous, after reporting that the delivery had been effected through Court, it is not appropriate for the tenant to file subsequent application once again before the Rent Controller questioning the delivery or recording the event of taking delivery through Court. Subsequent to this order, the petition in I.A.No.52 of 2011 is restored and it is open to the revision petitioners to prosecute I.A.No.52 of 2011. Until this application is decided, the applications filed by the tenant need not be heard. Hence the lower Court is directed to keep all other application filed by the tenant in abeyance till I.A.No.52 of 2011 in R.C.O.P.No.8 of 2010, is decided on merits. No costs. Consequently, connected miscellaneous petition is closed.

9.Having regard to the pendency of the proceedings for a long time, the learned Rent Controller-cum-District Munsif, Thanjavur, is directed to dispose of I.A.No.52 of 2011 in R.C.O.P.No.8 of 2010, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1.The Rent Control Appellate Authority
-cum-Principal Sub Judge, Thanjavur.

2.The Rent Controller-cum-District Munsif, Thanjavur.

3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+ 1 cc TO Mr.S.Srinivasaraghavan , Advocate in SR No. 63770

+ 1 cc TO Mr.P.Sesubalan Raja , Advocate in SR No. 64284

cmr

AE/JC/SAR3/17.05.2018/5P/7C

C.R.P.(PD)(MD)No.404 of 2014
26.04.2018