



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 20.03.2018
PRONOUNCED ON : 18.07.2018
CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) Nos.875, 876 and 1150 of 2014
and

M.P. (MD) .Nos.1 and 1 of 2014 in C.R.P. (MD) .Nos.875 & 876 of 2014

K.Raja

... Revision petitioner in C.R.P. (MD)
Nos.875 & 876/2014 & respondent in
C.R.P. (MD) No.1150/2014/Tenant

Vs.

A.Meera Mohideen

... Respondent in C.R.P. (MD) Nos.875 &
876/2014 & Petitioner in C.R.P. (MD) .
No.1150/2014 / Landlord

PRAYER: Petitions filed under Section 115 of the Code of Civil Procedure read with Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the common judgment, dated 20.12.2013, made in R.C.A.Nos.3, 7 & 8 of 2012 by the learned Principal Subordinate Court / Rent Control Appellate Authority, Trichy, confirming the common order, dated 03.12.2011, made in R.C.O.P.Nos.65 & 129 of 2008 by the learned Principal District Munsif / Rent Controller, Trichy.

For Petitioner in

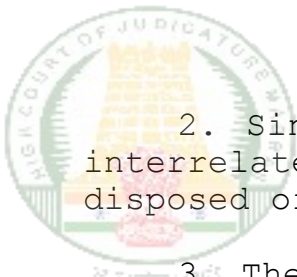
C.R.P. (MD) Nos.875 & 876/2014 &
respondent in C.R.P. (MD) .No.1150/2014 : Mr.D.Rajkumar

For respondent in

C.R.P. (MD) Nos.875 & 876/2014 &
Petitioner in C.R.P. (MD) .No.1150/2014 : Mr.H.Lakshmeshankar

COMMON ORDER

The revision petitioner / tenant has filed C.R.P. (MD) .Nos.875 and 876 of 2014 challenging the concurrent judgment passed by the Courts below, whereby and whereunder the Courts below directed the revision petitioner / tenant to vacate the premises on the ground of own use and occupation of the landlord and also rejected the permission sought for by the revision petitioner / tenant to deposit the rent into the Court. The respondent / landlord has also filed C.R.P. (MD) .No.1150 of 2014 seeking to allow the eviction petition on the ground of willful default also.



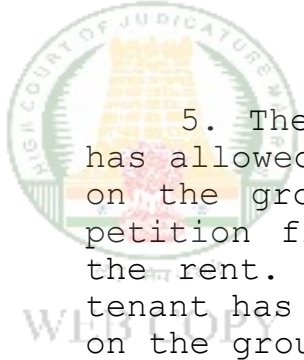
2. Since the issue involved in all the revision petitions are interrelated to each other, they were heard together and are disposed of by way of this common order.

3. The brief facts of the case of the respondent / landlord are as follows:

The respondent / landlord let out 2nd floor of the building owned by him to the revision petitioner / tenant for a sum of Rs.1,900/- p.m. The revision petitioner / tenant had given a sum of Rs.20,000/- as advance. He was not regular in paying the rent. He had stopped the payment of rent from March, 2008. Thus, he has committed wilful default in paying the rent. While so, the revision petitioner / tenant has filed O.S.No.749 of 2008 with the false allegation that the respondent / landlord is trying to evict him illegally. When the agreed rent between the parties was Rs.1,900/-, the revision petitioner / tenant sent only a sum of Rs.1,000/- by way of Money Order and hence, the respondent / landlord had no other option except to refuse the same. Hence, the tenant is liable to be evicted on the ground of willful default. The demised premises is 680 sq.ft. building, whereas respondent / landlord is residing in only 480 sq.ft. building. As the property in which the respondent / landlord lives is small as compared to the demised premises and as his children have grown up, he requires the demised premises for his own use and occupation. Hence, he has filed R.C.O.P.No.129 of 2008 for evicting the revision petitioner / tenant.

4. The brief facts of the case of the revision petitioner / tenant are as follows:

The respondent / landlord let out his property only for Rs.1,000/- p.m. The revision petitioner / tenant has given Rs.20,000/- as advance. He has been paying the rent regularly without any default. The respondent / landlord is not in the habit of issuing receipt for payment of rent. When the revision petitioner / tenant attempted to pay rent for the month of April, 2008 on 10.05.2008, the respondent / landlord refused to receive the same and hence, he sent the same through Money Order on 15.05.2008. But, the respondent / landlord refused to receive the same demanding higher rent. Since the respondent / landlord attempted to evict illegally, the revision petitioner / tenant has filed the suit in O.S.No.749 of 2008 and obtained an interim order. The revision petitioner / tenant has also started to deposit the rent regularly to the credit of R.C.O.P.No.65 of 2008 and he is not at all in arrears of rent. He would further submit that the respondent / landlord has let out both the ground floor and first floor for enhanced rent and in order to collect higher rent in the second floor also, where the petitioner / tenant is residing, he has falsely stated that the demised premises requires for own use and occupation.



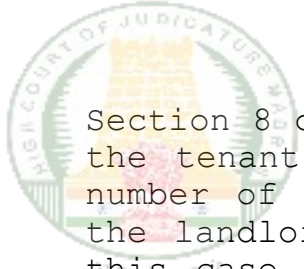
5. The learned Rent Controller has, after hearing both sides, has allowed the eviction petition filed by the respondent / landlord on the ground of own use and occupation alone and dismissed the petition filed by the revision petitioner / tenant for depositing the rent. Challenging the said order, the revision petitioner / tenant has filed two appeals. Seeking to allow the eviction petition on the ground of willful default also, the respondent / landlord has filed an appeal before the learned Rent Control Appellate Tribunal. The Rent Control Appellate Tribunal has dismissed all the appeals and thereby confirmed the order passed by the learned Rent Controller. Challenging the said judgment in the appeal, the revision petitioner / tenant and the respondent / landlord have filed separate revision petitions, as stated in the first paragraph of this order.

6. The learned counsel for the revision petitioner / tenant would submit that the landlord is in occupation of another own house in the very same street and without availing the first floor of the building in his occupation, the respondent / landlord with an evil intention to evict the revision petitioner / tenant has stated that he required the demised premises for own use and occupation and the same was erroneously allowed by the both the Courts below. He would further submit that though the revision petitioner / tenant was ready to deposit the rent, both the Courts below have erroneously dismissed the petition filed by the revision petitioner seeking permission to deposit the rent. Thus, he prayed to allow the civil revision petitions filed by him.

7. So far as the revision petition filed by the respondent / landlord is concerned, the learned counsel for the revision petitioner / tenant submitted that though the tenant was ready to pay rent, the landlord has purposefully refused to receive the same and considering the said aspect, the Court below has rightly rejected the said ground and the same need not be interfered with.

8. The learned counsel appearing for the respondent / landlord would submit that the landlord is residing in a building comprised of 480 sq. ft. and he is having a mentally challenged son and such person need larger space to move about and therefore, he requires the demised premises for his own use and occupation and the Courts below, after considering the same, has rightly allowed the eviction petition filed by him and dismissed the petition filed by the revision petitioner / tenant seeking permission to deposit the rent.

9. So far as the revision petition filed by the respondent / landlord, the learned counsel appearing for the respondent / landlord would submit that the tenant had been paying a sum of Rs.1,900/- as rent and as the tenant had sent Money Order only for a sum of Rs.1,000/-, he had refused to receive the same and the Courts below, without considering the same, has erroneously rejected the ground of willful default. He would further submit that even assuming that the landlord refused to receive the rent, as per



Section 8 of the Tamil Nadu Buildings (Lease and Rent Control), Act, the tenant ought to have first issued notice seeking bank account number of the landlord and in the event of refusal on the part of the landlord, then, he ought to have issued Money Order. But, in this case, the tenant had first sent Money Order and then, issued notice seeking bank account number. As the tenant has failed to follow procedure contemplated in Section 8 of the Act, it is to be construed that he has committed wilful default in payment of rent. He would further submit that the tenant has stopped the payment of rent from March, 2008. But, the Tribunal has erroneously taken the month of April, 2008 only based on the submission of the tenant and as there is no document produced on the side of the tenant about the payment of rent for the said month, it is to be construed that he has committed wilful default in payment of rent. He would further submit that the tenant is in huge arrears of rent and he has not deposited the rent by seeking lodgment of the same into Court even as an interim measure and this itself amounts to wilful default. The Courts below have failed to consider the above aspects. Thus, he prayed to allow the eviction petition on the ground of willful default also.

10. Heard the learned counsel appearing for both sides and perused the records carefully.

11. According to the landlord, the tenant had given Rs.20,000/- as advance amount and paid Rs.1,900/- p.m. as rent and he is in arrears of rent from the month of March, 2008. According to the tenant, he has given Rs.20,000/- as advance and has been paying Rs.1,000/- p.m. as rent. Admittedly, there is no document produced on either side about the tenancy agreement, payment or receipt of advance amount and payment or receipt of rental amount. Since the tenant himself admitted that he has been paying Rs.1,000/- p.m. as rent and the landlord has not produced any document against the same and also not sent any reply notice denying the same, both the Courts below have taken into account the said amount as monthly rent. This Court does not find any reason to interfere with the same.

12. The main contention of the learned counsel for the tenant is that the landlord is in occupation of another own house in the very same street and he let out the first floor of the said building and without availing the first floor of the said building, the landlord, with an evil intention to evict, has stated that he required the demised premises for own use and occupation. This Court is of the view that the tenant has no say as to where the landlord has to reside. The landlord being owner of the building has the right to choose the place where he should reside. The landlord has stated that since his children have grown up and the demised premises is bigger than the premises where he resides, he requires the demised premises. The Courts below, after considering the above aspects, have rightly allowed the eviction petition filed by the landlord on the ground of own use and occupation and consequently, dismissed the petition filed by the tenant for deposit



of rent. More over, as held by the Hon'ble Supreme Court in the decision in E.Palanisamy Vs. Palanisamy (D) by LR's. and others, reported in AIR 2003 SC 153, the tenant has not scrupulously followed the provision of Section 8 of the Tamil Nadu Building (Lease and Rent Control) Act and hence, he is not entitled to seek the benefit under the said provisions regarding deposit of rent. This Court does not find any reason to interfere with the concurrent findings of the Courts below. Hence, the revision petitions filed by the tenant are liable to be dismissed.

13. So far as the revision petition filed by the landlord is concerned, it is stated that by the landlord that the tenant has failed to pay rent from March, 2008. It is the duty of the tenant to produce any piece of document in order to substantiate the payment, as there cannot be any presumption as to the payment of rent. The burden of proof with regard to the payment of rent has not been discharged by the tenant. Both the Courts below have also not considered the said aspect. It is not the case of the tenant that he issued notice to the landlord to adjust the rent in the advance amount. Hence, the non payment of rent during the month of March, 2008 amounts to wilful default. Further, as stated earlier, as the tenant did not scrupulously follow Section 8 of the Act, the tenant disentitles to plead that there was no wilful default on his part. More over, according to the landlord, the tenant has miserably failed to pay rent for the past nine years. The same is not disputed by the tenant. When the petition to evict the tenant on the ground of wilful default is filed, one would expect the tenant to pay the rent regularly at least after initiation of the proceedings. Failure of the tenant to pay the rent regularly even during the proceedings amounts to wilful default. Thus, viewing from any angle, this Court is of the view that the tenant is liable to be evicted on the ground of wilful default also. Both the Courts below, without considering the above aspects, have erroneously rejected the said ground. Hence, this Court is inclined to allow the eviction petition filed by the landlord on the ground of wilful default also.

14. In the result, C.R.P.(MD).Nos.875 and 876 of 2014 are dismissed and C.R.P.(MD).No.1150 of 2014 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Rent Controller /
Principal District Munsif,
Trichy.



2. The Rent Control Appellate Authority/
Principal Subordinate Judge,
Trichy.

3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**.

+3CC to Mr.D.RAJKUMAR, Advocate, SR.Nos. 73986,73987,73988

+2CC to Mr.H.LAKSHMI SHANKAR, Advocate, SR.Nos. 73488, 73489

C.R.P. (MD) Nos.875, 876 and 1150 of 2014
and

M.P. (MD) .Nos.1 and 1 of 2014 in
C.R.P. (MD) .Nos.875 & 876 of 2014
18.07.2018

GCG

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