



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.11.2017
DELIVERED ON : 28.04.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.1641 of 2017
and
C.M.P. (MD) No.9194 of 2017

1.R.Absar Hussain
2.Syed Ibrahimsha
3.R.Ajmeer Kaja : Petitioners / Respondents / Appellants

vs.

Sethukarai Nadar : Respondent / Petitioner / Respondent

PRAYER : Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, praying to set aside the fair and executable order dated 08.08.2017 passed in I.A.No.100 of 2017 in R.C.A.No.36 of 2016 on the file of the Principal Subordinate Judge cum Rent Control Appellate Authority, Madurai and thus allow this Civil Revision Petition.

For Petitioners : Mr.T.R.Jeyapalam

For Respondent / Cavetor : Mr.N.Subramanian

ORDER

This Civil Revision Petition has been filed challenging the fair and executable order dated 08.08.2017 passed in I.A.No.100 of 2017 in R.C.A.No.36 of 2016 on the file of the Principal Subordinate Judge cum Rent Control Appellate Authority, Madurai.

2. The facts of the case, in nutshell, are as follows:

2.1. The suit property belongs to the respondent, which was leased to one Nizam, who, in turn, had sub leased the property to the petitioners herein. The respondent/landlord has filed R.C.O.P.No.252 of 2012 before the Principal District Munsif cum Rent Controller on three grounds viz.,

- i) wilful default;
- ii) sub lease; and
- iii) different user.



the same, the petitioners have preferred R.C.A.No.36 of 2016 before the Principal Subordinate Court cum Rent Control Appellate Authority.

2.2. Pending disposal of the said R.C.A., the respondent/landlord has filed an interlocutory application in I.A.No.100 of 2017 in R.C.A.No.36 of 2016, claiming arrears of rent and the learned Rent Control Appellate Authority, after careful scrutiny, has directed the petitioners to pay a sum of Rs.5,25,000/- towards arrears of rent from November 2008 to July 2017.

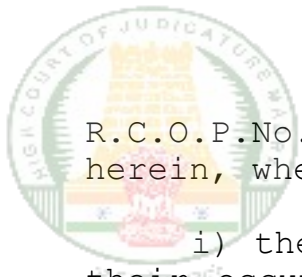
2.3. It is, at this juncture, aggrieved by this order, the petitioners are before this Court.

3. The learned Counsel for the petitioners would submit that the respondent herein has leased out the subject property to one Nizar and the said Nizar has sub leased the same to the petitioners herein. Therefore, the landlord-tenant relationship exists only between the respondent and the said Nizar. So, the respondent can demand rent/arrears of rent, whatever it may, only from the said Nizar and not from the petitioners herein. If the petitioners are construed to be the tenants, then their landlord is the said Nizar, who can claim rent/arrears of rent from them and not the respondent herein. Therefore, the respondent cannot file an application under Section 11 of the Act.

4. The learned Counsel for the petitioners would further submit that even according to the respondent, the quantum of rent payable per month is only Rs.1,000/-, whereas, the impugned order came to be passed, by taking into account Rs.5,000/- as monthly rent, thereby, directing the petitioners to pay a sum of Rs.5,25,000/- towards arrears of rent. Moreover, a sum of Rs.316/- per month, was already fixed as fair rent for the subject property by order dated 14.11.1995 in R.C.O.P.No.190 of 1993 and such being so, the respondent ought not to have claimed a sum more than that. Therefore, the learned Counsel for the petitioner prays interference at the hands of this Court on the impugned order passed by the lower appellate Court.

5. On the other hand, the learned Counsel for the respondent/landlord, on instructions, would submit that the respondent has leased out his property to one Nizar and others and the respondent has filed eviction petitions in R.C.O.P.Nos.772, 774, 776, 780 & 782 of 1982, on the ground of Demolition and Reconstruction, which, according to the respondent, after some rounds of litigation, were decreed, as prayed for by this Court in C.R.P.Nos.1245 to 1248 of 1996, but, some time was granted for the tenants to vacate and hand over the possession.

6. It is the grievance of the respondent that taking advantage of this situation, the said Nizar has sub-leased the property to the petitioners herein. Upon knowing the same, the respondent has filed



R.C.O.P.No.252 of 2012, against the said Nizar and the petitioners herein, where the petitioners/sub-tenants contested as follows:

i) they are direct tenants, in respect of the portion now under their occupation, under the respondent/landlord from the year 2008 and the said Nizar is only an agent for respondent/landlord;

ii) they are paying Rs.5,000/- as monthly rent to the said Nizar and paid huge amount as advance for the tenanted premises.

7. After a full trial, the learned Trial Judge, by order dated 21.10.2016, has directed eviction, against which, the petitioners have filed R.C.A.No.36 of 2016, where, the respondent/landlord has filed I.A.No.100 of 2017, seeking a direction to the sub-tenants to deposit the arrears of rent at the rate of Rs.5,000/-.

8. The learned Counsel for the respondent has also relied upon the statement of objections filed by the petitioners/sub-tenants in R.C.O.P.No.252 of 2012, wherein, it is stated as follows:

"It is further submitted that the respondents 2 to 4 have paid rent amount in every month as per agreement and since the respondents 2 to 4 are in possession and enjoyment of the demise premises as tenant and therefore, we are the legally and statutory tenant under the petitioner herein."

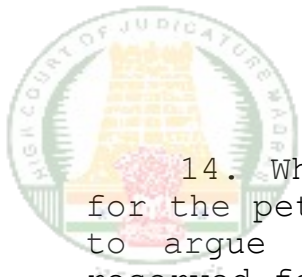
9. Admittedly, the quantum of rent payable by Nizar to the respondent/landlord is Rs.1000/-, whereas, the petitioners/sub-tenants have paid a sum of Rs.5,000/- as monthly rent to Nizar, which was also admitted by the petitioners/sub-tenants in their statement of objections in R.C.O.P.No.252 of 2012.

10. The lower appellate Court, after going through all the actual and factual matrix, has passed the present impugned order and therefore, the interference of this Court is not warranted. Hence, he prays for dismissal of this revision petition.

11. Heard the learned Counsel appearing for both parties and perused the documents placed on record.

12. In the earlier rounds of litigation, the learned Counsel for the petitioners, in order to show their bona fide, has submitted a Demand Draft in favour of the respondent/landlord for a sum of Rs.1,07,000/- towards rental arrears @ Rs.1,000/- for 107 months, pending disposal of the present petition.

13. Upon the direction of this Court, the learned Counsel for the respondent received the same. Thereafter, this Court, has granted an order of interim stay, with a direction to the learned Counsel for the petitioners to ascertain as to when the petitioners would pay the entire balance amount to the respondent.



14. When the matter came up for hearing, the learned Counsel for the petitioners, on instructions, submitted that he was prepared to argue the matter and the matter was accordingly argued and reserved for orders.

15. The learned Counsel for the petitioners, before this Court, has raised the following grounds:-

i) the petitioners are not tenants as per Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act;

ii) application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act cannot be proceeded as against sub-tenants alone;

iii) the agreed rent for the tenanted premises by Nizar is only Rs.1,000/- and respondent/landlord cannot claim any amount more than that; and

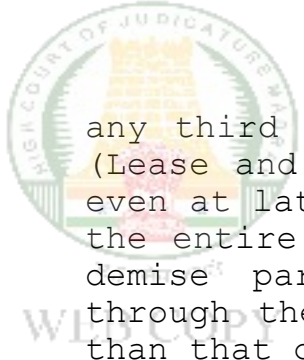
iv) the rent claiming at Rs.5,000/- is imaginary for a lesser extent of portion under occupation of the petitioners.

16. The foremost contention of the learned Counsel for the respondent/landlord is that there is an order passed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act and therefore, as a condition precedent, the petitioners should deposit the amount into the Court, otherwise, the said proceedings, challenging the order passed, whether appeal or revision, is not maintainable.

17. As rightly pointed out by the respondent, the petitioners had not deposited the amount of Rs.5,25,000/-. Even the demand draft for the sum of Rs.1,07,000/- was given only after the direction of this Court and therefore, the revision petition itself is not maintainable.

18. Going by the merits of the case, it is the specific stand of the petitioners before the Court below that they are in possession and enjoyment of the demise premises as tenants and therefore they are the "legally statutory tenants" under the respondent. When the petitioners have taken a defence as if they are the statutory tenants, then their question as to whether they are tenants within the meaning of Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act does not arise at all.

19. Insofar as the second question, i.e., an application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act cannot be proceeded as against a sub-tenant is concerned, this Court is of the view that in a rent control proceedings, there can be only two parties, viz., landlord and tenant and there cannot be



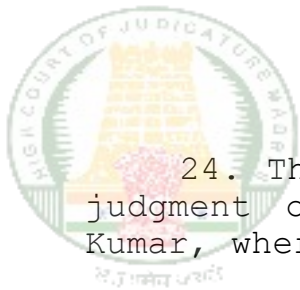
any third party as per the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and no other parties can be impleaded even at later point of time. The respondent/landlord is the owner of the entire building and the said Nizar is tenant in respect of the demise parties. The petitioners/sub-tenants claim tenancy only through the said Nizar and hence, they cannot have a better right than that of Nizar.

20. Though the present revision petition does not arise out of fixation of fair rent, it is the duty cast upon this Court to make a decision in a proper manner to find out whether rent in respect of the demise premises is Rs.1,000/- as paid by the said Nizar to the respondent/landlord or Rs.5,000/- as claimed to have been paid by the petitioners/sub-tenants to the said Nizar. There is no conclusive definition for the term "Rent". Rent - in the legal sense of recompense, a sum paid by the tenant to the landlord for the exclusive possession of the premises occupied by him. Rent is the whole amount agreed to be paid by a tenant to his landlord in respect of enjoyment of what is let to him whether described as rent or not. The rent is for the buildings and not for the landlord. The landlord is always entitled to collect rent from tenants as a compensation for utilising the building of the landlord. In such case, the rent includes the place of location, the amenities provided by the landlord, which were already available and the amenities which were provided by the landlord specifically as per the requirement of the tenant in the building.

21. In my considered opinion, the provision for fixation of fair rent has been enacted for protecting the tenant from unscrupulous landlords. It was intended to be a shield for the tenant. But, in the present scenario, according to me, the tenants are using the shield as a weapon on hand to exploit the landlord.

22. On a perusal of documents, it is seen that vide deed dated 02.09.2008, entered into between the petitioners/sub-tenants and the said Nizar, it is stated that the rent for the portion is Rs.5,000/-. i.e., in the year 2008 itself, according to the petitioners, the rent amount is Rs.5,000/- and now, we are in the year 2018, passage of nearly ten years would fetch around Rs.10,000/-, as the property is situated in a commercial area, near Meenakshi Amman Temple, Madurai. Despite the same, the learned Judge has fixed the rent as Rs.5,000/- per month, which was quite reasonable and thereby, directed the petitioners/sub-tenants to pay the arrears.

23. Moreover, this Court is in full agreement with the learned Counsel for the respondents that the petitioners, being the sub-tenants have got no independent right to file any appeal. When an order has been passed by the Court directing the petitioners, who are occupying the premises without the consent of the landlord, as a condition precedent, they are expected to deposit the same, so as to contest the case.



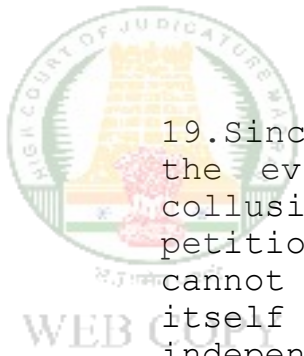
24. The learned Counsel for the respondent would rely upon the judgment of this Court in the case of Jayanthilal v. V.M.Muthu Kumar, wherein, it is held as follows:

"16. The same view was followed by this Court in 1999 (1) L.W. 650 [M.P.M.Haeed Ibrahim and another v. V.S.Bagirathan and 3 others] wherein it has been held as follows:-

"6....Therefore, it is clear from a reading of the Act vis-a-vis the status of the tenant, to my mind it is only the 'tenant', who can agitate his rights under the Act before the forum created under the Act and it is impermissible in law for any person other than a 'tenant' to question the correctness or otherwise of the order of eviction passed against the 'tenant'. The Act is not meant to protect the rights of a person who has no privity of contract with the landlord in respect of a tenanted premises and who does not fit into the description of the term 'tenant' as defined under the Act. Therefore I have no hesitation to hold that the objection of Mr.K.Alagirisamy, learned Senior Counsel for the first respondent on the point of maintainability of the revision has to be sustained and accordingly, it is sustained. Consequently, it is held that the revision at the instance of the petitioners is not maintainable."

17. In the instant case, the landlord filed the eviction petition contending that the tenant has inducted the sub-tenants without his consent and the respondents 2 and 3 in the eviction petition are unauthorised occupants. This Court has consistently taken the view that while interpreting Section 26 of the Act that the only defence available to the sub-tenant is that the sub-tenancy is not an authorised one, but it was created with the knowledge and consent of the landlord and a right is conferred on a sub-tenant to attack an order of eviction on the ground that it is vitiated by fraud or collusion as it was obtained behind his back.

18. It is to be noted that the sub-tenants have not established their induction to the tenanted premises with written consent and knowledge of the landlord and it is not the case of the sub-tenants that the order was obtained by fraud or collusion. In my considered opinion, the decisions of the Hon'ble Supreme Court relied upon by the learned Counsel for the petitioner have no bearing on the facts of this case and the decision of the Division Bench of this Court referred supra is squarely applicable to this Case.



19. Since the petitioner has no independent right to contest the eviction petition except on the ground of fraud or collusion, which was not pleaded and established by the petitioner, this Court is of the view that the petitioner cannot maintain the appeal. If the appeal of sub-tenants itself is held to be not maintainable, they have no independent right to argue the appeal. In view of my finding, the order impugned in this revision does not warrant interference of this Court."

25. It is seen from the records that the respondent/landlord has already fought for the past 35 years and even now, knocking the doors of this Court seeking justice. However, due to the pendency of the present proceedings, the other tenants are also still in occupation of the entire building and the respondent/landlord is not able to enjoy the fruits of the decree which was awarded in his favour long back.

26. In view of the foregoing discussions, this Court has no other option, except to dismiss the present petition and the same is accordingly dismissed. The petitioners/sub-tenants are directed to settle the entire arrears of rental amount, being Rs.5,25,000/-, as directed by the first appellate Court, excluding the amount which was already paid upon the directions of this Court, i.e., Rs.1,07,000/-, within a period of four weeks from the date of receipt of a copy of this order. On payment of arrears of rental amount, the learned first appellate Judge is directed to expedite the proceedings and dispose of R.C.A.No.36 of 2016 within a period of four months thereafter. If the petitioners fail to pay the amount within the time stipulated, the learned first appellate Judge is at liberty to proceed with the matter in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge Cum

Rent Control Appellate Authority, Madurai.

+1CC to Mr.T.R.Jeyapalam, Advocate in SR.No.64831,

+1CC to Mr.N.Subramanian, Advocate in SR.No.64283.

GK

DS/SV/MMS/SAR-2 :21.05.2018: 7P/4C

Order Made in
C.R.P. (NPD) (MD) No.1641 of 2017
and

C.M.P. (MD) No.9194 of 2017
28.04.2018