



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.03.2018
PRONOUNCED ON : 21.06.2018
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.R.P. (MD) Nos.2160 to 2162 of 2017

D.V.P.Raja

... Revision petitioner
in all the revision petitions/
respondent / Landlord

Vs.

A.Saleem

... Respondent in all
the revision petitions /
Appellant / Tenant

PRAYER: Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the common fair and decreetal judgment, dated 30.08.2017, made in R.C.A.Nos.14 to 16 of 2013 by the learned Principal Subordinate Court, / Rent Control Appellate Authority, Madurai, reversing the common order, dated 07.11.2012, made in R.C.O.P.Nos.177 & 255 of 2009 and 173 of 2010 by the learned Additional District Munsif Court / Additional Rent Controller, Madurai.

For Petitioner in all
the petitions : Mr.R.Lakshmanan

For respondent in all
the petitions : Mr.A.Arumugam,
for M/s.Ajmal Associates

COMMON ORDER

The revision petitioner / landlord had filed R.C.O.P.No.177 of 2009 seeking eviction of the respondent / tenant on the ground of wilful default and own occupation. The respondent / tenant had filed R.C.O.P.No.255 of 2009 for deposit of rent and R.C.O.P.No.173 of 2010 for restoring the amenities which were provided earlier. The learned Additional Rent Controller had allowed R.C.O.P.No.177 of 2009 filed by the revision petitioner / landlord on the ground of wilful default and own occupation and accordingly, directed the respondent / tenant to vacate the premises. Consequently, the Additional Rent Controller had dismissed both R.C.O.P.Nos.255 of 2009 and 173 of 2010 filed by the respondent / tenant.

2. Challenging the common order passed by the learned Additional Rent Controller, the respondent / tenant had filed appeals in R.C.A.Nos.14 to 16 of 2013. The Rent Control Appellate Authority, by way of a common judgment, had allowed all the three appeals, thereby set aside the common order passed by the Additional Rent Controller. Challenging the common judgment passed by the Rent



Control Appellate Authority, the revision petitioner / landlord has filed these revision petitions.

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

4. The learned counsel appearing the revision petitioner / landlord would submit that the petitioner / landlord let out his own premises for non residential purposes to the respondent / tenant in the month of March, 2006 and the monthly rent was fixed at Rs.15,000/- per month and Rs.15,000/- was received as advance. The respondent / tenant was irregular in payment of rent from the very beginning of the tenancy and he had paid rent till the end of March, 2008 and thereafter, he had not paid rent and thereby, he was in arrears of rent for 16 months ie., from April, 2008 to June, 2009. Though the tenant had issued cheque dated 25.01.2009 for a sum of Rs.40,000/- as part payment of the arrears of rent, it was returned by the bank on 09.03.2009 as "insufficient funds" and therefore, a proceedings has been initiated in S.T.C.No.1011 of 2009 under Section 138 of the Negotiable Instruments Act against the respondent / tenant. Again the tenant had sent a cheque for a sum of Rs.20,000/- towards part payment of arrears of rent and the said cheque was also dishonoured as "insufficient funds". When the petitioner / landlord sent a notice, dated 13.04.2009, under Section 138 of the Negotiable Instruments Act, the respondent / tenant had sent a D.D. for Rs.30,000/- towards part payment of arrears of rent and the same was received by the petitioner / landlord without prejudice to his right to proceed against the respondent / tenant. Thus, even after deduction of Rs.30,000/- towards arrears of rent, the respondent / tenant committed wilful default in payment of rent about one year. Even assuming that the respondent / tenant had paid only a sum of Rs.10,000/- p.m. as rent, the respondent / tenant had committed wilful default in payment of rent. Further, the said premises is required for own use of the petitioner's / landlord's daughter, who is now residing at Tirunelveli.

5. The learned counsel for the revision petitioner / landlord would further submit that considering the above facts, the learned Additional Rent Controller has rightly allowed the eviction petition filed by the petitioner / landlord and accordingly, directed the respondent / tenant to vacate the premises. But, the learned Rent Control Appellate Authority, without properly going into the facts and circumstances of the case and also without considering the fact that the respondent / tenant was in wilful default in payment of rent from April, 2008 to December, 2008, has erroneously held that the petitioner / landlord has not proved the default committed by the respondent / tenant and also the own use and occupation.

6. The learned counsel for the petitioner / landlord would next submit that admittedly, the tenant is in occupation of the 1st floor and 2nd floor of the building for non residential purposes. The



bore-well is situated in shopping complex, which is situated on the western side of the building. There is no agreement between the parties to supply the water from the bore-well situated in the shopping complex. The appellate authority has erroneously directed the petitioner / landlord to restore such facility based on the evidence collected through the report of an Advocate Commissioner and therefore, the said order is liable to be set aside.

7. The learned counsel for the petitioner / landlord would further submit that so far as the payment of rent is concerned, the respondent / tenant has committed default in payment of rent even after the order of the Court below to deposit the rent and therefore, the respondent / tenant has to be evicted on this ground also. In support of his contention, he has produced a calculation memo. Thus, the learned counsel for the petitioner / landlord prayed to allow these civil revision petitions, set aside the order passed by the Rent Control Appellate Authority and restore the order of the learned Additional Rent Controller.

8. The learned counsel for the respondent / tenant would submit that he has given a sum of Rs.3 lakhs as advance and has paid only a sum of Rs.10,000/- p.m. as rent and the same was rightly taken into account by the Courts below. He would further submit that the respondent / tenant had paid rent till December, 2008 without any arrears. Thereafter, demanding enhanced rent to the tune of Rs.15,000/- and Rs.1 lakh as additional advance amount, the petitioner / landlord refused to receive the rent. The petitioner / landlord never issued any receipt either for the advance amount of Rs.3 lakhs or for the payment of monthly rent and therefore, he could not produce any document to substantiate the same. So far as the issuance of cheque to the tune of Rs.40,000 is concerned, it was issued only for payment of advance amount and not for any arrears of rent. Though the respondent / tenant had requested to return that cheque, the petitioner / landlord had refused to do so and subsequently, he has purposefully issued a statutory notice, dated 13.04.2009, under Section 138 of the Negotiable Instruments Act.

9. The learned counsel for the respondent / tenant would further submit that after receipt of statutory notice, dated 13.04.2009, the respondent / tenant had issued a cheque to the tune of Rs.20,000/-, but due to inadvertence on his part, it was dishonoured. Thereafter, he had issued D.D. for a sum of Rs.30,000/-, out of which Rs.20,000/- was for reimbursement of the bounced cheque, dated 14.03.2009 and Rs.10,000/- was for the rent of March, 2009. Though, thereafter, the respondent / tenant made several attempts to pay the rent through D.D. and money order, the petitioner / landlord had refused to receive the same and therefore, he had filed R.C.O.P.No.255 of 2009 for deposit of rent into Court. The petitioner / landlord had also cut the amenities illegally and hence, the respondent / tenant had filed R.C.O.P.No.173 of 2010 for restoration of amenities. Though the learned Additional Rent Controller had erroneously allowed the eviction petition filed by



the petitioner / landlord and consequently, dismissed the petitions filed by the respondent / tenant, the learned Rent Control Appellate Authority has rightly found that the respondent / tenant has not committed wilful default in payment of rent and accordingly, set aside the eviction order passed by the Rent Controller. The learned Rent Control Appellate Authority has also, after considering the merits of the relief sought for by the respondent / tenant, has directed him to deposit the rent and also directed the landlord to restore the amenities and the same are also need not be interfered with. Thus, the learned counsel for the respondent / tenant prayed to dismiss all the civil revision petitions.

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

11. According to the petitioner / landlord, the respondent / tenant has given only Rs.15,000/- as advance amount and has been paying Rs.15,000/- p.m. as rent and he is in arrears of rent from the month of April, 2008 to June, 2009 and the respondent had issued cheque, dated 25.01.2009, for a sum of Rs.40,000/- as part payment of arrears of rent and the same was dishonoured and the subsequent, cheque, dated 14.03.2009, issued by the respondent / tenant for a sum of Rs.20,000/- as part payment of arrears of rent was also dishonoured, which would go to show that the tenant had committed wilful default in payment of rent.

12. According to the respondent / tenant, he has given Rs.3 lakhs as advance amount and he has been paying Rs.10,000/- p.m. as rent and there is no arrears of rent till December, 2008 and in view of the refusal of the petitioner / landlord to receive the rent from January, 2009, he had issued a cheque for Rs.20,000/- towards rent for the months of January and February, 2009 and another cheque for Rs.40,000/- towards security. But, both the cheques were dishonoured. However, the respondent / tenant had sent D.D. for a sum of Rs.30,000/- towards the payment of rent for January, February and March, 2009.

13. 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.10,000/- p.m. as rent, 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. So far as the payment of advance amount is concerned, it is very hard to believe the version of the respondent / tenant that he has given a sum of Rs.3 lakhs as advance without any receipt or advance, because even a layman would not give such huge amount without any receipt or agreement. With regard to the default in payment of rent from April, 2008 to December, 2008 is concerned, this Court is of the view that it is the duty of the respondent / tenant to prove the same. The tenant should always be vigilant enough to collect the receipt for payment of rent or even a piece of



document for remittance, because, in general, there cannot be any presumption as to the payment of rent by a tenant.

14. According to the petitioner / landlord, the respondent / tenant had issued a cheque, dated 25.01.2009, for Rs.40,000/- as part payment of arrears of rent. But, according to the tenant, it was issued only as security / advance. The respondent / tenant himself admitted in his counter that though the petitioner / landlord demanded a sum of Rs.15,000/- as enhanced rent and additional sum of Rs.1 lakh as security or advance from the month of January, 2009, he stubbornly refused to pay the same. Therefore, the contention of the respondent / tenant that he had issued cheque, dated 25.01.2009, for Rs.40,000/- as security or advance, cannot be believed. Hence, it can be easily presumed that the cheque for Rs.40,000/- was issued only for part payment of arrears of rent payable for the period of April, 2008 to December, 2008. It is seen from the record that the said cheque was dishonoured, against which a proceeding under Section 138 of the Negotiable Instruments Act is pending. It is also seen from the record that the tenant had not paid rent from the month of April, 2008 to December, 2008, even after receipt of demand notice - Ex.P7. In the judgment reported in (1999) 3 MLJ 691 (Mettupalayam Municipality V. Shanmugam), a learned Single Judge of this Court has categorically held that the default committed by the tenant even after issuance of notice is deemed to be wilful default. Thus, it is clear that the respondent / tenant has committed wilful default in payment of rent.

15. Further, the payment of rent by the tenant is a recurring process and therefore, the tenant, who seeks protection under the Tamil Nadu Building (Lease and Rent Control) Act, is expected to perform certain duties and obligations ie., payment of rent within a stipulated time, etc. as contemplated under the Act. In this case, according to the respondent / tenant, he had issued a cheque for Rs.20,000/-, dated 14.03.2009, for the payment of monthly rent of January and February, 2009. But, the tenant himself admitted that the cheque of Rs.20,000/- was dishonoured due to his inadvertence and therefore, he has sent a D.D. for Rs.30,000/- on 13.04.2009 for the payment of monthly rent of January to March, 2009, that too after receipt of legal notice from the landlord. The action of the respondent / tenant would only go to show that he had neither followed the procedure contemplated under Section 8 of the Act nor fulfilled the duties and obligations contemplated under the Act. Even assuming that the tenant had paid rent for the month of April, 2008 to December, 2008, the belated payment of rents for the month of January and February, 2009 would go to show that the respondent / tenant had committed wilful default in payment of rent. It is pertinent to mention that irregular payments or lump-sum payments would only show that the tenant has committed wilful default, as per the decision of this Court reported in 1994(1) MLJ 510 (K.N.Gunalan Vs. C.Santhalingam). Thus, viewing from any angle, the respondent / tenant has committed wilful default in payment of rent.



16. So far as the ground of own occupation is concerned, the petitioner / landlord has categorically stated that his daughter, who is residing at Tenkasi along with her husband and child, has decided to come down to Madurai, run a business and educate her son at Madurai and as she has no own house at Madurai Town, the petitioner / landlord required the premises occupied by the respondent / tenant. Admittedly, the bona fide of the reason assigned by the landlord cannot be weighed with golden scale. The reason that the petitioner's / landlord's daughter required the demised premises to run a business, appears to be a bona fide requirement under Section 10(3)(a)(iii) of the Act. Therefore, on this ground also, the respondent / tenant is liable to be evicted.

17. It is seen from the record, the Rent Control Appellate Authority has mainly relied upon Ex.X1 - complaint lodged by the revision petitioner / landlord, dated 30.05.2010, before the Anna Nagar Police Station, for reversing the decision of the learned Additional Rent Controller, Madurai. It is stated in the said complaint that the respondent / tenant had paid only a sum of Rs.30,000/- as advance and he is in arrears of rent for the last eight months. According to the respondent / tenant, the petitioner / landlord himself admitted that the respondent / tenant is in arrears of rent only for the last eight months and therefore, the earlier version is not true. Merely because, the petitioner / landlord has stated in the complaint, dated 30.05.2010, that the respondent / tenant is in arrears of rent for the last eight months, we cannot presume that except that eight months, there was no arrears of rent, as it has been categorically stated by the petitioner / landlord in his petition filed in the year 2009 that the respondent / tenant is in arrears of rent from April, 2008 to December, 2008. The learned Rent Control Appellate Authority has erroneously relied on the said document.

18. In view of the above, the order passed by the learned Rent Control Appellate Authority in respect of restoration of amenities and also the direction to continue to deposit the rent are also liable to be set aside. So far as the payment of rent is concerned, it is duty of the respondent / tenant to pay the same till the date of vacating the premises.

19. In the result, all the three civil revision petitions are allowed and the common judgment passed by the learned Rent Control Appellate Authority in R.C.A.Nos.14 to 16 of 2013 is set aside and the common order passed by the learned Additional Rent Controller in R.C.O.P.Nos.177 & 255 of 2009 and 173 of 2010 is restored. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

1. The Rent Control Appellate Authority/
Principal Subordinate Judge,
Madurai.

2. The Additional Rent Controller /
Additional District Munsif,
Madurai.

Copy To:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to M/s.AJMAL ASSOCIATES, Advocate, SR.No. 69433
+3CC to Mr.R.LAKSHMANAN, Advocate, SR.No. 69039

C.R.P. (MD) Nos.2160 to 2162 of 2017
21.06.2018

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