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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.11.2017

DELIEVRED ON : 29.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.660 of 2017 (NPD)

and

CMP (MD) .No.2997 of 2017

Dharmaraj

.. Petitioner/
Respondent / Respondent /
Tenant

Vs.

RM.Kannan,
Trustee,
M.M.Melachatram

... Respondent/
Appellant / Petitioner /
Landlord

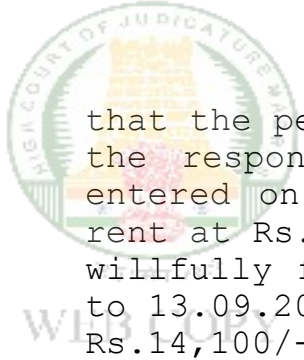
PRAYER: Civil Revision Petition is filed, under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (as amended by Act XXIII of 1973 and Act - I of 1980), praying to set aside the judgment passed by the Rent Control Appellate Authority (Sub-Judge), Devakottai in R.C.A.No.6 of 2016, dated 03.02.2017, reversing the fair and decreetal order of the learned Rent Controller / Principal District Munsif cum Judicial Magistrate, Karaikudi, in RCOP.No.47 of 2013 dated 09.12.2015.

For Petitioner : Mr.S.Rajaprabu
Caveator for Sole respondent : Mr.R.Sundar Srinivasan

ORDER

This Civil Revision Petition has been filed by the revision petitioner / tenant, challenging the order passed by the Rent Control Appellate Authority (Sub-Judge), Devakottai in R.C.A.No.6 of 2016, dated 03.02.2017, in and by which the order of the learned Rent Controller / Principal District Munsif Cum Judicial Magistrate, Karaikudi in R.C.O.P.No.47 of 2013, dated 09.12.2015, was reversed.

2. The respondent / landlord has filed a petition in Rent Control Original Petition No.47 of 2013 under Section 10(2)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for eviction of the revision petitioner / tenant stating among the other things



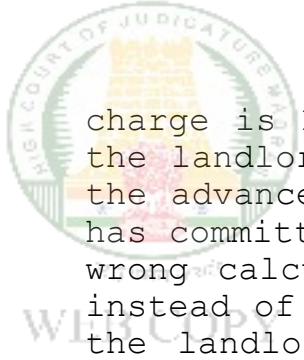
that the petition mentioned property belongs to the private trust of the respondent / landlord and as per the oral rental agreement entered on 21.08.2002, the petitioner / tenant has to pay monthly rent at Rs.150/- and maintenance at Rs.150/-, but the petitioner has willfully failed to pay rent and maintenance amount from 01.11.2009 to 13.09.2013 ie., for 47 months, thereby the arrears accumulated to Rs.14,100/-. Even after legal notice, the revision petitioner / tenant failed to pay the arrears of rent and to vacate the building and hence, the revision petitioner / tenant is to be vacated.

3. The revision petitioner / tenant has filed his counter affidavit before the Rent Controller stating that he became tenant on 09.12.2000, gave Rs,20,000/- as advance to the then trustee and agreed to pay the rent of Rs.150/- and maintenance charge of Rs.150/-. The revision petitioner had deposited a sum of Rs.4014/- for getting electricity connection and the same was added with the advance amount. Subsequently, the revision petitioner carried out maintenance work for Rs.15,000/- in the said building, for which the respondent / landlord orally permitted the petitioner / tenant to pay rent only after deducting all the arrears and therefore, there is no willful default on the part of the petitioner / tenant in paying the rent. Further, the rented building belongs to the public trust and therefore, the rent control original petition is not maintainable. Hence, there is no need to vacate the premises.

4. After hearing both sides, the Rent Controller had dismissed the petition on the ground that the arrears of rent could be deducted in the advance amount and therefore, the eviction petition is not maintainable. Aggrieved by the said order, the respondent / landlord had preferred an appeal in R.C.A.No.6 of 2016 on the file of the Rent Control Appellate Authority. The Rent Control Appellate Authority has dismissed the order passed by the Rent Controller on the ground that the payment of advance amount has not been proved by the revision petitioner / tenant and thereby, allowed the Rent Control Original Petition. Aggrieved by the said judgment, the present civil revision petition has been filed by the revision petitioner / tenant.

5. The learned counsel appearing for the revision petitioner / tenant would submit that the Courts below, without considering the evidence of R.W.1 and Ex.R3 in proper perspective manner, have wrongly come to the conclusion that the landlord trust is not a public trust. He further contended that the respondent Trust is a Public Trust and hence, as per Section 30 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Public trust cannot file such an application before the Rent Controller.

6. The learned counsel appearing for the petitioner / tenant would further submit that the lower Appellate Court has wrongly come to the conclusion that the monthly rent is Rs.500/-, without considering the fact that even as per the case of the landlord, the monthly rent is Rs.150/- and monthly maintenance



charge is Rs.150/-, in toto only Rs.300/- payable by the tenant to the landlord. Further, the lower appellate Court has held that even the advance amount is adjusted towards the payable rent, the tenant has committed default in payment of 7 months rent, which is based on wrong calculation by taking into account Rs.500/- as monthly rent instead of Rs.300/-, and also without considering the fact that the landlord has been holding big amount as advance even without paying interest.

7. The learned counsel appearing for the respondent / landlord would submit that the Courts below, after elaborate discussions and after assigning valid reasons, have found that the respondent Trust is only a private trust and the same cannot be found fault with. Moreover, the rental receipts would also indicate that the status of the respondent trust is that of a private trust and therefore, the revision petitioner, who entered into tenancy agreement accepting the status of the respondent trust as a private trust, cannot question the status of the landlord and is also estopped in law and by conduct. Even assuming for the sake of argument, however, without admitting that the respondent Trust is only a Public Trust, the same cannot be an impediment for filing a rent control proceedings and it has been held that such exemption granted to a Public Trust from the purview of Rent Control Act is only a beneficial clause and such a beneficial exemption can be waived by the Public Trust and that the rent control proceedings initiated by a public trust cannot be dismissed on that ground. Therefore, the first ground raised in the revision petition is no longer a valid objection and therefore, the same has to be rejected.

8. The learned counsel appearing for the respondent / landlord would further submit that the respondent himself admitted in his evidence during cross examination that no advance amount has been paid and therefore, the contention that a sum of Rs.20,000/- was paid as advance cannot be pressed into service in the light of categorical admission by RW.1 himself. He further contended that in collusion with the expelled trustee, the petitioner has created a forged document and marked as Ex.R2 and the same has not been properly stamped and registered and therefore, Section 35 of Indian Stamp Act and Section 49 of the Indian Registration Act would be a bar for relying upon the said Ex.R2. He further contended that the appellate authority has rightly rejected the contention of the revision petitioner that a sum of Rs.15,000/- was spent for maintenance expenses and Rs.4,014/- for electricity deposit and held that the same could not be adjusted in rental arrears on facts and also on legal aspects in the light of provisions of Rent Control Act. He would further submit that a sum of Rs.26,400/- is due as outstanding by way of rent for a period from 01.11.2009 to 31.03.2017 i.e for 88 months @ Rs.300/- per month. Since the revision petitioner / tenant did not pay rent, even after the institution of the suit, on that ground alone, the revision petition deserves to be dismissed.



9. Heard the learned counsel appearing for both sides and perused the materials available on record.

10. The first and foremost ground raised by the revision petitioner / tenant is that the building in question belongs to a public trust and therefore, only civil suit is maintainable not the Rent Control Original Petition. After having detailed discussions, both the Courts below have rightly held that the property in question belongs to the Private Trust. This Court does not find any reason to interfere with the same. Therefore, the first contention is rejected.

11. The second contention of the learned counsel for the revision petitioner / tenant is that the Rent Control Appellate Authority, based on the wrong calculation by taking into account Rs.500/- as monthly rent, instead of Rs.300/-, has held that the revision petitioner/ tenant has committed default in payment of 7 months rent, even after deduction of advance amount and amount stated to have been spent by the tenant. A perusal of the judgment passed by the Rent Control Appellate Authority would go to show that only based on the document produced by the revision petitioner / tenant - Ex.R3, in which the monthly rent is stated as Rs.500/-, the Rent Control Appellate Authority has held so and it is not due to wrong calculation or inadvertence.

12. According to the revision petitioner / tenant, as per Ex.R3 - Rental Agreement, he had paid Rs.20,000/- as advance. It was disputed by the respondent / landlord. When that be so, it has to be proved in the manner known to law. As per Ex.R3, no receipt for the payment of advance amount has also been produced by the revision petitioner / tenant. The evidence of RW1, who is the respondent / tenant and the evidences of RW2 and RW3, who are the attesting witnesses to the rental agreement, are contradictory to each other. In view of the such contradictory statements, it cannot be held that the payment of advance amount of Rs.20,000/- is proved. More over, the revision petitioner / tenant has stated that he has paid a sum of Rs.4,014/- for electricity deposit and spent a sum of Rs.15,000/- for maintenance of the building. It was also disputed by the respondent/ landlord. No relevant material is produced by the revision petitioner / tenant in order to prove the same. On the other hand, the revision petitioner / tenant himself admitted that he has not paid the rent for the period stated in the eviction petition. In view of the above, there is no merit in the revision petition. The learned Rent Control Appellate Authority has rightly reversed the order of the Rent Controller and allowed the Rent Control Original Petition and the same does not warrant any interference at the hands of this Court.



13. In the result, this Civil Revision Petition is liable to be dismissed and accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar (T&P)

Sub-Assistant Registrar

To

1. The Rent Control Appellate Authority /
Sub-Judge, Devakottai.

2. The Rent Controller /
Principal District Munsif Cum Judicial Magistrate,
Karaikudi.

Copy to:-

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

+One cc to Mr.R.Sundar Srinivasan, Advocate, SR.No.44408

gcg
RL/6C/5P/KK/SAR1/1/3/2018

order made in
C.R.P (MD) No.660 of 2017

29.01.2018