



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.07.2018

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.471 of 2016

Sahul Hameed ... Petitioner/Respondent/Petitioner (Landlord)

-vs-

Shajahan ... Respondent/Appellant/Respondent (Tenant)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the Civil Revision Petition and set aside the fair and decreetal order dated 29.07.2013 made in R.C.A.No.2 of 2012 on the file of the Rent Control Appellate Authority, Sub-Court, Pudukkottai, reversing the well considered fair and decreetal order dated 19.10.2012 made in R.C.O.P.No.1 of 2009 on the file of Rent Controller, District Munsif Court, Pudukkottai.

For Petitioner : Mr.A.Arumugam
for M/S.Ajmal Associates
For Respondent : Mrs.S.Sujatha
Legal Aid Counsel

O R D E R

The revision petitioner herein (Landlord) has filed this petition against the respondent (Tenant), seeking to set aside the order dated 29.07.2013 made in R.C.A.No.2 of 2012 on the file of the Rent Control Appellate Authority, Sub-Court, Pudukkottai, reversing the well considered fair and decreetal order dated 19.10.2012 made in R.C.O.P.No.1 of 2009 on the file of Rent Controller, District Munsif Court, Pudukkottai. R.C.O.P.No.1 of 2009 was filed by the Landlord / revision petitioner herein for evicting the Tenant / respondent herein so as to give vacant possession of the property to the Landlord, which was allowed by the learned Rent Controller. Aggrieved by the same, the Tenant filed appeal in R.C.A.No.2 of 2012 for setting aside the order in R.C.O.P.No.1 of 2009, which was allowed by the Rent Control Appellate Authority, Sub-Court, Pudukkottai. Challenging the said appeal, revision petitioner / Landlord is before this Court.

2. For the sake of brevity, the parties would be referred to as "Landlord (revision petitioner)" and "Tenant (respondent)".

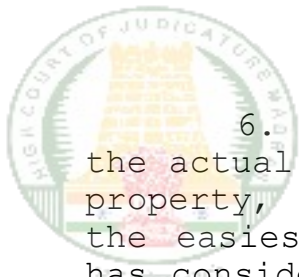


3. It is the case of the Landlord that there was an oral agreement between him and the Tenant to rent out his building to the Tenant at the monthly rent of Rs.950/- on payment of Rs.10,000/- as advance, for the purpose of conducting his business and the respondent has been running an electrical/electronic shop in the premises. The tenant had filed a suit in O.S.No.402 of 2008 against the Landlord and also obtained an interim order against him on the false averment that he had paid Rs.50,000/- as advance. Subsequently, the Landlord had voluntarily allowed the suit to get exparte so as to file a petition for eviction.

4. It is the further case of the Landlord that the Tenant had not paid the monthly rent regularly from the month of February, 2008 onwards and the Landlord, in support of his submission that in the event of non payment of monthly rent regularly, the Landlord would be entitled to the relief of eviction, has relied upon one of my judgments in the case of Lakshmi Ganga vs. Umadevi, reported in 2017-4-L.W.89, wherein it has been held as follows:

"From the both side submissions, it is revealed that the respondent herein as tenant committed default in payment of rent. As held in the above judgment of this Court, mere deposit of arrears of rent in the 1st hearing of eviction petition will not absolve the respondent herein from willful default committed by him. Further during the course of the argument, this Court put question regarding payment of the rent during the pendency of eviction proceedings, the Learned Counsel for the respondent herein informed this Court that despite sending letter by him to the respondent herein there was no response from him. This would itself show the conduct of the tenant's malafide intention. Therefore, the above said conduct of the respondent herein for not responding to his counsel regarding payment of arrears of rent during the pendency of eviction proceedings to willful default and this Court hold that the revision petitioners are entitled for eviction on the ground of willful default."

5. Per contra, Smt.S.Sujatha, the learned Legal Aid Counsel appearing for the Tenant has contended that it was the Landlord, who refused to receive the rent for October, 2008 onwards, which made the Tenant to sent the same through money order and the same was returned back on account of non receipt of the amount. Though the Tenant had given a sum of Rs.50,000/- to the Landlord, the Landlord has been spreading a lie that only Rs.10,000/- was extended as advance. It has been further contended that in case the rent for a particular month had not been paid, it is open to the Landlord to deduct the amount from the advance amount and without doing so, the Landlord is making huge hue and cry, as if the fault is purely on the part of the tenant.



6. It is also contended by the learned Legal Aid Counsel that the actual intention of the landlord is to evict the Tenant from the property, for which, he has taken the device of wilful default as the easiest ground to achieve his object. The Appellate Authority has considered all these factors suitably and reversed the order of the learned Rent Controller and therefore, the order of the Appellate Authority does not call for any interference by this Court and this petition is liable to be dismissed in limine.

7. Heard the learned counsel for the Landlord and the learned Legal Aid Counsel for the Tenant and also perused the material documents available on record, including the citation relied upon by the counsel.

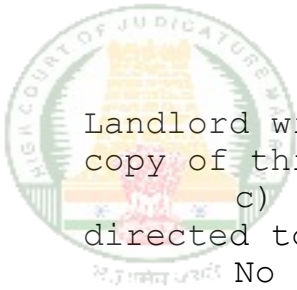
8. It is seen that the property in question was rented out to the Tenant in the year 2007 and according to the Landlord, only a sum of Rs.10,000/- was paid as advance, whereas it was stated by the Tenant that he had given Rs.50,000/- as advance. The main plea raised by the Landlord that in spite of several reminders, the Tenant had not paid the rent in time, thereby committed a wilful default, which was highly refuted by the Tenant stating that despite sending money order towards payment of monthly rents, the Landlord refused to accept the same and therefore, the question of wilful default does not arise at all.

9. Be that as it may, the submission of the Tenant that in the event of non-payment of monthly rent, the Landlord is entitled to adjust the amount from the advance, cannot be accepted for the reason that in the absence of consent by the Tenant, no amount can be deducted from the amount paid in advance automatically and secondly, the amount can be deducted, when the Tenant does not pay the rent anticipating vacation of property in the near future. Moreover, as rightly held by the learned Rent Controller, though the Tenant stated that he had sent the arrears of rent through money order, on its return, he had not taken any steps to deposit the same in anyone of the Banks. Hence, it can be easily construed that the Tenant has committed a wilful default and as such, I cannot take a different view than the one taken in my previous judgment (cited supra) and the Landlord is entitled to the relief of eviction of the Tenant on the ground of wilful default itself.

10. In the result,

a) this Civil Revision Petition is allowed and the order dated 29.07.2013 passed in R.C.A.No.2 of 2012 by the learned Rent Control Appellate Authority, Sub-Court, Pudukkottai, is hereby set aside and the order dated 19.10.2012 made in R.C.O.P.No.1 of 2009 by the learned Rent Controller, District Munsif Court, Pudukkottai, is confirmed;

b) the Tenant/respondent herein is directed to vacate the premises and hand over the vacant possession of the property to the



Landlord within a period of two months from the date of receipt of a copy of this order;

c) the Legal Aid, Madurai Bench of Madras High Court is directed to pay a sum of Rs.3,000/- to Smt.S.Sujatha.

ச.ஜெயகுமார் No costs.

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Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

- 1.The Subordinate Judge,
Rent Control Appellate Authority,
Sub Court,
Pudukkottai.
2. The Rent Controller / District Munsif,
Pudukkottai.
- 3.The Co-ordinator,
Legal Aid,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Section Officer,
Record Section
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No. 70929

CRP(NPD)(MD).No.471 of 2016

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JM-ES/SKN RSK/SAR 1/29.08.2018/4P/7C