



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 04.12.2017

ORDERS PRONOUNCED ON: 14.09.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) Nos.1127 and 1128 of 2011
and M.P. (MD) Nos.1 of 2013 and 2 of 2011

C.R.P. (NPD) (MD) .No.1127 of 2011

1.Rajammal (Died)
2.M.Sornavel
3.Parvathi
4.Rajeswari
5.Palanivel
6.M.Balakrishnan
7.M.Nagendran
8.M.Kathiresan

... Petitioners/Appellants 2 to 9/
3rd Parties

(1st petitioner died and petitioners 2 to 8 and R4 are recorded as Lrs of 1st petitioner. Memo recorded vide order dated 23.04.2013 made in CRP(MD) No.1127 of 2011 by RSRJ memo USR No..... dated 23.04.2013)

Vs.

1.Srija
2.Sarala
3.Baskaran
4.M.Subramanian

... 1 to 3 Respondents/2 to 4 Respondents/
2nd Respondent-3rd Parties

....4th Respondent/5th Respondent/3rd Party
(in C.R.P. (MD) No.1127 of 2011)

(4th Respondent set ex parte before the Tribunal)

C.R.P. (NPD) (MD) .No.1128 of 2011:

1.Rajammal (Died)
2.Parvathi
3.M.Sornavel
4.Rajeswari
5.Palanivel
6.M.Balakrishnan
7.M.Nagendran
8.M.Kathiresan

... Petitioners/Appellants 2 to 9/
3rd Parties

(1st petitioner died and petitioners 2 to 8 and R2 are recorded as Lrs of 1st petitioner. Memo recorded vide order dated 23.04.2013 made in CRP(MD) No.1128 of 2011 by RSRJ. Memo filed dated 23.04.2013)

**Vs.**

1.Srija Pradheep

...1st Respondent/1st Respondent/Petitioner

2.M.Subramanian

...2nd Respondent/2nd Respondent/3rd Party

(2nd respondent was set-exparte in the Rent control
appellate Tribunal) (in C.R.P.(MD)No.1128 of 2011)

PRAYER in both petitions:- Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decretal order passed in R.C.A.Nos.32 and 31 of 2004 dated 23.06.2010 on the file of the Principal Sub-Court, Nagercoil confirming the fair and decretal order passed in R.C.O.P.Nos.1 of 2002 and 42 of 2001 dated 13.09.2004 on the file of the Rent Control Tribunal (1st Additional District Munsif Court), Nagercoil.

(For both petitions)

For Petitioners : Mr.D.Nallathambi

For Respondents : Mr.V.M.Balamohan Thambi

COMMON ORDER

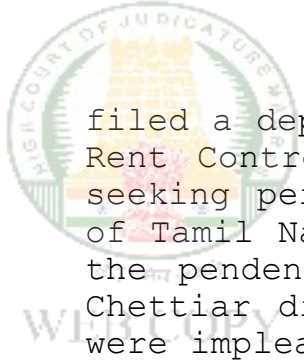
These Civil Revision Petitions have been filed against the fair and decretal order passed in R.C.A.Nos.32 and 31 of 2004 dated 23.06.2010 on the file of the Principal Sub-Court, Nagercoil confirming the fair and decretal order passed in R.C.O.P.Nos.1 of 2002 and 42 of 2001 dated 13.09.2004 on the file of the Rent Control Tribunal (1st Additional District Munsif Court), Nagercoil.

2. Since the issue involved in both the Civil Revision Petitions are inter-connected to each other, both are taken up together and a common order is passed.

3. For the sake of convenience, the parties are referred to as per the rank mentioned in this Civil Revision Petition. The petitioners herein are the tenants under the respondents herein, who are the respondents 1 to 3 in C.R.P.(MD).No.1127 of 2011.

4. The short facts which are necessary to dispose of the Civil Revision Petition are as follows:-

4.1. Originally, an eviction Petition in R.C.O.P.No.42 of 2001 was filed by the respondents/owners before the Rent Control Tribunal, Nagercoil against one Madaswamy Chettiar, on the grounds of 'wilful default' in payment of rent, denial of title, own use and occupation and for additional accommodation, under Sections 10(2) (1), 10 (3) (a) (III) & 10(3) (C) of Tamilnadu Buildings Lease and Rent Control Act. In response to that, the said Madaswamy Chettiar



filed a deposit petition in R.C.O.P.No.1 of 2002 on the file of the Rent Control Tribunal, Nagercoil against the 1st respondent herein seeking permission to deposit the monthly rents under Section 8(5) of Tamil Nadu Buildings Lease and Rent Control Act. However, during the pendency of the Rent Control proceedings, the said Madaswamy Chettiar died and his legal heirs, namely, the petitioners herein, were impleaded as parties. The first respondent namely, Karunakaran, in R.C.O.P.No.1 of 2002 also died during the pendency of the Rent Control Appeal Proceedings and his legal heirs were impleaded as the respondents 3 to 5.

4.2. The first respondent herein filed an eviction petition in R.C.O.P.No.42 of 2001 on the grounds of wilful default in the payment of rent, denial of title, own use and occupation and for additional accommodation, under Sections 10 (2) (1), 10 (2) (VII) , 10 (3) (a) (III) & 10 (3) (C) of Tamilnadu Buildings (Lease and Rent Control) Act, against the said Madaswamy Chettiar.

5. The first respondent herein as landlady contended that previously her father was the landlord and subsequently she became owner by virtue of a partition suit decree dated 02.02.2001. She is unemployed and got M.C.A Degree in Computer Application in the year 1999 and she intended to start a Computer Center in all the four shops and that they were not owning any other non-residential building. Hence, she issued a legal notice to the said Madaswamy Chettiar and in turn, he issued a reply notice also. In the reply notice, he contended that her father Karunakaran Nair alone is the landlord, that the monthly rent for each portion is only Rs.600/- and that he totally paid a deposit amount of Rs.40,000/- to the father of the Petitioner. In the petition, it is further contended that the said Madaswamy Chettiar is owning many other properties also.

6. The tenant, namely, Madaswamy Chettiyar filed a statement of objection stating that he took the ground floor portion in the year 1987 and the first floor portion in the year 1988, that he paid a deposit amount of Rs.30,000/- for the ground floor portion and Rs.10,000 for the upstairs portion to the father of the Petitioner by name Karunakaran Nair, that he was not intimated about the decree passed in the partition suit, that the Petitioner's father received the rent upto the month of September, 2001 and refused to receive the rent from the month of October, 2001, that the money order sent by him was also refused, that he filed R.C.O.P.No.1 of 2002 to deposit the monthly rents, that the petitioner after her marriage is living with her husband at Chennai and her brother and her father are also living separately, that they have no intention to start a Computer Center as projected by them, that the premises is also not suitable for starting the Computer Center, that he invested huge amount in the business and doing the same for so many years and that if eviction order is passed he would be put into irreparable loss and hardship.

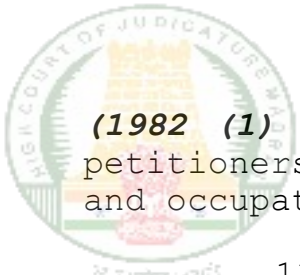


7. In R.C.O.P.No.1 of 2002, the said Madaswamy Chettiar, being the petitioner, raised the same contentions as that of in the statement of objections submitted by him in R.C.O.P.No.42 of 2001. Hence, it is not discussed once again.

8. Before the Rent Control Tribunal, joint trial was ordered. During the trial, on the side of the landlord, the first respondent herein and her father by name Karunakaran Nair were examined and on the tenant, the said Madaswamy Chettiar was examined. The Court below on appreciation of evidence and records favoured with the landlord and dismissed the claim of the tenant and as against which, the tenant went on appeal and the appeal also met the same fate which led to filing of the present Civil Revision Petitions.

9. The learned Senior Counsel appearing for the petitioners/ tenants would mainly argue that the respondents have purposely refused to receive the rent amount and the respondents have not intimated to the petitioners about the change in ownership of the building. He further contended that the deceased tenant alone issued the notice at the first instance about the change in ownership of the building and the landlord in his evidence admitted the money orders sent by the deceased tenant and the same has not been considered by the courts below. He would further submit that the advance amount is more than the rent arrears and therefore, there is no willful default as alleged by the owner. The documents marked as ex.R.5 to R.13 were not sent for comparison of the signature by handwriting expert. P.W.1 admitted about issuance of vouchers by her father P.W.2 and the same has also not been considered by the courts below. Mere desire to start a business is not a *bona fide* claim on the part of the respondent and she came forward with the eviction petition only with the *mala fide* intention. The learned Rent Controller having not able to come with a definite conclusion about the signatures of P.W.2 in the vouchers marked as Ex.R.5 to R.13 is wrong in allowing the petition under Section 10(2)(i) of the Rent Control Act. In any event, the orders of the both the court below are liable to be set aside.

10. Further, on the ground of denial of title and additional accommodation, the eviction petition was dismissed and no appeal was filed by the landlord and as such it is a final one. However, with respect to 'own use and occupation' both the Courts failed to see that the landlady is already given in marriage and that her husband is employed at Chennai. Only for the purpose of filing the present petition, she falsely contended that she is unemployed, that intended to start a Computer Centre and she made all the preliminary arrangements. For application of Section 10 (3) (a) (III) of Rent Control Act on the ground of own use and occupation "Carrying on Business" is an essential element. But in the case on hand, admittedly, the landlady and her family members were never carrying on business in Internet. For this proposition of law, the petitioners are relying upon the decisions reported in



(1982 (1) MU 130, 1990 (2) MU 186 and 1999 (3) MU 303. Thus, the petitioners are not liable to be evicted on the ground of 'own use and occupation' also.

11. Eventually, he would contend that the deposit petition under Section 8 (5) of the Rent Control Act in R.C.O.P.No.1 of 2002 was mainly dismissed on the ground that the respondent Madaswamy Chettiar had not followed the procedures mentioned in that Section. But both the Courts below failed to see that PW 1 and PW 2 specifically admitted that they have not sent any reply for the legal notice issued by the tenant and that they refused to receive the rent sent by money order. Thus the tenant had taken all the steps to pay the rent amount which was purposely refused by the landlord. In such circumstances, the orders of the Courts below is not maintainable and liable to be set aside.

12. *Per contra*, the learned counsel appearing for the respondents and third party contended that the Rent Controller discussed about exhibits in detail and ordered eviction on the ground of 'own use and occupation'. The learned Sub-Judge has also accepted the findings of the Rent Control court. In support of their contention, the respondents rely on the judgments reported by this Court in **1990(2) M L J 186, 1999(3) M L J 303, 2004(2) M L J 127 and 1995(2) M L J 282**. They would further contend that the petitioners/tenants have not followed by the procedure contemplated under section 8 of the Tamil Nadu Buildings Lease and Rent Control Act 1960, before filing R.C.O.P.No 1 of 2002. As per the judgment reported in Apex Court and this Court omission to avail prescribed procedure disentitle the tenant to plead that there was no wilful default on his part as per the judgment reported in **(2002 (4) CTC 572(SC), 2007 (3) M L J 179, and 2011 (1) M W N (Civil) 754.)**. Hence, they pray for the dismissal of the Civil Revision Petitions.

13. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

14. Though very many arguments have been raised by the learned counsel appearing for the petitions, this Court deems it fit to answer a few of the contentions which are necessary to decide the case on hand. The main contention of the learned counsel for the petitioners/tenants is that the documents marked as Ex.R.5 to R.13 in question were not sent for comparison of the signature by handwriting expert. In that aspect, the appellate court in its judgment observed as follows:

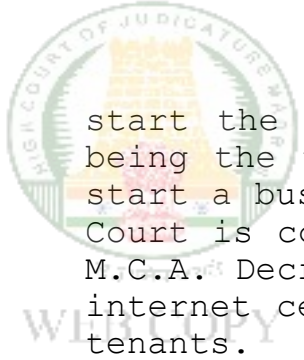
"16.வ.வி.எண் 82/2017 மே.வ.எண் 31/2004 - ல் தாக்கல் செய்யப்பட்ட இந்த மனுவில் எ.ம.சா.ஆ.5 முதல் எ.ம.சா.ஆ.13 வரையுள்ள ஆவணங்களிலுள்ள கையெழுத்துக்களையும் ஏற்றுக்கொள்ளப்பட்ட கையெழுத்தையும் ஒப்பிட்டுப் பார்க்க கைரேகை நிபுணருக்கு அனுப்பவேண்டும் என்று சொல்லப்பட்டிருந்தும் ஆராயும்போது ஏற்கனவே ஒப்புக்கொள்ளப்பட்ட கையெழுத்து எ.ம.சா.ஆ.3 அஞ்சல் ஒப்புகல் அட்டையில் உள்ளது. அது கருணாகரன் நாயரின் கையெழுத்து.எ.ம.சா.ஆ.5 முதல் எ.ம.சா.ஆ.13 - ல் உள்ள கையெழுத்து



கருணாகரன் நாயரின் கையெழுத்தா என்பது குறித்து பார்க்கும்போது மேல்முறையீட்டாளர் தரப்பில் சமர்ப்பிக்கப்பட்ட 2005 (2) Law Weekly பக்கம் 694 மற்றும் 2008 (3) CTC பக்கம் 31-ல் உள்ள முன்தீர்ப்புகளில் சொல்லப்பட்டபடி நீதிமன்றம் வெறுங்கண்ணால் பார்க்கும்போது மேற்படி கையெழுத்துகளில் மிகுந்த முரண்பாடுகள் உள்ள நிலையில் மேற்படி கையெழுத்துக்களை கையெழுத்து நிபுணருக்கு அனுப்பவேண்டிய அவசியம் இல்லை என முடிவு செய்து மேற்படி மனு தள்ளுபடி செய்யத்தக்கது என முடிவு செய்யப்படுகிறது. “

15. As regards comparison of signatures, the Court below has perfectly relied on the judgment and reached a conclusion that there is no necessity to send the signature in question for handwriting expert, in which, this Court finds no infirmity or illegality. Dealing with the next aspect as regards payment of rent, it is the specific case of the respondents in the Civil Revision Petitions that the petitioners herein have not paid the rent since October 2001. Though it is stoutly denied by the petitioners contending that the respondents herein refused to receive the rent, they have not produced any document to show their *bona fide* that they were ready and willing to pay the rent for the simple reason even if there is a denial on the part of the respondents as alleged by the petitioners, the petitioners should have scrupulously followed Section 8 of the Tamilnadu Buildings Lease and Rent Control Act, 1960 before filing R.C.O.P.No.1 of 2002. But, they failed to do so. Therefore, omission on the part of the petitioners to avail the prescribed procedure disentitle tenants to plead that there was no 'wilful default'. Moreover, in the case on hand, once the respondents/owners herein filed a petition in R.C.O.P.No.42 of 2001 for evicting the petitioners/tenants, immediately, the tenant has filed a petition in R.C.O.P.No.1 of 2002. Therefore, the attitude of the tenant is to be taken note of by this Court. Being the tenant, it is his duty to follow the procedures laid down in the Act and every effort must be made, as a tenant, to prove his *bona fide* in paying the rent. As per the judgment made in **2017 (1) TNLJ 523 (Civil), Manoharan and others Vs. Maruthachalam**, the tenant filing petition to deposit subsequent to filing eviction is not a *bona fide* one. On that score also, the petitioners are not entitled to the relief sought for in the Civil Revision Petitions. Therefore, both the Courts below after scanning the material available on record have reached concurrent conclusion that the petitioners herein/tenants have failed to pay the rent due to the respondents/owners in time. In otherwords, the 'wilful default' has been apparently proved in this case.

16. In the case on hand, the petitioners question the financial ability of the respondents to start the business. The first respondent herein completed Master of Computer Application and her degree Certificate was marked as Ex.P.7 before the Court below. Ex.P.4 to P.8 clearly shows that the respondents has the capacity to start the business. Apart from that, the lower Court has listed out the various steps taken by the landlord to



start the internet business centre. In any event, the petitioners being the tenant cannot dictate the terms and conditions either to start a business nor ability to start the business. As far as this Court is concerned, the first landlord, namely, Shreeja, is holding M.C.A. Decree qualification which is more than enough to start the internet centre, she is also unemployed which is not denied by the tenants. When such is the factual position, the tenants cannot contend that the first landlady has no experience in connection with the business, when experience can be gained only through the starting of business. Therefore, the contention of the tenants that the landlords filed the petition to evict the tenant has no legs to stand.

17. In the result, these Civil Revision Petitions are dismissed and the order of the concurrent judgment of the Courts below stand confirmed. The petitioners are directed to vacate the property in question and hand over the same to the owner of the property, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Principal Subordinate Judge,
Nagercoil.
2. The 1st Additional District Munsif,
Rent Control Tribunal,
Nagercoil.

Copy To :-

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 2 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR Nos. 84114 & 84262
+ 1 CC TO Mr.V.M.BALA MOHAN THAMBI, ADVOCATE IN SR No. 84290

BALAJI

TE/PM/SAR-4 : 08/11/2018 : 7P/8C