



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 05.02.2018

Delivered on 25.07.2018

CORAM :

**THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**

C.R.P. (NPD) (MD) No.1263 of 2011

and M.P. (MD) No.1 of 2011

1.R.Mary  
2.R.Jerold  
3.R.Androse  
4.R.Xavier

...Petitioners/Appellants  
Respondents/Tenants

**Vs.**

T.Subramania Chettiar

...Respondent/Respondent  
Petitioner/Landlord

**PRAYER:** Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 1961, to set aside the fair and decreetal order dated 28.02.2011 made in R.C.A.No.26 of 2003 on the file of Rent Control Appellate Authority, Tiruchirapalli by confirming the fair and decreetal order dated 13.03.2003 made in R.C.O.P.No.51 of 1996 on the file of Rent Controller(II Additional District Munsif), Tiruchirapalli pending disposal of the above Civil Revision Petition.

For Petitioners: Mr. P. Thiagarajan

For Respondent : Mr. M.Ramaratnam

**ORDER**

The Civil Revision Petition has been filed to set aside the fair and decreetal order dated 28.02.2011 made in R.C.A.No.26 of 2003 on the file of Rent Control Appellate Authority, Tiruchirapalli confirming the fair and decreetal order dated 13.03.2003 made in R.C.O.P.No.51 of 1996 on the file of Rent Controller (II Additional District Munsif), Tiruchirapalli.



**2.** The brief facts of the case are as follows:

**2.i)** The respondent/landlord has filed R.C.O.P.No.51 of 1996 on the file of Rent Controller cum 2<sup>nd</sup> Additional District Munsif Court, Tiruchirappalli, on the ground of willful default and owner's occupation.

**2.ii)** The relationship between the petitioners and the respondent as landlord and tenant is not disputed. The monthly rent as stated by the landlord is Rs.500/- and by the respondents/ tenants is Rs.60/-. Even the monthly rent of Rs.60 as alleged by the tenants is not paid by them regularly and they were paying the rent in the next succeeding month. The deposit petition filed by the tenants was not proceeded by them, which would prove the willful default on their part. On perusal of Ex.B.27, it is seen that the rent is paid by the tenants only at lumpsum, which proves that they have not paid the monthly rent every month as per the agreement.

**2.iii)** Regarding the expenses, they have incurred for the repairs and reconstruction works is also not supported by any evidence.

**2.iv)** The ground of owner's occupation is concerned, it has been clearly proved that the landlord is residing in the rental premises belongs to the Housing Board. The argument of the petitioners/ tenants is that the respondent/landlord has got his own house within Trichy City. But the same is not proved by the respondents/ tenants.

**2.iv)** On 13.03.2003, the learned Rent Controller, District Munsif, Trichirappalli, allowed the petition as prayed for and one month time was granted to the revision petitioners to hand over the possession. Aggreived by the said order, the revision petitioners/ tenants filed an Appeal in R.C.A.No.26 of 2003. On 28.02.2011 the learned Appellate judge dismissed the appeal filed by the tenants and granted 3 months time to vacate and hand over the possession. The learned Appellate Judge came to the conclusion that the tenants have not paid the rent regularly and the building is required for owner's occupation.

**2.vi)** Further, the material available on record would show that the tenants are in the habit of paying the rent in lumpsum without any valid reason. As the subsequent conduct of the petitioners/Tenants should also be taken into account while deciding the grounds of willful default, it has to be seen whether the subsequent conduct of the Tenants was genuine and reasonable in paying the rents regularly. As discussed earlier, the Tenants were not prompt in paying the rent every month.



2.vii) As far as owner's occupation is concerned, the deceased Richard himself had admitted that he alone is in possession and enjoyment of the house at Deeran Nagar, which shows that the house at Deeran Nagar is in possession and enjoyment of the tenants only as claimed by the respondent/ Landlord. The learned Appellate Judge came to the conclusion that there is wilful default of rent by the tenants and the building is required for the owner's occupation.

3. The learned counsel for the petitioners/tenants would submit that the deposit petition filed by the petitioners/tenants was restored and the petitioners/tenants were paying rent every month without any default. According to the learned counsel for the petitioners, before initiating proceedings under Rent Control Act against the tenants, notice has not been served on them. He would further submit that the tenants have paid Rs.2,000/- as advance and therefore, the landlord can adjust the arrears of rent from the advance amount.

4. As far as owner's occupation is concerned, the learned counsel for the petitioners would submit that the claim of the landlord that he has no premises for own occupation is not a *bonafide* one and the landlord has not proved that he is residing in rented premises and he prays for setting aside the order of the Rent Control Appellate Authority.

5. The learned counsel for the respondent/landlord would submit that the petitioners/tenants are not paying the rent promptly and insofar as owner's occupation is concerned, the respondent/ landlord has proved that the respondent/landlord is residing in a rented building. The Rent Control appellate authority is right in dismissing the appeal and he prays for dismissal of the Civil Revision Petition.

6. Heard the learned counsel for the petitioners/tenants and the learned counsel for the respondent/landlord.

7. On a perusal of records, it is seen that the Rent Control Appellate Authority has analysed the oral and documentary evidence. From Ex.B.28, it is seen that the petitioner was depositing even the admitted rent in lumpsum every now and then after allowing it to get accumulated for several months. R.W.1 in her evidence has admitted that though it was agreed that the rent should be paid every month, she has not paid the rent every month. It is useful to extract the relevant portion of the evidence of R.W.1, which reads as follows:



8. The Rent Control Appellate Authority has specifically observed that the tenants were not prompt in paying the rent every month and they have not even chosen to restore the petition filed to deposit the rent, but, they are prompt in contesting the appeal. Finally the Appellate Authority came to the conclusion that the tenants had committed default in paying the rent to the landlord. Insofar as owner's occupation is concerned, the Rent Control Appellate Authority has observed that it is proved that the petitioners/tenants are owning the house at Deeran Nagar and the petitioners/tenants have not proved that the landlord is residing in his own house within the Corporation. Therefore, the Appellate Authority has confirmed the order of eviction and granted three months time to the tenants to vacate and hand over the possession.

9. Upon hearing both sides and on a careful scrutiny of the orders of the courts below, I am of the considered view that there is no error in the order of the Rent Control Appellate Authority, Tiruchirapalli, which does not warrant interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected M.P(MD) No. 1 of 2011 is also dismissed.

*Sd/-*

*Assistant Registrar(CRL-SIDE)*

*/True Copy/*

*Sub Assistant Registrar(CS-III)*

**To**

1. The Rent Controller  
(II Additional District Munsif),  
Tiruchirapalli.
2. The Rent Control Appellate Authority,  
Tiruchirapalli.
3. The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)



+ 1 CC TO MR.P.VELMURUGAN, ADVOCATE IN SR NO. 79412

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BU/TK/SKN/SAR-III : 24.09.2018 : 5P/6C

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M.P. (MD) No.1 of 2011  
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