

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on : 30.11.2017****Delivered on : 19.01.2018****CORAM:****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.R.P. (NPD) (MD) .No.2113 of 2013****and****M.P. (MD) .Nos.1 of 2013 and CMP.No.2401 of 2017**

N.Sathiamoorthy

... Petitioner/Appellant/
Respondent/Tenant

Vs.

1. A.Kansingh
2. K.Kavery

... Respondents/Respondents/
Petitioners/landlords

PRAYER: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act No.18 of 1960 as amended by Act No.23 of 1973 and Act No.1 of 1980) against the order dated 08.10.2013 passed in R.C.A.No.25 of 2011 on the file of Principal Subordinate Judge (Appellate Authority), Madurai confirming the order of eviction dated 16.08.2011 passed in R.C.O.P.No.102 of 2007 on the file of the Principal District Munsif (Rent Controller), Madurai Town.

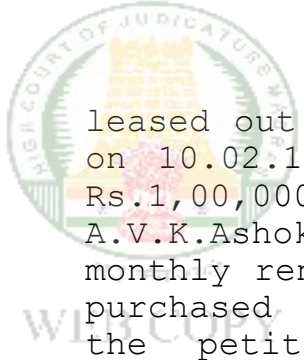
For Petitioner	: Mr.N.Subramanian
For Respondent	: Mr.R.Sevugaraja for
No.1	M/s. Motherland Associates
For Respondent No.2	: Mr.M.M.Rajaraman

O R D E R

Assailing over the order passed by the learned Principal Subordinate Judge (Appellate Authority), Madurai, in R.C.A.No.25 of 2011 dated 08.10.2013, confirming the order of eviction passed by the learned Principal District Munsif (Rent Controller), Madurai Town in R.C.O.P.No.102 of 2007 dated 16.08.2011, the present revision petition has been filed.

2. The facts of the case, as averred in the affidavit filed in support of the petition, are as follows:

2.1. The case of the respondents/landlords is that the property comprised in Door No.46 situated in Lakshmipuram 2nd Street, Madurai services rendered by in house services engaged to one A.V.K.Ashokan Babu and his brother and sister and the said A.V.K.Ashokan Babu has managed the said property for his brother and sister as power agent. During his management, he



leased out the petition mentioned property to the petitioner/tenant on 10.02.1999 on a monthly rent of Rs.1,500/- and an advance of Rs.1,00,000/- had also been given to him. According to the said A.V.K.Ashokan Babu, the petitioner was not regular in paying the monthly rent. The respondents herein are husband and wife, who have purchased the petition mentioned property on 07.12.2005, in which the petitioner was a tenant. It is their case that the petitioner/tenant has not paid the monthly rent from December 2005 to March 2007 for a period of 16 months at Rs.1,500/- per month to the tune of Rs.24,000/-. In spite of repeated requests made by the first respondent, the petitioner has withheld the rent with a view of causing loss to the respondents. Hence, the respondents/landlords filed a petition in R.C.O.P.No.102 of 2007 before the District Munsif (Rent Controller), Madurai Town under Section 10(2)(1) of the Tamil Nadu Building Lease and Rent Control Act, against the petitioner for a direction to the petitioner/tenant to vacate from the petition mentioned property and hand over the vacant possession.

2.2. The Rent Controller (Principal District Munsif), Madurai Town, after considering the facts and circumstances, had allowed the R.C.O.P.No.102 of 2007, on 16.08.2011, directing the petitioner/tenant to vacate the petition scheduled building and hand over the vacant possession of the same to the landlords within a period of two months. Against which, the petitioner/tenant filed an appeal before the Rent Control Appellate Authority (Principal Sub Judge), Madurai, to set aside the order dated 16.08.2011 in R.C.O.P.No.102 of 2007. After hearing the arguments of both sides, the Rent Control Appellate Authority (Principal Sub Judge), Madurai has dismissed the appeal on 08.10.2013, directing the respondent/tenant to vacate and hand over the possession of the petition mentioned premises to the respondents/landlords within two months, thereby, confirmed the order dated 16.08.2011 passed by the Principal District Munsif, Madurai Town in R.C.O.P.No.102 of 2007. Aggrieved thereby, the present Civil Revision Petition has been filed by the petitioner/tenant.

3. The Sum and substance as well as the arguments put forth by the learned Counsel appearing for the petitioner are as follows:

3.1. The learned Counsel for the petitioner would contend that the loan agreement - Ex.R1, which was entered into between the petitioner and the erstwhile owner, was not challenged by the respondents and as a matter of fact, there is no finding rendered by both the learned Rent Controller as well as learned Rent Controller Appellate Authority over the same. The erstwhile owner further borrowed a sum of Rs.30,000/- from the petitioner on 01.03.1999 for doing repair work in the building. For the amount borrowed, the above said A.V.K.Ashokan Babu has agreed to pay 3% interest i.e., Rs.900/- per month to the petitioner/tenant and has also agreed to deduct the same from the rent and the balance amount of Rs.600/- per month is sufficient. According to the petitioner, unless and until, the loan amount of Rs.30,000/- was returned, either by the original



vendor or by the respondents, he is entitled to pay a sum of Rs.600/- as rent.

3.2. As the original landlord refused to receive the rent from the petitioner/tenant, R.C.O.P.No.335 of 2002 before the Rent Controller, came to be filed, requesting to deposit the rent of Rs.600/- per month. The petition was allowed on 31.10.2005 and the petitioner/tenant is depositing Rs.600/- per month in the Court regularly.

3.3. The R.C.O.P. was filed in the month of April'2007 and even according to the same, the arrears were only to the tune of Rs.24,000/-, for the period from 01.12.2005 to 31.03.2007. When advance was paid to the original landlord and when excess of advance amount was available after adjusting arrears, there cannot be any wilful default and he referred to the judgments rendered by the Hon'ble Supreme Court in 1989 (2) SCC (686), 2013 (7) MLJ (49) and 2013 (2) CTC (152). Therefore, after adjusting the sum of Rs.24,000/- out of the advance amount of Rs.1,00,000/-, the respondents were having excess advance amount of Rs.74,500/- along with a sum of Rs.1,500/-, that could be retained by them under law, so there is no wilful default.

3.4. The learned counsel for the petitioner/tenant would further submit that the respondents/landlords did not disclose the purchase of the said property from the original landlord and had mentioned about the same, only in the list of documents annexed in the eviction petition.

3.5. He would further submit that both the Rent Controller as well as the Rent Control Appellate Authority without going into the merits of the case, have dismissed the petition as well as the appeal on the ground that pending proceedings, the petitioner/tenant had not paid the rent regularly and such a ground for dismissal is not available under the Act and he has also relied on various judgments. Furthermore, the learned counsel for the petitioner/tenant would submit that for the entire period, when the eviction petition was pending before the trial Court, the arrears could be, if at all, for the period from 01.12.2005 to 16.08.2011 and taking it as 31.08.2011, it would work out to Rs.91,500/- alone. As the advance amount lying with the hands of the respondents was Rs.1,00,000/-, after deducting the same, it would mean that the respondents were having excess amount of Rs.5,000/- in addition to the statutory limit of Rs.1,500/- being one month rental advance. Hence, there is no default in paying the rent and accordingly, there is no act of wilful default committed by the petitioner.

3.6. It is the further case of the petitioner that even factually, the learned Judges are not correct, especially when, the tenant deposited a sum of Rs.1,05,000/- in R.C.A.No.25 of 2011, pursuant to the order passed in I.A.No.252 of 2011, filed by the respondents, in the above appeal, under Section 11(4) of the Rent



Control Act and it was also withdrawn by the respondents by their application in I.A.No.202 of 2012, pursuant to the order dated 16.11.2002 and if this payment of Rs.1,05,000/- is taken into account, the respondents are retaining excess advance amount.

3.7. The learned Counsel for the petitioner would further contend that the respondents have committed several acts contrary to their own conscience and in fact, the respondents, in spite of the order of interim stay passed in M.P.(MD)No.1 of 2013, had took possession of the schedule premises on 12.12.2016, for which, the petitioner filed a Contempt Petition in Cont.P(MD)No.1655 of 2016. Pending contempt proceedings, upon an I.A., made by the petitioner, the possession has been given back to the petitioner on 31.01.2017 and a sum of Rs.25,000/- was also given to the petitioner as compensation.

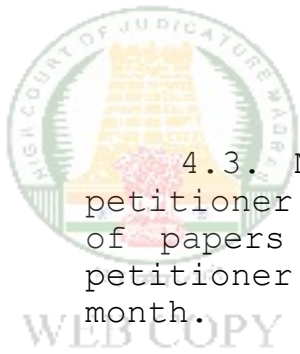
3.8. It is further contended that the judgment reported in 1990 TLNJ (110) cannot be applicable to the present case, in view of the agreement Ex.R1, wherein, the then Landlord had agreed to receive a sum of Rs.600/- after adjusting the rent and so, it cannot be stated that the petitioner had acted against the order passed in R.C.O.PNo.335 of 2002 under Ex.R4 and there cannot be any finding fault with the petitioner, as, there cannot be any estoppel, prohibiting the taking of the advance amount in excess of one month rent.

3.9. According to the petitioner, there is no default in payment of rent and accordingly, there is no act of wilful default committed by the petitioner and therefore, prayed for setting aside the orders passed by the Courts below.

4. Per contra, the contentions raised by the learned Counsel appearing for the respondents/landlords are as follows:

4.1. The learned counsel for the respondents/landlords, denied the arguments put forth by the learned Counsel appearing for the petitioner that there was no notice issued and he would rely on page No.16, Para No.5 of the typed set of papers filed by the petitioner in R.C.O.P.No.102 of 2007, wherein, he has admitted that the respondents have informed about the purchase of the property and asked him to vacate and therefore, the contention that no notice was issued to the petitioner was not acceptable.

4.2. The learned Counsel for the respondents relied upon the prayer of the petitioner in R.C.O.P.No.335 of 2002, wherein, he has prayed that this Court may be pleased to pass an order permitting the petitioner to deposit the rent of Rs.9,000/-, for the months of June 2001 to August 2002, into the Court and also to continue to deposit the rent at the rate of Rs.1,500/- per month and directing the respondents to pay the petitioner's cost and to render justice, which itself reveals that the petitioner had consented to deposit the rent of Rs.1,500/- per month and the same was also accepted by the respondents.



4.3. Moreover, from the statement of objection filed by the petitioner in R.C.O.P.No.102 of 2007, in Page No.15 of the typed set of papers filed by the respondents, it is clearly evident that petitioner has agreed to deposit a sum of Rs.1,500/- as rent per month.

4.4. But, the petitioner even after the order in R.C.O.P.No.335 of 2002, has not deposited the agreed amount of Rs.1,500/-, instead deposited a much lower one. The contention of the petitioner/tenant in not depositing the rent at Rs.1,500/- per month, as directed by the learned Rent Controller in R.C.O.P.No.335 of 2002 under Section 8(5) of Tamil Nadu Buildings (lease & Rent Control) Act, 1960, is deliberate and wilful default and therefore, the petitioner has to be evicted under Section 10(2)(i) of Act 18 of 1960. He has also relied upon certain judgments for the purpose of stating that once the tenant agrees to deposit a certain amount before the Court and the landlord also agrees for the same, then the tenant would be diligent enough to pay the rent.

5. Heard the learned Counsel appearing for both sides and perused the documents placed on record.

6. It is not in dispute that the monthly rent payable is Rs.1,500/-. A perusal of the impugned order would show that the learned Judges, after careful consideration, have observed that there was no proof that the tenant has been regularly depositing the said sum of Rs.1,500/- per month in R.C.O.P.No.335 of 2002 and it is his bounden duty to give a clear proof of payment of rent of Rs.1,500/-. If the tenant was unable to prove the NIL arrears, even with the vendors of the respondents, it has to be held that the tenant is in arrear of rent with the landlords, who are the present respondents herein.

7. It is also held by the lower Courts that a copy of the petition in R.C.O.P.No.335 of 2002 is exhibited as R2 by the respondent side, where, the respondent therein, prayed for permission to deposit the monthly rent of Rs.1,500/- not at the rate of Rs.600/-, as alleged. The said petition was allowed, which means that the tenant was permitted to deposit the monthly rent of Rs.1,500/- into the Court. If the said rent has been correctly deposited, then no one can found fault with the tenant. But, the RW1, during his cross examination, would admit that the amount mentioned in Ex.R12 alone was deposited as rent and it is also evident from Ex.R12, the tenant had not deposited the rent at the rate of Rs.1,500/- per month, into the Court.

8. Though there is a specific order to deposit the monthly rent of Rs.1,500/- into the Court on the application made by the tenant, it appears that the tenant has failed to deposit the rent at the rate of Rs.1,500/-, which, in my considered view, amounts to wilful default.



9. From the records, it is also seen that the learned Judge in R.C.O.P.No.335 of 2002, dated 31.10.2015, had observed as follows:

“...ரூ .1500/- வைப்பீடு செய்ய தயாராக இருப்பதாக மனுதாரர் தரப்பிலும், ரூ .1500/- வாடகையை பெற்றுக் கொள்ள தயாராக இருப்பதாக எதிர் மனுதாரர் தரப்பிலும் கூறப்பட்டுள்ள நிலையில் இந்த மனுவை அனுமதிப்பதால் எதிர் மனுதாரருக்கு எவ்வித பெருத்த கஷ்டநஷ்டமும் ஏற்படப் போவதில்லை.”

From a bare reading, it is very clear that the petitioner has to deposit a sum of Rs.1500/- per month, towards rent.

10. The learned Counsel for the petitioner would make his arguments stating that subsequent arrears, after the filing of the application, will not amount to wilful default. But, perusal of records would show that the petitioner was in arrears, even prior to the filing of R.C.O.P., for 16 months.

11. Having regard to the order passed by the learned Rent Controller under Section 8(5) of the Act, 18 of 1960 in R.C.O.P.No.335 of 2002 dated 31.10.2005 and the consequential failure of the petitioner to deposit the rent at the rate of Rs.1,500/- per month, it is deliberate and wilful failure, on the part of the tenant.

12. Furthermore, it is not the case of the petitioner before the learned Rent Controller or learned Rent Controller Appellate Authority that he has paid Rs.1,00,000/- as advance and the arrear of rent shall be adjusted towards the advance amount. In the absence of any pleadings or evidence to that effect, the tenant is not entitled to raise the said plea for the first time in the present revision. Therefore, the said contention of payment of one lakh cannot be accepted by this Court.

13. In view of the foregoing discussions, this Court is of the opinion that the orders passed by the learned Rent Controller Appellate Authority as well as learned Rent Controller does not warrant any interference.

14. In result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (P & A)

/True Copy/



1. The Principal District Munsif (Rent Controller),
Madurai Town.

2. The Principal Subordinate Judge (Appellate Authority),
Madurai.

Copy to:

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

+1cc to M/S.R.SEVUGARAJA, Advocate SR.No.42832.
+1cc to M/S.N.SUBRAMANIAN, Advocate SR.No.43356.

C.R.P. (NPD) (MD) .No.2113 of 2013

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