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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:09.03.2018

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THE HONOURABLE MRs. JUSTICE S.RAMATHILAGAM

CRP (NPD) (MD).No.891 of 2013
and
M.P. (MD).No.1 of 2013

M.Saleem ... Petitioner/Appellant/Respondent/Tenant

Vs.

K.R.Kannappan ... Respondent/Respondent/Petitioner/Landlord

PRAYER: Civil Revision Petition filed under Section 25 of Tamilnadu Buildings (Lease And Rent Control) Act 1960, against the fair and decreetal order dated 12.12.2012 in R.C.A.No.1 of 2009 on the file of Rent Control Appellate Authority cum Principal Sub-Judge, Dindigul, confirming the fair and decreetal order dated 01.04.2008 in R.C.O.P.No.11 of 2007 on the file of Rent Controller cum Principal District Munsif, Dindigul and allow this Civil Revision Petition.

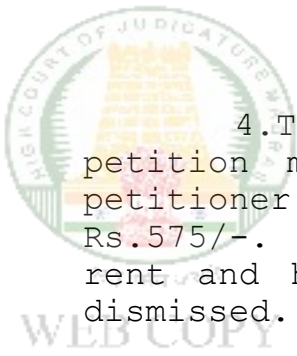
For Petitioner : Mr.H.Lakshmi Shankar
For Respondent : Mr.K.Hemakarthikeyan

O R D E R

This Civil Revision Petition has been preferred against the fair and decreetal order dated 12.12.2012 in R.C.A.No.1 of 2009 on the file of Rent Control Appellate Authority cum Principal Sub-Judge, Dindigul, confirming the fair and decreetal order dated 01.04.2008 in R.C.O.P.No.11 of 2007 on the file of Rent Controller cum Principal District Munsif, Dindigul.

2.The brief facts of the case is that the RCOP.No.11/07 was filed by the Landlord under section 10(2) of Tamilnadu Lease and Rent control Act for eviction of respondent from the property on the ground of wilful default in payment of rent. The Trial Court passed a decree in R.C.O.P.No.11/2007 by directing the respondent to vacate and hand over vacant possession of the petition mentioned property to the petitioner within three months from the date of that order with costs.

3.Aggrrieved over the same the respondent had filed R.C.A.No.1/2009 before the Principal Sub-Court, Dindigul. The first appellate Court had dismissed the R.C.A.No.1/2009 and confirmed the order passed in R.C.O.P.No.11/2007. Aggrrieved over the same the petitioner has come forward with this Civil Revision Petition.



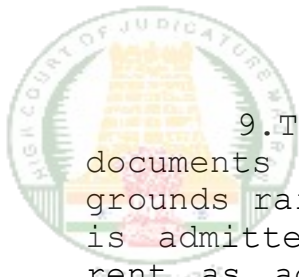
4.The learned counsel for the respondent submitted that the petition mentioned property belonged to the respondent and the petitioner was the tenant in the property for a monthly rent of Rs.575/-. After 11.03.2006 the revision petitioner has not paid any rent and he committed wilful default. Hence, the appeal may be dismissed.

5.Heard both sides. Perused the documents available on record.

6.Before the Rent Control Authority, Ex.P1 pocket diary is marked. The respondent/tenant has categorically admitted in his evidence that he used to make an endorsement in the pocket diary for the payment of rent in his own hand writing. It is an admitted fact that entries as to the payment of rent was not found in the pocket diary from March 2006 to December 2006. It is the contention of the tenant that he did not make any entries in the pocket diary, as it was stated by the land-lord that the pocket diary has been misplaced. However, there was not even a suggestion put to the land-lord during cross examination as to the mis-placing of the pocket diary. In such a circumstance, the Rent Control Authority held that the payment of rent was not proved by the tenant and thus there is willful default of payment of rent. Therefore, Rent Control Authority passed an order directing the respondent/tenant to vacate and hand over possession of the petition mentioned property to the petitioner in three months time. Against which, a Rent Control Appeal was filed by the respondent/tenant.

7.The Rent Control Appellate Authority also perused the documents and evidence and found the same observation that the petitioner tenant has committed wilful default and hence the order of the Rent Control Authority does not require any interference and the order was confirmed. Against which this Civil Revision Petition has been preferred.

8.The reason stated by the respondent is that in respect of the entry made in the pocket diary by the land-lord and the subsequent days that is after January 2007 the petitioner land-lord refused to receive the rent and therefore he had issued a legal notice to the land-lord on 10.02.2007 calling him to furnish the adequate particulars for deposit of rent. It is also found from Ex.P1 that the rent was paid only after the month of February 2006 and that is the last payment of rent that was made on 10.03.2006 and there was no further entries found in the pocket diary Ex.P1. Regarding the payment of rent by the tenant till the month of December 2006 there is no entry in Ex.P1. The Rent Control Appellate Authority has also found the same as wilful default on the part of the tenant and on that basis confirmed the order of the Rent Control Authority. Against which this Civil Revision Petition has been preferred.



9. There is no further fresh new point agitated or any further documents has been filed by the petitioner herein. One of the grounds raised in this Civil Revision Petition is that the land-lord is admittedly retaining Rs.5,000/- which is more than two months rent as advance and in such a case there cannot be any willful default. But it is common practice that every land-lord shall take an advance of rent and this does not exclude the tenant from paying the monthly rent which he is bound to pay as per the rental agreement.

10. Ex.P1 is the only document which can prove the case of the petitioner and the burden is on the respondent/tenant to show that he has been paying the rent regularly. But, it was not clearly proved by the tenant in both the forums. Hence, in view of the evidence and documents placed before the Rent Control Authority, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sub Judge, Dindigul.

2. The Principal District Munsif, Dindigul.

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

+1cc to M/S.H.Lakshmi Shankar, Advocate SR.No. 54397

+1cc to M/S.K.Hemakarthiskeyan, Advocate SR.No. 54193

CRP (NPD) (MD) .No.891 of 2013 and
M.P. (MD) .No.1 of 2013
09.03.2018

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JM/KKR/SAR 1/16.05.2018/3P/7C