

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CRP(NPD).Nos. 1535 & 1536 of 2008

Paritha Nachiar

...Petitioner in
both petitions

VS.

Sulthani Amma Sahibu Nachiar

...Respondent in
both petitions

COMMON PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order of the Subordinate Judge's Court (Rent Control Appellate Authority) at Nagapattinam dated 25.03.2008 in R.C.A.Nos.49 & 48 of 2007 respectively, confirming the fair and decreetal order of the District Munsif Court (Rent Controller) at Nagapattinam dated 26.07.2007 in R.C.O.P.Nos.2 of 2006 and 23 of 2005 respectively.

For Petitioner in both petitions : Mr.P.Valliappan

For respondent in both petitions : M/s.Srinath Sridevan

COMMON ORDER

As against the concurrent findings of the Courts below, the present revision petition has been filed.

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

The revision petitioner / tenant is in occupation of the respondent's building without any rent in view of the close relationship with the respondent/landlady. It is her contention that from 01.10.1996, she paid rent regularly to the respondent/landlady. However, the respondent/landlady did not issue any receipts for the same. It is her further contention that there was no willful default as alleged by the respondent/landlady. It is contended by the revision petitioner that since, the respondent's husband is permanently residing in Singapore, the allegation that the building is required for the occupation of the respondent's husband is denied. Besides, the alleged act of damage is also denied. Hence, the orders passed for eviction on the ground of own occupation, willful default and act of damage should be set aside.

3. The petitioner is a tenant in the respondent's premises paying monthly rent of Rs.250/- from 01.10.1996 onwards. The petitioner/tenant has

paid the said rent to the respondent till September 2003. Thereafter, the petitioner/tenant committed willful default from the next month. Despite several requests, rent has not been paid from October 2003 till March 2006. The petitioner/tenant has willfully defaulted a total sum of Rs.6,250/-. It is the case of the respondent/landlady that the building is also required for her own occupation for the purpose of taking rest by her husband as he has undergone heart surgery recently. The respondent/landlady is not having any other residential building in the city. Besides, the petitioner/tenant has also demolished the wall and damaged the building.

4. CRP.No.1535 of 2008 has been filed as against the dismissal of R.C.A.No.49 of 2007, wherein, CRP.No.1536 of 2008 has been filed as against the dismissal of R.C.A.No.48 of 2007.

5. Before the Rent Controller, on the side of the respondent herein, PW1 was examined and exhibits P1 to P4 were marked and on the side of the petitioner herein, RW1 was examined and exhibits R1 to R8 were marked. After perusing all the evidences and materials placed on record, the learned Rent Controller ordered eviction on three grounds, namely, willful default, act of damage and own occupation, as against which, an appeal was filed before

the learned Appellate Authority. The learned Appellate Authority has also confirmed the finding of the learned Rent Controller. Both the Courts below dismissed the application filed under Section 8(5) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 for deposit of rent.

6. As against the orders passed by the learned Appellate Authority, the present revision petitions are filed.

7. The learned counsel appearing for the revision petitioner contended that the courts below had not considered the fact that the legal notice was sent for demanding arrears on 23.10.2005 and the RCOP was filed on 20.11.2005, ie., even before the completion of two months period as stipulated by the Act. That being the position, there cannot be any willful default on the part of the petitioner/tenant. It is the further contention of the counsel for the revision petitioner that the respondent's husband is residing in Singapore. Therefore, eviction on the ground of own usage and occupation is also not maintainable. Further, there is no evidence to show that the tenant has committed an act of damage. Hence, he prays to allow this revision petition.

8. In support of his contentions, the learned counsel appearing for the revision petitioner/tenant relied on the Judgment in the case of **Raja Muthukone (D) by L.Rs. vs. T.Gopalasami and another** reported in **AIR 2002 Supreme Court 1830**. He also relied on the Judgment in the case of **P.Sivachandran vs. M.P.Purushotham** reported in **2008 (5) CTC 409**.

9. It is the contention of the learned counsel appearing for the respondent/landlady that the courts below have factually found the petitioner/tenant has committed willful default. Besides, the respondent/landlady requires the building for the purpose of own usage by her husband who has under gone heart surgery recently. He would contend that the evidence clearly shows that the petitioner/tenant has demolished the wall and committed the act of damage. Therefore, he contended that the courts below have analysed the facts and arrived at the correct finding and hence he prays for dismissal of the present revision petition.

10. Perused the materials placed on record.

11. Though the respondent/landlady has sought eviction under three grounds, namely, wilful default, own occupation and act of damage, it is an

admitted fact that before filing the rent control proceedings, a legal notice was issued for demanding arrears on rent. It is to be noted that the proviso to Section 10(2) of Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) makes it clear that “it is only on tenant's failure to pay arrears within 2 months notice period that he can be considered defaulter”. Admittedly, in this case without waiting for a period of two months, the R.C.O.P was filed by the respondent/landlady on 20.11.2005.

12. In this regard, it is relevant to extract paragraph no. 5 in the case of **Raja Muthukone (D) by L.Rs. vs. T.Gopalasami and another** reported in **AIR 2002 Supreme Court 1830**, (*cited supra*) wherein, it is stated as follows:

“5.The submission of the learned counsel for the tenant finds support from the Three-Judge Bench decision in S.Sundaram Pillai and ors. v. V.R.Pattabiraman and ors. (1985) 1 SCC 591. Having taken into consideration the provisions of Section 10(2)(i), and the Proviso and the Explanation to sub-section (2) Fazal Ali, J., speaking for the majority, stated his conclusions as under:

(1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard

to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two months notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord.

Vide para 63, His Lordship observed:

“Indeed, if the landlord chooses to give two months notice to his tenant and he does not pay the rent, in the absence of substantial and compelling reasons, the

Controller or the Court can certainly presume that the default is wilful and order his eviction straightway. We are unable to accept the view that whether two months notice for payment or rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because that would render the very object of explanation otiose and nugatory.”

13. In view of the above, since the RCOP has been filed before the expiry of two months, wilful default on the part of the revision petitioner/tenant cannot be inferred, though, the evidence indicates that the rent has not been paid by the revision petitioner/tenant. When the statutory requirements have not been complied, the petition for eviction cannot be maintained contrary to the statutory requirements.

14. As far as the contention of the bonafide requirement of respondent/landlady for the purpose of using the premises for the occupation of her husband, PW1 - the respondent's husband is examined and the documents are also filed. Both Courts below analysed the facts in this regard and arrived at the finding. The factual finding arrived by the Courts below does not suffer from any illegality or irregularity. This Court being sitting in

revisional jurisdiction cannot re-appreciate the entire facts. So as to establish before the Court, except the said premises the landlady is not having any other premises of her own in the city, PW1 is examined and it also clearly indicates that the said premises is required for the own use and occupation of the respondent's husband. The Courts below assessed the evidence and found that requirements are bonafide. The bonafide has to be tested on the date of petition. Therefore, I do not find any infirmity in the order of the Courts below in allowing the application on the ground of own use and occupation.

15. Similarly, with regard to the act of damage, the Courts below had clearly found that without the permission of the respondent/landlady, a wall in the house of the respondent/landlady has been demolished by the petitioner/tenant. Since, the petitioner/tenant has committed the said act of damage without the permission of the respondent/landlady, the Courts below have ordered eviction on the ground of act of damage. Therefore, this Court does not find any infirmity in the orders passed by the Courts below. Hence, the eviction ordered by the learned Appellate Authority on two grounds namely, own use and occupation and act of damage is hereby confirmed.

16. At this stage, the learned counsel appearing for the revision

petitioner/tenant submitted that the petitioner/tenant is aged 72 years. Since, she is an old aged woman, she requires one year time to vacate the premises.

17. In the meanwhile, the learned counsel appearing for the respondent/landlady submitted that one year time is too long. However, she has no objection in giving seven months time to the petitioner/tenant to vacate the premises. Considering the above aspects and taking into fact that the tenant is an old aged lady, this Court is inclined to grant time to the petitioner/tenant to vacate the premises. The petitioner/tenant is directed to vacate the premises on or before 31.12.2019, failing to vacate the premises she shall be liable for further proceedings for disobeying the orders of this Court.

18. With the above observations, the CRP.No.1535 of 2008 is dismissed. No costs. In view of the above, nothing survives in the CRP.No.1536 of 2008 filed as against the orders passed under Section 8(5) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and therefore, it is dismissed. No costs.

19. The revision petitioner / tenant is directed to file an affidavit of

undertaking to the effect that she will vacate the premises within the seven months period ie., on or before 31.12.2019 as stipulated above, within a period of two weeks from the date of receipt of a copy of this order..

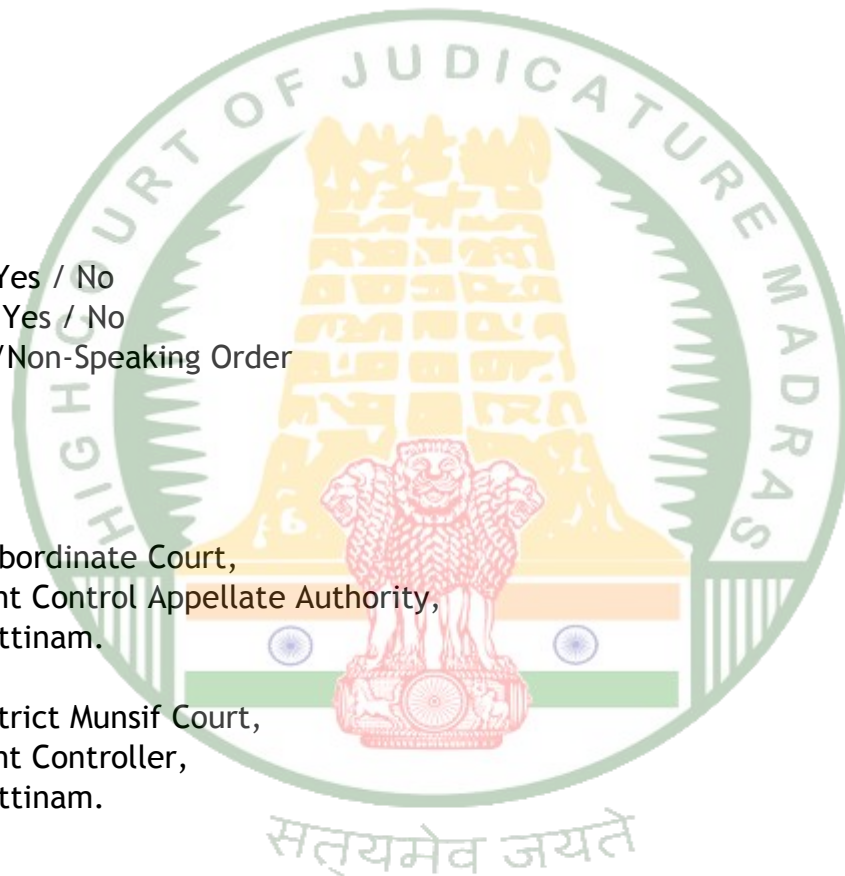
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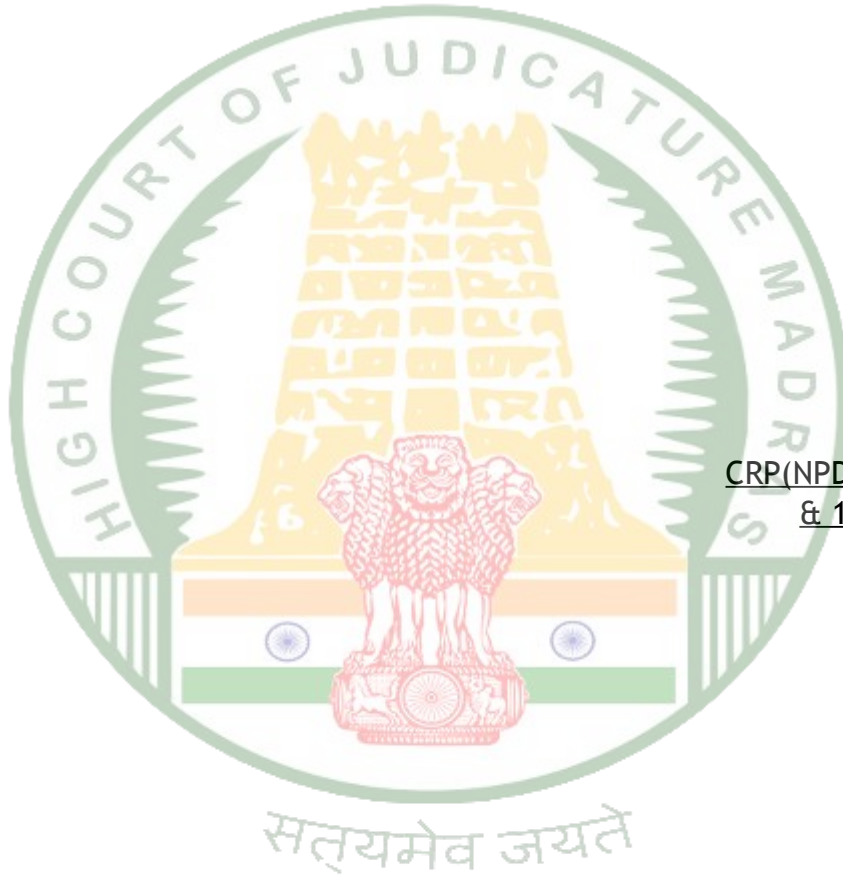
- 1.The Subordinate Court,
The Rent Control Appellate Authority,
Nagapattinam.
- 2.The District Munsif Court,
The Rent Controller,
Nagapattinam.



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N. SATHISH KUMAR, J.

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