

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.4613 of 2012

1. K.S.Suresh Kumar

2. K.S.Naresh Kumar

... Petitioners

Vs.

M/s Noori Lace House,

Represented by its Proprietor V.M.Shamsudeen

No.57, Ground Floor Shop, Pondhy Bazaar,

Chennai 600 017.

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the decree and judgment dated 27.07.2012 passed in RCA No.499 of 2008 by the VIII Judge, Court of Small Causes Chennai, upholding the decree and judgment dated 31.01.2008 passed in RCOP No.1304 of 2006 by the XV Judge, Court of Small Causes, Chennai.

For Petitioners

: Mr.Soundararajan

For Respondent

: No appearance

ORDER

The Revision petitioners are the landlords. They filed R.C.O.P No.1304 of 2006 under Section 10(2)(i) and 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the respondent/tenant for eviction on the ground of willful default in payment of rents and for additional accommodation.

2. The case of the petitioners/landlords is that the respondent is a chronic defaulter in payment of rents and that the previous owner of the premises also filed RCOP No.318 of 2004 on the file of the XII Judge, Court of Small Causes, Chennai on the ground of willful default in payment of rents. According to them, the respondent did not pay rents from the month of April 2005 onwards, inspite of repeated demands made by them. It is further contended that the revision petitioners were tenants in respect of major portion of the ground floor previously and they were carrying on business in textiles under the name and style of "SUMATISONS" and that they purchased the petition mentioned property for the purpose of expending their business and requested the respondent to hand over possession to them, so as to enable them to occupy the said portion also. Since the respondent/tenant did not handover vacant possession of the premises and also failed to pay rents, they filed the above RCOP seeking for

eviction of respondent/tenant from the petition mentioned premises.

3. The respondent/tenant filed a counter affidavit contending that he has been a tenant for more than 40 years under M.A.Abdul Rahman Amina Ammal, represented by her Power Agent Mr.A.K.M.Junaid, on a monthly rent of Rs.750/-. His further contention is that he paid rents upto December 2005 to the said A.K.M.Junaid and obtained receipts for the same and that the contention of the revision petitioners/landlords that he is liable to pay rents from April 2005 is false. It is further contended by him that the erstwhile owner filed RCOP No.318 of 2004 during the month of February 2004 before the XII Judge, Court of Small Causes, Chennai and after receiving notice in the said RCOP, the respondent had sent a demand draft for a sum of Rs.13,000/- to the erstwhile owner. It is his contention that the said amount of Rs.13,000/- was the rent amount for the period from January 2004 to May 2005. It is further averred in the counter affidavit that since respondent paid the rents from June 2005 to December 2005 to the erstwhile owner, he has not committed willful default in payment of rents and that since he has been doing business in the said premises for the past 40 years, the RCOP is liable to be dismissed.

4. The learned XV Judge, Court of Small Causes, after analysing the evidence on record had held that (1) the respondent has not committed willful default in payment of rents (2) the appellants/ landlords required the premises for expansion of their business and that their requirement is bonafide. Therefore, the learned Rent Controller allowed the RCOP No.1304 of 2006 vide his fair and decreetal order dated 31.01.2008. Aggrieved over the same, the tenant filed an appeal in RCA No.189 of 2008 and RCA No.499/2008 before the VIII Judge, Court of Small Causes. The learned VIII Judge, Court of Small Causes upheld the findings recorded by the Rent Controller. Now the land lords have filed the present civil revision petition seeking eviction of the respondent/tenant on the ground of willful default in payment of rents.

5. A perusal of the orders passed by both the courts below shows that both court courts below had concurrently held that the respondent/tenant paid rents till December 2005 to the erstwhile landlord of the premises and the rental receipts Ex.R6 to Ex.R8 would also prove the same.

6. Mr.Soundararajan, learned counsel appearing for the revision petitioners would contend that when the respondent/tenant did

not adduce any documentary evidence to show that he paid rents for the period from April 2005 to June 2006, both the courts below were wrong in concluding that the tenant did not commit willful default in payment of rents. His further contention is that the tenant did not examine Mr.A.K.M.Junaid , power of attorney of the erstwhile owner to prove that he paid the rents for the above said period. He therefore contended that the respondent/tenant had committed default in payment of rents.

7. There is no appearance on behalf of the respondent/tenant.

8. A perusal of Ex.R6 to Ex.R8 shows that they are the rental receipts issued by M.A.Abdul Rahman Amina Ammal during the year 2002 and 2003. Therefore, the observation of the courts below that Ex.R6 to Ex.R8 would prove that the respondent/tenant paid rents for the period from April 2005 to December 2005 is totally wrong. The respondent/tenant did not file any rental receipts for the period from April 2005 to December 2005. Ex.R6 to Ex.R8 clearly show that the erstwhile land lord was in the habit of issuing rental receipts, whenever rents are paid by the respondent/tenant. Though it is contended by the respondent/tenant that he came to know about the purchase made by the landlords only during February 2006, he did not pay any amount till July 2006. The allegation of the respondent/tenant that the

petitioners/landlords rushed to court without specifying their bank account to him, cannot be accepted, because, even according to him, he knew that the property was purchased by the landlords during February 2006 and the respondent/tenant did not issue any notice to the landlords requesting them to specify the bank account, in which he can deposit the rents. He did not also file any application under Section 8(5) of the Tamil Nadu Buildings (Rent and Lease) Control Act. Though it is contended by the respondent that he paid rents to Mr.A.K.M.Junaid, power of attorney of the erstwhile owner, he did not examine the said Mr.A.K.M.Junaid to substantiate his contention. Therefore, in the absence of sufficient proof that the respondent/ tenant paid rents for the period from April 2005 to December 2005, it has to be held that the respondent/tenant committed willful default in payment of rents. The respondent also did not pay rents from January 2006 til the date of filing of the RCOP and this also would amount to willful default in payment of rents. The observation made by both the courts below with regard to willful default in payment of rents is perverse and therefore, I hold that the respondent/tenant is liable to be evicted on the ground of willful default in payment of rents also.

9. Accordingly, the Civil Revision Petition is allowed. No costs.

The orders of both the courts below with regard to dismissal of the RCOP under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act for willful default in payment of rents is set aside. The respondent/tenant is hereby directed to deliver vacant possession of the petition mentioned property to the revision petitioners/landlords, within two months from the date of receipt of a copy of this order.

19.06.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

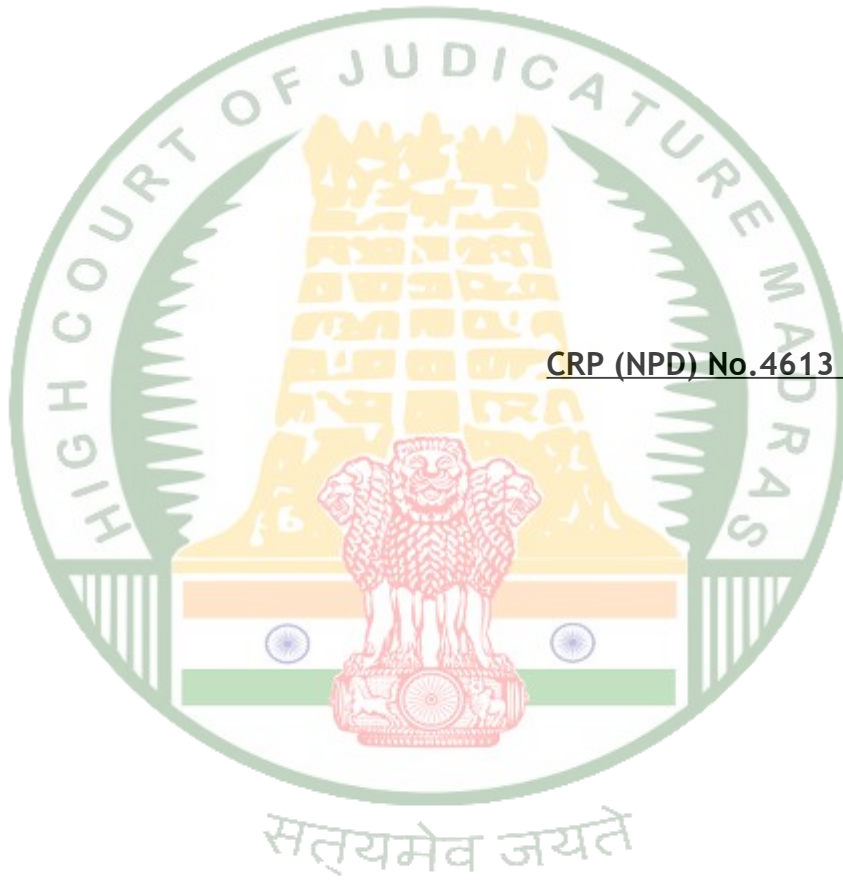
To

1. The VIII Judge, Court of Small Causes, Chennai.
2. The XV Judge, Court of Small Causes, Chennai.

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R.HEMALATHA,J.
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