

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) Nos. 627, 628 of 2012
and C.R.P.(NPD) No.3997 of 2016

I. Charles ... Petitioner in all CRPs

Vs.

Tmt.Revathy Ravindran
Rep. By her Power of Attorney
Agent, P.Sridharan (Deceased)

(Deleted vide order of Court dated
21.11.2014 made in
M.P.No.1 of 2014 in
CRP No. 627 of 2012)

... Respondent in CRP
No.627 of 2012

1. P.Sridharan (Deceased)
2. Tmt. Revathy Ravindran
Old.No.85, New No. 205, (Up stairs)
Mannarsamy Koil Street,
Royapuram,
Chennai – 600 013.

... Respondent in CRP
No.628 of 2012

(R2 impleaded as party respondent
vide order of Court dated 21.11.2014
made in M.P.No.1 of 2014
in CRP.No.628 of 2012)

Tmt. Revathy

... Respondent in CRP
No.3997 of 2016

PRAYER in CRP No. 627 of 2012: The Civil Revision Petition is filed under Section 25 (i) of Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 (as amended by Act 23 of 1973) against the order and decretal order dated 14.06.2011 made in R.C.A.No.42 of 2005, on the file of the VIII Judge, Small Causes Court, Chennai, confirming the Order and decree dated 15.12.2004 made in R.C.O.P.No.1460/2004 on the file of XIII Judge, Small Causes Court, Chennai.

PRAYER in CRP No. 628 of 2012: The Civil Revision Petition is filed under Section 25 (i) of Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 (as amended by Act 23 of 1973) against the order and decretal order dated 14.06.2011 made in R.C.A.No.61 of 2005, on the file of the VIII Judge, Small Causes Court, Chennai, confirming the Order and decree dated 15.12.2004 made in R.C.O.P.No.1395/2004 on the file of XIII Judge, Court of Small Causes, Chennai.

PRAYER in CRP No. 3997 of 2016: The Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960 (as amended by Act 23 of 1973) against the judgment and decree dated 06.08.2016

made in R.C.A.No.312 of 2013, on the file of the VII Judge, Small Causes Court, Chennai, confirming the Order and decree dated 22.04.2013 made in R.C.O.P.No.1203/2010 on the file of X Judge, Small Causes Court, Chennai.

For Petitioners in all CRPs : Mr.M.Devedran
For Respondents in all CRPs : Mr.G.Jayachandran

COMMON ORDER

The above civil revision petitions are filed against the concurrent findings of the Rent Control and Appellate Authority for eviction ordered in the property.

2. RCOP No.1395 of 2004 has been filed by the tenant to deposit the rent at the rate of Rs.500/- in the Court as per Section 8 (5) of the Tamilnadu Buildings (Lease and Rent Control) Act.

3. RCOP.No.1460 of 2004 has been filed by the landlord for eviction on the ground that the tenant has not paid the rent from January 2002 till July 2004 for 31 months at the rate of Rs.1,100/- per month aggregating to Rs.34,100/-. Hence, he filed a petition under the ground of willful default.

4. According to the tenant, there is no willful default and he has paid all the rent. The counter has been filed by the tenant contending that the rent is only Rs.500/- and he has regularly paying the rent to one Sridharan from February, 2004. The said Sridharan has tried to evict the tenant and also damaged the roof of the shop. Hence, the tenant has filed a suit in O.S.No.1509 of 2004. Thereafter, he sent monthly rent for the month of April, 2004 by way of cheque with a covering letter dated 14.05.2004 and called upon the said P.Sridharan to repair the damaged roof. After receipt of the said letter from the tenant, the petitioner himself poses to be the owner of the said property being represented by her Power Agent P.Sridharan, sent an untenable reply to the lawyer notice dated 17.05.2004 stating that the respondent was in arrears of rent from January, 2002 onwards. Thereafter, the tenant has sent the rent for the months of April to June, 2004 by way of Money Order which were also returned, hence, he has sent a lawyer notice dated 13.07.2004 calling upon the said P.Sridharan to name a bank to enable the respondent to deposit the rents. The said request was not complied with, which necessitated the tenant to file the R.C.O.P.No.1395 of 2004 on the file of this Court to deposit the rent into Court.

5. Application No.1203 of 2010 has been filed by the landlord on the ground that the tenant has committed the Act of Waste and has removed the tile roof of the petitioner's premises as well as the other shops. Besides causing nuisance to the two wheeler parking in front of the shop, further sought eviction under Section 10 3(a) of the above applications also opposed by the respondent. All the applications viz., R.C.O.P. Nos. 1395 and 1460 of 2004 were disposed of by common order by the Rent Controller and the Appellate Authorities has confirmed it. RCOP.No.1203 of 2010 was disposed and ordered eviction on the ground of Act of Nuisance and Act of Waste. Against which, the present civil revision petition is filed.

6. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents and also perused the materials available on record.

7. The learned counsel appearing for the Revision petitioner contended that tenant has filed a suit for permanent injunction, he has also sent notice to the landlord notify the bank.

The rent has been regularly paid and absolutely, there is no evidence to show that there is willful default. Similarly, mere carrying out certain repairs did not amount to Act of Waste and parking the two wheeler is not nuisance and further, he submitted that the Courts below has not properly analysed the facts.

8. The learned counsel appearing for the respondent has submitted that the Courts below analysed the facts and found that there is willful default.

9. The Court below ordered eviction on the ground of willful default and Act of Nuisance. The Courts below found that the allegation of tenant that he was paying rent regularly has not been established, absolutely, there is no evidence available on his side to show that he has regularly paid the rent till March as contented in his counter. Only after filing the suit for permanent injunction, he has sent three months rent by way of cheque which was refused by the land lord on the ground that earlier arrears had not been paid.

10. Admittedly, the landlord has filed an application on the ground of willful default for 31 months. The evidence of P.W.1

also shows that the tenant used to get the signature in the note book but none of the note books have been produced by the tenant. Absolutely, there is no materials to presume that tenant has paid rent regularly till the month of March 2002. There must be some evidence to prove the same. Further, when landlord has allegedly refused to receive the rent or refuse to issue receipts. Tenant ought to have sent the rent by way of money order which is not done so. Similarly, to show that he has also paid rents through Money Order, as stated in his counter there is no evidence available on record to countenance his contention. Hence, the Court below analysed the evidence of both sides and found that the tenant has not paid the rent for 31 months and rightly ordered the eviction. Similarly, the admission of the tenant itself clearly indicates that without the permission of landlord, he has made repairs in the suit property.

11. The Trial Court in RCOP.No.1203 of 2010 has categorically mentioned that the admission of the tenant for changing the character of the suit property and he has made such repairs without the permission of the land lord. The permission of the landlord is mandatory under Section 22 of the Tamilnadu Buildings (Lease and Rent Control) Act, when the trial Court has

found that such repairs has been done without any permission of the landlord, the same certainly ground for eviction for Act of Waste. It is the specific contention of the landlord that tile has been removed and stability of the building also reduced.

12. Therefore, I do not find any error or illegality in the order of the Court below. Similarly, the nuisance also proved before the trial Court. Therefore, when the Courts below arrived at a conclusion on the basis of the factual aspects, this Court in the revision cannot re-appreciate the evidence. Hence, I do not find any error or irregularity in the trial court.

13. Accordingly, the above civil revision petitions are dismissed. No costs.

14. With regard to the order passed under Section 8(5) of the Tamilnadu Buildings (Lease and Rent Control) Act, absolutely, there is no evidence on record to show that he has sent the money order. Thereafter, notice inviting the bank after refusal, again he sent a money order and approached the Court in the absence of any materials to show that he has complied the provisions under Section

8(5) of the Tamilnadu Buildings (Lease and Rent Control) Act, the deposit is not automatic.

15. At this stage, the learned counsel appearing for the revision petitioner submits that the tenant may be given six(6) months time to vacate the entire premises. Considering the submissions of all the three civil revision petitions are dismissed, six (6) months time is granted to vacate the premises and it starts from today (27.03.2019) onwards. Accordingly, the tenant shall vacate and handover the building to the landlord on or before 27.09.2019 and the landlord is permitted to withdraw the amount deposited by the tenant in the credit of R.C.O.P.No.1460 of 2004.

सत्यमेव जयते

27.03.2019

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Index:Yes/No

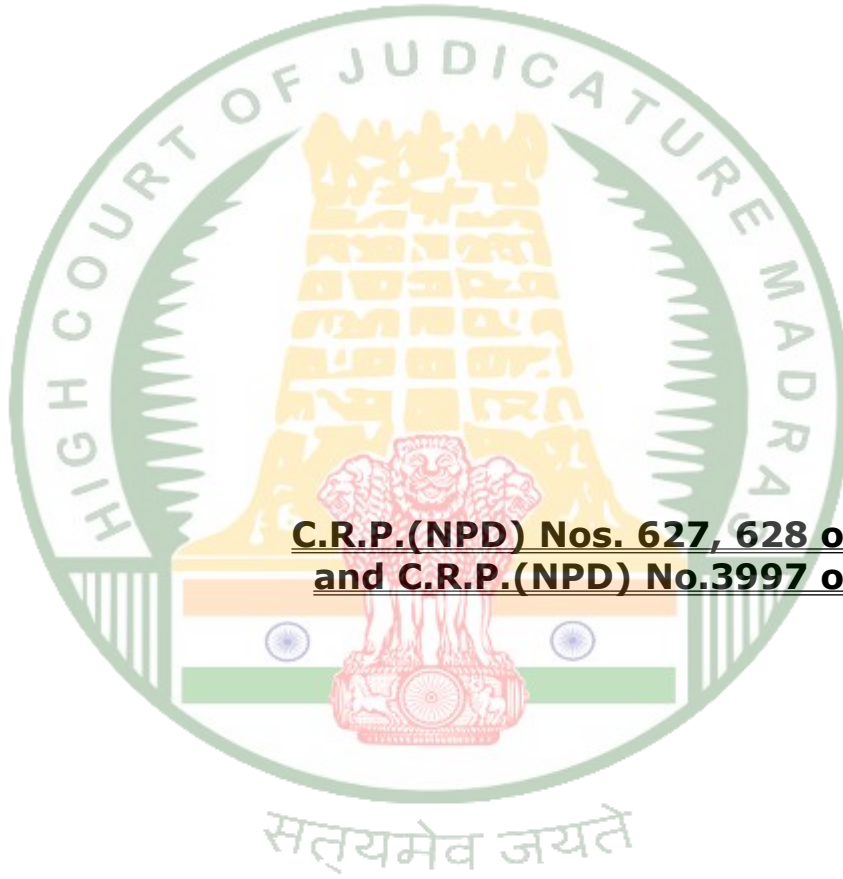
Internet:Yes/No

Speaking order: Non-speaking order

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N. SATHISH KUMAR, J.

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