

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 12.02.2019

**CORAM :**

**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR**

**C.R.P. (NPD) No.202 of 2013**

Mr.M.Ekambaram

.. Petitioner

Vs.

1. Mrs.Khursheet Begum
2. Mr.Mohammed Irshad
3. Mr.Mohammed Nawaz
4. Mr.Mohammed Fayaz
5. Ms.Dilshad
7. Ms.Jabeen Taj

.. Respondents

**PRAYER:** Civil Revision Petition filed under section 25 of the Tamilnadu Building (Lease and Rent Control) Act against the decree and judgment of the Subordinate Court at Tirupathur passed in R.C.A.No.7 of 2007 dated 06.08.2012 confirming the Order of the Rent Controller (District Munsif), Tirupathur dated 11.04.2007 passed in H.R.C.O.P.No.16 of 1988.

For Petitioner : Mr.S.Kothandaraman

For Respondents : No appearance

**ORDER**

Aggrieved over the concurrent finding of the Courts below in dismissing the petition filed by the revision petitioner against the landlord under section 8 of the Tamilnadu Building (Lease and Rent Control) Act, the present revision has been filed.

2. Brief facts leading to filing of this revision is as follows :

The revision petitioner is a tenant under the respondents on a monthly rent of Rs.250/-. As the respondents have cut the amenities, the revision petitioner has filed a petition to restore the amenities in H.R.C.O.P.No.63 of 1995 and the above application has been allowed. Aggrieved over the same, the respondents started to evade receiving rent in order to create a ground for eviction. Thereafter, the petitioner sent rent by Demand Drafts drawn on Catholic Syrian Bank on 06.10.1987, 06.11.1987, 05.12.1987 and 06.01.1988 and the respondent received the demand drafts. However, for the month of January, 1988, he refused to receive the demand draft. Hence, the petitioner sought permission of the Court to deposit rent in the Court.

3. The respondents disputing the allegation that he had received the rent by way of Demand Drafts, it is his contention that he never received any such demand draft and submitted that the petitioner is a willful defaulter and prayed for dismissal of the application. The Rent Controller dismissed the application on

the ground that the requirement contemplated under Section 8 of Tamilnadu Building (Lease and Rent Control) Act has not been followed for depositing the rent and dismissed the application. As against which, an appeal has been preferred before the Rent Control Appellate authority and the appellate authority also confirmed the finding of the trial Court. As against which, the present revision has been filed.

4. The learned counsel for the revision petitioner has submitted that Section 8 of Tamilnadu Building (Lease and Rent Control) Act is only an enabling provision and is not a mandatory provision. Merely because notice requesting the landlord to name the bank is not sent, that cannot be a ground to dismiss the application. Since Section 8 of the Tamilnadu Building (Lease and Rent Control) Act is only an enabling provision. Further, it is his contention that he has been depositing the rents regularly and he cannot be termed as a willful defaulter. In support of his contention, he also relied upon the judgement in **R.Srinivasan Vs. V.Thangaraju and Others reported in 1999 (2) MLJ 337.**

5. Heard the learned counsel for the revision petitioner and perused the entire materials available on record. There is no representation for the respondent.

6. It is the contention of the revision petitioner that he had sent rent through demand drafts up to December 1988 and the same has been received by the landlord. Thereafter, the landlord refused to receive the rent. To substantiate the above contention, absolutely there is no materials placed before this Court. Whereas, the landlord has denied the receipt of such demand draft.

7. It is curious to note that to invoke Section 8(5) of Tamilnadu Building (Lease and Rent Control) Act to deposit the rent, it is obligatory on the part of the tenant to comply preliminary mandatory requirements contemplated under section 8(5) Tamilnadu Building (Lease and Rent Control) Act, any obligation on the tenant to pay the rent regularly, if the landlord is found evading to receive the rent. The procedure contemplated under section 8 of the Tamilnadu Building (Lease and Rent Control) Act is notice required to be issued to the landlord to name the bank, in my view is mandatory. For the section starts with the word 'may', the word 'may' shall be construed as 'shall' as far as complying the conditions. Only if the procedure contemplated under section is properly complied, that will enable the Court to find out whether non payment of rent is deliberate and willful default or not. Only to assess the above fact, procedure has been contemplated under section 8 of Tamilnadu Building (Lease and Rent Control) Act. The sub clause 4 of the Section 8 of Tamilnadu Building (Lease and Rent Control) Act makes it very clear that only upon receipt of such notice, if the landlord does not specify the bank, the tenant shall remit the rent by money

order, after deducting the money order commission. Even then, if the landlord refuses to receive the money Order, which enables the tenant to deposit the rent in the Court under Section 8 of Tamilnadu Building (Lease and Rent Control) Act. A reading of the clause 2, 3, 4 and 5 of the Act, makes it clear that the procedure contemplated under Clause 8 of Section 8 of Tamilnadu Building (Lease and Rent Control) Act infact makes it mandatory. The word 'may' shall be construed as 'shall' for making deposit under section 8(5) of Tamilnadu Building (Lease and Rent Control) Act. Therefore, the contention of the learned counsel that Section 8 of Tamilnadu Building (Lease and Rent Control) Act is only an enabling provision and is not a mandatory cannot be countenanced.

8. In **R.Srinivasan Vs. V.Thangaraju and Others reported in 1999 (2) MLJ 337**, this Court taking note of the fact that the landlord refused to receive the rent sent by money order and the tenant deposited the amount in the bank account and only in the above context, this Court had held that the rent deposited in the Court is valid and there is no willful default.

9. In **Kuldeep Singh Vs. Ganpat Lal – reported in 1996 (1) SCC 243** the Honourable Supreme Court has held that

“The tenant moved the court under Section 19-A of the Rajasthan Rent Control Act and in fact deposited the money. But before moving the court, the preliminary

mandatory requirements as contemplated under Sub-section (3) of Section 19-A of the said Act were not complied with. In that context only, the Honourable Judges of the Supreme Court of India held that though the deposit was in court, yet it was not a valid deposit in view of the preliminary legal requirements having not been complied with. Following the above referred judgment of the Honourable Supreme Court of India, a learned single Judge of this Court in the judgment reported in **Raffuddin v. Yeswandha Rao (1997) 1 M.L.J. 581**, held, noticing that the tenant has not averred that he had issued a notice to the landlord to name the bank for it is his case that he had sent the amount by money order, that the deposit made by him in such a situation cannot absolve him from the disqualification he had suffered. सत्यमेव जयते

10. Likewise in the judgment of the Honourable Supreme Court of India in **Molly Joseph alias Nish v. George Sebastian alias Joy (1997) 1 M.L.J. (S.C.) 109**, it has been held that

“The tenant has got an obligation to pay the rent

regularly and if he does not do so, he commits willful default. It is further held that if he finds that the landlord is evading the payment of rent, procedures has been prescribed under Section 8 of the Act to issue notice to the landlord to name a bank and if he does not name the bank, the tenant has to file an application before the rent controller for permission to deposit the rent (this matter arose from the Andhra Pradesh Rent Control Act) and Section 8 therein is in part materia with the section in the [Tamil Nadu Act](#). It was noticed that the tenant did not avail that remedy and the omission to avail of the procedures will not disentitle the landlord to seek eviction for willful default.”

11. Though the above judgment is arising out of the Andhrapradesh, which is in pari materia with the Section in Tamilnadu Act, it has been held that non compliance of the Section will not disentitle the landlord to seek eviction for willful default. The procedure contemplated under section 8 of Tamilnadu Building (Lease and Rent Control) Act has to be complied by the tenant.

12. Therefore, this Court is of the view that unless the procedure set out under Section 8 of Tamilnadu Building (Lease and Rent Control) Act is

complied, he cannot come forward to deposit the rent. Hence, this revision lacks merits and is liable to be dismissed.

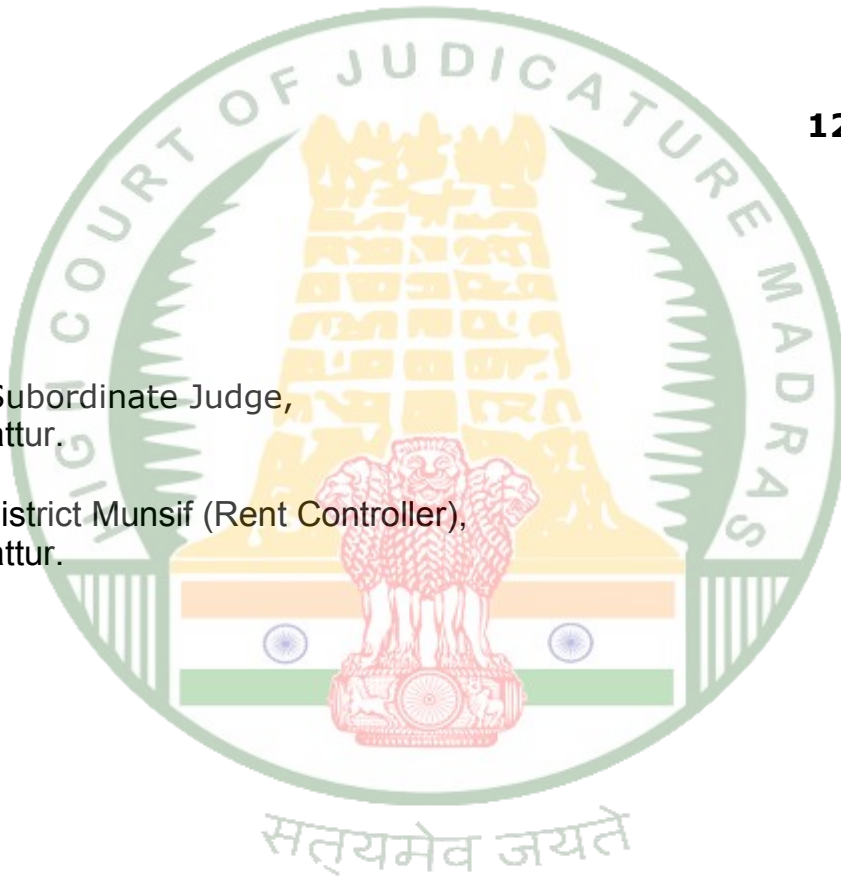
13. Accordingly, this Civil Revision Petition is dismissed and the Order of the Courts below is confirmed. No cost.

**12.02.2019**

vrc

To

1. The Subordinate Judge,  
Tirupattur.
2. The District Munsif (Rent Controller),  
Tirupattur.



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**N.SATHISH KUMAR, J.**

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