

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2018

Pronounced on : 05.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P(PD) No.708 of 2015

and

M.P.No.1 of 2015

- 1.National Textile Corporation
(Tamilnadu and Pondicherry) Ltd.
Government of India undertaking
Having office at NTC House
P.O.Box No.2400,
35-B, Somasundaram Mills Road,
Coimbatore - 604 009.
- 2.The Retail Marketing Division of
National Textile Corporation,
P.O. Box No.336, CS & W, Mills
Compound,
16/39, Krishnaswamy Road,
Coimbatore - 604 001.
- 3.Entyce
129, Old No.57, Purasawalkam
High Road, Chennai - 600 007.

Vs

J.Venkataramana

...Respondent/Petitioner

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as Amended by Act 23 of 1973, praying to set aside the Judgment and Decree dated 25.11.2014 made in RCA No.245 of 2011 on the file of the learned IX Judge, Small Causes Court, Chennai and consequently, dismiss the petition in RCOP No.1374 of 2008 on the file of the learned XV Judge, Small Causes Court, Chennai.

For Petitioners : Mr.K.V.Sundararajan

For Respondent : Mr.K.V.Sanjeevkumar

O R D E R

The petitioner in the Civil Revision Petition is the tenant, who had suffered an eviction order before the appellate authority. The original eviction petition on the ground of willful default in R.C.O.P.No.1374 of 2008 came to be dismissed on the ground that the landlord had failed to prove that the petitioner had wilfully defaulted in paying rents for the period between January 2007 till June 2008. On appeal, the learned Rent Controller had allowed the eviction petition by observing that the petitioner herein had failed to deposit the rents in the Court at the earliest point of time and as such, failure to deposit the rent would amount to willful default. As against the same, the present revision has been filed.

2. Heard Mr.K.V.Sundararajan, learned counsel for the petitioners and Mr.K.V.Sanjeevkumar, learned counsel for the respondent.

3. The learned counsel for the petitioners submitted that though the default period is admitted, the same would not amount to 'willful default' in view of the conduct of the petitioners herein. According to him, when the respondent herein had intimated the death of his father and had requested that rents be paid to him through a legal notice dated 06.02.2007, they had immediately sent Ex.P2, letter dated 22.02.2007, seeking for the death certificate and legal heirship certificate, followed by several other letters seeking for these documents. In the meantime, the petitioners were also keeping the rent in a separate account and they were awaiting for the legal heirship certificate and death certificate. When the respondent herein had filed the R.C.O.P, they had immediately deposited the entire rental arrears of Rs.50,000/- in the Court. In view of such conduct, the default cannot be termed as "willful default".

4. The learned counsel also submitted that the learned Rent Control Appellate Authority had not considered any of the evidence before arriving at such a conclusion. By relying upon two decisions of this Court reported in 1996 (2) MLJ 579 (Abdul Hameed Vs. M.Sultan Abdul Kader) and 2004 (2) MLJ 145 (M.Kothandapani V. Dhanammal and another), the learned counsel submitted that failure to pay the rent for the period between January 2006 till June 2007 will not amount to willful default.

5. The learned counsel for the respondent, on the other hand submitted that, the respondent herein had been repeatedly demanding the rents and that he had also furnished the death certificate and the legal heirship certificate to the concerned Manager of the respondent corporation. It is his further

submission that in view of the Section 9 (iii) of the Rent Control Act, there is a duty cast on the respondent to deposit the rents before the learned Rent Controller, when there was a bona-fide doubt with regard to the status of the landlord. Having failed to deposit rents in the time, the petitioner herein cannot take a plea that the default was not willful. With these submissions, the learned counsel sought for rejection of the Civil Revision Petition.

6. I have given careful consideration to the submissions made by the respective counsels.

7. From the grounds raised by the petitioner and countered by the respondents herein, the short question that arises before this Court for determination is as to whether the default in paying the rents by the tenants between January 2007 till June 2008 is willful or not.

8. The petitioners' herein are Corporations under the Government of India, who had become tenants of the demised premises with the respondent's father. It is the submission of the learned counsel for the petitioners that when the respondent's father had expired, a legal notice dated 06.02.2007 was received by them, intimating the death of the respondent's father to which they had replied on 22.02.2007, seeking for the death certificate and the legal heirship certificate. Since the petitioners herein were tenants under the respondent's father and being a Government Undertaking, there is no infirmity in seeking for the death certificate and legal heirship certificate. It is also claimed that the petitioners had thereafter been accruing the rents in separate accounts. The explanation given for non payment of rents between January 2007 till June 2008 is that, the legal heirship certificate or the death certificate were not supplied to them by the respondent and when the eviction petition came to be filed, the petitioners immediately have deposited Rs.50,000/- before the learned Rent Controller. Therefore, it is submitted that the default in paying the rents for the aforesaid period was not willful.

9. The respondent, on the other hand submitted that, the death and legal heirship certificates were handed over to the Manager of the Corporations. However, such a fact has not been properly established either before the learned Rent Controller or the learned Rent Control Appellate Authority. The learned counsel also submitted that Section 9(iii) of the Rent Control Act mandates the tenant to deposit the rents before the learned Rent Controller, when a doubt arises with regard to the landlord's status and since the petitioners had not taken steps to immediately deposit the rents before the learned Rent Controller, the default can only be termed as 'willful'.

10. In order to ascertain as to whether the non deposit of rents before the learned Rent Controller is willful or not, it requires to be mentioned here that the term 'willful' would mean and include an act done deliberately, with the knowledge, that such an act is wrong. Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act provides for eviction on the ground of default in paying the rents. The proviso to the aforesaid section clarifies that when such a tenant's default is not willful, the tenant can be given an opportunity to tender the rental arrears. Therefore, a mere default in paying the rents will not be a ground for eviction, unless such default is willful.

11. In the instant case, the petitioners have adduced reasons for non payment of the rents for the concerned period. As soon as the respondent herein had initiated the proceedings under the Rent Control Act for eviction on the ground of wilful default, the petitioners deposited the entire rental arrears before the learned Rent Controller. The reason for non payment of the rents has been established before the learned Rent Controller that they were awaiting for the death certificate and legal heirship certificate of the erstwhile owner. There does not seem to be an inordinate delay in depositing the rental arrears before the learned Rent Controller from the date of their knowledge about the eviction proceedings. A co-joint reading of the reasonings for the non payment of the rents as well as the steps taken by the petitioners to have the rents deposited, will clearly establish that the petitioners had no deliberate or willful intention to refrain from paying the rents. Consequently, it can be held that the default in paying the rents between January 2007 till June 2008 was not willful, warranting eviction.

12. The Madras High Court in a decision reported in 2004 (2) MLJ 145 (stated supra) had held in similar lines by observing as follows:

"11. In the petition, except some reference regarding the Will, there is no allegation, such as, the tenant occupied the premises as tenant, under the landlords, agreeing to pay the monthly rent, giving the commencement of tenancy also. At no point of time, the tenant has accepted the respondents as landlords. The payment of rent evidenced by R1 would go to show that the rents were paid only to the trustees. The petitioners have not filed this petition in the capacity of the Trustees, representing Soleti Venkataramanujam Chetty

Trust. It is also not the case in the petition, that after the death of Pushpa Ammal, the rent was paid to the petitioners in R.C.O.P. or the tenant had recognised them as the landlords, despite the existence of the trust, in order to invoke the principle of estoppel. Admittedly, the tenant had paid rents up to December 1992, only to the trustees, the son of the trustees, though he may related to one of the petitioners. The son of Gopal Chetty has not collected the rent on behalf of the petitioners, which could be seen from R1 itself. After the death of the trustees, there was some dispute, regarding who is entitled to collect the rent. The fact that the tenant failed to reply for the notice issued by the landlords alone, is not sufficient proof, to conclude that he had recognized the respondents herein as landlords. Because of the fact, the trustees are no more and there was some bona fide dispute, who is entitled to collect the rent on behalf of the Trust, the tenant has not paid the rent, that too only from the month of January and the petition was filed in the month of August 1993. As soon as the petition is filed, entire arrears were deposited into the court, though after the filing of the petition under Section 11. The non payment of the rent by the tenant to these petitioners, under the above narrated circumstances, would not amount to willful default, warranting eviction. Unfortunately, the courts below have not considered the defence properly, and proceeded as if the revision petitioner has recognized the respondents herein as landlords, which is incorrect.

15. Under the above circumstances, I conclude that the respondents have miserably failed to prove their status as landlords, which should follow, question of filing of a petition by them, for willful default, does not arise for consideration. Even assuming that the petitioners are entitled to maintain the application, because of the bonafide dispute viz., whether these petitioners are entitled to collect the rent individually, when the rent was collected by the trustees, the tenant was perplexed and only in this view, he has not paid

the rent only from Janaury 1993 and deposited the entire rent including the enhanced rent, as per the direction of the court, periodically and in this view, he should be relieved of the penalty of eviction, on the basis of the willful default, concluding the default committed by the tenant, is not willful, warranting eviction."

13. This Court in a decision reported in 1996 (2) MLJ 579 in the case of Abdul Hameed Vs. M.Sultan Abdul Kader, this Court had held in that case that the tenant had deposited the entire arrears, even at the first instance, without the trial Court granting any reasonable time, which fact was not taken note of by the learned Appellate Authority and therefore, the order of the learned Appellate Authority, which was impugned in that revision petition came to be set aside.

14. The learned counsel for the respondent relied upon the decision of this Court reported in 2001 (2) CTC 321 in the case of R.Sambandan @ Babu V. S.Krishnaveni and submitted that since the tenant had admitted that rent was not paid for during the default period, such non payment should be constituted as willful default. The facts involved in the case cited by the respondent may not be applicable to the facts involved in the present revision petition. In the said decision, the question as to whether deposit of the rental arrears before the learned Appellate Authority would be a necessary factor for determination was not discussed. As a matter of fact, the rental arrears for the default period in the aforesaid case was not deposited at all before the learned Rent Controller and therefore, the Court had come to the conclusion that the default was willful. Whereas, in the present case, though the petitioners had admitted that they had not paid the rents for the relevant period, an explanation has been given for such non payment to the effect that the respondent was called upon to prove his right to receive the rent and when the respondent had chosen to file the eviction petition on the ground of willful default, the petitioners had immediately deposited the rental arrears before the learned Rent Controller. Hence, this decision may not help the respondent in any way.

15. For all the foregoing reasons, this Court is of the view that the order of the learned Rent Control Appellate Authority cannot be sustained. Consequently, the judgment and decree dated 25.11.2014 passed in RCA.245 of 2011 on the file of the learned IX Judge, Small Causes Court, Chennai is set aside and thereby confirming the order and decree passed by the learned XV Judge, Small Causes Court, Chennai in RCOP.No.1374 of 2008 dated 09.12.2010 and accordingly, the Civil Revision Petition stands

allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

DP

To

- 1.The IX Judge,
The IX Small Causes Court,
Chennai.
- 2.The XV Judge,
The XV Small Causes Court,
Chennai.
3. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.K.V.Sajeev Kumar, Advocate, S.R.No. 33804
+1cc to Mr.K.V.Sundararajan, Advocate, S.R.No. 33258

C.R.P. No.708 of 2015
and
M.P.No.1 of 2015

BR(CO)
GN(13/08/2019)

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