

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.245 of 2016

1.Chandrika

2.T.G.Saravanan

...Petitioners

Vs

M.P.Ravindran

... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 against the Judgement and Decree dated 18.08.2014, passed in R.C.A.No.850 of 2007 on the file of the IX Judge, Court of Small Causes, Chennai reversing the order passed on 07.11.2007 in R.C.O.P.No.2056 of 2006 on the file of the X Judge, Court of Small Causes, Chennai.

For Petitioners : Mr.P.B.Balaji
For Respondent : Mr.Johnson
for Mr.S.Namasivvayam

ORDER

When the matter was called one Mr.Johnson, learned counsel claiming to be the Junior of Mr.S.Namasivvayam represented that they have not been engaged by the respondent/tenant but however he has informed the respondent that the matter is coming today and he was informed by the said Ravindran that he had engaged some other counsel whose name the counsel did not know. Therefore the respondent is aware about the posting of the matter today but chose to remain unrepresented. The Civil Revision Petition is of the year 2016. Therefore this Court is proceeding to pass orders.

2.The Civil Revision Petition is filed challenging the order passed by the IX Small Causes Judge, Chennai in R.C.A.No.850 of 2007 in R.C.O.P.No.2056 of 2006, whereby the learned Appellate Authority has reversed the order of eviction granted by the learned Rent Controller. The facts in brief which are necessary for the disposing of the Civil Revision Petition are as follows:

3.The revision was originally filed by one T.V.Gnanavelu, who

died pending the proceedings and whose legal heirs are the revision petitioners herein. It is the case of the landlord that he had inducted the respondent as a tenant in the demised premises for a monthly rental of Rs.11,000/-. The building was let out for a non residential purpose for running hotel. The landlord had filed R.C.O.P.No.660 of 2005 against the respondent on the file of the Rent Controller (XI Small Causes Judge), Chennai for fixation of fair rent and after the elaborate trial the learned Rent Controller had fixed the fair rent of Rs.18,790/- with effect from 10.06.2005.

4.The landlord would further submit that the respondent had paid the rent at the old rate up to the period of 15.06.2006 and therefore respondent was liable to pay the difference in the fair rent and contractual rent and the default would be a sum of Rs.93,480/-. That apart from 16.06.2006 to 15.10.2006, the respondent has committed a default in the payment of rent and was contesting the fair rent proceedings. Infact in his counter petition to the fair rent petition he has sought for fixing lower rent of Rs.11,000/-. It was the case of the landlord that the default for a period 16.06.2006 to 15.10.2006 was deliberate and willful and therefore he sought to have tenant

evicted from petition premises.

5.The respondent had issued a notice on 25.10.2006 and the same was received by the tenant on 06.11.2006, however no payments were made by the tenant instead he had sent a notice dated 27.10.2006 with six month rents at the old rate. Therefore the Rent Control Petition was filed for seeking eviction of the tenant. The tenant had filed a counter inter alia contending that he has not committed any default and that the landlord had received a rental advance of Rs.4,50,000/- from the year 1979 to 1997.

6.He would further contend that the rents from September 2006 has been sent to the landlord by way of postal orders every month and the landlord had refused to receipt for the same. Therefore according to him, there was no default much less a willful default. He would further contend that the landlord had not issued receipt, despite request made for the same.

7.The learned Rent Controller on a detailed consideration of the evidence on record and after hearing the parties found the default in

the payment of rents from 16.07.2006 to 15.08.2006 and 16.08.2006 to 15.09.2006 and the default is willful default.

8.Challenging the above order the tenant had filed R.C.A.No.850 of 2007 on the file of the IX Small Causes Court (Rent Control Appellate Authority), Chennai. The learned Judge by an order dated 18.08.2014 was pleased to allow the appeal on the ground that the default was not willful and that it was only the 1st time that the default has been committed and therefore the same is not willful.

9.Challenging the same the landlord is before this Court. Heard, Mr.P.B.Balaji, learned counsel appearing on behalf of the landlord. He would contend that with effect from 10.06.2006 the fair rent was enhanced by the Rent Controller to a sum of Rs.18,790/-. However the default continues and therefore the revision petitioner/landlord was constrained to filed R.C.O.P.No.1140 of 2015 directing the tenant to pay the differential rent which the tenant had not paid. In the said application the landlord had filed M.P.No.735 of 2016 directing the tenant to deposit the arrears of rent. The Conditional order passed in M.P.No.735 of 2016 was not complied with and M.P.No.735 of 2016

was allowed. Thereafter, the Rent Control petition was also ordered and eviction was directed within a period of two months.

10.The said order was taken up on appeal by way of Rent Control Appeal. It is seen that the default is for the period July to September 2016. Though the notice had been issued prior to the filing of the revision petition the tenant has failed to comply with the demand and had also failed to make the payment even on the first hearing. It is clear that there has been willful default on the part of the tenant. The subsequent events have also to be taken note of.

11.As rightly pointed out by the counsel for the petitioner, after the enhancement of the rent to a sum of Rs.24,854/- which has not been challenged by the tenant. R.C.O.P.No.2056 of 2016 has been filed claiming the differential which amount the tenant had failed to pay and therefore R.C.O.P.No.1140 of 2015 had been filed. It is therefore evident that not only was there a default during the pendency of the Rent Control Proceedings but also continued thereafter. Therefore it is very evident that the tenant has shown supine indifference in paying the arrears of

rent and therefore liable to evict.

The Civil Revision Petition is allowed and the order in R.C.A.No.850/2007 on the file of the IX Small Causes Judge (Appellate Authority), Chennai is set aside. There shall be no order as to costs.

08.03.2019

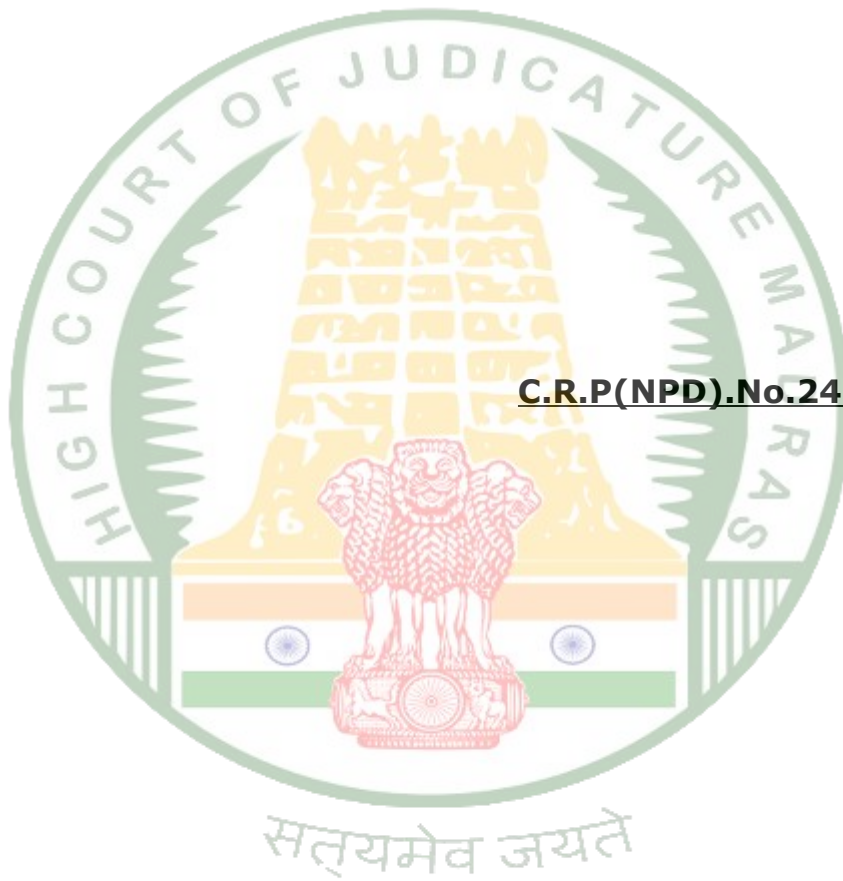
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Index : Yes/No
Speaking order/non-speaking order

To,
1.The IX Judge, Court of Small Causes, Chennai
2.The X Judge, Court of Small Causes, Chennai.

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P.T.ASHA, J.,



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