

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1311 of 2014

Anandan

... Petitioner

Vs.

1.Shakeela Banu

2.Adila

3.Aagila

... Respondents

PRAYER: Civil Revision petition is filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act 1960, to set aside the order & decree dated 26.11.2013 passed in R.C.A.No.4 of 2011 by the Rent Controller Appellate Tribunal Cum Subordinate Judge, Gudiyathm, Vellore District confirming Order and Decree dated 31.01.2011 passed in R.C.O.P.No.4 of 2008 on the file of the Rent Controller Cum District Munsif Court, Gudiyatham, Vellore District.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondents : Mr.P.Rathinavel

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order dated 26.11.2013 in R.C.A.No.4 of 2011 on the file of the Rent

Control Appellate Tribunal-Cum-Subordinate Court, Gudiyathm, Vellore District, confirming fair and decreetal order dated 31.01.2011 in R.C.O.P.No.4 of 2008 on the file of the Rent Controller-Cum-District Munsif Court, Gudiyatham, Vellore District.

2.The petitioner claims to be a tenant of the property belonging to the respondents and had filed an application for depositing monthly rent under Section 8(5) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. As the respondent had refused to accept the rent, an application was filed for depositing the same vide R.C.O.P.No.4 of 2008.

3.The petitioner had earlier sent a notice through courier which was received and acknowledged by one Musbera who identity has been denied by the respondents. The Rent Controller held that sending of notice by courier was not correct and therefore, dismissed the R.C.O.P filed by the petitioner.

4.Aggrieved by the order, the petitioner had preferred an appeal before the Appellate Tribunal. The Appellate Court, by order dated 26.11.2013 in R.C.A.No.4 of 2011, partly upheld the order of the Rent Controller by stating that though the petitioner was entitled to serve notice through courier, the petitioner had not discharged the burden of proof that the notice was served on the respondents/landlords and mere production of courier receipt

acknowledged by the said Musbera was not sufficient and therefore, dismissed the appeal filed by the petitioner/ tenant.

5. The learned counsel for the petitioner submits that the respondents have not let in evidence to deny the claim of the petitioner and therefore adverse inference ought to have been drawn under Section 114 of the Indian Evidence Act and therefore, the petitioner was entitled for relief.

6. The learned counsel for the petitioner relied upon on the decision of the Hon'ble Supreme Court of India in judgment in **Vidhyadhar vs Mankikrao and Another** AIR 1999 Supreme Court 1441(1).

7. The petitioner had also filed O.S.No.224 of 2008 before the District Munsif Court, Gudiyattam, Vellore District, for permanent injunction restraining the respondents from evicting him.

8. By the judgment and decree dated 26.06.2013, the suit was decreed, restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit property except under due process of law.

9. The respondents have entered appearance through their counsel Mr Rathinavel. They have opposed to the Civil Revision Petition. It was stated that

the petitioner has not paid any rent for last ten years and submits that the present Civil Revision Petition is liable to be dismissed as the petitioner had not complied the requirement of section 8 (5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

10. It is noticed that the petitioner has also filed a suit in O.S.No.224 of 2008 and has obtained an interim order restraining the respondents from evicting him. Respondents are unable to furnish any further details as to whether any steps have been taken to vacate the same.

11. Be that as it may, from the records available it is evident that the respondents had filed a brief counter sworn by the first respondent in the said proceedings before the Rent Controller. In para 2, the first respondent has merely stated ***"Since this respondent is a Gosha lady. She has no knowledge about the service of notice."***

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12. If that be so, the burden of proof is on the respondent's to prove that the said Musbera was not domestic help. Respondents ought to have let in evidence to state that as Gosha lady, they have domestic helps to answer the door bell and that they had not employed any person named Musbera. The first respondent has not denied the receipt of notice. She has merely denied the

knowledge of service of notice. Therefore, the court below ought not to have dismissed the relief claimed based on a evasive reply.

13. Therefore, the present Civil Revision Petition is allowed subject to conditions. The petitioner shall deposit the arrears of rents for the period of last ten years with an increase in the rent at the rate of 10% each year together with interest at 7.5% to the credit of R.C.O.P.No.4 of 2008 before the Rent Controller, Gudiyatham. In other words, there shall be an increase in the rent at the rate of 10% Rs.320 year in 2008 and Rs.352 for succeed in and so on each year. Aforesaid amount shall be paid to the credit of the above case within a period of eight weeks from the date of receipt of a copy of this order.

14.If the aforesaid amount is deposited together with interest, the Rent Controller shall restore R.C.O.P.No.4 of 2008 to its file.

15.Since the proceeding relates to the year 2010, the Rent Controller shall endeavour to bring closure the proceedings on merits within a period of six months from the date of receipt of a copy of this order. Both the parties shall cooperate before the Rent Controller.

C.SARAVANAN, J.

16. Respondents are at liberty to withdraw the same. The respondents are also at liberty to contest the said proceedings and raise all defences that are available on merits.

17. The Civil Revision Petition stands allowed with above observations. No costs.

27.02.2019

Index :Yes/No
Internet :Yes/No
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To

1. The Rent Controller Appellate Tribunal
Cum Subordinate Judge,
Gudiyatham, Vellore District.

2. The Rent Controller Cum
District Munsif Court,
Gudiyatham, Vellore District.

3. Anandan,
S/o. Kamalakannan,
Business doing at No.274,
Chowk Road, Pernambut Town,
Guidiyatham, Vellore District.

4. The Section Officer,
V.R. Section, High Court, Madras.

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