

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 25.09.2019

ORDER PRONOUNCED ON : 05.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) Nos.3488 and 3489 of 2014

K.Ramamoorthy

Petitioner in both CRPs

Vs

G.Veeramuthu

Respondent in both CRPs

PRAYER in CRP(NPD)No.3488 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.03.2014 passed in R.C.A.No.19 of 2009 on the file of VIII Small Causes Court, Chennai, confirming the fair and decreetal order dated 01.08.2008 passed in RCOP No.238 of 2006, on the file of XI Small Causes Court, Chennai.

PRAYER in CRP(NPD)No.3489 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.03.2014 passed in R.C.A.No.569 of 2008 on the file of VIII Small Causes Court, Chennai, reversing the fair and decreetal order dated 01.08.2008 passed in RCOP No.238 of 2006, on the file of XI Small Causes Court, Chennai.

For Petitioner (in both CRPs) : Mr.T.L.Thirumalaisamy
for M/s.Samanta and ston

For Respondent (in both CRPs) : Mr.K.Selladurai

COMMON ORDER

These Civil Revision Petitions have been preferred against the fair and decreetal orders dated 19.03.2014 passed in R.C.A.No.19 of 2009 and R.C.A.No.569 of 2008, on the file of VIII Small Causes Court, Chennai.

2. In the aforesaid Civil Revision Petitions, the petitioner K.Ramamoorthy is the landlord and the respondent G.Veeramuthu is the tenant. Initially, the petitioner herein has filed Rent Control Original Petition in RCOP No.238 of 2006, under Section 10(2) (i) (10) (3) (a) (III) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the file of XI Judge, Small Causes Court/Rent Controller, for the relief of eviction. Hereinafter, "Tamil Nadu Buildings (Lease and Rent Control) Act, 1960" is called as "Act". The learned XI Judge, Small Causes Court, Chennai by an order and decree dated 01.08.2008 has partly allowed the petition. In the said order, he has held that the respondent/tenant was liable to be evicted from the petition mentioned premises, under Section 10 (2) (1) of the Act. Whereas, he has dismissed the application observing that the ground raised by the petitioner, under Section (10) (3) (a) (iii) of the Act has not been proved.

3. Aggrieved over the said findings, the respondent/tenant has filed Rent Control Appeal in RCA No.569 of 2008 with a prayer to set aside the findings arrived at by the Rent Controller in respect to the order

of eviction. Similarly, the petitioner/landlord has filed Rent Control Appeal in RCA No.19 of 2009, in which he has prayed to set aside the findings arrived at by the Rent Controller in respect to the ground raised under Section 10(3)(a)(iii) of the Act. The Rent Control Appellate Authority in its order dated 19.03.2004 has allowed RCA No.569 of 2008 and set aside the order of eviction passed against the petitioner/landlord. On the other hand, he has dismissed RCA No.19 of 2009 by confirming the findings of Rent Controller.

4. Feeling aggrieved over the same, the petitioner has preferred these two Civil Revision Petitions, challenging the order passed in the above referred Rent Control Appeals.

5. For the sake of convenience, hereinafter the landlord is called as petitioner and the tenant is called as respondent.

6. The brief averments of the petition filed by the petitioner before the Rent Controller is as follows:-

6.1. The petitioner is the landlord and the absolute owner of the petition mentioned premises. The respondent is the tenant under the petitioner from November 1987 and the monthly rent was fixed as Rs.250/- and an advance amount was fixed as Rs.3,000/-. Subsequently, the rent has been enhanced to Rs.800/- per month and a sum of Rs.15,000/- has been deposited with the petitioner by the respondent

towards advance. Thereafter, the respondent was irregular in payment of rents from June and July 2005 and he had sent notice dated 01.08.2005 with a request to furnish the petitioner's bank account details along with demand draft for Rs.1850/- towards rent for June and July 2005. Due to the ill-health of the wife of the petitioner, he could not send any reply immediately for the notice sent by the respondent. By using the said circumstances, the respondent has not paid rent due from August 2005 to January 2006. Only on 22.10.2005, he has sent Demand Draft for Rs.1900/- towards rent for the month of August and September. The respondent has not paid any electricity charges, which is statutory one payable to the Electricity Board. The respondent willfully failed to pay the rent from the month of 2005 to January 2006. Further there is a due of Rs.800/- towards electricity charges. The petitioner was a Government servant and after his retirement, he proposed to start a business in the petition mentioned premises, for which, he requested the respondent to vacate the suit premises within a period of two months. The respondent has not vacated the suit premises as agreed before the petitioner. Further, for vacating the premises, the respondent demanded the petitioner to pay Rs.1,00,000/-. Further, the petition mentioned premises was converted as bar shop. In fact, the same was used as tailoring shop. Hence, evicting the respondent from the petition mentioned premises is necessary one.

7. Brief averments made in the counter affidavit made by the respondent is as follows:-

7.1. It is true that the respondent is the tenant under the petitioner. He has not committed any wilful default in payment of rent. It is not correct to say that the respondent is agreed to vacate the premises for the purpose of starting business by the petitioner. The petitioner is having one another business premises in Sulaimedu. The petitioner was not doing any business in Chennai. In the premises, the respondent was doing Tailoring work for the past 20 years,. The petition filed by the petitioner is liable to be dismissed.

8. Based on the above pleadings, the learned Rent Controller framed the following two issues.

1. Whether the respondent committed an act of wilful default in payment of rent.
2. Whether the petitioner is having bonafide intention to start business in the petition mentioned premises.

9. Before the trial Court, on the side of the petitioner two witnesses have been examined and five documents were marked as Ex.P.1 to Ex.P.5. On the side of the respondent, the respondent himself was examined as R.W.1 and 12 documents were marked as Exs.R.1 to R12. Having considered all the materials placed before him, the learned Rent Controller passed an order of eviction as stated supra. However, in the appeal filed by the respondent, the learned Appellate Authority set aside the findings of the Rent Controller.

10. Feeling aggrieved over the same, the petitioner is before this Court with the present two Civil Revision Petitions.

11. Since the party to the proceedings and the subject matter of the two Civil Revision Petitions are one and the same, it was decided by this Court to pronounce a common order for both Civil Revision Petitions.

12. The learned counsel for the petitioner submitted that as per the Rental Agreement, the respondent has to pay the rent periodically for every month. But the respondent has not paid the rent within the stipulated period. He has paid the rent 3 months once or two months once. The said default has been admitted by the respondent himself in his counter affidavit. But the learned Rent Control Appellate Authority without considering the said aspect has set aside the findings of the rent Controller, in which the Rent Controller firmly came to the conclusion that the respondent committed an act of default.

13. The learned counsel appearing for the petitioner would further contend that the respondent has sent notice through Advocate along with a letter to furnish the bank particulars of the petitioner, for depositing the rent. Further, he has not filed any application under Section

8 of Act for depositing the rent in the Court. Culling out of the entire circumstances shows that the respondent has committed an act of default.

14. In respect to the another ground raised by the petitioner, the learned counsel made a submission that the petitioner is likely to be retired from the Government service and he has a proposal to start a new business in the petition mentioned premises, after his retirement, for which the petitioner requires the petition mentioned premises. So the intention having by the petitioner is a bonafide one. Only for owning the occupation, he has filed the application and the same was negatived by the Court below, which is also an erroneous one.

15. On the other hand, the learned counsel appearing for the respondent would contend that it is agreed on the side of the petitioner that he has received Rs.15,000/- as advance. According to the Section 15 of the Act, the petitioner is entitled to receive one month rent towards an advance. Hence, the excess amount with the petitioner could be adjusted for the rent due from the respondent. Only in the said manner, the Rent Control Appellate Authority arrived at a conclusion that the act committed by the respondent is not attracted the act of willful default since the excess amount with the petitioner can very well be adjusted towards the rent due from the respondent and finally, the Appellate Authority has set aside the order of eviction, which is well within the principles of law laid down already.

16. Submissions made by either side counsel are considered. Before the trial Court, unregistered sale agreement dated 01.02.2003 made between the petitioner and the respondent was marked as Ex.P.1. As per the said document, the rent was fixed as Rs.800/- per month. Further, it is an admitted on the side of the petitioner that the respondent has paid Rs.15,000/- towards advance amount. In otherwise, the evidence given by the respondent as RW 1 before the trial Court clearly discloses the fact that he has not paid the rent to the petitioner periodically ie. every month. As per exhibits and the admission made by the respondent, the rent was paid by the respondent in the following manner:-

SL.NO.	MONTH & YEAR	RENT PAID (in.Rs.)	DATE	EXHIBIT NUMBER
1.	October 2005	800.00	24.02.2006	Ex.R.3
2.	November 2005 to February 2006	3200.00	24.02.2006	Ex.R.4
3.	March 2006	800.00	12.07.2006	Ex.R.5
4.	April 2006 to July 2006	3200.00	12.07.2006	Ex.R.6
5.	August 2006 to November 2006	3200.00	06.11.2006	Ex.R.7
6.	December 2006 to March 2007	3200.00	08.03.2007	Ex.R.8
7.	April & May 2007	1600.00	18.06.2007	Ex.R.9
8.	June & July 2007	1600.00	22.08.2007	Ex.R.10
9.	August 2007 to December 2007	4000.00	21.01.2008	Ex.R.11
10.	January 2008 to May 2008	4000.00	14.06.2008	Ex.R.12

17. For subsequent period, for proving the payment of rent, the respondent has not produced any receipts or copy of Demand Drafts except his oral evidence. It is to be noted that the rent paid by the respondent so far is irregular in nature. As per the agreed terms, he has to pay the rent every month without any default. However, reliance is placed by the respondent in 1996 (II) CTC 78, (K.Narasimharao Vs.T.M.Nasimuddin Ahmed),

“The character of the excess amount undoubtedly is that it is the tenant's money in the hands of the landlord for return to the tenant or for adjustment towards the dues of the tenant, at the tenant's option. Any other stipulation in contravention to it has no legal effect being null and void.”

Further, the learned counsel relying upon the judgment reported in 1999 (II) CTC 215 (Sivanraj Vs.Essakkimuthu)

“...it is a clear case where Section 25 has got to be invoked in favour of the tenant. This is a case where the landlord came forward with an allegation that the tenant had committed wilful default. Admittedly, the landlord had with him an advance of Rs.5,000/- Under Section 7 of the Rent Control Act the landlord is entitled to keep with him an advance of a month's rent alone. Any amount which is in

excess of more than a month's rent will have to go towards adjustment of future rent due from the tenant”.

In the said judgment, it was further held that

“40. The landlord is bound to adjust the excess amount of advance towards rent due from the tenant and the tenant in such a situation cannot be held to be a wilful defaulter in payment of rent.

Yet another judgment relied upon by the learned counsel, which is reported in (2000) II M.L.J. 202 (Mahalingam Vs. Pichaiammal

“In view of the law declared by the Honourable Supreme Court, it has to be held that landlady has no cause of action to file application for eviction on the ground that tenant has committed default in paying rent. As stated earlier, landlady has taken advance of 60 months rent, though law permits to take advance of only one month rent. Excess advance is liable to be adjusted in the rent payable by tenant as and when becomes due even without any demand from tenant. If that be so, landlord cannot expect payment of rent for the alleged period of default. If landlord cannot demand any rent for fault also will be invalid and of no legal consequence.

Now, a mere perusal of the aforesaid judgments would clearly display and demonstrate that the landlord who is bound to refund the excess amount should adjust the advance amount towards arrears, if any. However, in the case referred above, the tenant has not tendered the rent

from the specified period. But, the case put forth by the petitioner is different one. In a case in our hand, as per the admission made by the respondent, he was irregular in payment of rent. From 2005 to 2007, though he has paid the rent as agreed, the same was not within the agreed terms made in Ex.P.1.

18. At the outset, from the payment made by the respondent to the petitioner by way of demand drafts, it was noticed that the rent for the period of 2 or 3 months was paid in one lump sum. In this occasion, it is useful and necessary to see the judgment of 2013 (3) MWN (Civil) 313 (Ravi Raja Gopal vs. G.Anantharaman and another)

47. In G.Selvan v. B.Rajyalakshmi, 2005 (3) MLJ 385, this Court held that a Tenant is expected to pay monthly Rents regularly without any default and it is not necessary that the Landlord should make demands every month or take proceedings under Section 11(4) of the Act.

48. In S.Rajam v. Raja Stores, 2005 (4) MLJ 195, this Court held that just because the Landlords were receiving Rent in lump sum it does not mean they had given a go by to the monthly tenancy. The Landlords did not have any other option because the tenant was not regular in payment of Rents and his conduct in

not being regular even after filing of the RCOP only confirms wilful default.

49. Further in *Dinesh Kumar v. Dr. Indira Bai*, 2007 (2)

MLJ 976, this Court held that Tenant has no right to accumulate Rents and pay in lump sum and he is expected to pay Rents without demand from the Landlord.

50. In *V. Kannadasan & others v. K. Swaminathan Pathar*,

2007(2) CTC 127; 2007 (1) TLNJ 377, this Court held that irregular payment of Rents pending the Eviction Petition can be taken into account to Order eviction.

51. In *H. J. Siwani & another v. U. Ugam Bhai*, 2007 (5)

CTC 254; 2007 (6) MLJ 1572, this Court held that there is no duty on the part of the Landlord to make a demand every month. Duty is only on the Tenant to pay rent regularly.

52. In *K. Karupiah v. B. Kubendran*, 2009 (2) CTC 595:

2009 (4) MLJ 174, this Court held that the subsequent conduct of tenant in non-payment of Rents even after filing of Eviction Petition can be considered in deciding the Eviction Petition.

53. In *Munusamy v. A. Rajpal*, 2010 (2) MWN (Civil) 147:

2010 (2) TLNJ 318, this Court held that wilful default is a stringent provision and tenant has a duty to pay Rents regularly every month without expecting any

demand from the Landlord and failure to pay Rents regularly will render Tenant liable for eviction.

54. It is well settled that even during the pendency of the Rent Control proceedings/Appeal, it is the duty of the Tenant to pay the Rent promptly, as per the time schedule provided for, in the Lease Agreement, without any demand or as per the provisions contained in the Act. Payment has been made only on 07.09.2012, for the period from January 2012 to 31st August 2012, i.e for nearly eight months.

The above referred judgments are in order and speaks about the duty of the tenant in paying the rent. In the notice sent by the respondent dated 01.08.2005, he has stated that he bound to pay Rs.250/- per month towards electricity charges, apart from the rent fixed as Rs.800/-. In the said occasion, during the time of giving evidence as RW 1, he has not stated anything about the payment of electricity charges, which is a statutory one payable by the tenant. In the said notice, he has specifically stated in Paragraph 3 as "from the month of June 2005, the petitioner has wantonly refused to receive the rent and attempted to evict the respondent by illegal methods". In the said situation, it is the duty vested with the respondent that he has to follow Section 8 of Act. Though the respondent asked the details of bank account and the petitioner is refused to furnish the same, it is the duty of the respondent to file a petition before the competent Court, for depositing the rent. But the said rule has

not been followed by the respondent inspite of that he has paid the rent once in three months or once in 4 months.

19. Further, the learned counsel has placed reliance on the judgment reported in 2005(5) CTC 473 (R. Murugan Vs. M.O.M.Abubucker)

“16. As submitted by the learned counsel for the petitioner/Landlord, the defence is available only for adjustment of rent at the end of tenancy. In Raminder Singh Sethi v.D.Vijayarrangam, 2002 (4) SCC 675, the Supreme Court has held:

4. Every tenant is obliged to pay or tender rent to the landlord within 15 days of the month to which the rent relates. The purpose of advance rent is to protect the landlord from the unscrupulous tenant who may run into arrears and vacate the premises and comfortably walk away with the arrears. The advance rent is available for adjustment or is liable to be refunded at the time of vacating of the premises except where the law or the contract between the parties provides to the contrary. We have already noticed that the provisions of the Act do not apply to the premises and, therefore, the landlord was not

prevented by law from securing advance payment of rent by consent of the parties. It is not the case of the tenant that the contract between the parties provides for adjustment of rent no sooner it fell into arrears from out of the amount of advance rent. In short, the appellant tenant was not absolved of his obligation to pay the rent due monthly by month in spite of any amount of advance rent being available with the landlord”.

The mere fact that the landlord had with him an advance amount does not mean that the tenant has not committed wilful default within the meaning of Section 10(2)(i) of the Act. The Courts below have rightly negated the submissions made on behalf of the tenant that in view of the advance amount there is no wilful default. Broadly looking into the matter, it is a clear case of wilful default and the order of eviction passed by the Courts below on the ground of wilful default is to be endorsed with.

Applying the said principle in the case in our hand, we cannot conclude the issue infavour of the petitioner, merely for the reason that he is having excess advance amount. The judgment reported in 2000 (1) CTC 742 (Chordia Automobiles v.S.Moosa) clearly reveals the fact as follows: -

“Act done consciously or deliberately done with open defiance and intent not to pay Rent.”

More than that, the respondent has not stated anything about the payment of rent subsequent to the filing of petition by the petitioner.

20. In the light of the above discussions, I am of the view that the act committed by the respondent amounts to wilful default. The learned Appellate Authority only by holding that since the petitioner is holding excess amount, the act committed by the respondent is not amounts to wilful default. As already observed, the same was done within the purview of wilful default and thereby the order passed in RCA No.569 of 2008 needs interference.

21. In respect to CRP.No.19 of 2009, the same has been filed by the petitioner as against the findings made on the ground raised by the petitioner under Section 10 (3) (A) (III) of the Act. In respect to the said ground, both the courts below have arrived at a concurrent findings that the relief sought for by the landlord/petitioner is not a bonafide one. In this regard, it is necessary to see the evidence given by the petitioner. During the time of giving evidence as PW 1, the petitioner has stated that apart from the suit premises, he is owning another house situated at No.14, Kangaianman Temple, Sulaimedu. More than that in the chief examination, he has not stated anything about the proposed business to be started, date of retirement and other necessary factors, which are essential for starting a new business. The said aspect established the fact

that the evidence given by the landlord was not satisfied the four conditions contemplated under Section 10 (3) (a) (iii) of the Act.

22. Ultimately, I am of the opinion that the petitioner asked the respondent to vacate the premises let out to him, merely by saying that he has a proposal to start a business in the said premises, after his retirement and hence his intention is not a bonafide one.

23. In the light of the above discussions, CRP No. 3489 of 2014 is hereby allowed. The order and decree passed in RCA No.569 of 2018 is set aside and the order passed in RCOP No. 238 of 2006 by the Rent Controller dated 01.08.2008 is restored. However, one month time is granted to the respondent for vacating the Suit property.

24. As far as CRP No.3488 of 2014 is concerned, the concurrent findings arrived at by the Courts below are confirmed as such and accordingly CRP No. 3488 of 2014 is hereby dismissed. No costs.

WEB COPY **05.11.2019**

To

The VIII Small Causes Court, Chennai

R.PONGIAPPAN, J.,

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**Pre-delivery order in Civil Revision Petition (NPD) Nos.3488 and
3489 of 2014**



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