

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM

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

C.R.P.(NPD).Nos.620,621 & 844 of 2017 and
C.M.P.Nos.3181 & 4141 of 2017

A.Nasira Banu,
W/o.R.Abdul Rahoof,
Door No.1542, Trichy Road,
Coimbatore-641 018

... Petitioner/Tenant
in all revision petitions

Vs.

Sugunavathi,
W/o.Late Selvaraj,
D.No.1541, Trichy Road,
Coimbatore-641 018.
represented by her
Power Agent B.Purushothaman

...Respondent/Landlady
in all revision petitions

Civil Revision Petitions filed under Article 227 of the
Constitution of India against the order dated 08.11.2016 and
07.09.2016 in I.A.No.419 of 2015 in R.C.A.No.12 of 2014 on the file of
the Principal Subordinate Court, Coimbatore.

For Petitioner
in all revision petitions : Mr.S.Mukunth

For Respondent
in all revision petitions : Mr.G.K.Muthukumar

COMMON ORDER

The above civil revisions petitions have been filed by the petitioner challenging the order dated 08.11.2016 and 07.09.2016 in I.A.No.419 of 2015 in R.C.A.No.12 of 2014 on the file of the Principal Subordinate Court, Coimbatore.

2.Originally, the landlady has filed R.C.O.P.No.224 of 2005 for the eviction of the tenant on three grounds viz.,

- 10 (2) (i) – Willful default of rent
- 10 (2) (iii)- Act of waste
- 10 (3) – Owners own use and occupation

The Trial Court has allowed the above R.C.O.P., against which, an appeal has been preferred by the tenant in R.C.A.No.12 of 2014 before the Principal Subordinate Court, Coimbatore. Pending the appeal, an application has been taken out by the landlady in I.A.No.419 of 2015 filed under Section 11 (1) & 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, amended Act, 1973, for deposit of arrears of rent.

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3.It is curious to note that the Appellate Court has allowed the application in I.A.No.419 of 2015 by directing the tenant to deposit the amount of Rs.3,00,000/- as approximate arrears of rent before the Trial Court on or before 07.11.2016 and also directed the landlady not to withdraw the amount, unless she files a calculation memo regarding

the due of arrears of rent in accordance with law. It is also stated that if the tenant fails to deposit the above said amount within time, his defence will be struck off. When the matter once again came up before the Court on 08.11.2019, the Appellate Authority noting that the tenant called absent and the conditional order has not been complied with, struck off the defence of the tenant. As against which, these civil revision petitions have been filed.

4.The learned counsel appearing for the revision petitioner/tenant states that there was a direction in I.A.No.419 of 2015 filed under Section 11 (1) & 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, to deposit a sum of Rs.3,00,000/- before the Trial Court on or before 07.11.2016. On 24.10.2016 itself, the tenant has filed an application for issuance of lodgment for deposit the amount of Rs.3,00,000/- in C.F.R.No.27602. However, the Trial Court has not issued any lodgment on the ground that the copy of the Appellate Court has been received. In view of the above fact, on 08.11.2016, the first Appellate Court struck off the defence and consequently, dismissed the appeal. Hence, it is the contention of the revision petitioner that the due arrear amount of Rs.3,00,000/- has already been deposited when the civil revision petition has been filed before this Court and he is also ready to deposit the further due amount and he may be granted a chance to agitate his rights in

R.C.A.No.12 of 2014, whereas, the learned counsel for the respondent would contend that the subsequent arrears has to be deposited. Therefore, the tenant has no right to continue his defence. According to the respondent, the subsequent amount of arrears is more than two lakhs which has not been deposited. Hence, the revision petitioner has no right to continue his defence. Hence, prayed for the dismissal of the revision petition.

5.Heard the learned counsel for the petitioner and the learned counsel for the respondent and I have perused the entire materials available on record.

6.Admittedly, the rent control proceedings were initiated by the landlady as against the tenant on three grounds: 1. Willful default of rent, 2. Act of waste and 3. Owner's own use and occupation. It appears that the eviction was ordered by the Trial Court. As against which, appeal in R.C.A.No.12 of 2014 has been filed by the tenant. At that stage, an application in I.A.No.419 fo 2015 has been filed by the landlady under Sections 11 (1) & 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. However, she has claimed only the approximate arrears of rent and has not explained the nature of the arrears payable at that time.

7.The first Appellate Court having found that the exact arrears of rent has not been pleaded, however, allowed the application directing the tenant to deposit the approximate arrears of rent of Rs.3.00,000/- in the Trial Court on or before 07.11.2016.

8.It is the contention of the revision petitioner/tenant that she has filed an application before the Trial Court for issuance of lodgment on 24.10.2016 in C.F.R.No.27602. Since, the Trial Court has not issued the lodgment on the ground that the copy of the order of the Appellate Court has not reached the Trial Court, she could not deposit the amount in time. In the meanwhile, on 08.11.2016, his defence was struck off for non-compliance of the order of the Appellate Court.

9.Having regard to the above facts, the rent arrears of Rs.3,00,000/- ordered by the Trial Court has already been deposited. The fact remains that the copy of the order of the first Appellate Court in I.A.No.419 of 2015 has not reached the Trial Court in time, thereby, the Trial Court could not issue lodgment schedule. The right of the tenant to contest the appeal which is statutory in nature ought not to have been defeated without verifying the fact as to whether the tenant has filed an application in compliance of the order of the Trial Court to deposit the arrears of amount Rs.3,00,000/-.

10. In such view of the matter, having regard to the fact that the amount of Rs.3,00,000/- has already been deposited, I am of the view that one more chance has to be given to the revision petitioner to contest the appeal on merits. The Appellate Court being the last Court for facts, the right to statutory appeal cannot be defeated. Hence, the order of the first Appellate Court striking out the defence of the tenant is set aside and the Appellate Court shall decide R.C.A.No.12 of 2014 within two months from the date of receipt of a copy of this order and the tenant is also directed to deposit the future arrear amount of Rs.2,89,000/-, before the Trial Court on or before 28.06.2019. On such deposit, the Appellate Authority shall dispose of the rent control appeal within two months, on merits. The Trial Court shall permit the landlady to withdraw the amount of Rs.5,00,000/- of the total amount deposited and the remaining amount shall be disbursed after filing a proper calculation memo.

With the above observations, these civil revision petitions are allowed. Consequently, connected civil miscellaneous petitions are closed. No costs.

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Index: Yes/No
Speaking/Non-speaking
nsd

NOTE: Issue order copy on 29.04.2019

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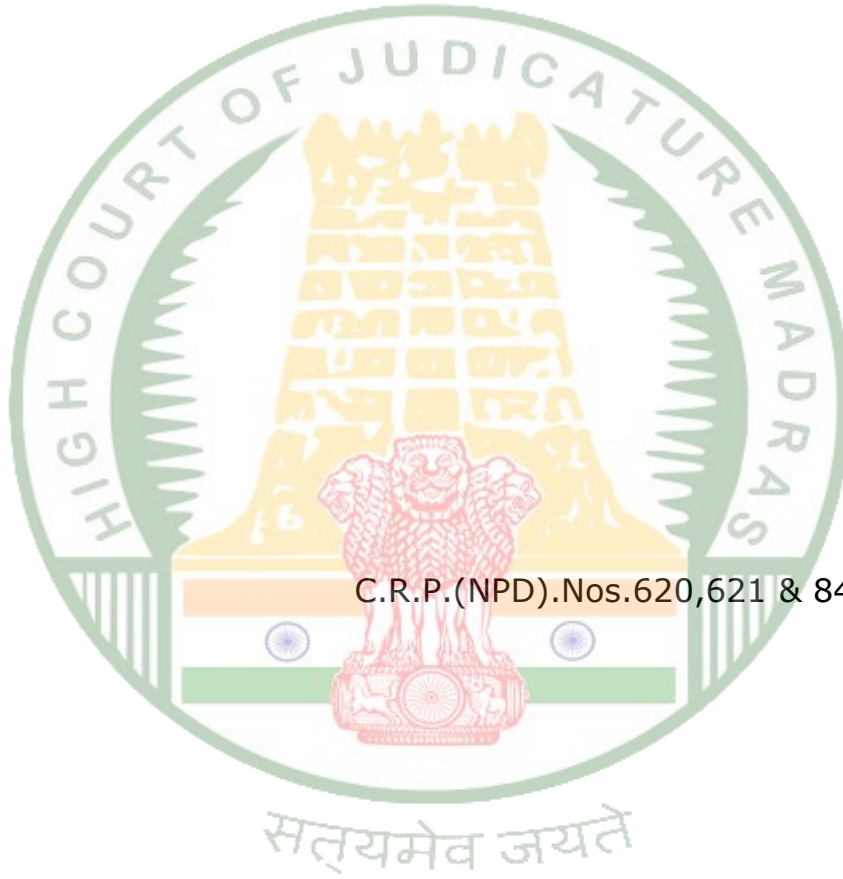
The Principal Subordinate Judge,
Coimbatore.



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N.SATHISH KUMAR, J.,

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