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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.04.2019

PRONOUNCED ON : 30.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)Nos.1909 and 1928 of 2012

and

M.P(MD)No.1 of 2012

Rajalakshmi ... Petitioner in both CRPs / Tenant

Vs.

Yasmin Fathima Beevi ... Respondent in both CRPs / Landlord

PRAYER: Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the common judgment, dated 07.03.2012 made in R.C.A.Nos.3 and 5 of 2011 by the Rent Control Appellate Authority / Principal Subordinate Court, Tenkasi, confirming the common order, dated 22.02.2011, made in R.C.O.P.Nos.7 and 8 of 2010 by the Rent Controller / Principal District Munsif Court, Tenkasi.

For petitioner in both CRPs. : Mr.P.Krishnasamy

For respondent in both CRPs.: Mr.T.S.Mohammed Mohideen

COMMON ORDER

The revision petitioner herein is the tenant and the respondent herein is the landlord. Originally, the landlord had filed R.C.O.P.No.7 of 2010 seeking to evict the tenant on the ground of wilful default and also for own use and occupation. The tenant had also filed R.C.O.P.No.8 of 2010 seeking permission to deposit the rent amount. The learned Rent Controller had allowed R.C.O.P.No.7 of 2010 filed by the landlord only on the ground of wilful default and accordingly, directed the tenant to vacate the premises. Consequently, the Rent Controller had dismissed R.C.O.P.No.8 of 2010 filed by the tenant.

2.Challenging the common order passed by the learned Rent Controller, the tenant had filed appeals in R.C.A.Nos.3 and 5 of 2011. The Rent Control Appellate Authority, by way of common judgment, dated 07.03.2012 had dismissed both the appeals, confirming the common order passed by the Rent Controller. Challenging the common judgment passed by the Rent Control Appellate Authority, the tenant has filed these revision petitions.

3.Since the issue involved in both the revision petitions are interrelated to each other, they were heard together and are



disposed of by way of this common order.

4. The learned counsel appearing for the revision petitioner / tenant would submit that originally, the tenant obtained the petition mentioned property for lease in the year 2004 from one Arumugam for the monthly rent of Rs.250/- on payment of advance amount of Rs.20,000/-. In the year 2006, one Ashrab Ali (second purchaser) purchased the said property from the said Arumugam. After the said purchase, the tenant got back the advance amount and paid the same to the subsequent purchaser and also paid the monthly rent of Rs.400/- to him and she is in continuous possession of the said property as a tenant. Subsequently, in the year 2008, the very same property was purchased by one Mohideen Pitchai and Musthal @ Mallika (third purchaser) and received the advance amount paid by her to Ashrab Ali and also demanded to pay the monthly rent of Rs.400/- and she also paid the monthly rent to them. According to the revision petitioner, she had done the repair works in the property at the cost of Rs.5,000/- and the landlord also agreed to return back the same at the time of vacating the property. On 05.01.2009, the said Mohideen Pitchai and Musthal @ Mallika demanded her to vacate the property, for which, a complaint has been preferred before the police and the same was ended in compromise. Though she paid the rent regularly, the landlord refused to receive the same and also attempted to evict her, for which, she filed O.S.No.283 of 2009, in which, a compromise had been entered and the rent was received by them, till November, 2009. Thereafter, the property was purchased by the respondent in this civil revision petition (the fourth purchaser). According to the tenant, though, she paid the rent regularly, the same was refused by the respondent herein and therefore, the tenant filed R.C.O.P.No. and 8 of 2010 for the purpose of depositing the rent amount before the Court. Despite the fact that the landlord is having many houses at Tenkasi, the Courts below, without considering the same, have erroneously rejected the contentions raised on the side of the revision petitioner / tenant. Thus, he prayed to set aside the concurrent orders passed by the Courts below.

5. The learned counsel appearing for the respondent / landlord would submit that the respondent is the fourth purchaser of the subject mentioned property. Since, the tenant did not pay the rent from November 2008 and the property is also required for her own use, she demanded the revision petitioner / tenant to vacate the same, for which, the revision petitioner / tenant replied that she obtained an injunction order in O.S.No.283 of 2009 against the predecessor of the respondent / landlord, namely, the third purchaser. Since the respondent is the landlord of the property in question and she is proper and necessary party to adjucate the matter, the act of the revision petitioner / tenant is an abuse of process of law. The Courts below after taking note of the all the factual aspects and merits, have rightly ordered eviction on the ground of wilful default. Thus, he prayed to



dismiss these revisions.

6. Heard the learned counsel appearing for both sides and perused the records carefully.

7. A perusal of the records would show that the Court below has clearly depicted how the tenant had failed to pay the rent in time. The landlord, namely, the respondent herein purchased the petition mentioned property on 07.11.2008 through Ex.P.1. But, the tenant contended that she paid rent from January, 2009 to November, 2009, to Mallika and the landlord received the rent from January, 2010. Therefore, it is assumed that the respondent / landlord accepted that the revision petitioner / tenant paid rent before January, 2009 to Mallika. But, the tenant has not filed any document to substantiate the fact that she paid rent from January, 2010 to May, 2010 to the present landlord. But, cleverly, she has filed petition in R.C.O.P.No.8 of 2010 seeking to receive rent from June, 2010, but not from 2009. Therefore, it is crystal clear that the tenant has got arrears of rent. Further, before sending notice to receive rent, she filed the petition to receive rent. In this connection, the Rent Controller has rightly relied on Section 8(2) of the Act 1960 to rebut the contention of the tenant. As per the said act, the tenant has to make all out efforts to pay the rent in time so as to say that originally the tenant has to send the rent through money order and thereafter, if the landlord refuses to accept, then, the tenant has to send a notice seeking details of bank account and even thereafter, the landlord refuses to divulge the information of bank account, then only, the remedy available to the tenant is to file a petition under Section 8(5) of the Act 1960. Without exhausting the right given to the tenant under Section 8(2) of the Act 1960, the contention of the respondent has no legs to stand. Therefore, both the Courts after considering the conduct of the tenant have allowed the case in favour of the landlord in which I do not find any infirmity or illegality and therefore, these civil revision petitions are liable to be dismissed.

8. In the result, these civil revision petitions are dismissed and the common judgment passed by the learned Rent Control Appellate Authority in R.C.A.Nos.3 and 5 of 2011 confirming the common order passed by the learned Rent Controller in R.C.O.P.Nos.7 and 8 of 2010 is confirmed. Accordingly, the revision petitioner / tenant is given one month time from today to vacate the demised building. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CO)

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1.The Rent Control Appellate Authority/
Principal Subordinate Judge,
Tenkasi.

2.The Rent Controller /
Principal District Munsif,
Tenkasi.

+1CC TO MR.P.S.MOHAMED MOHIDHEEN, Advocate Sr. No. 78757

**PRE-DELIVERY COMMON ORDER MADE IN
C.R.P(MD)Nos.1909 and 1928 of 2012
and
M.P(MD)No.1 of 2012
30.07.2019**

NS (CO)
TR (05.08.2019) 4P 4C