

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 04.04.2019****CORAM:****THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM****C.R.P. (MD) (NPD) .No.618 of 2019****and****C.M.P (MD) .No.3156 of 2019**

B.Kaliappan

: Petitioner/Appellant/Respondent

Vs.

K.Rajamani

: Respondent/Respondent/Petitioner

**PRAYER:** Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act,1960) against the fair and decreetal order, dated 10.12.2018, in R.C.A.No.32 of 2017, on the file of the Rent Control Appellate Authority/Principal Subordinate Judge, Madurai, confirming the fair and decreetal order, dated 20.06.2017, in R.C.O.P.No.88 of 2014, on the file of the Rent Controller/Principal District Munsif, Madurai Town.

For Petitioner

: Mr.Meenakshisundaram

Senior Counsel for Mr.B.Baskaran

For Respondent

: Mr.M.Rajaraman

**ORDER**

This Civil Revision Petition has been preferred against the fair and decreetal order passed in R.C.A.No.32 of 2017 by the Rent Control Appellate Authority on 10.12.2018.

2.Originally, R.C.O.P.No.88 of 2014 was filed by the respondent / landlord for eviction of the petitioner/tenant from the petition mentioned property on the grounds of willful default in payment of rent, different user, causing damages to the building, causing nuisance to the public and act of waste and also for own use and occupation.

3.The revision petitioner/tenant has entered into a tenancy agreement in the month of August 2009. He also agreed to pay the rent at the rate of Rs.8,000/- per month. The rent has to be paid on or before 5<sup>th</sup> day of every succeeding English Calendar Month. Subsequently, it was enhanced to Rs.10,000/- per month from August 2012.



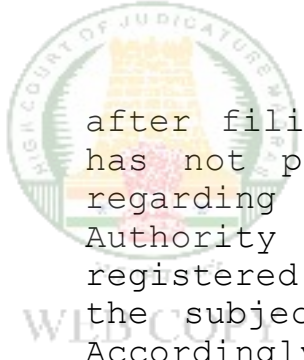
4.The respondent/landlord in the said petition has contended that the property was taken by the revision petitioner/tenant for residential purpose. However, without his consent, he is doing business under the name and style of 'Sun Cars'. Originally, electric connection for the building was obtained for residential tariff. But, due to the unauthorized conversion and different user, it was changed into commercial tariff. Hence, on this ground the revision petitioner/tenant is liable to be evicted from the premises.

5.The respondent/landlord further contended that the revision petitioner / tenant has also put up unauthorized constructions in the open space without any written consent from the respondent / landlord and caused damage to the building. The respondent / landlord further contended that he is a practicing Advocate at Madurai Bench of Madras High Court and he has to come to Madurai frequently from Aruppukottai to meet his clients. Hence, the said premises is required for his own use and occupation.

6.The revision petitioner/tenant in the counter statement denied the averments made by the respondent/landlord. According to the petitioner, there is no written agreement entered into between him and the landlord. As per oral agreement he had paid an advance amount of Rs.1,00,000/- and the same has to be repaid by the respondent/ landlord at the end of the tenancy period i.e., after 10 years. He would further state that there is no arrears of rent and he was regularly paying the rent from the month of August 2012 at the rate of Rs.10,000/- per month and with the consent of the landlord he had also paid the taxes to the Corporation for several months. Hence, the grounds raised by the respondent / landlord are vehemently denied by the revision petitioner/tenant.

7.The Rent Control Authority by considering the evidence let-in on either side, and considering the grounds raised by the respondent / landlord, allowed the said petition on the grounds of willful default and own use and occupation and directed the revision petitioner / tenant to vacate and hand over the vacant possession of the petition mentioned property to the respondent / landlord within a period of 2 months.

8.Aggrieved over the said order, the revision petitioner/tenant herein has preferred Rent Control Appeal before the Rent Control Appellate Authority. The Rent Control Appellate Authority after perusing the evidence and documents placed by both parties has given a finding that there is no proof for the payment of advance amount of Rs.1,00,000/- by the revision petitioner/tenant to the landlord/ respondent and there is willful default of rent on the part of the petitioner / tenant and even

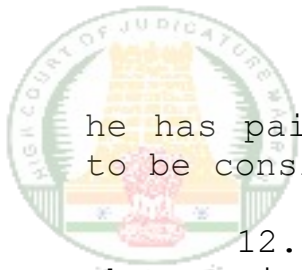


after filing the petition by the landlord, the petitioner/tenant has not paid the rent. With regard to the contention raised regarding the own use and occupation, the Rent Control Appellate Authority has observed that the respondent / landlord is a registered law practitioner and his claim to put up an office in the subject mentioned property at Madurai, is a bonafide one. Accordingly, the Rent Control Appellate Authority confirmed the order passed by the Rent Control Authority.

9. Aggrieved over the said order, the revision petitioner / tenant has preferred this Civil Revision petition. It is contended that in the legal notice sent by the landlord Ex.R3, there is no mention about the arrears of rent for 18 months, whereas it has been made as a ground in the eviction petition. However, both the Courts below have not considered the said aspect. The Courts below erred in coming to the conclusion regarding the grounds raised by the respondent/landlord viz., own use and occupation of the subject building without taking note of the real facts and that of the landlord's malafide intention. It is further contended that the Courts below have misconstrued that the tenant has made payment of rent by way of money orders and Demand Drafts, whereas, the tenant has specifically stated that the rent was collected by the landlord and the petitioner sometimes paid through his employee. The above fact was not considered by the Courts below. The Courts below have also failed to consider the fact that the landlord is not in the practice of issuing receipts for payment of rents and taking advantage of the same, he had made false allegation of willful default.

10. Heard both parties and perused the documents.

11. The petitioner / tenant claimed that he has paid a sum of Rs.1,00,000/- towards advance and the said amount can be very well adjusted by the landlord, whereas, the courts below have observed that there is no proof for the payment of advance amount of Rs.1,00,000/-. Further, by verifying the evidences and documents, both the courts have also found that there is willful default of payment of rent. Even though it is contended by the petitioner that there is no arrears of rent and he was regularly paying the rents, but the fact remains that the petitioner/ tenant himself has admitted in his counter affidavit that he has not paid the rent from December 2013, since the landlord refused to receive the same. Even if it is so, the tenant ought to have taken steps to deposit the rent amount in favour of the landlord as per law. But, he did not taken any steps even after filing the Rent Control Original Petition. But the tenant has deposited 50% of the rent amount only after the order passed by the lower appellate Court in the application filed by the landlord under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Hence, it is clearly proved that there is willful default on the side of the petitioner/tenant. It is stated by the petitioner / tenant that



he has paid the corporation taxes and other charges and that has to be considered by the landlord.

12. In support of his contention, the learned counsel for the petitioner has relied upon the Judgment passed by the Honourable Supreme Court in **K.Narasimharai Vs. T.M.Nasimuddin Ahmed** reported in **1996 (II) CTC 78**.

13. Per contra, the learned counsel for the respondent relied upon the orders passed by this Court in **P.K.Vijayan Vs. Kalaimagal Account Book Shop** reported in **2000(2)RCR(Rent)276** and **A.L.O. Gopal Sah and Others Vs. K.P.M.Musthaffa and others** reported in **(2004)2 MLJ 702**.

14. Considering the evidence and the materials available on record, it is absolutely clear that there is arrears of rent and the requirement of the property by the landlord for his own use and occupation is also a bonafide one. The order passed by the Rent Control Appellate Authority is based on evidence, reasons and as per law. Hence, the order of the Rent Control Appellate Authority does not call for any interference.

15. As per the calculation memo filed by the respondent/landlord in I.A.No.195 of 2017 in R.C.A.No.32 of 2017 before the Rent Control Appellate Authority, there is arrears of rent of Rs.2,45,400/- after deducting the amount paid by the petitioner/tenant towards taxes etc., and the learned counsel for the petitioner/tenant seeks time to deposit the above said rent arrears amount and to vacate the premises.

16. In view of the plea made by the learned counsel for the petitioner/tenant, the petitioner/tenant is directed to deposit the rent arrears of Rs.2,45,400/- within a period of two months and hand over the possession of the petition mentioned property within a period of four months from the date of receipt of a copy of this order.

17. With the above direction, this Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)



To

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

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

3. The Section Officer,  
E.R.Section/V.R.Section, (2 copies)  
Madurai Bench of Madras High Court, Madurai.

+ 1 CC to Mr.M.Rajaraman, Advocate in Sr.No.59171

+ 1 Cc to Mr.B.Baskaran, Advocate in SR.No.59250

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**KS (21.06.2019) 5 P 7 C**