



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2019

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.836 of 2019

and

C.M.P (MD) .No.5033 of 2019

WEB COPY

Shyamala

... Petitioner/Respondent/Appellant

-Vs-

Rakkammal (Died)

R.M.Subbiah (Died)

1.Mayilvahanam

2.Vinayagarajagajendran

3.Amirthalingam

4.Kalaiselvi

5.M.Valliammal

6.Latchumi Ammal

7.Arumugam

8.Dhayazhini

9.Selvaganesan

...Respondents/Petitioners/ Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and ex-order dated 10.04.2019 made in I.A.No.6 of 2018 in R.C.A.No.06 of 2017 on the file of the Rent Control Appellate Authority(Sub Judg) Thirumangalam.

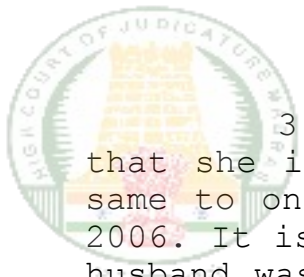
For Petitioner : Mr.K.Hemakarathikeyan

O R D E R

This Civil Revision Petition has been filed against the order passed by the Rent Control Appellate Authority (Sub Judge) Thirumangalam in I.A.No.6 of 2018 in R.C.A.No.06 of 2017 dated 10.04.2019.

2. The short facts necessary for disposal of the case are depicted below:-

2.1. The petitioner is the tenant and the respondents herein are the landlords. Originally, the landlord filed R.C.O.P.No.2 of 2008 for evicting the tenant and the same was allowed by the Court below vide its order dated 29.07.2011. Thereafter, the tenant filed R.C.A.No.26 of 2011 to set aside the fair and executable order dated 29.07.2011 made in R.C.O.P.No.2 of 2008. Pending R.C.A.No.26 of 2011, the owner filed I.A.No.6 of 2018 for a direction, directing the tenant to pay arrears of rent, which was allowed by the Court below vide its order dated 10.04.2019. Challenging the same, the tenant is before this Court. The parties are referred to as per the rank mentioned in R.C.O.P.

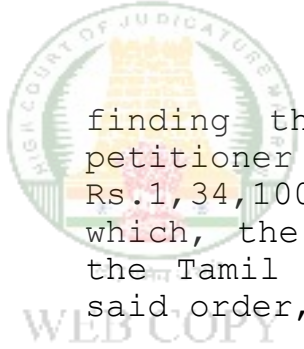


3. The petitioner/landlord would aver among other things that she is the owner of the suit property and she has leased the same to one Muthulingam the father of the respondent therein since 2006. It is an oral tenancy between the parties. As the petitioner's husband was doing business, he had to leave India for Srilanka and she authorised her son-in-law to receive the rent. Though the respondent's father entered into the tenancy agreement, from the inception, the respondent in RCOP is alone residing in the petition mentioned premises. The tenant paid a sum of Rs.5,000/- as advance. According to the landlord, despite repeated demands, the respondent did not pay the rent and there is arrears of rent since July 2006. Therefore, the petitioner filed eviction petition in R.C.O.P.No.2 of 2008.

4. After perusing the oral and documentary evidence, the Rent Controller had allowed the petition holding that the respondent therein has committed wilful default and also granted two months time to vacate the petition premises. Aggrieved against the said order, the tenant preferred R.C.A.No.6 of 2017 to set aside the order passed by learned Principal District Munsif (Rent Controller) Thirumangalam in R.C.O.P.No. 2 of 2008. Pending R.C.A, I.A.No.6 of 2018 has been filed by the landlords for directing the tenant to pay the rent from the month of July 2006 till November 2018 for 149 months to the tune of Rs.1,34,100/- within a time frame, failing which to evict the petitioner/tenant from the petition premises.

5. The tenant has filed a counter affidavit in I.A.No.6 of 2018 stating that there is no relationship of landlord and tenant between the original owner Rakkammal and the tenant. The petitioner herein was a tenant in the petition premises earlier and she paid the rent regularly. Further, the respondent proposed to form a trust for the benefit of Handicapped persons in the name of "Jesus Trust". The original owner Rakkammal objected to the same and demanded a sum of Rs.5,00,000/- to run the trust in the petition mentioned premises. It was finally agreed between the parties that a sum of Rs.3,00,000/- shall be paid by the tenant to Rakkammal. Accordingly, the tenant had paid a sum of Rs.3,00,000/- to Rakkammal and her husband and they executed a promissory note on 25.01.2007 to the effect that the petitioner will be in possession and enjoyment of the suit premises in lieu of interest.

6. After detailed enquiry, the learned Rent Control Appellate Authority (Subordinate Judge), Thirumangalam has allowed I.A.No.6 of 2018 as per Section 11(3) of the Tamil Nadu Lease and Rent Control Act, wherein proviso has been made to make an application, if there is any dispute as to payment of rent. However, the tenant has failed to comply with the same. Further, the Appellate Authority held that the tenant has not submitted any explanation as to why no such application was made before the Rent Controller and why efforts were not taken to produce those documents before the Rent Controller to prove the alleged pro note and agreement. Further, the Rent Control Appellate Authority has given a

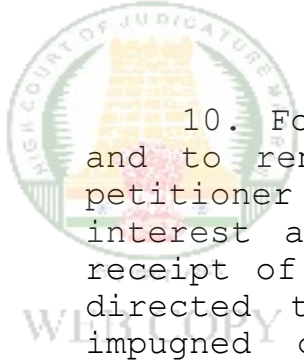


finding that to proceed further with the appeal filed by the petitioner herein/tenant, she should pay the arrears of Rs.1,34,100/- within 15 days from the date of the order, failing which, the tenant has to face the eviction under Section 11(4) of the Tamil Nadu Building Lease and Rent Control Act. Against the said order, the tenant is before this Court.

7. The learned counsel for the petitioner/tenant would state that the petitioner is not a tenant and she is residing in the petition mentioned premises based on the agreement executed by the parents of the respondents herein and the same is binding on them. The learned counsel would further submit that the deceased Rakkammal and her husband Subbiah had failed to repay the promissory note amount to the petitioner and therefore, the petitioner filed a suit in O.S.No.47 of 2010 before the Camp Sub Court, Thirumangalam and the same was renumbered as O.S.No.907 of 2017 and it is pending for adjudication before the same Court. Further, the petitioner has filed a petition in I.A.No.5 of 2018 for reception of additional document of certified copies of the promissory note and agreement and thereafter only, the respondents have filed the present application in I.A.No.6 of 2018 for deposit of the rent which is not maintainable. The learned counsel would further state that admittedly the original owner Rakkammal as well as the respondents never filed any application under Section 11(4) of Rent Control Act and therefore, the application is nothing but counter blast to the petitioner's application filed for receipt of additional documents.

8. Heard the learned counsel appearing for the petitioner.

9. A perusal of the records would show that the petitioner has not come with clean hands for the simple reason that according to the tenant the landlords had executed the alleged promissory note on 25.01.2007. Further, despite many opportunities given by the Court below, namely, for more than one and half years, the tenant did not chose to refute the said fact by producing substantial documents for the reasons best known to her, whereas, the landlord stoutly denied that on 25.01.2007, he was away from India. Therefore, there is no *bona fide* contention raised by the tenant and the alleged promisory note is nothing but to drag on the proceedings and to defeat the rights of the owners. That apart, though the petitioner has stated that she is not residing in the petition mentioned premises as tenant, but in lieu of interest for the suit pro note amount, she is in possession of the petition premises, no materials have been produced before the Court below to substantiate the said contention and the said contention was not at all raised before the Rent Controller. The Rent Controller has categorically held that the petitioner was in default in payment of rent and therefore, ordered for eviction. The learned Judge considering the circumstances of the case, has rightly allowed I.A.No.6 of 2018 where, I do not find any infirmity or illegality in the order passed by the Court below.



10. For the reasons stated above, to meet the ends of justice and to render substantial justice to the parties concerned, the petitioner herein is directed to pay the rent as on date along with interest at the rate of 9% within one month from the date of receipt of a copy of this order, failing which, the Court below is directed to take steps as observed in paragraph No.26 of the impugned order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

The Rent Control Appellate Authority(Sub Judge)
Thirumangalam.

+1 CC to Mr.K.HEMAKARTHIKEYAN, Advocate SR-68978.

C.R.P. (MD) No.836 of 2019

and

C.M.P (MD) .No.5033 of 2019

13.06.2019

CS (16.08.2019) 4P 3C