



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:27.02.2019

PRONOUNCED ON: 12.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

CRP(MD) .Nos.2222 to 2224 of 2018(PD)

V.Kannan ... Petitioner/Petitioner/Appellant

Vs.

1.S.Rajendran

2.Tmt.Vasantha Rajendran ... Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.172 of 2017 in R.C.A.No.19 of 2013 dated 07.03.2018 passed by the learned Principal Subordinate Court, Madurai.

C.R.P. (MD) .No.2223 of 2018

V.Kannan ... Petitioner/Appellant/
Respondent/Respondent

Vs.

1.S.Rajendran

2.Tmt.Vasantha Rajendran ... Respondents/Respondents/
Petitioners/Petitioners

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act, against the order passed in R.C.A.No.19 of 2013 dated 07.03.2018 passed by the learned Principal Subordinate Court, Madurai.

C.R.P. (MD) .No.2224 of 2018

V.Kannan ...Petitioner/Appellant/
Respondent/Respondent

Vs.

1.S.Rajendran

2.Tmt.Vasantha Rajendran ... Respondents/Respondents/
Petitioners/Petitioners

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act, against judgment and decree dated 07.03.2018 made in R.C.A.No.54 of 2012 on the file of the learned Principal Sub Court, Madurai, confirming the judgment and decree dated 21.11.2012 made in R.C.O.P.No.57 of 2011 on the file of the Additional District Munsif, Madurai Town.



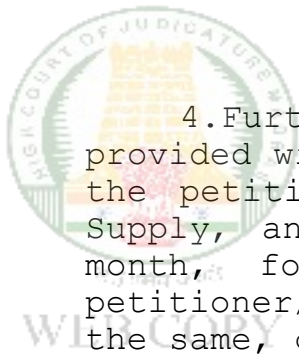
For Petitioner : Mr.V.Kannan, Party-in-person
For R1 : No appearance
For R2 : No appearance

COMMON ORDER

These civil revision petitions have been preferred against the common fair and decreetal order passed by the learned Principal Subordinate Judge, Madurai, in I.A.No.172 of 2017 in R.C.A.No.19 of 2013, R.C.A.No.19 of 2013 and R.C.A.No.54 of 2012, dated 07.03.2018.

2.I.A.No.172 of 2017 was filed by the petitioner/tenant, who is the appellant in R.C.A.No.19 of 2013, to admit the additional documents along with the petition filed on the side of the appellant and to mark the same. In the said I.A., the petitioner/tenant has contended that during the enquiry, he was not able to find the documents and those documents were obtained by him only recently and the non-filing of those documents at the earlier stage was not wilful. Further, it is stated that the petitioner/tenant has filed four documents before the Tribunal. Before the order dated 11.10.2011 was passed by the Additional District Munsif, Madurai Town, on 12.04.2011, transfer of ownership of title has been changed. To prove the same, certified copy of the original has been enclosed in the affidavit, which was to be marked as Document No.I. Further, it is stated that as per Section 47 r/w 151 of C.P.C., the tenant has denied the title of the landlord. Since such denial is the bonafide once, the Appellate Court ought to have set aside the order passed in I.A.No.87 of 2011 in R.C.O.P.No.57 of 2011 of the Additional District Munsif, Madurai. Further, the respondents have suppressed the change of ownership of the title of landlord to the Rent Controller/ Additional District Munsif, Madurai Town. Therefore, the respondents shall not have any right to execute the decree in R.C.O.P.No.57 of 2011. Without issuing any notice to the petitioner/tenant, the title of the landlord has been changed on 12.04.2011 and hence, I.A.No.87 of 2011 in R.C.O.P.No.57 of 2011 filed under Section 47 r/w 151 of C.P.C., shall be treated as null and void.

3.Further, it is stated that the the petitioner/tenant is residing in the first floor and the electricity connection number is 354. The respondents are residing in the ground floor portion which is having electricity connection bearing service connection No.353. The respondents had not paid the E.B., charges on the ground to evict the petitioner/tenant from the premises. In respect of EB connection No.353, the petitioner/tenant has paid a total sum of Rs.51,614/-. In this regard, the petitioner/tenant has filed 22 original and 7 xerox copy of the E.B Bills, which were to be marked as Document Nos.23 to 29. The 7 original E.B bills have already been filed in R.C.A.No.54 of 2012 as Document Nos.23 to 29.



4.Further, it is stated that the respondents/landlords have not provided with sufficient water to the petitioner/tenant. Therefore, the petitioner/tenant has purchased water from private Sun Water Supply, and for which, he was paying Rs.1000/- per load and per month, four loads are required and for that purpose, the petitioner/tenant has paid a sum of Rs.4,000/- every month. To prove the same, original water supply delivery slips were also enclosed in the affidavit, which were to be marked as Document No.3. Further, it is contended that initially no repair work was done and after getting the consent from the respondents, the petitioner tenant has done repair works. The petitioner/tenant has incurred a sum of Rs.33,970/- towards materials and labour charges and to prove the same, he has filed two original receipts through O.S.No.563 of 2010, which was marked as Ex.A.1.

5.The Rent Control Appellate Authority has passed an order in R.C.A.No.19 of 2013 that the petition mentioned property belongs to the landlords and the appellant is a tenant and he is residing in the first floor and he is also paying monthly rent at Rs.5,700/-, whereas, the rent is only Rs.5,500/-. In the said R.C.A., the following points were framed for determination,

(i)whether the appellant as a tenant, has made an arrears of rent and has committed any default in payment of rent?

(ii)Whether the order passed in I.A.No.87 of 2011 is liable to be set aside?

(iii)Whether the order passed by the Rent Controller in R.C.O.P.No.57 of 2011 is liable to be set aside?

(iv)Whether the R.C.A.No.54 of 2012 is liable to be allowed?

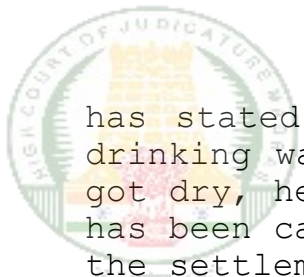
(v)Whether R.C.A.No.19 of 2013 is liable to be allowed? and

(vi)Whether the documents filed in I.A.No.172 of 2017 in R.C.A.No.19 2013 by the appellant is liable to be accepted?

6.The Tribunal has taken monthly rent at Rs.5,500/- and there is no proof regarding the payment of advance paid by the petitioner/tenant at Rs.60,000/-, which was also not considered by the Rent Controller. Regarding the amount spent for repair works, the petitioner/tenant has not filed any document.

7.On the other hand, the respondents/landlord contended that the petitioner/tenant has not done any repair works. Since permission was not granted to do the repair works, the respondents/landlords have not paid the charges. To prove the same, the tenant has filed the receipts for paying the electricity charges, which was not considered by the Rent Controller. The petitioner/tenant has paid the charges whereas, the landlords/respondents have not objected the same and no document has been produced for granting permission to pay electricity charges. The amount incurred for purchasing of water, was also not considered by the Appellate Authority that the said water was purchased for the personal use of petitioner/tenant. The appellate

<https://hcc.mca.gov.in/cases/>



has stated as monthly rent at Rs.5,500/- and Rs.200/- charges for drinking water, whereas, he has stated that since the bore-well has got dry, he has purchased water from outside. Hence the monthly rent has been calculated by the Rent Controller at Rs.5,500/-. Regarding the settlement deed, the tenant has already filed I.A.No.304 of 2014 in R.C.A.No.169 of 2011 under Order 1 Rule 10(2) of C.P.C by stating that already the ownership of the property was transferred to the landlord's son Rajkumar and he has to be impleaded as a necessary party, whereas the said petition was dismissed on 22.02.2016. Further, the Rent Controller has also observed that the settlement deed stated only after the life time of the landlord, his son has to take right over the property. Hence, the landlord has filed R.C.O.P., about the ownership of the property and there is no denial of the said title of ownership to the petition mentioned property. Hence, the said document was also not considered.

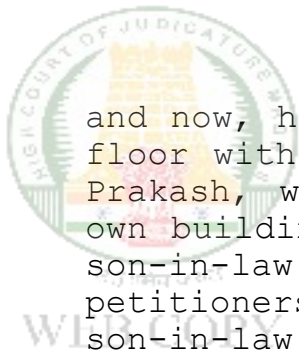
8.The appellant as the petitioner/tenant has contended before the Rent Control Authority that there is no relationship between the tenant and the landlords. The averment stated in the petition is that the tenant is paying the rent by way of cheque for the month of September 2009 and he is paying the rent to the landlord's daughter viz., Latha Chandraprakasam and also continued to pay the same till January 2011 and further from February 2011 to 16.03.2013 he is paying the rent through money order, whereas the said sum was refused by the landlord. But said no proof was filed by the petitioner/tenant for the said money order. Though the tenant has filed R.C.O.P.No.169 of 2011 to deposit the rent amount, he has not deposited the same. Hence, the Rent Control Appellate Authority has found that the tenant has not paid the rent. Further, the order passed in I.A.No.87 of 2011 on 11.10.2011 that the petitioner/tenant has to pay the arrears of rent upto September 2012 for nearly 38 months at Rs.2,09,000/- on or before 20.11.2012, whereas the said order was also not complied with by the petitioner/tenant. Observing all these findings, there is no proof for payment of monthly rent and also the expenses incurred by the petitioner for repairing works, electricity charges and for purchasing of water, the Rent Control Appellate Authority has not considered the said documents and found that the petitioner/tenant has not deposited any amount, inspite of order passed in I.A.No.87 of 2011 and hence, the Rent Control Appellate Authority has passed an order to vacate the suit property by granting two months time. Since the monthly rent at Rs.5,500/- was not paid by the petitioner/tenant from the month of August 2009 and even after passing an order in I.A.No.87 of 2011 in R.C.O.P.No.57 of 2011, the petitioner/tenant has not paid the arrears of rent, the R.C.O.P.No.57 of 2011 filed by the landlord was also allowed. Thus, the orders are very much based on facts and evidence and hence, the orders are not liable to be set aside.

9.C.R.P.No.2223 of 2018 has been preferred against the order passed in R.C.A.No.19 of 2013. R.C.O.P.No.57 of 2011 was filed by
<https://hcmjcs.lcmjcs.gov.in/services> for eviction of the suit property and to deliver and



hand-over the vacant possession of the petition mentioned property. In the said R.C.O.P., the petitioners/landlords contended that the respondent is a tenant and he is residing in the first floor from 01.09.2007 by paying monthly rent at Rs.5,700/- and the said rent has to be paid on or before 5th of every English calendar month. Apart from that, the respondent/tenant has to pay electricity charges and other charges payable by him. Further, it is contended that the respondent is a chronic defaulter in payment of rent and whenever, the rent is accrued, the tenant used to send cheque to the second petitioner's bank account and on many occasions, the cheque issued by the respondent/tenant was bounced. Even from the inspection of tenancy, the respondent/tenant was not paying the rent regularly and as on date, the respondent/tenant is in huge arrears of rent for 19 months to the tune of Rs.1,08,300/- and lastly he had paid rent for the month of July 2009. Thereafter, he did not pay any amount towards rent. Hence, the respondent/tenant has committed wilful default in the payment of rent. It is further contended that the respondent/tenant has committed several acts of wastes in the petition mentioned property both in the ground floor as well as in the first floor. Originally, the petitioners/landlords have arranged a switch for the sump motor to be used in common by the petitioners and the respondent. Causing of hindrance and nuisance, the respondent/tenant has removed the sump motor switch and fixed the same in the first floor portion. Hence, the petitioners/landlords are unable to use the same at present. It is further contended that the respondent/tenant has also closed the water supply valve in the first floor portion, by which, he had completely stopped the supply of water to the ground floor, which is occupied by the petitioners/landlords. As the respondent/tenant has dumped the first floor water closet area, the free flow of sewage water and rain water have been obstructed and hence, the ground floor walls have been damped in a bad condition. It is further contended that the respondent had also closed the drinking water sump stating that he alone has to get water separately from the pipe by fetching water through lorry and hence, he obstructed the usage of water sump by the petitioners/landlords. Apart from that, the respondent/tenant had stealthily removed the bore-well motor stating that there is no water in the bore-well. On 21.02.2011, the respondent/tenant had damaged the lock attached to the entrance gate and caused lot of acts of waste and nuisance to the petitioners/landlords. Hence, on these grounds, the petitioners/landlords sought for eviction. The respondent/tenant has caused nuisance to the petitioners, who are old aged people residing in the ground floor. On that ground, the respondent/tenant is liable to be evicted from the petition mentioned property. Against which, he filed R.C.A.

10.Further, it is stated that the first floor portion was leased out to the respondent/tenant, now required by the petitioners/landlords by way of additional accommodation. The first

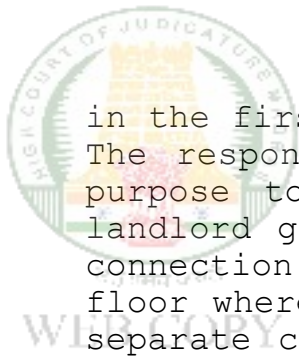


and now, he was retired from service and he is occupying the ground floor with his wife. The petitioners' son-in-law namely, Dr.Chandra Prakash, who is a leading Medical Practitioner, is not having any own building within the Madurai City. The petitioners' daughter and son-in-law are also having two daughters with them and the petitioners find it very difficulty to accommodate their daughter, son-in-law and grandchildren in the ground floor portion. Therefore, they want the first floor portion by way of additional accommodation. The requirement of the petitioners is a bonafide one and there is no malafide intention. The Rent Control Authority, after perusing the evidence and also the documents placed before him, allowed the R.C.O.P.No.57 of 2011.

11.The Rent Control Appellate Authority observed the order passed by the Rent Controller that originally the landlords filed a petition under Section 10(2)(i), 10(2)(iii), 10(2)(v) and 10(3)(c) of the Tamilnadu Buildings (Lease and Rent Control) Act 1960 and the appellant has not filed a counter statement wherein, the appellant/tenant has to pay the arrears of rent from the month of August 2009 to till July 2012 to the respondents/landlords, failing which, the appellant/tenant to vacate the petition mentioned property and hand over the same to the respondents/landlords. There is an arrear of 38 months rent at Rs.5,500/- per month and the same was arrived at Rs.2,90,000/- and the Court has also ordered that the said amount has to be paid on or before 20.12.2012 and the future rent has to be paid by the tenant to the landlord directly and the said order was passed on 11.10.2012 and the case was also posted for compliance of the said order on 21.01.2012. The said arrear of rent was not paid by the tenant and hence, the application in I.a.No.87 of 2011 was allowed and based on the same, the Rent Controller has allowed the petition in R.C.O.P.No.57 of 2011 by granting two months time to evict the said property. Aggrieved against the said order, the R.C.A has been preferred.

12.In these civil revision petitions, the petitioner/tenant has raised his grievance that the order passed in R.C.A.No.19 of 2013 is erroneous in law and the same is liable to be reversed. The advance paid by the petitioner/tenant at Rs.60,000/- on 1st September 2007 was not noted by the learned Judge. During the time of enquiry in I.A.No.172/2017 the petitioner/tenant showed the lease agreement, the Subordinate Judge, Madurai, hidden the said lease agreement.

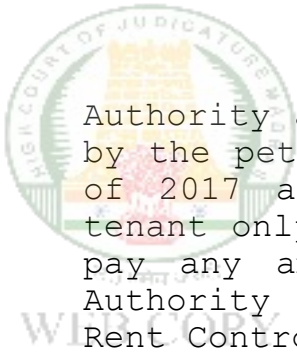
13.The learned counsel appearing for the petitioner contended that the R.C.O.P filed by the petitioner/landlords is not maintainable on the ground of arrears of rent. He has not at all failed to pay the arrears of rent as he is regularly paying the rent by way of issuing cheque and also by paying the rent in person and some time to the landlord's daughter. Since there is no arrears of rent, the order passed by the Rent Controller on that ground is not proper. Further, it is contended that the petitioner/tenant spent



in the first floor is connected with the ground floor EB connection. The respondents/landlords are not receiving the rent only for the purpose to vacate the petitioner from the demised property. The landlord gave him all troubles by way of disconnecting the service connection in the ground floor to prevent the supply in the first floor wherein the tenant is residing. Hence, he himself has got the separate connection. Hence, he has paid the electricity charges by himself and the water supply is also disconnected by the landlords and he is purchasing the water from the outside and for the said expenses, the petitioner filed the original receipts regarding the documents filed in I.A.No.172 of 2017. It is further contended that even at the time of inspection, there was some repair and thus, repairing work were done by him by spending a huge sum for which he is furnishing relevant receipts and those documents were not considered by the Rent Control Authority. Hence, the order passed by the Rent Control Authority is liable to be set aside.

14.On a perusal of the records, it is seen that regarding the payment by way of cheque, it is stated by the respondents/landlords that from the date of agreement he is paying the rent and the said cheque issued by him also bounced and he never paid the monthly, rent for a long time nearly 38 months and he is also making so much of wastes in the property by closing the valve and because of the closure of the said valve, the drinking water stagnating in the area and caused damage to the property. Further, it is seen that after retirement, he is residing in the ground floor with his wife and he found it very difficult because of the unpleasant attitude indulged by the tenant by blocking the water supply and the electricity and causing damage to the property. Further, he has also find out very difficulty to accommodate his daughter and her family.

15.On perusal of the records and also on filing of the I.A.No.87 of 2011, it is seen that the Rent Controller has given a reasonable time for depositing the arrears of rent, but, the petitioner/tenant has not deposited the said amount and hence, the Rent Controller allowed the R.C.O.P. Further, it is seen that the petitioner/tenant has also filed a petition in I.A.No.172 of 2017 to receive document by stating that he has incurred huge expenses by way of purchase of water and paying the electricity charges and the other charges spent for repairing of the building and those documents were not considered by the Rent Controller by stating that for making such expenses whether he got permission form the landlord or not and it was not proved by the petitioner/tenant before the Rent Controller. Hence, the expenses done only for his personal usage, for which, the landlords are not liable to pay the same and dismissed the I.A. Further, it is seen that the R.C.O.P filed by the landlords is one for own usage on the ground of damage and arrears of rent, such facts are very much proved even by the argument advanced by the petitioner and the order passed in I.A.No.87 of 2011 was also not complied with by the tenant and the Rent Controller has dismissed the same. The Rent Control Appellate



Authority also considered the said facts and the contentions raised by the petitioner/tenant and also the documents filed in I.A.No.172 of 2017 and concluded that these expenses were incurred by the tenant only for his personal use, for which, the landlord shall not pay any amount. Hence, the order of the Rent Control Appellate Authority does not require any interference and the order of the Rent Control Appellate Authority is very much reasonable.

16.For the foregoing reasons, these Civil Revision Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge, Madurai.

2.The Additional District Munsif, Madurai.

Copy to:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+6 cc to Mr.V.KANNAN, ADVOCATE, SR.NOS.75135,75136,75137

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KK/SAR/14.10.2019/8P-11C/