



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.12.2019

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WEB COPY

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (MD)No.2189 of 2019
and
C.M.P. (MD)No.11416 of 2019

Guruvammal ... Petitioner/Appellant/Tenant
Vs.
Rani ... Respondent/Respondent/Landlord

Prayer: Civil Revision Petition filed under Section 25 of Lease and Rent Control Act, to call for the records pertaining to the order and decretal order dated 17.09.2019 passed by the Rent Control, Appellate Authority (Sub Judge), Virudhunagar in R.C.A.No.2 of 2019 by confirming the order and decretal order dated 10.08.2016 passed by the learned Rent Controller (District Munsif), Virudhunagar in R.C.O.P.No.1 of 2015 and to set aside the same by allowing this civil revision petition.

For Petitioner : Mr.R.Rajamohan
For Respondent : Mr.D.Rameshkumar

ORDER

This Civil Revision Petition has been filed against the order dated 17.09.2019 passed by the Rent Control, Appellate Authority (Sub Judge), Virudhunagar in R.C.A.No.2 of 2019 by confirming the order and decretal order dated 10.08.2016 passed by the learned Rent Controller (District Munsif), Virudhunagar in R.C.O.P.No.1 of 2015. The petitioner is the tenant and the respondent is the landlord.

2.The landlord filed a petition in R.C.O.P.No.1 of 2015 seeking for eviction against the tenant. The Rent Controller allowed the petition and ordered eviction. Against that order, the tenant preferred an appeal before the Rent Control Appellate Authority in R.C.A.No.2 of 2019. That appeal was dismissed. Against which, the tenant preferred this civil revision petition.

3.Brief substances of the petition in R.C.O.P.No.1 of 2015 are as follows:

The suit property originally belonged to one K.Vijayalakshmi. She entered into a lease agreement with the respondent/tenant (who is the petitioner herein), fixing rent as Rs.1,500/- per month. The



said K.Vijayalakshmi executed a sale deed in favour of the petitioner/landlord (who is the respondent herein), on 18.10.2012. The respondent/tenant agreed to pay rent to the petitioner/landlord from November 2012. However, the respondent failed to pay the rent. The petitioner informed the same to the vendor K.Vijayalakshmi and the vendor issued a notice to the tenant. Even then, the respondent failed to pay the rent. There is no agreement between the petitioner and the respondent regarding the lease. The respondent is running chit fund without any valid permission and the respondent should be evicted.

4. Brief substances of the counter is as follows:

The respondent is residing in the suit premises for the past 16 years. The respondent entered into a lease agreement with one Indhrani for an advance amount of Rs.750/- and he undertook to pay Rs.75/- per month. Later, the rent was increased to Rs.250/-. Then, it was increased to Rs.300/-. On request the rent was paid to one Jeyalakshmi. There is no rent arrears. The respondent was paying the house tax in the name of Indhrani and the respondent deposited a sum of Rs.15,000/- in the Municipality in the name of Indhrani and obtained water connection. The respondent is running a monthly chit and the petitioner as a member in the chit has to pay Rs.4,50,000/- to the respondent. The respondent lodged a complaint before the Superintendent of Police on 24.01.2014. Only to harass the respondent with the help of the said Indhrani a false complaint has been lodged before the Virudhunagar Police Station. However, the Police refused to take the case. Hence, the respondent filed a suit in O.S.No.26 of 2014 not to evict her. The petitioner has to implead the said Jeyalakshmi and Indhrani and the petition is bad for non-joinder of necessary parties and hence, the petition should be dismissed.

5. After hearing the parties, the Rent Controller allowed the R.C.O.P. Against which, the petitioner preferred an appeal on the following grounds:

(i) The non-issuance of statutory notice was not considered by the Rent Controller. The landlord is not the title holder and has no *loco standi* to file this petition.

6. After hearing both sides the Rent Control Appellate Authority dismissed the appeal. Against which, the present civil revision petition is filed under the following grounds:

Mere default in payment of rent, cannot be treated as a wilful default. The rental premises is used for running chit company, was not supported by any oral and documentary evidence. There is nothing on record to show that the premises in question was used for running a chit company. The tenant owns a house, is not a ground for evicting the tenant. The appellate authority failed to consider the money dispute between the landlord and tenant.



7.On the side of the petitioner it is stated that the lower Court allowed R.C.O.P. on the following three grounds:

- 1.Own occupation of the landlord
- 2.The premises being used for running illegal chit fund
- 3.Wilful default in payment of rent.

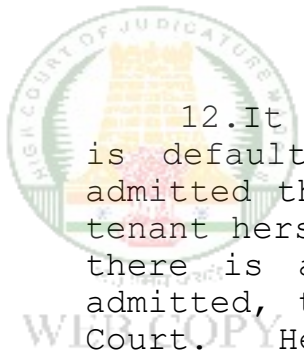
8.On the side of the tenant it is further submitted that no documents was filed to show that the landlord is not having any other house. The evidence of the tenant proves that the tenant is having a house. The tenant is not running chit fund in the rental premises. The landlord is a member of the chit company and there is money dispute between the landlord and the tenant. There is no wilful default in payment of rent. The rent amount was adjusted towards the chit amount.

9.In support of the contention, the learned counsel appearing for the petitioner relied upon a judgment reported in **2019 (2) MWN (Civil) 353 National Textile Corporation (Tamil Nadu and Pondicherry)Ltd., and two others Vs. J.Venkataramana** wherein it is held as follows:

"10.In order to ascertain as to whether the non-deposit of Rents before the learned Rent Controller is wilful or not, it requires to be mentioned here that the term 'wilful' would mean and include an act done deliberately, with the knowledge, that such an act is wrong. Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act provides for eviction on the ground of default in paying the Rents. The Proviso to the aforesaid Section clarifies that when such a Tenant's default is not wilful, the Tenant can be given an opportunity to Tender the Rental arrears. Therefore, a mere default in paying the rents will not be a ground for eviction, unless such default is wilful."

10.On the side of the respondent it is stated that in the evidence of the tenant, it is admitted that the tenant is having a own house and it is admitted that there is default in payment of rent and there was an FIR pending against her for running a chit funds, without any valid permission. Moreover, the tenant has admitted that the landlord is staying with her mother and later she is residing somewhere else. In the FIR, it is clearly stated that the place of occurrence is Samiyar Kinatru Street, where the respondent resides, that is the property rented to her.

11.On the side of the petitioner it is stated that the landlord has to produce evidence and documents and the landlord cannot take advantage of the weakness of the case of the tenant.



12.It is seen that the tenant herself has admitted that there is default in payment of rent from the year 2012 and she has admitted that she is having own house in the same locality and the tenant herself has admitted that she is running a chit fund and that there is an FIR to that effect. When all the allegations are admitted, there is nothing to interfere in the orders of the lower Court. Hence, this civil revision petition is dismissed. The respondent has to evict, within a period of sixty (60) days from the date of receipt of a copy of this order and hand over the vacant possession to the landlord. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

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Sub Assistant Registrar(CS)

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To

1.The Rent Control, Appellate Authority (Sub Judge),
Virudhunagar.

2.The Rent Controller (District Munsif),
Virudhunagar.

Copy to: The Section Officer,
VR Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

C.R.P. (MD)No.2189 of 2019
18.12.2019

MK (12.02.2020) 4P 5C