

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.4585 of 2010

1. Mrs.Syeda Syedunissa (died)
2. Mrs.Showkath Jahan
3.Mrs.Syeda Siddiqua Be Be
(Petitioners 2 and 3 brought on records as LRs of
the deceased sole petitioner viz., Syeda Syedunissa vide
Court order dated 05.04.2019 made in C.M.P.No.8734/2019
in CRP No.4585 of 2010) ... Petitioners

Mrs.S.Umapathy ... Vs..
... Respondent

Prayer: Civil Revision Petition filed under Section XXV of Tamil Nadu
Buildings (Lease and Rent Control) Act 18 of 1960 against the order and
decree dated 23.11.2010 in R.C.A.No.121 of 2009 on the file of the VIII
Small Cause Court, Chennai confirming the order dated 02.02.2009 passed in
R.C.O.P.No.991 of 2008 on the file of the XIV Small Cause Court, Chennai.

For Petitioners : Mr.S.Balasubramaniam
for Mr.A.V.Munuswamy
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 23.11.2010 passed in R.C.A.No.121 of 2009 on the file of the VIII Small Causes Court, Chennai, confirming the order dated 02.02.2009 passed in R.C.O.P.No.991 of 2008 on the file of the XIV Small Causes Court, Chennai.

2. The deceased first petitioner herein is the landlady and the respondent is the tenant. The deceased first petitioner filed the petition for eviction on the ground of wilful default before the learned Rent controller (XIV Small Causes Court, Chennai) in R.C.O.P.No.991 of 2008. The learned Rent Controller, after enquiry dismissed the petition by order dated 02.02.2009, on the ground that there was no wilful default as contemplated under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Challenging the said order passed by the learned Rent Controller, the landlady filed an appeal before the Rent Control Appellate Authority (VIII Small Causes Court, Chennai) in R.C.A.No.120 of 2009. The learned Rent Control Appellate authority after hearing the arguments on either side dismissed the appeal and confirmed the order passed by the learned Rent Controller by order dated 23.11.2010. Challenging the order passed by the

Rent Control Appellate Authority, the landlady is before this Court by way of revision.

3. The learned counsel for the petitioners would submit that even after filing of the R.C.O.P. and the R.C.A., the respondent/tenant was not regular in paying rent. He would further submit that the Appellate Court was erred in holding that the notice sent under Ex.P4 dated 12.04.2008, calling upon the respondent/tenant to pay the rental arrears within three days and filing the eviction petition on 28.04.2008, within 15 days was prematured one as RCOP was filed before expiry of two months. In support of his contentions, he placed reliance on the following decisions:

1. B.Anraj Pipada Vs. V.Umayal reported in **(1998) 3 LW 159.**
2. Vasantha Leela Vs. N.Vadivelu Chettiar reported in **1998 (III) CTC 467.**
3. M.Meenakshisundaram Vs. S.Venkatesan reported in **AIR 1981 MADRAS 277.**

4. The learned counsel for the petitioners would further submit that when this revision came up on 01.03.2011, there was no representation from the respondent/tenant. Therefore, this Court on hearing the the submissions of the learned counsel for the petitioner/land lady, had allowed the revision and the eviction order was passed. Subsequently, based on the order of this

Court, the landlady filed Execution Petition and in the said Execution Petition, the tenant vacated the premises and the landlady has taken the possession and at present the petitioners have let out the premises to the third party and therefore once the tenant vacated and the landlady has taken the premises, the respondent has no case. The learned counsel for the petitioners would submit that no notice is mandatory prior to filing the rent control original petition and in this connection, relied on the Judgment of Hon'ble Supreme Court in ***Dhanapal Chettiar Vs. Yesodai Ammal*** reported in (1979) **4 SCC 214**.

5. The learned counsel for the respondent would submit that there is no wilful default in this case and the son of the landlady regularly used to come to the place of the tenant and collect the rent every month from the respondent/tenant. It is further contended that till the month of March 2008, the petitioner's son came and collected the rent and during the month of April 2008, the son of the landlady came to the respondent and asked him to vacate the premises, but the respondent refused to do so, offering to pay more rent. But the petitioner's son/Hussain did not come and collect the rent of April 2008 in the subsequent month of May 2008. When the respondent went to the

house of the landlady and paid the rent, the same was refused by the said Hussian by asking the respondent to vacate the premises. Subsequently, the rent was paid by way of money order to Mr.Hussian, the son of the landlady and the same was returned by him. Since the name and particulars of the landlady is not known to the respondent, he could not take steps under Section 8 of the Act. He would further submit that subsequently Ex.P4- legal notice was issued only on 12.4.2008 and without waiting for reply, the landlady filed the eviction petition on 28.04.2008.

6. It is the main contention of the counsel for the respondent that as per Section 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the petitioners have to file the eviction petition only after the expiry of two months from the date of receipt of notice. In this case, the deceased first petitioner has filed the eviction petition within fifteen days from the date of sending the notice. Therefore, the eviction petition itself is premature and not maintainable. He would further submit that both the Rent Controller and the Rent Control Appellate authority rightly appreciated the oral and documentary evidence and found that there was no wilful default. Further the eviction petition is filed within fifteen days from the date of sending the notice. Therefore the respondent cannot be evicted on the ground of wilful

default. It is further submitted that the tenant was in possession of the premises for 25 years and there was no occasion for the tenant to commit wilful default. Even the rent was raised periodically and without objections, the tenant used to pay the enhanced rent. However for the reasons best known to the petitioners, they have not come and collect the rent and all of a sudden asked the respondent to vacate the premises. It is further submitted that after sending notice even without waiting for the reply, the landlady has filed the eviction petition. He would further submit that both the Courts rightly considered the said aspect and dismissed the RCOP and RCA filed by the petitioner/landlady and therefore no interference is warranted.

7.It is submitted by the learned counsel for the respondent that at the time of admission of this Civil Revision Petition, notice was ordered to the respondent on 22.12.2010 and the same was served to the respondent on 03.01.2011. When the matter was taken up on 01.03.2011 there was no representation on behalf of the respondent and therefore this Court passed the exparte order. Subsequently the respondent filed an application to set aside the exparte order dated 01.03.2011 and the same was allowed on 27.08.2018 and therefore, the learned counsel for the petitioners should not rely on the exparte order passed by this Court. He would further submit that during the

pendency of the restoration petition, the execution petition filed by the landlady was ordered and the landlady has taken possession. He would further submit that once the exparte order is set aside, the original position has to be restored; the landlady has to surrender her possession and the tenant has to continue. He would further submit that once the exparte order is set aside and the revision petition is finally decided on merits, there is no impediment in passing an order of restoration of original position by this Court.

8. Heard both sides. Perused the materials available on record.

9. The case of the landlady is that the respondent/tenant has taken premises of the petitioner for non residential purpose and the respondent is a chronic defaulter for non payment of monthly rent and he has committed wilful default in payment of rent from October 2007 to February 2008, even after repeated demands and therefore the petitioner issued legal notice dated 12.04.2008, for which the respondent has not sent any reply. Therefore, the landlady filed eviction petition on the ground of wilful default. The case of the respondent is that the respondent is a tenant under the said premises since 1988. Originally the petitioners' premises was let out to the respondent by

one Hussain who claimed to be the son of the first petitioner herein and he received a sum of Rs.8,000/- by way of advance and let out for a sum of Rs.600/- as rent per month and that was paid regularly without any default. The said Hussain has never issued any receipt for the rent received by him and during the month of April 2008, the son of the landlady came to the respondent and asked him to vacate the premises, but the respondent refused to do so, offering to pay more rent. But the petitioner's son did not come and collect the rent of April 2008 in the subsequent month of May 2008. Subsequently, the rent was sent to Mr.Hussian, the son of the landlady by way of money order and the same was refused. Since the name and particulars of the landlady is not known to the respondent, he could not take steps under Section 8 of the Act. Thereafter, the landlady sent the notice to the respondent on 12.04.2008 and without waiting for reply, she has filed the eviction petition with malafide intention and without valid reason. Therefore, both the Rent Controller as well as the Rent Control Appellate Authority dismissed RCOP and RCA respectively and therefore there is no merit in this revision and the same is liable to be dismissed.

10.The jural relationship of the parties are admitted and from the oral evidence of both the 1st petitioner (deceased landlady) as well as the

respondent, it is clear that the son of the first petitioner used to go to the shop of the respondent and collected the rent and whenever the 1st petitioner's son went to the respondent, he has received the rent and it is not in dispute that the landlady is not in the habit of issuing the receipt for the rent received from the tenant. The landlady has not come to the witness box and stated that she called the tenant to pay the rent and the tenant refused to pay the same. Admittedly, the son of the landlady used to collect the rent, that too she never used to come to the place of the respondent and get the rent. Therefore, once it is admitted that the landlady has not issued any receipt and admittedly for the past 25 years tenant has been continuously in possession of the said premises, in the absence of account maintained by the landlady and also in the absence of issuing the receipt, the landlady has to prove that there was a default in payment of rent. Admittedly the landlady sent the legal notice on 12.04.2008 and filed the eviction petition on 28.04.2008 itself, without even waiting for reply. Therefore, as stated by the respondent, the petitioners have to file petition only after two months. As per the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, after receiving notice if the tenant failed to pay rent, it will amount to wilful default. Though the learned counsel for the petitioners relied upon the Judgment of the Hon'ble Supreme Court in the case of *Dhanapal Chettiar Vs. Yesodai Ammal* reported in (1979) 4 SCC

214 stating that no notice is mandatory prior to filing the eviction petition, and therefore the eviction petition filed before expiry of two months is not premature. However, Subsequently, the Hon'ble Supreme Court held in the case of *Raja Muthukone (D) Lrs Vs.T.Gopalasami* reported in *AIR 2002 SC 830*, that if the tenant has failed to pay the rent, the landlady has to send notice to the tenant and after receiving notice within two months the tenant has to pay the rent and if the tenant has not paid the rent within the said period, landlady can file petition for eviction petition. Admittedly in this case, notice sent only on 12.04.2008 and eviction petition was filed on 28.04.2008 itself. However, subsequently as stated by the tenant, the landlady never directly approached the tenant to collect the rent or she never issued the receipt for the rent received. Admittedly, the son of the landlady was deputed to collect rent and admittedly from the evidence, there is no dispute in this case to the fact that the landlady never issued the receipt for the rent received from the tenant. Notice before filing a petition for eviction on the ground of wilful default is not mandatory. The Landlord can file a petition for eviction under Section 10 (2) (1) directly without giving notice. However, when the Landlord issues a notice under the explanation to the Section, then he waives the past conduct of default and has to wait till expiry of two months period and if there is default of payment even by that time then

rebutable presumption of wilful default would arise. The landlord cannot seek to evict tenant if the tenant pays entire arrears within two months time. Therefore, once landlord gives notice to the tenant claiming arrears of rent, he should wait for two months and cannot initiate proceedings before expiry of two months.

11. Under these circumstances, though the tenant may be a defaulter, but he is not a wilful defaulter. The pleadings and materials available on record, reveals that tenant was in default, i.e., in not paying rent for one month. The landlady also proved the said aspect by stating that her son came and demanded the rent from the tenant but the tenant failed to pay. However, notice was served to the tenant on 12.04.2008 and eviction petition was filed within fifteen days. Therefore it clearly shows that there is no wilful default on the part of the respondent. Though both the Courts held that landlady has not proved that there is wilful default and dismissed the petition and appeal respectively. Subsequently, the tenant eventhough was served with notice in the revision, had not appeared on previous occasions and therefore this Court passed the exparte order on 01.03.2011. Subsequently, the tenant has filed an application for restoration of revision. However, pending the restoration

petition, the Executing Court ordered eviction even in the year 2011 itself.

It is pertinent to note that so far in the preceding years, the tenant has not been in possession and actually the landlady has taken the premises and let out the same to the third party, after passing of exparte order in the revision, but within a month before restoration, the eviction has taken place.

12. Under these circumstances, admittedly there is no dispute with regard to jural relationship between the parties, since the land lady filed eviction petition before expiry of 2 months from receipt of the notice the default committed by the tenant is not wilful default the revision petition is liable to be dismissed. However, in view of the fact that after passing of an exparte order by this Court in this revision, in the execution proceedings, possession has been taken and now the 3rd party is in possession for 9 years in the said premises as a tenant, on considering the equitable grounds, that the petitioners has taken possession and now the third party is in possession of the premises, there is no necessity to pass an orders of restitution and granting time to vacate and handover the possession.

12. Accordingly, this Civil Revision Petition is dismissed. However, it is made clear that the above order is passed by taking into account the

peculiar circumstances involved in this case and this order cannot be taken as a precedent for any other cases like this. No costs.

08.09.2020

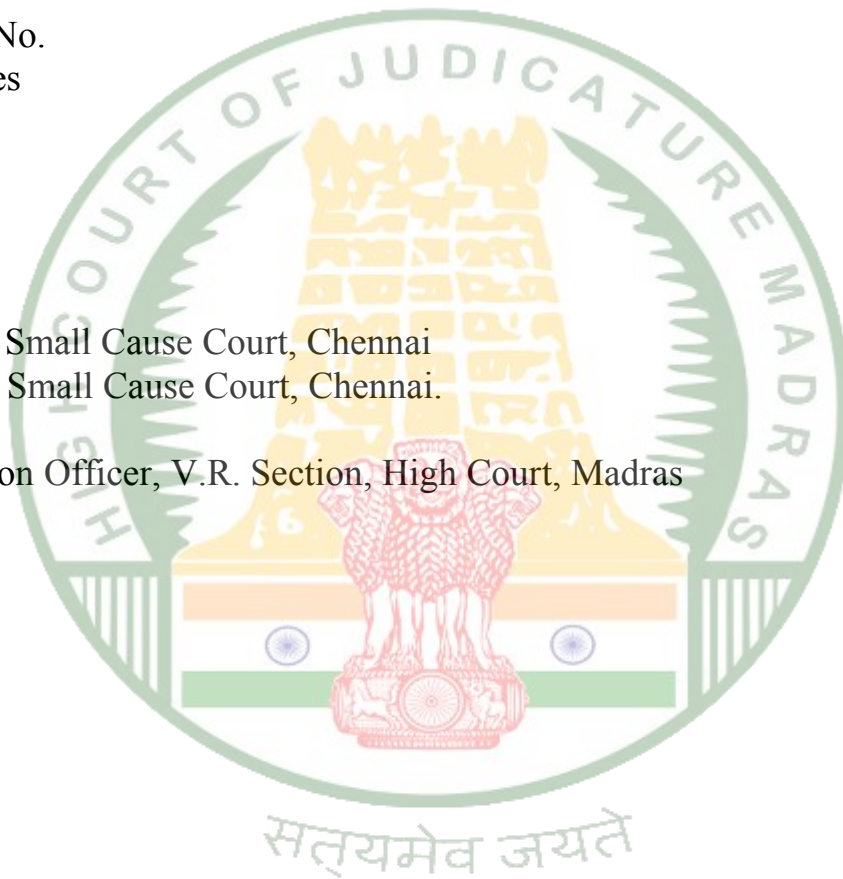
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To

1. The VIII Small Cause Court, Chennai
2. The XIV Small Cause Court, Chennai.
3. The Section Officer, V.R. Section, High Court, Madras

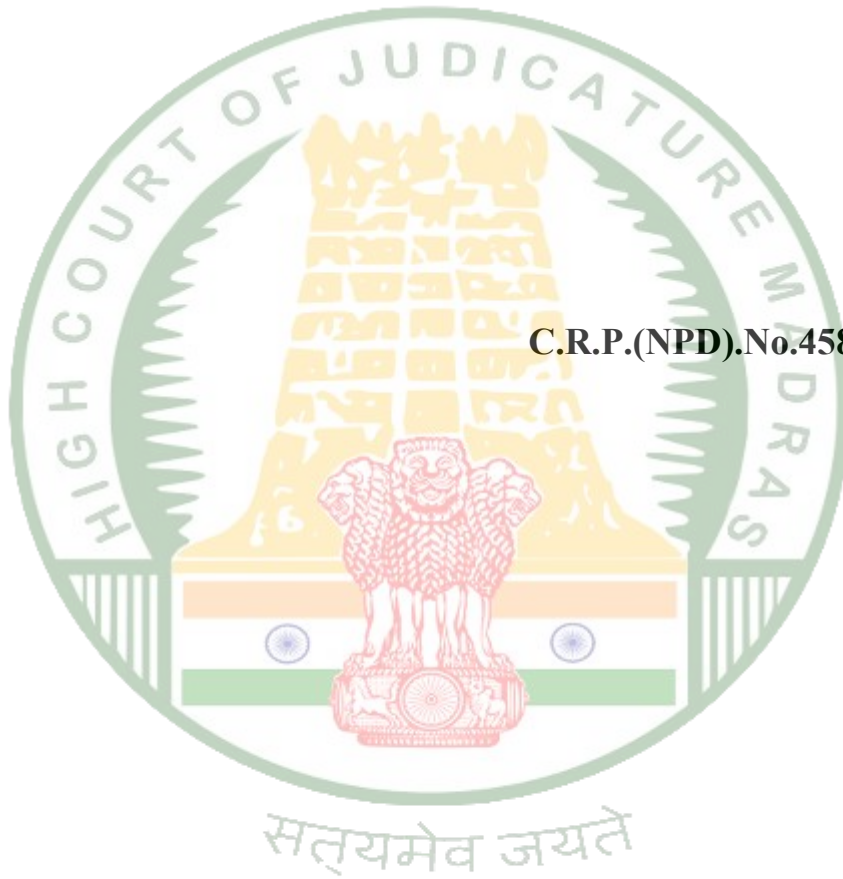


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P.VELMURUGAN, J

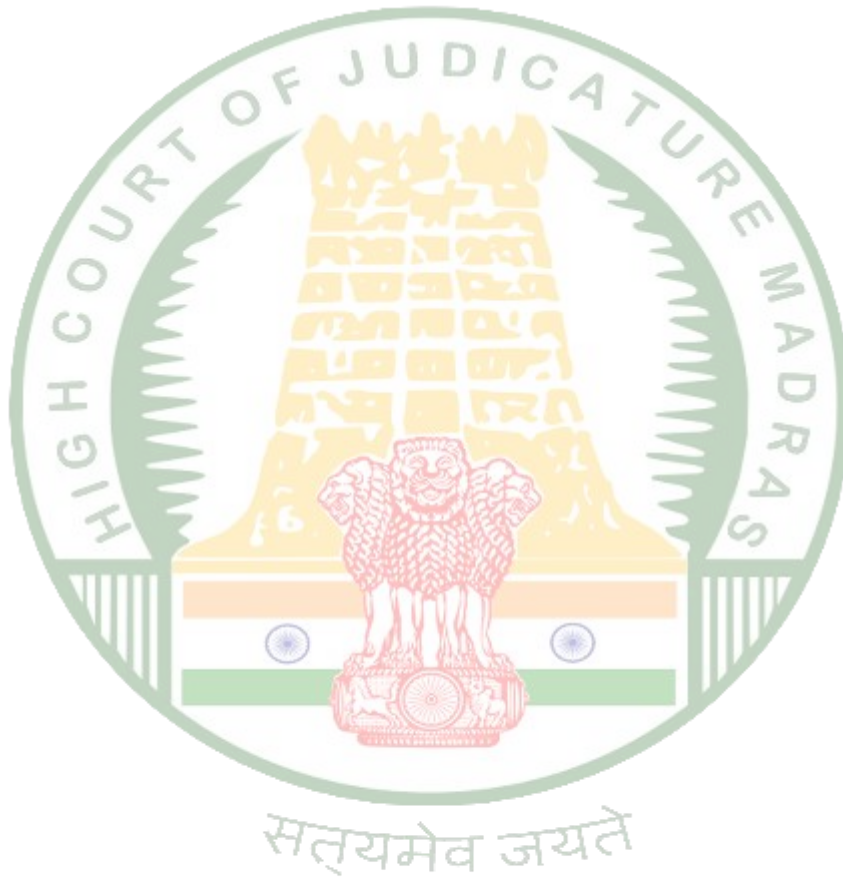
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