

CRP. (NPD) Nos.1070 & 1071 of 2018
and CMP Nos.5637 & 5638 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.10.2020	Delivered on 28.10.2020
-----------------------------------	------------------------------------

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. (NPD) Nos.1070 & 1071 of 2018
and CMP Nos.5637 & 5638 of 2018

Y.R.Prasanna .. Petitioner in CRP 1070/2018

Y.R.Manjunath .. Petitioner in CRP 1071/2018

Vs.

Indira Raveen .. Respondent in both the Petitions

PRAYER: Civil Revision Petitions filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control Act) Act 18 of 1960, praying to set aside the fair and decretal order of eviction dated 17.01.2018 in (i) RCA No.83 of 2016 (ii) RCA No.84 of 2016 respectively on the file of the IX Court of Small Causes, Chennai and confirming the judgment of Rent Controller in (i) RCOP No.1939 of 2012 (ii) RCOP No.1940 of 2012 respectively on the file of XIII Court of Small Causes, Chennai.

For Petitioner : Mr.Sunil Prakash
(in each of the petitions) for M/s.T.Viswanatha Rao

For Respondent : Mr.Ashok Menon
(in both the Petitions)

COMMON ORDER

This matter is taken up for hearing through Video-Conferencing.

These two Revisions arise under the Tamil Nadu Buildings (Lease & Rent Control) Act. The tenants are the petitioners.

2. The landlord sought for eviction on the grounds of wilful default and owners occupation under Sections 10(2)(i) and 10 (3)(a)(iii) of the Act, against two tenants in RCOP Nos.1939 and 1940 of 2012. Subsequently the landlord withdrew the claim for eviction on the ground of owners occupation viz. under Section 10(3)(a)(iii). The case of the landlord as far as the wilful default was concerned is that the tenants had defaulted in payment of rent for the period from June 2012 to August 2012 i.e. for three months. The landlord would further claim that the tenants agreed to pay a monthly rent of Rs.3,900/- when they were put in possession of the property as lessees on 01.04.2009. The lease was for a period of 11 months subject to renewal at the option of the landlord.

3. It is alleged that the tenants did not renew the lease or vacated the premises. It is claimed that the agreement was orally extended for a further

period of 11 months from 01.03.2010 and the said period of 11 months also expired on 31.01.2011. It is also claimed by the landlord that even as per the original lease deed, the tenants had agreed that they would pay a rent of Rs.10,000/- per month, if they do not vacate and handover possession on the expiry of the lease.

4. The tenants would resist the claim contending that there was no agreement to pay Rs.10,000/- as rent. It was claimed that the original rent was Rs.1,500/- and it was increased to Rs.3,900/-. It was also claimed that the landlord has got an advance of Rs.75,000/- with her. Therefore there is no question of wilful default as she is not entitled to retain more than a month's rent as advance and she is liable to adjust the same with the rent payable. On the above contentions, the tenants sought for dismissal of the eviction Petition.

5. The learned Rent Controller who heard the petition concluded that the agreement to pay Rs.10,000/- as rent was true and there was a default in payment of rent for a period of 3 months. The learned Rent Controller concluded that, since, as on the date of the judgment, the tenants were in arrears of rent of more than Rs.75,000/- viz. the advance, the learned Rent Controller

concluded that the case of wilful default has been made out. The learned Rent Controller also found that the requirement of the landlord is *bonafide* and ordered eviction on both the grounds viz. wilful default and own use in occupation.

6. Aggrieved the tenants preferred two Appeals in RCA Nos.83 and 84 of 2016 on the file of the learned Appellate Authority. Before the learned Appellate Authority, the eviction sought for on the ground of owner's occupation was given up. The learned Appellate Authority concurred with the conclusions of the learned Rent Controller regarding the wilful default and upheld the order of eviction on the said ground. Aggrieved by the order of the Appellate Authority, the tenants have come up with the above Civil Revision Petitions.

7. I have heard Mr.Sunil Prakash, learned counsel appearing for M/s.T.Viswanatha Rao, for the petitioners in each of the petitions and Mr.Ashok Menon, learned counsel appearing for the respondent in both the petitions

8. Mr.Sunil Prakash, learned counsel appearing for the petitioners would vehemently contend that both the Authorities constituted under the Act, erred in concluding that the agreed rent was Rs.10,000/- per month. He would point out that there was no agreement for payment of Rs.10,000/- per month as rent. It is his further contention that the lease deed which is for 11 months cannot be read to impose a liability on the tenants for payment of higher rent for the subsequent period. He would also point out that if the Lease Deed is to be construed as one for 3 years, then it requires to be registered and the same shall not be looked into for want of registration. The learned counsel would further contend that both the Authorities erred in concluding that the tenants have committed wilful default, despite the landlord admitting that she had a sum of Rs.75,000/- as advance lying with her on the date when she filed the RCOPs. The learned counsel would further contend that once it is shown that there was no cause of action for institution of the proceedings on the ground of wilful default subsequent defaults cannot be taken into consideration to order eviction.

9. Contending contra, Mr.Ashok Menon, learned counsel appearing for the respondent would submit that the very fact that the landlord had Rs.75,000/- as advance on the date when she filed the petition for eviction which was over

and above the amount of default would not disentitle her from seeking eviction on the ground of default. The Authorities were right in taking into account, the subsequent default by the tenants to conclude that there has been wilful default on the part of the tenants. He would also submit that once there is an agreement between the parties to pay a higher rent after a particular point of time the agreement will prevail and the tenants cannot be allowed to resile from the agreement.

10. I have considered the rival submissions.

11. As regards the quantum of rent, it is admitted that the lease deed provides that if the tenants failed to vacate by a particular date they would be liable to pay a higher rent of Rs.10,000/- per month. All that is submitted by the tenants is that the said clause in the agreement cannot be enforced because the agreement is unregistered. It is also claimed that the enhancement is a unilateral act of the landlord. I am unable to agree with the contentions of the learned counsel for the tenants in this regard.

12. Section 7(2) of the Tamil Nadu Buildings (Lease & Rent Control)

Act, provides that where no fair rent is fixed, the landlord shall not claim, receive or stipulate payment of any amount in addition to the agreed rent. The question that crops up is as to what is the agreed rent. According to the tenants, the agreed rent is Rs.3,900/- and according to the landlord, the agreed rent is Rs.10,000/-. The agreement between the parties has been produced as Ex.P4. There is no dispute regarding the contents of the agreement. Para 16 of the Rental Agreement dated 01.04.2009, reads as follows:

“The tenant holds over or does not deliver possession of the shop on the expiry of the period fixed in the lease deed on determination of the tenancy as provided above, the tenant shall be liable to pay Rs.10,000/- per month towards rent for the periods if the tenant remains in possession or deprives or prevents the landlord from taking vacant possession of the said premises.”

The execution of this rental agreement is not denied by the tenants. All that the tenants would contend is that they had not agreed for paying Rs.10,000/- per month as rent and it was only the demand of the landlord. In support of his submission, the learned counsel would rely upon the judgments of this Court in

Venkataramanaswami Ayyar v. Abdul Wahab, reported in **1969 (1) MLJ 122**,
and *M.Nagarajan v. Selvasubramaniam*, reported in **2001 (3) CTC 725**.

13. In *M.Nagarajan v. Selvasubramaniam*, reported in **2001 (3) CTC 725**, this Court was concerned with the power of the Court to decide reasonable rent in a petition for eviction on the ground of wilful default. This Court held that in the absence of fixation of fair rent, the Court has to go only by the agreed rent and it cannot decide reasonable rent. The position of law is not in dispute. In the case on hand, the agreement is admitted. The agreement contains a stipulation that the tenants should pay rent at a particular amount as rent, if they do not vacate by a particular date. The fact that the tenants had not vacated is admitted. The question is whether they can resile from the agreement and contend that they would continue to pay the old rent.

14. Even in *Venkataramanaswami Ayyar v. Abdul Wahab*, this Court has held that the landlord can demand agreed rent. This Court has noted the absence of definition of the term agreed rent in the Act and has held that the ordinary meaning is rent agreed between the parties and not any unilateral demand to which the tenant has not consented. The learned counsel for the

petitioners would attempt to project the demand of Rs.10,000/- as rent by the landlord as a unilateral demand. I am unable to agree with the said submission of the learned counsel.

15. Clause 16 of the agreement extracted above is very clear and imposes an obligation on the tenants to pay a sum of Rs.10,000/-per month as rent, if they chose to continue in possession beyond a particular date. The mere fact that the landlord did not seek to enforce the increase immediately after the expiry of the first term of 11 months will not render the agreement unenforceable. I therefore do not find any merit in the submission of the learned counsel for the petitioners that the Courts below were not right in accepting that the agreed rent is Rs.10,000/- per month.

16. Coming to the next contention of the learned counsel based on Section 7(2) of the Act, that the landlord cannot retain more than a month's rent as advance and any amount retained by him/her over and above a month's rent ought to be adjusted towards arrears before filing of the eviction petition on the ground of wilful default, I find myself in entire agreement with the contention of the learned counsel for the petitioners. Of course there was considerable

debate, as to whether, the tenants should seek adjustment of the rent or the landlord is obliged under law to adjust the rent even before filing the petition for eviction. The law was settled by Hon'ble Supreme Court in **Narasimha Rao v. Nasimuddin Ahmed**, reported in **1996 (2) CTC 78**, wherein the Hon'ble Supreme Court held that if the landlord has got more than a month's rent as advance, he/she is bound to adjust the same and there will be no question of wilful default till the amount over and above a month's rent is adjusted.

17. In the case on hand, if we examine the facts, it is found that the landlord had a sum of Rs.75,000/- as advance from each of the tenants, the period of default was only three months and the amount in default was only Rs.30,000/-. Therefore, the landlord had no cause of action for filing an application for eviction on the ground of wilful default on the date of its initiation. The Courts below have taken the subsequent default into account to conclude that there is wilful default on the part of the tenants. Admittedly no application under section 11(4) was filed pending the the proceedings. There was a dispute regarding the quantum of rent, the Authorities were therefore not right in taking into account the subsequent default to conclude that the tenants had committed wilful default in payment of rent.

18. I am therefore of the considered opinion that the orders of eviction have to be set aside and they are accordingly set aside solely on the ground that the landlord had no cause of action for filing a petition for eviction on the ground of wilful default on the date of its filing. Both the Civil Revision Petitions are **allowed**. No costs. Consequently the connected miscellaneous petitions are closed.

28.10.2020

jv
Index: No
Internet: Yes
speaking order

To

1. The IX Judge,
Court of Small Causes,
Chennai.
2. The XIII Judge,
Court of Small Causes,
Chennai.
3. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104.

CRP. (NPD) Nos.1070 & 1071 of 2018
and CMP Nos.5637 & 5638 of 2018

R.SUBRAMANIAN,J.

jv



Pre Delivery Order

CRP. (NPD) Nos.1070 & 1071 of 2018
and CMP Nos.5637 & 5638 of 2018

WEB COPY

28.10.2020