

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD).No. 1283 of 2018

and

C.M.P.No. 6606 of 2018

B.Mahalingam(deceased)

1.Amudhavalli

2.Srinivasan

3.Senthil Kumar

4.Thenmozhi

...Petitioners

Vs.

T.A.Govindarajan (deceased)

R.Mukilvannan

...Respondent

Prayer: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 10.11.2017 made in R.C.A.No.1/2014 on the file of the Rent Control Appellate Authority / Sub-Court, Tirupattur confirming the judgment and decree dated 24.10.2013 made in R.C.O.P.No. 7/2005 on the file of the Rent Control Authority / Principal District Munsif Court, Tirupattur.

For Petitioners : Mr.M.V.Venkateseshan

For Respondent : Mr.T.M.Hariharan

ORDER

The tenant, who had suffered an order of eviction at the hands of both the rent controller as well as the appellate authority has come up with this revision under Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act.

2. The original petition was filed by the landlord seeking eviction claiming that the tenant has committed wilfull default in payment of the daily rent, which was enhanced to Rs.100/- from Rs.65/- from 01.04.2004 claiming that the tenant is defaulted in payment of rent from 10.06.2004. The landlord issued a notice on 10.08.2004 claiming that there was an arrears of Rs.5,700/-. Despite such notice, the tenant did not pay the rent. He issued a reply notice on 20.08.2004 claiming that the rent is only Rs.65/- per day and not Rs.100/- as claimed by the landlord and the landlord there upon launched eviction proceedings on 31.03.2005. It is an admitted case of the parties that a tenant has paid an advance of Rs.15,000/- and the arrears on the date of filing of R.C.O.P was Rs.28,500/-. The learned rent

controller concluded that the daily rent was Rs.100/- and not Rs.65/- as claimed by the tenant. The Court had in the interlocutory stage in I.A.No.4 of 2008 has determined the rent at Rs.100/- and the same was also confirmed by the Appellate authority in R.C.A.No.1 of 2012 by its judgment dated 06.07.2013.

3. Despite the said judgment, the tenant did not come forward to deposit a sum of Rs.100/- per day as rent. He deposited only Rs.65/- per day and that too he has been depositing the rent only till 30.06.2013 and not subsequently. The tenant however chose to deny the title of the brother's son of the landlord who came on record claiming under the Will, Ex.B4. The rent controller rejected the said claim and ordered eviction. Aggrieved, the tenant preferred an appeal in R.C.A.No. 1 of 2014.

4. It is seen from the records that the tenant died pending appeal and his legal representatives were brought on record in the appeal as appellants. The appellate authority, upon a consideration of the evidence on record has concluded that the tenant has not been regular in payment of rent

and had in fact committed wilfull default. The learned appellate authority has also found that even after obtaining an order for eviction, the tenant has not been regular in paying the rent. The appellate authority has in fact found, despite the Court had fixed the rent at Rs.100/- per day, the tenant has been continuing to deposit only Rs.65/- that too at his descretion once in three months. This conduct of the tenant according to the appellate authority would undoubtedly qualify him for the eviction on the ground of wilfull default. On the above conclusions, the learned appellate authority dismissed the appeal confirming the order of eviction passed by the learned rent controller.

5. I have heard Mr.M.V.Venkateshan, learned counsel for the petitioners and Mr. T.M.Hariharan, learned counsel for the respondent.

6. Mr. M.V.Venkateshan, learned counsel for the petitioners would vehemently contend that the tenant has been depositing the rent into Court. Once the dispute regarding the quantum of rent arose, the tenant has promptly filed R.C.O.P.No.13 of 2014 for depositing the rent into Court and

has been depositing the to the credit of R.C.O.P, as per the interim order, without fail. He would also submit that after disposal of the RCOP No.13 of 2004, he has been depositing the rent to the credit of eviction petition regularly. It is not in dispute that RCOP No.13 of 2004 filed by the tenant was dismissed. Once the petition under Section 8(5) was dismissed for not paying the contractual rent, there will be presumption of default on the part of the tenant.

7. Even during the pendency of the proceedings before the Courts below, the tenant has not been regular in depositing the rent, despite the fact that the Court had determined the rent of Rs.100/- by way of an interlocutory order. This conduct of the petitioner is nothing but wilful default. I therefore, do not find any error in the order of the Appellate Court in ordering eviction. I do not see any reason to interfere with the orders of eviction passed by the Courts below. This civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

8. Considering the fact that the tenant has been carrying on business, the tenant is granted six months time to vacate on condition, he files an affidavit undertaking to vacate within a period of six months from today. Such affidavit shall be filed on or before 29.09.2020. If the affidavit is not filed within the time granted, the landlord will be at liberty to execute the decree as if no time has granted by this Court to handover possession. Needless to say, that the tenant must pay rent at Rs.100/- per day once in fifteen days till such time he vacates the premises.

01.09.2020

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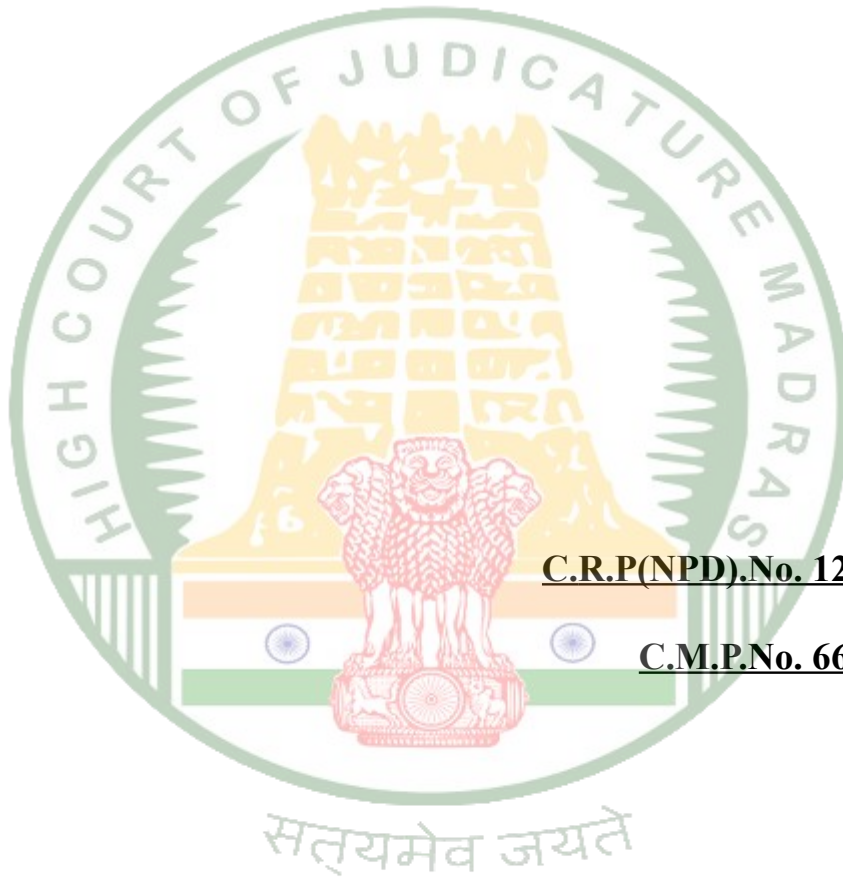
1. The Rent Control Appellate Authority / Sub-Court,
Tirupattur.

2. The Rent Control Authority / Principal District Munsif Court,
Tirupattur.

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R.SUBRAMANIAN, J.

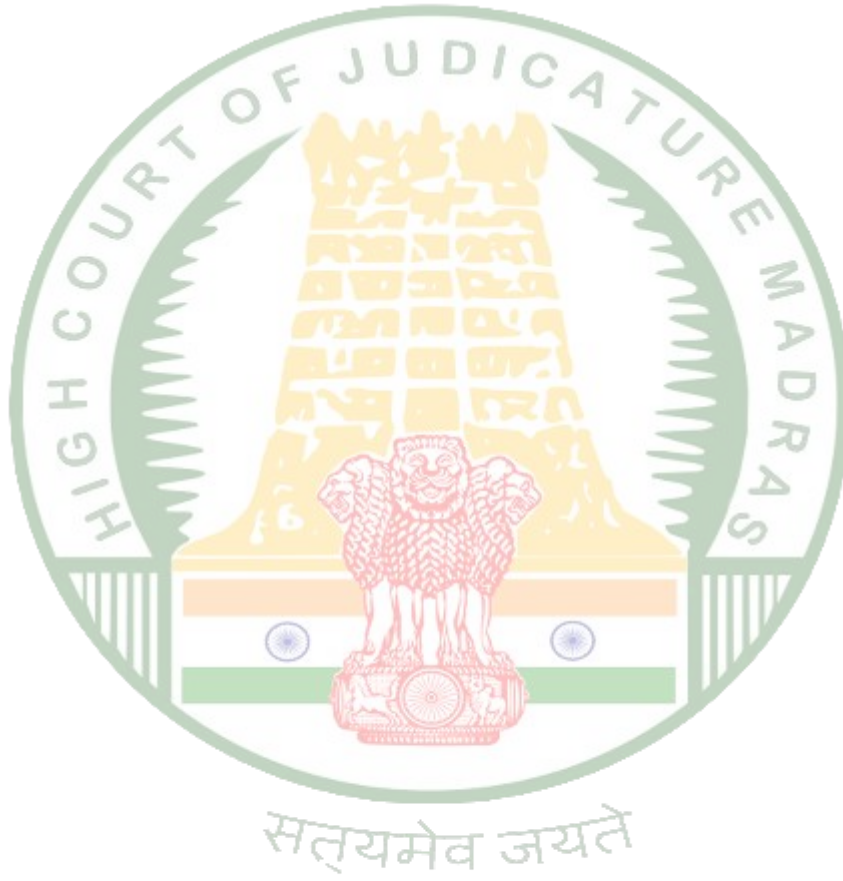
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