

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

**C.R.P.NPD.No.188 of 2018
and
C.M.P Nos.1066 and 6777 of 2018**

M.Arjunan

... Petitioner

Vs.

J.S.Rajan

... Respondent

Prayer :- This Civil revision has been filed under Section 25(1) of Tamil Nadu Building (Lease and Rent Control) Act, to set aside the judgment and decree passed in C.M.A No.1 of 2017 on the file of the Subordinate Judge, Ranipet, Vellore District (Appellate Authority) dated 25.10.2017 confirming the fair and decretal order passed in I.A.No.1 of 2015 in R.C.O.P No.4 of 2014 on the file of the District Munsif Court (Rent Controller) Ranipet, dated 23.11.2016.

For petitioner

: Mr. K.Nirmal Kumar

For Respondent

: Mr.M.Arun

ORDER

This Civil Revision Petition has been filed challenging the judgment and decree passed in C.M.A No.1 of 2017 on the file of the Subordinate Judge, Ranipet, Vellore District (Appellate Authority) on 25.10.2017 confirming the fair and decreetal order passed in I.A.No.1 of 2015 in R.C.O.P No.4 of 2014 by the the District Munsif (Rent Controller) Ranipet, on 23.11.2016.

2. The petitioner is a tenant. The respondent/landlord has filed a petition in RCOP No.4 of 2014, for eviction under Section 10(2)(i) of the Tamil Nadu Building (Lease and Rent Control) Act, (hereinafter referred to as Act) on the ground that the petitioner/tenant has committed willful default in payment of rent. Pending the RCOP, since the petitioner/tenant has failed to pay the rent from the month of May 2014, the respondent/landlord has filed an application in I.A.No.1 of 2015 before the Rent Controller, under Section 11(4) of the Act, seeking for a direction to the petitioner to pay the rent from May 2014 till August 2015 to the tune of Rs.5,55,000/-. The said application has been contested by the petitioner/tenant on the ground that he has not committed any default in payment of

rent. At the behest of the respondent, the petitioner has constructed an additional portion of the building investing huge amount and the rent payable to the landlord has been adjusted for the above said construction. The Rent Controller, after considering the entire materials available on record, allowed the aforesaid application on 23.11.2016, on the ground that admittedly, the tenant did not pay the rent and there is no material to establish that the petitioner has spent huge amount for the construction of the additional portion. Aggrieved over the same, the petitioner has filed an appeal in C.M.A No.1 of 2017 before the Subordinate Court, Ranipet. The learned Subordinate Judge/Appellate Authority, after considering the entire materials available on record, dismissed the aforesaid appeal on 25.10.2017. Challenging the same, the present revision petition is filed.

3. The learned counsel for the petitioner would contend that the petitioner did not commit any willful default in paying the rent. According to the petitioner, the very RCOP itself is not maintainable. After issuing a legal notice to the petitioner, within a period of two months RCOP has been filed, which is not

maintainable in the eye of law. That apart, so far as the future rent is concerned, on the request of the respondent, the petitioner has put up an additional construction spending huge amount and the amount spent for the construction has been adjusted towards the rent. In the above circumstances, non-payment of rent cannot be construed as willful default and eviction cannot be ordered under Section 11(4) of the Act. In support of his contention, the learned counsel has relied on the judgments in the case of **Paritha Nachiar v. Sulthani Amma Sahibu Nachiar** reported in **2019(4) CTC 88** and **M/s.Chordia Automobiles v. S.Moosa and others** reported in **2000(1) CTC 742**.

4.Per contra, the learned counsel for the respondent would contend that since the petitioner has failed to pay the rent from the month of May 2014, a petition in RCOP No.4 of 2014 has been filed. Even after filing the said RCOP, the petitioner did not pay the amount. In the above circumstances, an application under Section 11(4) of the Act, has been filed. The petitioner admitted the non-payment of rent, but, contended that he has put up additional construction spending huge amount and it has

to be adjusted towards the rent. Absolutely, there is no evidence to prove the aforesaid contention. Considering those circumstances, both the Rent Controller and the Appellate Authority have concurrently held against the petitioner and there is no merit in this petition.

5. I have considered the rival submissions and perused the records carefully.

6. Before considering the rival submissions, it is useful to refer the relevant provisions in the Act. Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, which reads as follows:

"11. Payment or deposit of rent during the pendency of proceedings for eviction – No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under Section 23 against any order made by the Controller on the application, unless he has paid or pays to the

landlord, or deposits with the Controller or the Appellate Authority, as the case may be, all arrears of rent due in respect of the building upto the date of payment or deposits, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the Appellate Authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1) the Controller or the Appellate Authority as the case may be, shall on application, made to him either by the tenant or by the landlord and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority, as the case may be, shall, unless the

tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

7. Under Section 11(1) of the Act, the tenant is not entitled to contest the application filed under Section 10 of the Act, unless the tenant pay or deposit the past arrears of rent, as well as continues to pay the rent till the termination of the proceedings before the Rent Controller or Appellate Authority. In the event of the tenant fails to pay the rent, under Section 11(4) of the Act, the Rent Controller or the Appellate Authority, unless the tenant shows sufficient cause for non-payment of rent, can stop all further proceedings and put the landlord in possession.

8. In the instant case, admittedly, the petitioner did not pay the rent, pending RCOP. The only contention of the petitioner is that the non-payment of rent is not willful and the petitioner has spent huge amount for putting up additional construction on the demised premises and the amount spent for the additional construction has been adjusted towards the rent. But, to support

his contention, there is absolutely no material available on record. Even some additional documents sought to be filed only the appeal was also dismissed by the Appellate Authority. In the circumstances, in the absence of any evidence to support the claim of the petitioner that he made additional construction spending huge amount and the amount was adjusted towards the rent, the contention of the petitioner that the non-payment of rent is not willful, is not acceptable one. Both the Rent Controller and the Appellate Authority, after considering the entire materials available on record, have rightly dismissed the applications. So far as the judgments relied on by the learned counsel for the petitioner is concerned, in the judgment in **M/s.Chordia Automobiles v. S.Moosa and others**, reported in **2000(1) CTC 742**, it is a case where the RCOP has been filed within a period of two months after issuing notice to the tenant. Likewise, the judgment in **Partiha Nachiar v. Sulthani Amma Sahibu Nachiar** reported in **2019(4) CTC 88**, is a similar case where the Supreme Court and this Court has held that the landlord cannot maintain RCOP within two months after issuing notice. But, in the instant case, the petition has been filed under Section 11(4) of the Act for non-payment of rent pending both RCOP as

well as appeal, hence the eviction was ordered. In the said circumstances, the aforesaid decisions are not applicable to the facts of the present case.

9. Considering the facts and circumstances of the case, there is no merits in this Revision and it is only deserves to be dismissed.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes/No

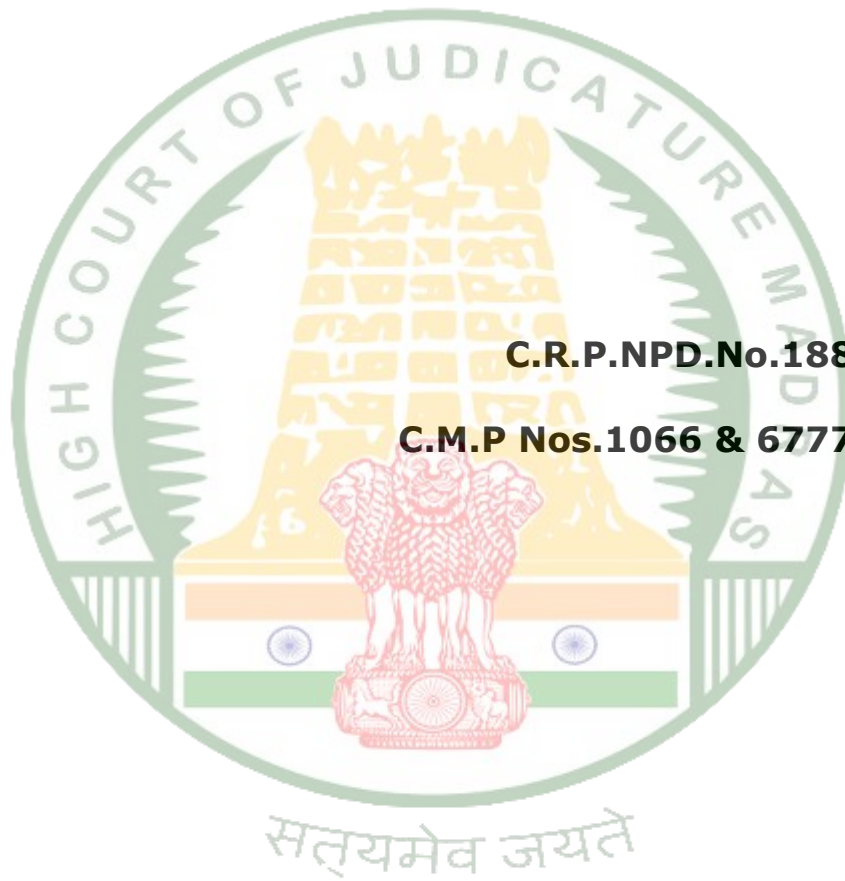
Speaking order/non speaking order

To

1. The Subordinate Judge, Ranipet, Vellore District
2. The District Munsif, Ranipet.

V.BHARATHIDASAN, J.,

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**C.R.P.NPD.No.188 of 2018
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10(1)Eviction of tenants (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Sections 14 to 16:

Provided that nothing contained in the said sections shall apply to a tenant whose landlord is the Government:

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the Appellate Authority, as the case may be.

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