

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.No.3832 of 2016
and
C.M.P.No.19540 of 2016

P.Arumugam .. Petitioner/Tenant

Vs.

T.N.Parandaman .. Respondent/Land Lord

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act to set aside the Judgement and Decree dated 27.01.2016, made in R.C.A.No.16 of 2011, passed by the learned Subordinate Judge, Ponneri reversing the Order and Decree dated 02.09.2010, made in R.C.O.P. No.5 of 2009 by the learned District Munsif, Ponneri.

For Petitioner : Mr.C.P.Sivamohan

For Respondent : Mr.P.V.Muralidhar

O R D E R

The petitioner herein is the tenant and the respondent herein is the landlord.

2. The respondent/landlord filed a petition in R.C.O.P.No.5 of 2009, on the file of the learned District Munsif, Ponneri / Rent Controller, for eviction, on the ground of willful default. After hearing, the learned Rent Controller, by an order dated 02.09.2010, dismissed the said petition filed by the respondent/landlord for eviction holding that no willful default has been committed by the petitioner/tenant. Aggrieved over the same, the respondent/landlord filed an appeal in R.C.A.No.16 of 2011, on the file of the learned Subordinate Judge, Ponneri / Rent Control Appellate Authority. The learned Rent Control Appellate Authority, after hearing the arguments, by judgement dated 27.01.2016, allowed the appeal and set aside the order passed by the leaned Rent Controller. Challenging the said judgement passed by the learned Rent Control Appellate Authority, the petitioner/tenant filed the present revision before this Court.

3. The case of the respondent/landlord is that the property belongs to the respondent and he let out the scheduled premises to the revision petitioner/tenant herein. The tenancy was reduced into writing on 09.04.2008 and the monthly rent was fixed as Rs.750/-. The petitioner/tenant paid only two months rent and thereafter from June, 2008 onwards, he has not paid the rent, thereby he committed willful default. The respondent/landlord issued a legal notice to the petitioner on 03.11.2008 and terminated the tenancy on expiry of 30.11.2008 and called upon the petitioner/tenant to vacate and surrender vacant possession of the rented premises. Though the petitioner/tenant has acknowledged the receipt of notice, he neither sent a reply nor complied with the same but on the other hand, filed a suit in O.S.No.445 of 2008, on the file of the learned District Munsif, Ponneri for permanent injunction restraining the respondent/landlord from taking forcible possession until evicting the petitioner/tenant by due process of law. As there was no such incident took place as alleged by the petitioner in the suit in O.S.No.445 of 2008 and the petitioner has willfully defaulted in paying the rent, the respondent has filed a petition for eviction.

4. The case of the petitioner/tenant is that, the petitioner/tenant admits the landlord and tenant relationship and that he was paying a monthly rent of Rs.750/-. The petitioner further states that the respondent/landlord has received a sum of Rs.1,00,000/- as advance. That he filed a suit for injunction in O.S.No.445 of 2008, to restrain the respondent/landlord from interfering with his peaceful possession and enjoyment of the premises except by due process of law. Aggrieved by the filing of the suit by the petitioner/tenant, the respondent/landlord with mala fide intention has filed a petition for eviction on the ground of willful default before the learned Rent Controller. According to the petitioner/tenant, as per law the landlord is entitled to receive one month rent as advance, but in the instant case, the respondent has received a sum of Rs.1,00,000/- as advance. To the notice issued by the respondent, the petitioner has sent a reply stating that the respondent can adjust the future rent from the advance amount. As the respondent tries to forcefully evict him, he filed a suit for injunction restraining the respondent from interfering with his peaceful possession and that he should not be evicted except by the due process of law.

5. Based on the averments made in the petition and the counter and also the evidence adduced by both parties, the learned Rent Controller dismissed the petition. Aggrieved over the same the respondent/landlord filed an appeal before the learned Rent Control Appellate Authority. The learned Appellate

Authority found that the landlord and tenant relationship was admitted, agreement was also admitted and receipt of a sum of Rs.1,00,000/- as advance was also admitted. But according to the respondent, after the agreement, the petitioner paid only two months rent and subsequently from the month of June, 2008 onwards the petitioner has not paid any rent and therefore he issued a notice and terminated the tenancy. Immediately, the petitioner approached the Court and filed a suit that as per law the respondent is entitled to receive only one month rent as advance and in the instant case he has received Rs.1,00,000/- as advance and immediately when he received the notice from the respondent, he sent a reply notice to adjust the rent and therefore on the date of filing of the petition, in the hands of the respondent more than one month rent was available and therefore there is no willful default in payment of rent more so when the petitioner has informed the respondent to adjust the advance money towards the monthly rent. Therefore, according to the petitioner/tenant there is no willful default. The learned Rent Control Appellate Authority considering all these facts, reversed the order of the learned Rent Controller on the ground that though the petitioner has stated that he gave a letter to the respondent to adjust the advance amount as rent, he has not produced the said letter and further he has expressed his no objection in allowing the petition. Based on the above grounds, the learned Rent Control Appellate Authority allowed the appeal and eviction was ordered. Challenging the same, the petitioner/tenant has filed the present civil revision petition before this Court.

6. The learned counsel appearing for the petitioner/tenant would submit that after receipt of the eviction notice from the respondent/landlord for willful default and termination of tenancy on the ground of willful default, immediately, the petitioner sent a reply notice to adjust the rent from the advance amount. Though the learned Rent Controller has rightly appreciated the same, the learned Rent Control Appellate Authority misconstrued that in the evidence of the petitioner herein he has stated that he sent a letter and that he has not produced any such letter before the Court. The petitioner is a layman and he does not know the difference between a notice and a letter. In the notice he has clearly stated to adjust the rent from the advance amount. During the trial, he informed that he sent a letter and thereby, he wrongly mentioned the notice as letter. The learned counsel for the petitioner further submitted that it is admitted that on the date of filing of the petition, already more than one month rent amount was available in the hands of the respondent.

7. The learned counsel for the petitioner further submitted that already there was a dispute between the respondent and the

petitioner and a suit has also been filed by the petitioner/tenant and the same is pending and at that juncture, no tenant will give no objection to allow the appeal. He further stated that neither the learned counsel nor the party has filed either memo or affidavit that he has no objection to allow the appeal. Therefore, the learned Rent Control Appellate Authority failed to appreciate the legal as well as the factual position and therefore the petitioner is before this Court with this revision.

8. The learned counsel appearing for the respondent/landlord would submit that even after adjustment of the rent, the petitioner has not tendered the rent and therefore he has committed willful default and for which the learned counsel appearing for the petitioner would submit that the petitioner tried to pay the rent to the respondent but he refused to receive the same and therefore he deposited the rent amount in the Court. For which, the learned counsel for the respondent would submit that the petitioner has not complied with the procedure as contemplated in the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act'). He has to first tendered the rent and if the respondent/landlord refused to accept, he has to send it by money order or get the bank account details for depositing the rent into the bank account of the respondent/landlord and if the respondent does not render his bank account details, then only he can deposit the rent in the Court. Therefore, straightway depositing in the Court is against law and therefore it shows the petitioner/tenant has committed willful default. Though the learned Rent Controller failed to appreciate the conduct of the parties, the learned Rent Control Appellate Authority has rightly allowed the appeal and passed the order of eviction.

9. I have heard the learned counsel on either side and also perused the entire records.

10. The landlord and tenant relationship is admitted, monthly rent of Rs.750/- is also admitted, written rental agreement was also admitted, a sum of Rs.1,00,000/- paid as advance was also admitted, after the agreement the petitioner paid only two months rent and the same was also admitted. According to the respondent, after two months, the petitioner has not paid the rent and therefore, he sent a notice and terminated the tenancy as the petitioner has committed willful default. According to the petitioner, without any reason, the respondent tried to evict him and therefore he filed a suit for injunction restraining the respondent from evicting him except by due process of law. Therefore, the respondent as landlord has filed a petition for eviction on the ground of willful default. A notice was sent to the petitioner and he sent a reply

stating that advance amount can be adjusted for subsequent monthly rents.

11. The dispute is whether the petitioner herein has committed any willful default in payment of rent and whether the learned Rent Controller and the learned Rent Control Appellate Authority have rightly appreciated the evidence and passed the order.

12. On a careful perusal of the records, admittedly the tenancy agreement was reduced into writing on 09.04.2008. The monthly rent was fixed as Rs.750/- and it is admitted by both the parties that only two months rent was paid. From June, 2008 onwards there arose some misunderstanding between both the parties and the respondent/landlord sent notice to the petitioner/tenant and terminated the tenancy. The petitioner/tenant has approached the Civil Court seeking injunction restraining the respondent/landlord from disturbing his peaceful possession and without following the due process of law he should not be evicted. Subsequently, the respondent/landlord has also filed a petition for eviction. Admittedly, on the date of filing of the petition for eviction, there was more than Rs.90,000/- pending with the respondent/landlord i.e. more than one month rent is available with the respondent/landlord. As per the law the landlord is entitled to receive one month rent as advance and if he received advance more than that, then the tenant is entitled to instruct the landlord to adjust the rent from the advance amount. In this case, on the date of filing of the petition, there was more than one month rent available with the respondent/landlord and therefore the learned Rent Controller has rightly dismissed the petition holding that there is no willful default. The petitioner/tenant has not paid the rent after two months and within two months of the tenancy some misunderstanding had happened between them and therefore both the parties approached the Court. The petitioner/tenant approached the Civil Court for injunction and the respondent/landlord approached the learned Rent Controller for eviction. Legally, the respondent/landlord is entitled to collect advance amount of not more than one month rent. If he has collected more than that, he is liable to adjust the rent from advance amount.

13. Though the learned Rent Control Appellate Authority admitted all these things, but has stated that the petitioner/tenant has sent a letter to adjust the advance amount but the said letter was not produced and the petitioner/tenant has also expressed his no objection in allowing the petition. As far as the said letter is concerned, as stated by the learned counsel appearing for the petitioner/tenant, he sent a notice instructing the respondent/landlord to adjust the advance amount

towards rent and the said notice is already marked. The petitioner/tenant being a layman he may not have understood the difference between the letter and notice. Any how, the petitioner/tenant has sent notice and in that notice he has clearly indicated that advance amount can be adjusted as rent. Therefore, a mere wrong mentioning of the notice as letter is not fatal to the case of the petitioner/tenant and therefore the finding in this regard rendered by the learned Rent Control Appellate Authority is not sustainable.

14. As far as the no objection to allow the appeal is concerned, as stated by the learned counsel appearing for the petitioner/tenant neither the learned counsel nor the petitioner/tenant has given any memo or an undertaking affidavit in writing and in the absence of that the learned Rent Control Appellate Authority has simply stated that they have given their no objection, but there is no proof to show that neither the learned counsel nor the party has given any memo or made any endorsement in the memorandum of ground of appeal or filed any undertaking affidavit. Therefore, in the absence of any written proof, the judgement of the learned Rent Control Appellate Authority is not sustainable.

15. Though the learned counsel appearing for the respondent/landlord has stated that after exhausting the advance amount of Rs.1,00,000/- the petitioner/tenant has not paid the rent. On the date of filing of the eviction petition, more than Rs.90,000/- advance amount was available with the respondent/landlord and even subsequently if the tenant has not made payment, the respondent/landlord can file a petition under Section 11(4) of the Act and he has not filed any such petition. Though the learned counsel for the respondent/landlord has stated that they have not offered rent by the petitioner/tenant after exhaustion of the advance amount, the learned counsel appearing for the petitioner/tenant has stated that after exhaustion of the advance amount, the petitioner/tenant has tendered the rent, since the respondent/landlord has refused to receive the rent, the petitioner/tenant has deposited the same into the Court. Since the eviction proceedings under the Act is pending the petitioner/tenant has not followed Section 8 of the Act strictly. However, on the date of filing of the eviction petition more than one month rent as advance was available with the respondent. In these circumstances, this Court finds that the respondent/landlord has not proved willful default, though as per the agreement, the petitioner/tenant has not paid the rent after two months may be in default but however legally the respondent/landlord is not entitled to receive more than one month rent as advance and even assuming that there was a default and the same is not a willful default. Therefore, the order passed by the learned Rent Control Appellate Authority is liable

to be set aside and accordingly it is set aside.

16. In the result, the civil revision petition is allowed and the impugned judgement is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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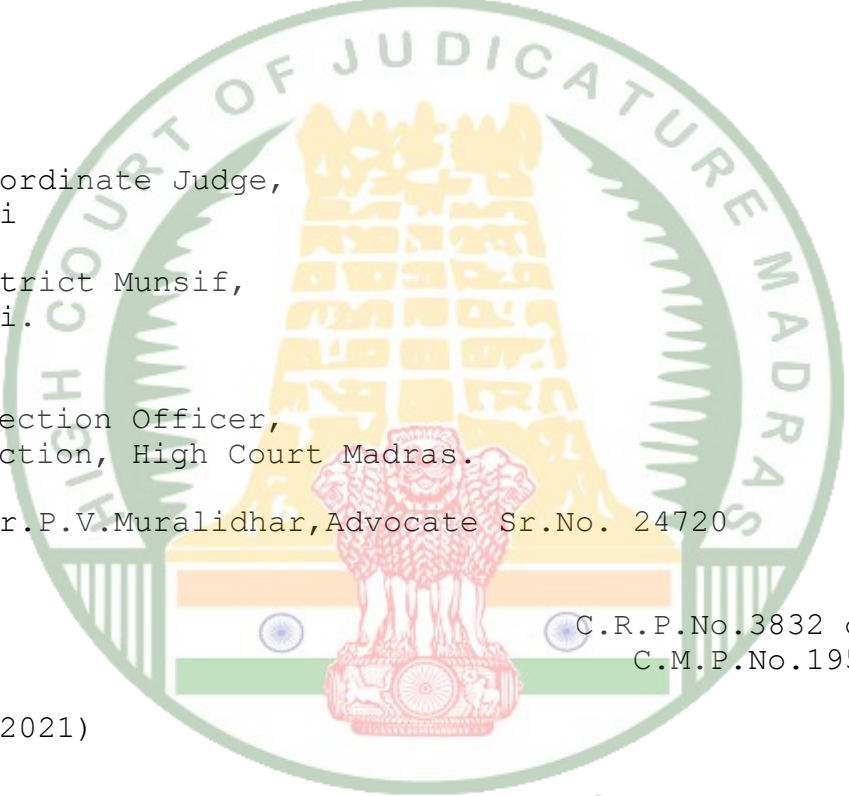
1. The Subordinate Judge,
Ponneri
2. The District Munsif,
Ponneri.

Copy to:
The Section Officer,
VR Section, High Court Madras.

+1 cc to Mr.P.V.Muralidhar, Advocate Sr.No. 24720

SAI (CO)
RMP (08/01/2021)

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C.M.P.No.19540 of 2016



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