

C.R.P.(NPD)Nos.2873 of 2018 and 627 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.06.2019
Pronounced on	04.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD).Nos.2873 of 2018 and 627 of 2019

and

C.M.P.No.16898 of 2018 and 8702 and 4191 of 2019

Susheela Joseph @ Joseph Suseela ... Petitioner in both cases

Vs

1.P.S.K.Lakshmi Bai

2.P.K.Arvind

3.P.K.Sri Vishnu Priya K.A. Raja ... Respondent in both cases

Prayer in C.R.P(NPD)No.2873 of 2018: Civil Revision petitions filed under Sec. 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 to set aside the order and decretal order passed in M.P.No.361 of 2015 in R.C.A.No.433 of 2015 dated 03.08.2018 on the file of the learned VIII Judge, Court of Small Causes, (Rent Control Appellate Authority) Chennai.

Prayer in C.R.P.(NPD)No.627 of 2019: Civil Revision petitions filed under Sec. 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 to set aside the Docket order dated 14.11.2018 passed by the VII Judge Court of Small Causes, Chennai in the memo in M.P.No.195 of 2015 in R.C.A.No.433 of 2015.

For Petitioner : Mr.N.Nagusah

For Respondent : Mr.K.Sivakumar

COMMON ORDER

C.R.P.No.627 of 2019: This Civil Revision petition is directed against the docket order passed by the Rent Control Authority in non extending the stay for not complying with the conditional order.

2. The respondent filed an eviction petition for willful default and for subletting the premises. He also filed another RCOP for fixation of fair rent. The Rent Controller has ordered eviction on the ground of willful default as well as on subletting. In the petition filed for fixing of fair rent a sum of Rs.17685/- was fixed as fair rent. Since the tenant failed to pay the difference of monthly rent between the agreed rent and fair rent, the landlord filed a petition u/s. 11(3) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960(hereinafter referred to as the 'Act'). The said petition was allowed on 03.08.2018 and the tenant was directed to deposit a sum of Rs.10,61,235/- and to pay Rs.17,685/- per month for the subsequent month on or before 03.09.2018.

3. While the matter stood thus, the tenant filed a stay petition against the order of eviction passed on the ground of wilful default and subletting. The Appellate Court granted stay of eviction proceedings on the condition that the petitioner shall deposit Rs.35,700/- towards rental arrears at the rate of Rs.300/- per month for 119 months from September 2005 to July 2015 on or before 12.10.2015. However, during the pendency of the stay order, the petitioner has preferred a Civil Revision petition against the order passed i/s. 11(3) of the Act. This Court has not granted stay of the order. Therefore, the landlord has filed a memo stating that the petitioner has not complied with the conditional order passed by the Appellate Authority to deposit a sum of Rs.10,61,235/- on or before 03.09.2018 and therefore stay shall not be extended. Recording the same, the Appellate authority has refused to extend the order. Since no stay has been granted by this Court in C.R.P.No.2873 of 2018 a direction was issued to the tenant to work out his remedy before the Execution Court. The said order is challenged in C.R.P.No.627 of 2019.

4. Learned counsel for the petitioner/tenant would contend that this Court has repeatedly held that non payment of difference of agreed rent and fair rent will not amount to wilful default and the landlord has to file a Civil suit to

recover the same. In support of his contention, he would rely on 100 L.W 708, C.Ranganathan Vs. M.Suri and the judgment of Nelson and other vs. P.Ranganathan Mudaliar, 1995 (1) CTC 446.

5. As per the above judgments, non payment of difference between the fair rent fixed by the Rent Controller and agreed contractual rent is not wilful default and eviction cannot be ordered. Only remedy available to the landlord is to file a suit to recover the money.

6. Per contra, the learned counsel for the respondent contended relying on the judgment of this Court in 2011 5 CTC 252, Girdharilal Chandak and Bros (HUF) and others vs. S.Mehdi Ispahani and others, wherein it is held that Sec.23 empowers Appellate Authority to grant stay of order of Lower Court. Sec. 23(4) renders decision of the Appellate Authority final and the same cannot be questioned in any Court of law except in revision filed under Sec. 25 of the Act. If High Court does not grant stay of the order of Appellate court such order becomes final unless modified or set aside by High Court.

7. In 2011 5 CTC 837, C.Raghunatha Reddy vs. S.Rajasekaran and another, this Court has observed that non payment of difference between fair

rent and contractual rent amounts to wilful default and mere pendency of the revision petition preferred by the landlord will not enable the tenant to contend that fair rent had not reached finality. Further, stay granted by the Appellate Authority and also made absolute could not bar the Appellate authority from entertaining an application filed u/s. 11(4) of the Act. Therefore, he would contend that the stay of eviction is different from claiming rental arrears. The landlord is entitled to file a petition u/s. 11(3) in spite of stay granted by the Appellate Authority. He would further contend that non payment of difference between fair rent fixed by the Rent Control Appellate Authority and contractual rent will amount to wilful default as held by this Court in P. Thangamani Ammal vs. K.Ramachandra Chetty, 2014 4 L.W.158 .

8. He would draw the attention of this Court to the judgment of the Hon'ble I Division Bench of this Court in J.Visalakshi Ammal vs. T.B.Sathyanarayana, 1996 2 L.W. 849, wherein the judgment of this Court in Rangathan's case(100 L.W. 708) and Nelson's case (1995 1 CTC 446) were over ruled. The Hon'ble I Division Bench held that the difference between agreed rent and fair rent is payable when order fixing fair rent becomes final. The landlord is entitled to demand arrears and failing to comply with will amount to wilful default and the landlord need not file a separate suit to recover

the rental arrears.

9. Heard the submissions.

10. Admittedly, the petition for eviction is filed in R.C.O.P.No.732 of 2010 on the grounds of willful default and subletting. The Revision petition suffered an order of eviction on both grounds. Against which he filed an appeal in R.C.A.No.433 of 2015. He also filed a petition for stay of operation of the order of eviction passed. The Rent Control Appellate Authority by its order dated 06.10.2015 granted stay on condition that the revision petitioner shall deposit a sum of Rs.35,700/- being the rental arrears of agreed contractual rent at the rate of Rs.300/- for 119 months from September 2005 to July 2015 on or before 12.10.2015.

11. While the matter stood thus, the respondent/landlord filed a petition in R.C.A.No.433 of 2015 u/s. 11(3) of the Act for a direction to the revision petitioner to pay the rental arrears of Rs.10,61,235/- for the period between 13.09.2010, and 12.10.2015 the date of filing of the petition u/s. 11(3) of the Act.

12. The Rent Control Appellate Authority after considering the rival

C.R.P.(NPD)Nos.2873 of 2018 and 627 of 2019 submissions allowed the petition and granted one month's time for depositing the difference of rent between agreed rent and contractual rent and fair rent arrived by the Court to the tune of Rs.10,61,235/-. Against the order passed by the Rent Control Appellate Authority to deposit the difference of rent to the tune of Rs.10,61,235/- the petitioner preferred the above C.R.P. No.2873 of 2018. This Court has not granted any stay of the order.

13. Therefore, the respondent/landlord reported the Court that interim order should not be extended as the tenant has not complied with the condition imposed by the Appellate Authority in M.P.No.361 of 2015. The revision petitioner/tenant filed a memo dated 20.09.2018 seeking extension of time to deposit the amount of Rs.10,61,235/- for a period of two weeks. Since, the revision petitioner/tenant failed to comply with the order of conditional deposit and as well as failed to get any interim order in C.R.P.No.2873 of 2018, the stay was not extended and the revision petitioner/tenant was given liberty to work out his remedy before the Execution Court. Accordingly, the memo filed by the revision petitioner was closed.

14 The contention of the revision petitioner relying on the over ruled judgment of C.Ranganathan's case and Nelson's case cited supra that non

payment of difference of amount between contractual rent and fair rent fixed by the Rent Controller will not amount to wilful default and thereby the order by the Rent Control Appellate Authority during the pendency of stay of eviction proceeding is illegal cannot be sustained in eyes of law. Therefore, the further contention that the order passed by the Rent Control Appellate Authority in not extending the time for deposit as well as not extending the stay order is illegal, is also equally not sustainable in view of the authoritative pronouncement of this Court.

15. It is well settled by the Hon'ble I Division Bench of this Court in J.Visalakshi Ammal Vs. T.B.Sathyanarayana, 1996 2 L.W. 849 that

“11. It is to save the tenant from the order of eviction on the ground of wilful default in payment or tendering of the rent that sub-section(1) of section 11 of the Act enables him to pay all the arrears due in respect of the building upto the date of payment or deposit and continue to pay or to deposit any rent which may subsequently became due in respect of the building until the termination of the proceedings before the Controller or the Appellate Authority as the case may be sub-section (2) of Section 11 also states that the deposit of the rent shall be made within the time and in the manner prescribed. It is only in the event of failure on the part of the tenant to pay or deposit the rent as prescribed in sub-sections(1) and (2) of Section 11 of

the Act, 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. It is also relevant to notice that the Proviso to sub-section (2) of Section 10 of the Act relates to a case falling under Section 10(2)(i) of the Act. As per the proviso, in such a case, even if the tenant's default to pay or tender rent was not wilful, the Court has to direct the tenant to pay or tender the arrears of rent within a reasonable time not exceeding 15 days, upto the date of such payment and in the event the tenant pays or tenders the rent, then only the application for eviction shall have to be rejected. That being the position, the reasoning of the Appellate Authority that the application for eviction falling under Section 10(2)(i) of the Act was not maintainable, cannot at all be accepted as correct. Similarly, the interpretation placed in Ranganathan's case and Nelson's case cannot be accepted as correct. Consequently, it follows that the application filed under section 11 of the Act was maintainable. Maintainability of the application filed for eviction on the ground falling under Section 10(2)(i) of the Act, does not arise, as long as, on the date the application was filed, the tenant was not in arrears of rent. Of-course, if the landlord fails to prove that the tenant had committed wilful default in payment or tendering of the rent, the order has to be passed as per the proviso to sub-section (2) of Section 10 of the Act, pertaining to the grounds falling under Section 10(2)(i) of the Act. Even in

such a case also, as already pointed out, the Rent Controller has to fix a reasonable time not exceeding 15 days for payment of arrears of rent. The application for eviction can be rejected only in the event the tenant pays or tenders the rent due. Looked from any angle, it is not possible to hold that the petition for eviction filed on the ground falling under Section 10(2)(i) of the Act, in the facts and circumstances of the case, was not maintainable. In the instant case, the Rent Controller was justified in passing an order sub-section (4) of Section 11 of the Act. No doubt, the learned Appellate Judge has followed the decision in Ranganathan's case. As we have held that the said decision and also the decision in Nelson's case do not lay down the law correctly and as such the decisions are liable to be overruled, the order of the learned Appellate Judge has also to be set aside. We are firmly of the view that the difference of the amount between the fair rent fixed and the agreed rent is the arrears of rent for the building, and it becomes payable when the order fixing the fair rent becomes final, and the same shall have to be paid within 15 days from the last day of the tenancy month, failing which, it would be open to the landlord to issue notice calling upon the tenant to pay the arrears of rent, and in the event of the tenant failing to pay the arrears of rent pursuant to the notice, it would be open to the landlord to institute a proceeding for eviction on the ground falling under Section 10(2)(i) of the Act. It is not necessary for the landlord to go to a civil court to recover such arrears of rent. In the view we take, we find it difficult to agree with the case

Ranganathan's case (100 L.W 708) (supra) and Nelson's case (1995 TLNJ 270) (supra). Accordingly, the said two decisions are overruled. The decision in Hussain's case (1990-I-MLJ 85) (supra) does not deal with, the arrears of rent accruing due to the difference between the fair rent and the agreed rent."

In the instant case, admittedly no stay has been granted against the order of the Rent Controller passed in R.C.O.P.No.1621 of 2010.

16. As held by this Court in C.Ragunatha Reddy Vs. S.Rajasekaran and another, 2011 5 CTC 837, that during the pendency of the appeal, the tenant cannot claim that fair rent fixed by the Rent Control Appellate authority has not reached finality. Further, non payment of difference between fair rent and contractual rent will amount to wilful default.

17. In that view of the matter the order passed by the Rent Control Appellate Authority u/s. 11(3) of the Act to deposit the difference between agreed rent and fair rent is appropriate. Failure to comply with the conditional order within the stipulated time will disentitle the tenant for any discretionary relief. In other words, he is not entitled to extension of stay and all further proceedings shall be stopped. Even before this Court, till date, the tenant has not come forward with any proof that he has deposited the difference of rental

between contractual rent and fair rent fixed by this Court.

18. As such the Civil Revision petitions filed by the petitioner against the order passed in M.P.No.3611 of 2015 dated 03.08.2018 as well as the docket order passed in M.P.No.195 of 2015 in R.C.A.No.433 of 2015 dated 14.11.2018 do not stand the scrutiny of law and accordingly both the revisions are dismissed. However, considering the facts and circumstances of the case one month's time is granted to the revision petitioner to deposit a sum of Rs.10,61,2035/- along with subsequent arrears of rent at the rate of Rs. 17,300/- up to date to contest the appeal on merits, failing which, appropriate orders will be passed by the Rent Control Appellate authority. No Costs. Connected miscellaneous petitions are closed.

04.09.2020

Index : Yes / No

Internet : Yes / No

Speaking/ Non Speaking Order
To

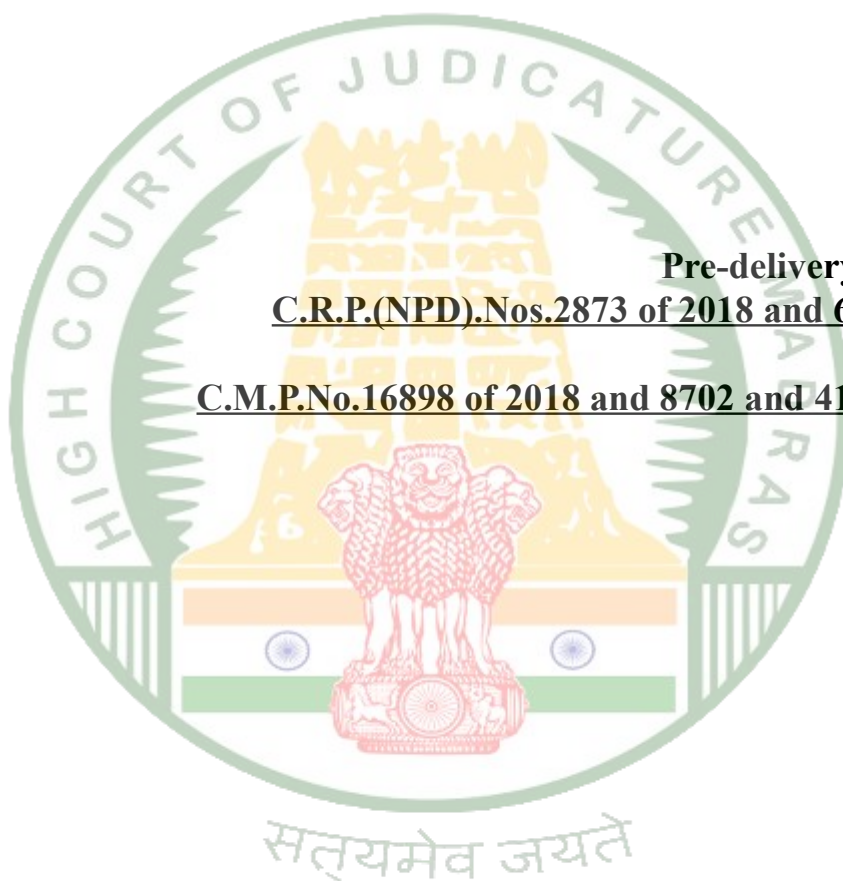
1. The Judge, VIII Small Causes Court
(Rent Control Appellate Authority) Chennai.

2. The Judge, VII Small Causes Court, Chennai

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M.GOVINDARAJ, J.

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**Pre-delivery order in
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and
C.M.P.No.16898 of 2018 and 8702 and 4191 of 2019**

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