

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 13.10.2020]

[ORDERS PRONOUNCED ON : 02.12.2020]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

C.R.P. [NPD] Nos.1874 and 1875 of 2020

and

C.M.P.Nos.11257 and 11264 of 2020

K.Babu

... Petitioner in both C.R.Ps./Tenant

.. Vs ..

K.Rajan

... Respondent in both C.R.Ps./Landlord

Prayer in both C.R.Ps.:- Civil Revision Petitions are filed under Section 25 (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 17.07.2020 passed in R.C.A.Nos.2 and 4 of 2019 respectively, on the file of the Subordinate Court, Vaniyambadi, Vellore, reversing the well considered order and decretal order passed in R.C.O.P.No.2 of 2018, dated 13.03.2019 on the file of the learned District Munsif, Vaniyambadi.

In both C.R.Ps.

For Petitioner : Mr.B.Arvind Srevatsa

For Respondent : Mr.Pa.Sudesh Kumar

COMMON ORDER

The tenant is the revision petitioner herein. The respondent herein/Landlord has filed a petition in R.C.O.P.No.2 of 2018 against the revision petitioner herein by stating that he is a tenant in respect of a non residential premises and the said non residential building with other portions originally belongs to Mohammed Kaliula. On 02.12.2015, the respondent/landlord has purchased the petition mentioned property with other portions from the above said Mohammed Kaliula.

2. The tenancy between the revision petitioner/tenant and Mohammed Kaliula was terminated with effect from 31.12.2015 and the tenancy in respect of property was attorned in favour of the respondent/landlord. The monthly rent of Rs.4,250/- was payable on or before 5th day of every English Calendar month. The revision

petitioner/tenant has failed to pay the monthly rent for the month from January 2016 to till date. In spite of several demands, on 02.11.2016, the revision petitioner/tenant has sent a Demand Draft for a sum of Rs.42,500/- towards rent for the month of January 2016 to October 2016 through his counsel along with reply notice and after that, he has neglected to pay the rent from November 2016 to till date and therefore, this amounts to willful default.

3. It is admitted that the revision petitioner/tenant has paid a sum of Rs.42,500/- on 02.11.2016 towards rent from January 2016 to October 2016 for 10 months. It is the case of the revision petitioner/tenant that in spite of several attempts made by him to pay the rent to the respondent/landlord, landlord wantonly avoided to receive the rents for the reasons best known to him and has come forward with the allegation about willful default only to evict the revision petitioner/tenant from the petition mentioned property.

4. To prove the case of the respondent/landlord, he examined himself as P.W.1 and examined another witness as P.W.2 and marked the

documents Exs.A.1 to Ex.A.11. On behalf of the revision petitioner/tenant, he examined himself as R.W.1 and no documentary evidence has been marked.

5. After trial, the learned District Munsif [Rent Controller], Vaniyambadi, has held that there is no willful default in making payment of rent by the revision petitioner/tenant. However, on the point of owner's occupation, the learned Rent Controller has allowed the R.C.O.P.No.2 of 2018 in favour of the respondent/landlord and ordered for eviction of the tenant. As against the same, the revision petitioner/tenant has preferred an appeal in R.C.A.No.2 of 2019 against the order of eviction on the ground of owner's occupation while the respondent/landlord has preferred an appeal in R.C.A.No.4 of 2019 for rejection of the eviction on the ground of willful default. Both the R.C.A.Nos.2 and 4 of 2019 were taken up together and disposed of by a common order on 17.07.2020 by the learned Subordinate Judge (Rent Control Appellate Authority), Vaniyambadi, wherein, the R.C.A.No.2 of 2019 filed by the revision petitioner/tenant was dismissed while the R.C.A.No.4 of 2019 filed by the respondent/landlord was allowed.

Consequently, R.C.O.P.No.2 of 2018 stands allowed on both the grounds.

Hence, the revision by the tenant.

6. Mr.B.Arvind Srevatsa, learned counsel for the revision petitioner/tenant would contend that after receipt of the legal notice, the tenant has paid a sum of Rs.42,500 in lump sum and hence, the default is not willful. It is further contended that the Milk Vending License granted in favour of the respondent/landlord is old enough and it is of the year 2015 and R.C.O.P. was filed only in the year 2018 and therefore, the findings given by both the Authorities under the Rent Control Act are improper. It is argued by the learned counsel for the revision petitioner/tenant that on perusing the challan, the respondent/landlord has procured a small quantity of milk only to show the alleged business and therefore, the allegation of the respondent/landlord about own use and occupation is *mala fide* and not the *bona fide* one.

7. This Court has given its anxious consideration to the submissions made by the learned counsel for the revision petitioner/tenant.

8. Heard Mr.Pa.Sudesh Kumar, learned counsel appearing for the respondent/landlord and perused the records.

9. On a perusal of records, it is seen that the respondent/landlord has purchased the property from Mohammed Kaliula and thereafter, the tenancy between the revision petitioner/tenant and Mohammed Kaliula was terminated and the tenancy in respect of the property was attorned in favour of the respondent/landlord. The revision petitioner/tenant has filed a suit in O.S.No.12 of 2016 for injunction restraining the respondent/landlord from evicting him without due process of law and hence, the respondent/landlord has sent a Legal Notice-Ex.A.1, dated 31.10.2016. The respondent/landlord has clearly stated about the filing of the suit in O.S.No.12 of 2016 and also non-payment of rent from January 2016. On receipt of Ex.A.1, the tenant has sent a reply notice on 08.11.2016 and also enclosed a Demand Draft for a sum of Rs.42,500/- towards rent from January 2016 to October 2016 and the said Demand Draft enclosed with the reply notice is a sheet anchor for the revision petitioner/tenant.

10. Based upon the said payment, the learned counsel for the revision petitioner/tenant has submitted that a lump sum payment has been made and hence, there is no willful default by the tenant, though it is a default. However, it is to be seen that in the suit filed by the revision petitioner/tenant in O.S.No.12 of 2016, the tenant had knowledge that who is the owner of the petition mentioned property. Though the revision petitioner/tenant has paid a sum of Rs.42,500/- by way of Demand Draft under Ex.A.2, thereafter, he has not paid the rent upto 13.06.2018 i.e., for about 20 months, when the eviction proceedings are pending before the Court.

11. In the cross-examination, the tenant/R.W.1 has admitted that he has paid the amount in lump sum. Admittedly, on the date of filing of the suit in O.S.No.12 of 2016, the respondent herein is the landlord. Therefore, there is a statutory obligation cast upon the revision petitioner/tenant to pay the rent to the respondent/landlord. Even in respect of the said amount of Rs.42,500/- for the month of January 2016 to October 2016, on 02.11.2016 in the reply notice, the tenant has

annexed the Demand Draft. Thereafter, the tenant has never paid any amount and has paid the amount for next 20 months i.e., from November 2016 to June 2018 only on 05.07.2018 and the rent for the month of July 2018 and August 2018 has been paid only on 04.09.2018.

12. It is to be stated that on the date of filing of the suit, the revision petitioner/tenant had the knowledge as to who is the owner of the petition mentioned property and he has not paid the amount. The tenant has paid the amount on receipt of the notice. Thereafter, again the tenant defaulted in paying the rent and again, he paid the lump sum. Taking into consideration the attitude of the revision petitioner/tenant in paying the arrears of rent in lump sum, the learned Rent Control Appellate Authority has rightly held that there is a willfulness on the part of the revision petitioner/tenant in non payment of rent.

13. It is settled law that the learned Rent Control Appellate Authority has to find out the intention of the revision petitioner/tenant whether non payment of rent is *bona fide* one or willful one. The revision petitioner/tenant has willfully defaulted in making the payment

of rent consciously, deliberately with open deficiencies and with intention not to pay the rent. When that be the case, in the instant case, as per the admission of R.W.1 in the cross examination, it amounts to willful default and hence, the finding rendered by the learned Rent Control Appellate Authority is just and proper and it does not warrant any interference by this Court.

14. The next ground on which both the Authorities under the Rent Control Act have concurrently held that the owner's occupation pleaded by the respondent/landlord is *bona fide*. It is the specific case of the respondent/landlord that he has obtained Vending Licence to do Aavin Milk retail business and he was doing so in the platform in front of the petition mentioned premises. The adjacent shop is also belongs to the respondent/landlord and in the connected R.C.O.P., he has also filed for eviction and the said eviction is also confirmed by the learned Rent Control Appellate Authority.

15. On a combined reading of the evidence of P.W.1 coupled with the documentary evidence of Ex.A.4 to Ex.A.11, it is seen that since

the respondent/landlord is doing milk vending business in the street at CL Road, he cannot procure more quantity of milk, because he need the storage facilities to keep the milk intact till the evening and thus, this Court finds that the intention of the respondent/landlord to have the building for his own use and occupation to do retail milk vending business has been duly supported by a documentary evidence and even in the cross examination, he has clearly answered the suggestions made by the revision petitioner/tenant and the future course of action that has to be taken for internal alternation of the building and thus, both the premises are situated in the ground floor. One portion is covered under this CRP and another portion is covered under the next CRP and both the petition premises are situated in the ground floor and therefore, the landlord is using the first floor for residential purpose and for doing milk vending as a retail business, ground floor is more suitable.

16. As per Ex.A.5, the respondent/landlord has obtained an agency for selling milk and milk produces at CL Road, Vaniyambadi. Admittedly, he has no other premises except the petition mentioned premises including other shops in the premises. Two shops are situated

in ground floor and other two portions are situated in the upstairs. Now, the respondent/landlord has filed a petition for eviction against the revision petitioner/tenant in respect of the petition mentioned property. To show the business transaction, the respondent/landlord has marked documents as Ex.A.4 and Ex.A.6 to Ex.A.11. The only objection raised by the revision petitioner/tenant is that the respondent/landlord is having other two portions in the upstairs and he has not filed any petition for eviction in respect of the portion situated in the upstairs. If he wants to do business, he can very well take steps to evict the tenant in the upstairs premises also. As stated supra, to do milk vending retail business, ground floor is more suitable than the first floor in rural areas.

17. Both the learned Rent Controller as well as the Rent Control Appellate Authority have rightly come to the conclusion that the plea of the respondent/landlord with regard to the owner's occupation has been proved in the manner known to law. The said finding does not suffer from any irregularity or illegality warranting interference by this Court in this revisional jurisdiction and accordingly, both the Civil Revision Petitions are devoid of merits and liable to be dismissed.

18. In the result, both the Civil Revision Petitions are dismissed.

No costs. Consequently, the connected miscellaneous petitions are also dismissed.

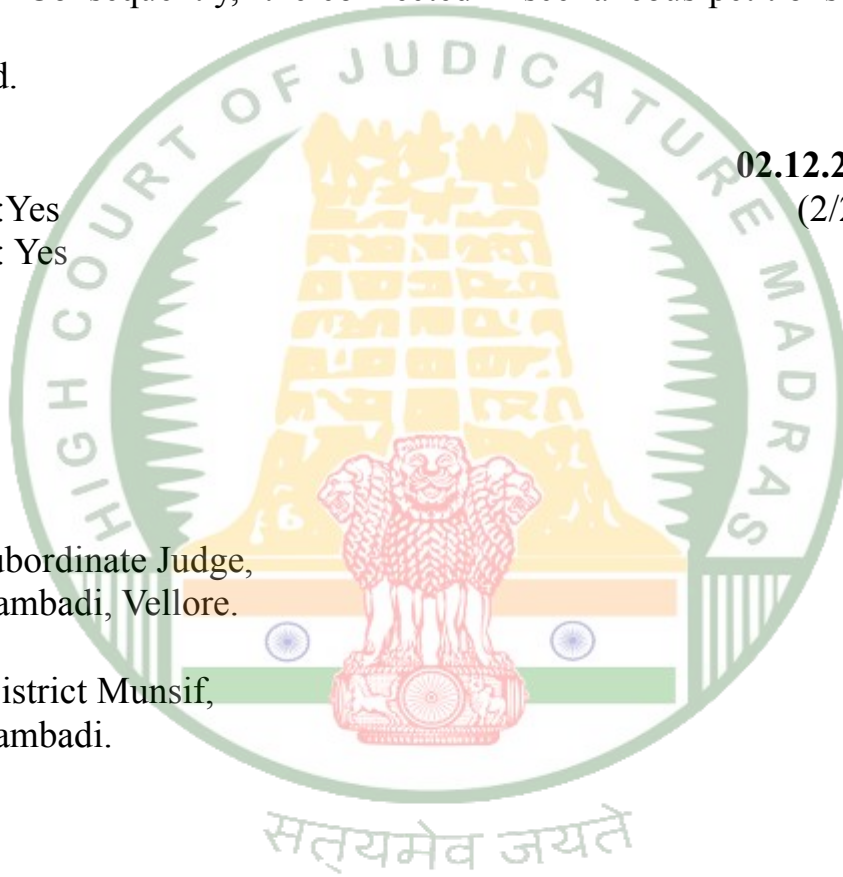
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02.12.2020

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To

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



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RMT.TEEKAA RAMAN, J.

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**Order made in
C.R.P.[NPD] Nos.1874 and 1875/2020**

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