

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 31.01.2020

Judgment Pronounced on : 19.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.1864 of 2014

N.Shankaran

... Petitioner / Appellant /
Landlord

Vs.

M.Krishnan

... Respondent/ Respondent/
Tenant

Prayer: This Civil Revision Petition is filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, against the fair order and decreetal order dated 10.02.2006 in R.C.A.No.89 of 2005, on the file of the Rent Control Appellate Authority(II-Additional Subordinate Judge), Coimbatore confirming the fair and final order dated 29.12.2004 made in R.C.O.P.No.14 of 2001 on the file of the Rent Controller (I-Additional District Munsif), Coimbatore.

For Petitioner : Mr.Haja Nazirudeen
Senior Counsel
For Mr.R.Tholgappian
For Respondent : Mr.N.Senthil Kumar

ORDER

The unsuccessful Landlord is the revision petitioner herein. The revision petitioner has filed this revision seeking an order of eviction on the ground of wilful default in payment of rent.

2. Brief averments that are necessary for determining of this Civil Revision Petition is as under:

The petitioner is the landlord and the respondent is the tenant. The respondent/tenant took the petition mentioned property on oral lease. The advance for the lease was agreed to Rs.20,00,000/- and monthly rent was agreed to Rs.10,000/- per month. The period of lease was 10 years and it was agreed between the parties that rent can be increased by 30% in every succeeding three years. The said oral agreement was confirmed and acknowledged by both petitioner and respondent in letter dated 23.06.1997. On the basis of confirmation letter dated 23.06.1997 the respondent took petition mentioned property on 28.08.1998 after paying Rs.20,00,000/- as

advance to the petitioner. Thereafter the respondent filed a suit in O.S.No.1174 of 2000 before the learned Principle Subordinate Judge, Coimbatore for the recovery of advance amount of Rs.20,00,000/- along with the interest at the rate of 12% per annum. The respondent/tenant was produced an unregistered memorandum of understanding and based on the terms contended that the lease was terminated on 12.05.2000. The said memorandum of understanding is an unregistered document contains the terms of lease for the period of ten years. Non-payment of rent for a period of 11 months is wilful and result is intentional.

3.The counter statement filed by the respondent/tenant in nutshell is as follows:

The respondent took on lease the petition mentioned property from the petitioner on 29.08.1997 after paying a huge advance amount of Rs.20,00,000/- to the petitioner. The tenancy is one at will. The petitioner and the respondent also entered into a memorandum of understanding on 29.08.1997 in respect of the above said lease. The respondent has stated that the perusal of Clause 6 of the memorandum of understanding would clearly show that the tenancy is one at will. The contents of Clause 6 of the

memorandum of understanding is as follows:

“The second party shall have the right to assign and/or sublease the property. However, the lease will be terminated at the end of 10 years subject to Clause 4, under which the lease can be extended on mutually agreed terms. However, the second party shall have the right to terminate the lease at any time by giving three months notice in writing.”

The respondent in exercise of his rights under Clause 6 terminated the lease in writing on 12.02.2000 by giving three months notice as stipulated by Clause 6. As per the terms of the termination notice issued by the respondent, the lease ended even on 10.05.2000 and the respondent was willing to hand over possession of the leasehold premises on the very same day. The respondent again sent a notice through his counsel on 27.04.2000 calling upon the petitioner/landlord to refund the advance paid by him on 12.05.2000, viz., the day the lease stood terminated. The petitioner received the notices, but has not chosen to send any reply. The respondent is always ready and willing to hand over possession immediately on receipt of the advance amount of Rs.20,00,000/- together with interest and cost as decreed in the suit in O.S.No.1174 of 2000.

4. Before the learned Rent Controller, PW.1 was examined and no document has been filed on behalf of the respondent/tenant and on his side, no oral evidence was let in. Further Exs.R1 to R4, Judgment copies of O.S.No.1174 of 2000 and grounds of appeal in A.S.No.720 of 2000 were marked in the cross-examination of PW.1.

5. Both the Courts, the Rent Controller as well as the Appellate Authority have concurrently held that on the date of filing of the petition for eviction, the landlord is having money in his credit as an advance, over and above the alleged arrears and the decree amount is yet to be paid by the landlord, accordingly, rejected the petition and hence this Civil Revision Petition.

6. Heard Mr.Haja Nazirudeen, learned Senior Counsel appearing for the petitioner/landlord and Mr.N.Senthil Kumar, learned Counsel appearing for the respondent/tenant and perused the records.

7. After hearing the submissions of the rival parties, it appears that admittedly parties are governed by the Tamil Nadu Buildings (Lease & Rent

Control) Act, 1960. The agreed monthly rent at the time of commencement of leased was fixed at Rs.10,000/- with periodical enhancement of 30% in every three years. The respondent paid rental advance of Rs.20,00,000/- refundable without interest at the time of vacating the premises. The respondent/tenant paid the monthly rents from 01.09.1997 till 31.01.2000 and thereafter terminated the lease and requested for refund of the rental advance though the respondent did not vacate the premises and hand over possession to the petitioner/landlord. Further, the respondent filed a suit for recovery of the rental advance of Rs.20,00,000/- with interest at the rate of 12% from the date of filing the suit till realisation. The respondent however refused to vacate and continues to remain in possession without paying the monthly rents till date.

8. It is to be stated that pursuant to the memorandum of understanding, the petition premises were given on rent at the rate of Rs.10,000/- per month and advance of Rs.20,00,000/- was given by the respondent/tenant as could be seen from the terms of memorandum of understanding. For the reasons stated in the notice, the respondent/tenant has terminated the tenancy on 12.05.2000 and asked the landlord to refund

the advance amount of Rs.20,00,000/-. Since the landlord refused to pay the advance amount after issuing notice, it appears the tenant has filed a suit in O.S.No.1174 of 2000 before the Sub Court, Coimbatore for return of advance amount. After contesting, the suit was decreed with cost on 20.04.2000. In view of the suit claim being Rs.20,00,000/-, first appeal in A.S.No.720 of 2002 was filed before this High Court.

9. Pending suit in O.S.No.1174 of 2000, the landlord appears to have filed R.C.O.P.No.14 of 2001 on 31.01.2000 before the learned District Munsif, Rent Controller, Coimbatore. The suit was decreed on 20.04.2002 and the appeal was filed before High Court in A.S.No.720 of 2002. The Judgment and decree copy in O.S.No.1174 of 2000 and the memorandum of appeal in the above said A.S.No.720 of 2002 were marked as Exs.B1 to B4, as mentioned above. Taking into consideration of the fact that there was a termination of the lease and for recovery of advance amount, the suit was decreed. Both the Courts have held that since the petitioner/landlord is having the money as that of the tenant as an advance and subsequently, a decree was passed by Civil Court for refund of the advance and has rejected the RCOP and RCA as well.

10.(a) Going by the terms of the memorandum of understanding which lead to the tenancy as per the rental account as on date, the respondent/tenant has stopped paying rent from 01.02.2000 onwards. After adjustment of the rental advance as per the dictum of the Hon'ble Supreme Court, the rental advance stood exhausted on 30.09.2016 itself. Therefore, the respondent is overdue from 01.10.2016 onwards and the arrears due and payable by the respondent/tenant is Rs.3,30,000/- as on 31.06.2019 at the rate of Rs.10,000/- per month.

10.(b) This Civil Revision Petition was filed on February 2007. It remains to be stated that pending this CRP, the above said A.S.No.720 of 2002 was disposed of by Judgment dated 13.12.2008, wherein the Hon'ble Division Bench, consisting of Hon'ble Mr.Justice R.Subbiah and Hon'ble Mr.Justice C.Saravanan, has upheld the finding rendered by the trial Court and dismissed the above said A.S.No.720 of 2002 and observed as under:

“32.Before paring with, it has to be necessarily observed that even though the plaintiff had issued notice dated 12.02.2000, Ex.A4 expressing his intention to quit and deliver vacant possession of the leasehold premises on or before 10.05.2000, the defendant refused to take delivery of the

possession and it led to the plaintiff filing the instant suit to direct the defendant to refund the advance amount of Rs.20 lakhs, which he paid to the defendant, After filing the suit, the plaintiff continued to remain in possession of the suit property. Even though the suit was decreed, the plaintiff is admittedly in possession of the leasehold premises even during the pendency of this appeal at the instance of the defendant. In fact, across the bar, it was brought to the notice of this Court that the defendant has taken recourse to the provisions contained under the Tamil Nadu Buildings (Lease & Rent Control) Act and had filed a Rent Control Original Petition for non-payment of the lease amount during the pendency of the present appeal, and on its dismissal, he has filed a Civil Revision Petition before this Court and it is stated to be pending. Having regard to the above facts, even though we confirm the decree and judgment of the trial Court, taking note of the events that had taken place during the subsistence of the present appeal, we observe that the defendant is entitled to adjust the lease rent payable by the plaintiff for his use and occupation of the demised premises, from the date on which it has become due till the date of surrendering vacant possession of the leasehold premises.(emphasis supplied).

33. In the result, we confirm the Judgment and Decree dated 26.04.2002 passed in O.S.No.1174 of 2000 on the file of the Principal Subordinate Judge, Coimbatore. The Appeal Suit

fails and it is dismissed. No Costs.”

11.(a) The learned Senior Counsel for the petitioner could contend that the findings rendered by the Hon'ble Division Bench in the Appeal Suit wherein the defendant(landlord) is entitled to adjust the lease amount payable for the plaintiff for his use and occupation of the demised premises from the date on which it has become due till the date of surrendering vacant possession of the leasehold premises.

11.(b) As stated supra, both the parties has submitted calculation memo. As per the landlord's calculation memo, no pendency regarding the arrears of amount after adjusting Rs.20,00,000/-. While as per the calculation memo filed by the tenant, the landlord has to pay the decree amount to the tune of Rs.44,55,400/-. In view of the above position, the matter was referred to mediation. However, mediation failed and the case was reverted back to the Court for adjudication.

11.(c) After going through the counter statement filed by the respondent/tenant and the terms of memorandum of understanding in A.S.No.720 of 2002, it is seen that the monthly rent is Rs.10,000/- and once in three years there must be an increase of 30% rental amount. As observed

earlier after adjusting the rental advance, the rental advance stood exhausted on 30.09.2016 itself. Hence from the exhausted date, the respondent/tenant is liable to pay the amount, however on the said date, this Civil Revision is pending.

12. On perusal of the memo of calculation filed by the respondent/tenant he has calculated the rent only at the rate of Rs.10,000/- per month for 235 months, however as per the terms of lease deed, there must be a increase of 30% enhancement once in three years. The terms of the memorandum of understanding has been upheld by the Hon'ble Division Bench in the above said Appeal Suit also assumes significance and hence during pendency of this revision, the advance amount of Rs.20,00,000/- is exhausted.

13. In view of the peculiar circumstances of the case and also of the fact, this Court finds that neither the petitioner/landlord nor the respondent/tenant is appears to be a law abiding citizen however each one of them took recourse to legal action to suppress opponent while remaining mute in discharging their legal duty as envisaged under law.

14. On perusal of Section 7 (2) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the adjustment of rent can be made only against excess rental advance and not against any other amount, debt or claim much less a decree debt including interest. In view of the plain reading of provision under Section 7 (2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, coupled with judicial decision thereon, in interpretation of the said provision the amount that could be adjusted in the advance amount retained by the landlord/petitioner could be rental amount only and hence this Court has no hesitation to reject the contention of the learned counsel for the respondent/tenant that the decree amount as granted in O.S.No.1174 of 2000 as confirmed in A.S.No.720 of 2002 should also be adjusted.

15. It remains to be stated that since the suit has ended in decree as confirmed in the appeal, it is always open to the plaintiff in the suit to execute the decree in the manner known to law. What was envisaged under Section 7(2) of the above Act is only in respect of the advance amount. The advance amount is Rs.20,00,000/-which is not in dispute. From the date of

12/16

commencement of the tenancy on 12.02.2000 till July 2009, it was about 235 months and as per the terms of the memorandum of understanding, 30% enhancement has to be given for once in three years and therefore, the entire advance amount has been expired pending this Civil Revision Petition. It is the specific case of the respondent/tenant in the counter statement filed before the Rent Controller, as extracted above, on payment of advance amount, he will ready to quit the property and hand over the possession.

16. In view of the above factual possession, which is not in dispute, I am of the considered view that in the interest of justice, the following order be passed.

(1) As the advance amount retained by the landlord has expired tenancy, in the interest of justice this Civil Revision Petition shall stand allowed and the respondent/tenant is directed to vacate and hand over the petition premises within a period of two months from the date of receipt of a copy of this order. Two months time is granted since it is a non-residential building.

(2) Pursuant to the decree passed in O.S.No.1174 of 2000 as

confirmed in A.S.No.720 of 2002, it is open to the respondent/tenant, who is the plaintiff in O.S.No.1174 of 2000 to file appropriate execution petition before the Execution Court to execute the money decree as granted in the decree in O.S.No.1174 of 2000. In such view of the matter, the petitioner/landlord would be at liberty to file memo of calculation, as given by the Appellate Court in A.S.No.720 of 2002, before the Execution Court and the same shall be decided by the Execution Court in this regard.

17. With these observations, this Civil Revision Petition is allowed and R.C.O.P.No.14 of 2001 shall stand allowed. No Costs.

19.06.2020

Index : Yes/No
Internet: Yes/No

PJL

सत्यमेव जयते

WEB COPY

To

1. The II-Additional Subordinate Judge (Rent Control Appellate Authority)
Coimbatore.
2. The I-Additional District Munsif, (Rent Controller)
Coimbatore.
3. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.



WEB COPY

C.R.P.(NPD)No.1864 of 2014

RMT.TEEKARAMAN, J.

PJL



**Pre-delivery
Order made in
C.R.P.(NPD)No.1864 of 2014**

WEB COPY

19.06.2020