

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2020

PRONOUNCED ON : 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.NPD.No. 2044 of 2020

and

C.M.P.No.12841 of 2020

Mrs.S.Periyalakshmi

...Petitioner

Vs.

K.Hari Bhaskar

...Respondent

Prayer: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 & Amended Act 23 of 1973 and Act 1 of 1980, to set aside the Judgement and Decree passed by the learned VII Court of Small Causes (Rent Control Appellate Authority), Chennai in R.C.A.No.157 of 2017 dated 16.03.2020 affirming the Decree and Order passed by the learned XV Small Causes Court at Chennai in R.C.O.P.No.846 of 2013 dated 28.11.2016 and dismiss the R.C.O.P.No. 846 of 2013.

For petitioner : Mr.M.Balasubramanian

ORDER

The tenant is a Revision Petitioner.

2. The respondent/landlord filed R.C.O.P. 846 of 2013, for eviction of the tenant under Section 10(2) (1) of the Tamil nadu Buildings (Lease and Rent Control) Act, on the ground of wilful default. After contest, revision was ordered in favour of the landlord and the same was confirmed in an appeal filed by the tenant in R.C.A.No.157 of 2017 and hence, the Civil Revision Petition.

3. The learned counsel for the petitioner/tenant would contend that none of the ingredients as found in Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 has been made out. The Revision Petitioner has sent a legal notice along with the copy of the demand draft, Ex.R2 on 06.08.2012 and the same was not appreciated by the Courts below in proper prospective. On the very first hearing, the revision Petitioner had rendered the outstanding amount payable to the landlord and has filed a Memo to the said effect on 05.07.2013 in Ex.R3 and the said documents have also not been examined in proper perspective.

4. After hearing the learned counsel for the revision petitioner/tenant and also perusing the Lower Court Records, it is seen that on the side of respondent/landlord, his father was examined as PW1, Exs.P1 to P6 were marked. On the side of respondent, the respondent herself was examined as RW1, Exs.R1 to R7 were marked.

5. The respondent herein had purchased the property from erstwhile owner on 03.12.2010 under Ex.P2, the revision petitioner was a tenant under the erstwhile owner. The purchase of the property was orally informed to the revision petitioner and the respondent / landlord demanded monthly rent. The revision petitioner had also paid monthly rent for 2 months in favour of landlord and thereafter rent was not paid from February 2011 to March 2013, hence this R.C.O.P. has been filed by the landlord for eviction on the ground of wilful default.

6. The tenant has rendered part payment towards arrears of rent on the date of 1st hearing and the landlord is also willing to receive entire arrears of rent which is payable from February 2011 onwards. Thereafter also, the tenant was irregular in payment of rent and only after an order was passed in

M.P.No.210/13, the tenant has deposited the monthly rent from March 2011 to February 2014 on 07.04.2014 before the Court. Therefore, the non payment of the rent from March 2011 to February 2014 is nothing but wilful default and there was supine difference in payment of rent. Even after filing RCA, the tenant was irregular in payment of rent. Only after order was passed in M.P.No.339 of 2018, the tenant has paid monthly rent from December 2016 to February 2019, hence the non payment of rent by the tenant is intentional and deliberate one.

7. This Court also finds that the respondent herein / landlord purchased the property from the erstwhile land owner. The tenancy was attorned in favour of the tenant. After attornment of tenancy, the tenant also paid rent for two months, thereafter, he has not paid the amount. With regard to the plea of wilful default, it is elicited in the cross examination of the RW1 (tenant) that the monthly payment for the period from March 2011 to July 2012 have been sent by way of demand draft and the same was also returned by the PW1 (father of the landlord). Since, the said amount was sent in the name of the father of the landlord and not in the name of the landlord. Thereafter, the tenant has not taken any steps as contemplated

under the Rent Control Act. The respondent/landlord, namely, Hari Baskar has purchased the property under a Registered sale deed dated 31.12.2020. It is also admitted by the RW1/tenant in the witness box.

8. On perusal of trial court records, this Court comes to know that R.C.O.P.No.846/13 has been filed on 23.04.2013 and the arrears of rent rendered by the revision petitioner/tenant from March 2011 to July 2012 was not accepted by the respondent/landlord in the month of August 2012 itself, which shows that the revision petitioner/tenant has not taken any steps to deposit the monthly rent into the court by invoking section 8(5) of the Act. It is true that after filing R.C.O.P., the appellant has filed M.P.No.210/13 seeking permission of court to deposit the monthly rent from March 2011 to April 2013, the same was allowed by trial court. After that the appellant has deposited the monthly rent from March 2011 to February 2014 on 07.04.2014 and the deposit receipt is also available in the trial Court bundle. Therefore the monthly rent from March 2011 to till the date of filing R.C.O.P. was deposited into the court on 07.04.2014 only and hence, both the Court below have concurrently held that the default in payment of rent is wilful. Initially after the purchase of the property by the

respondent/landlord, the tenant has paid the rent for two months. Thereafter, he has not paid the amount, subsequently, he sent the amount for the rent from March 2012 to July 2012 on 06.08.2012 and the same was returned since, the Demand Draft was taken in the name of the father of the landlord. Thereafter, the tenant has not taken any steps to deposit the monthly rent into the Court by invoking Section 8(5) of the Act.

9. It is also referred that even during the appeal, he has not remitted the amount. Since he had rendered the amount on the first hearing of the case, the learned counsel for the revision petitioner/tenant would contend that it does not amount to wilful default. However, it is seen from the order passed by the Rent Control Appellate Authority that the Authority relied on various decisions and came to a conclusion that the tenant committed wilful default, which in view of this Court is also acceptable.

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10. In the absence of any material irregularity and in view of the discussion in the preceding paragraphs, this Court has no hesitation to hold that the concurrent finding rendered by the authorities below does not suffer from any irregularity or illegality warranting interference in this Revisional Jurisdiction.

11. The last contention raised by the Revision petitioner/tenant is that the evidence of PW1 cannot be accepted, because, as per section 120 of Indian Evidence Act, the husband or wife or any party to the suit shall be competent witness, whereas, the father of the respondent/landlord is not a competent person to give evidence on behalf of his son. The argument advanced by the counsel for petitioner/tenant is not acceptable, because the petitioner/tenant has authorized his father to give evidence under Ex.P1, moreover, PW1, father of respondent/landlord had known the facts of the entire tenancy. Therefore, the evidence of PW1 cannot be rejected as contended by the learned counsel for revision petitioner/tenant. The Demand Draft was taken in the name of the father of the respondent/landlord and the same was also returned by him and he was examined on the side of the respondent/landlord, as PW1 in this regard.

Hence, the points raised by the learned counsel for the Revision Petitioner have no merits for consideration. Accordingly, this petition is devoid of merits and same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

15.12.2020

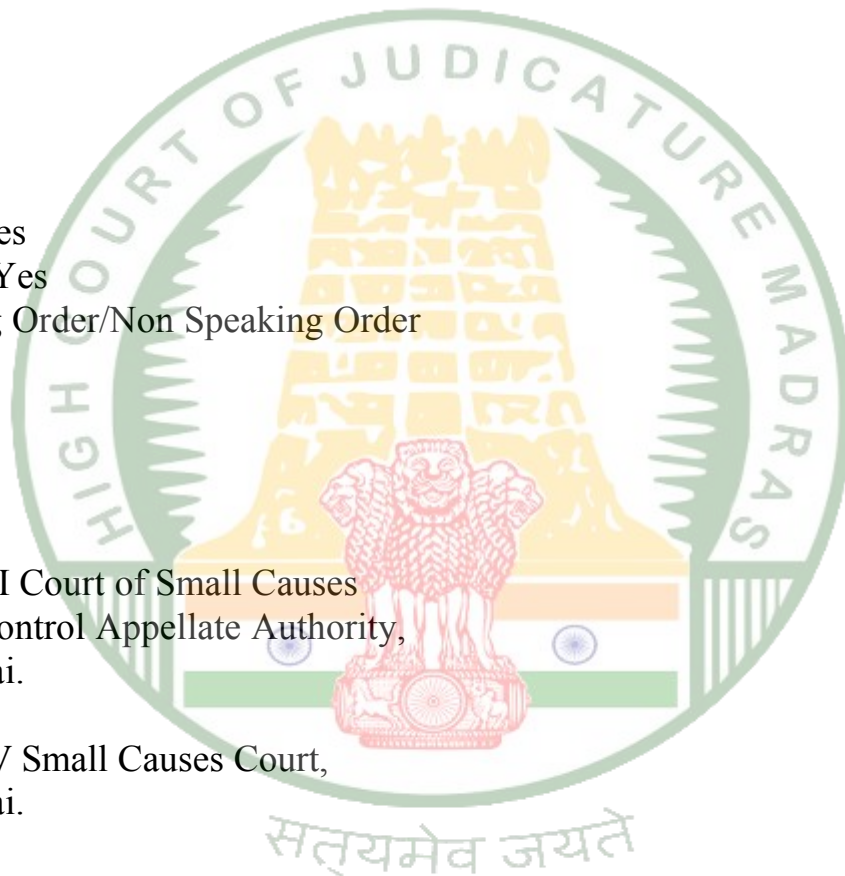
Index: Yes
Internet: Yes
Speaking Order/Non Speaking Order

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To

1.The VII Court of Small Causes
Rent Control Appellate Authority,
Chennai.

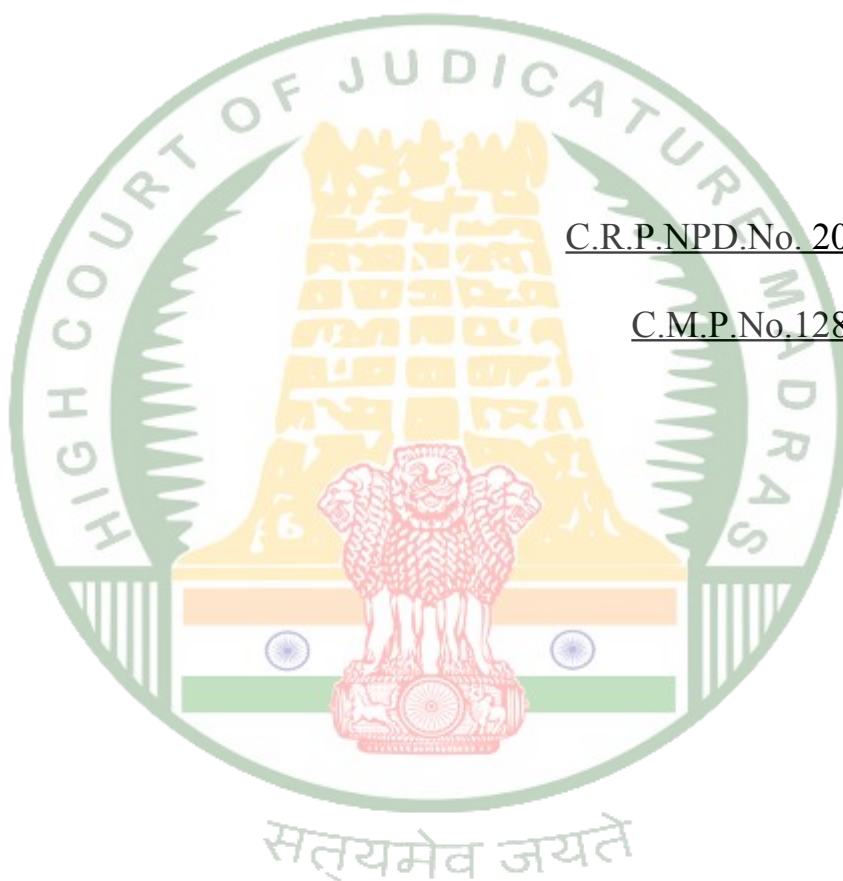
2.The XV Small Causes Court,
Chennai.



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RMT.TEEKAA RAMAN, J.

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