

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2019
DELIVERED ON : 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.Nos.3993, 3994, 3546 & 3721 of 2018
and
C.M.P.Nos.22267, 22150, 19846 & 20752 of 2018

Siraj @ Babu Salam
S/o. Mr. Ibrahim
Rep by his Power of Attorney
T.K. Abdul Rahoof

..Petitioner in all the CRPs/Respondent/Appellant

Vs.

M.A.Shaik Khaja Mohideen

..Respondent in all the CRPs/Petitioner/Respondent

Prayer: Civil Revision Petition Nos.3993 & 3994 of 2018 are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair orders and decreetal orders dated 02.11.2018 made in M.P.Nos.57 and 58 of 2018 respectively made in R.C.A.Nos.352 & 354 of 2014 on the file of the learned VII Judge, Small Causes Court, Chennai.

Civil Revision Petition Nos.3721 & 3546 of 2018 are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair orders and decreetal orders dated 06.09.2018 made in M.P.Nos.208 & 209 of 2018 respectively made in M.P.Nos.57 & 58 of 2018 in R.C.A.Nos.352 & 354 of 2014 on the file of the learned VII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.R.Munuswamy
For Respondent : Mr.S.A.Akbar

C O M M O N O R D E R

Civil Revision Petition Nos.3993 & 3994 of 2018 have been filed by the petitioner/tenant, against the orders passed by the learned Rent Control Appellate Authority, allowing the applications filed by the respondent / landlord, under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred to as the 'Act').

2. Civil Revision Petition Nos.3546 & 3721 of 2018 have been filed by the petitioner/tenant against the orders dismissing the applications filed by the petitioner/tenant under Order VII Rule 11 of C.P.C. r/w Rule 11 of the Rent Control Rules, to reject the applications filed by the respondent/landlord under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

3. Since the issues arising in all these revisions are one and the same, the revisions are heard together and disposed of by means of this common order. The parties are hereinafter referred to as per their jural relationship.

4. Brief facts leading to the filing of the revisions are as follows:

(i) The respondent/landlord, has filed two eviction petitions in R.C.O.P.Nos.1633 and 1634 of 2009 against the petitioner/tenant in respect of two premises. The eviction petitions has been filed on the ground of willful default that, the tenant failed to pay the rent from the month of February, 2008 to July, 2009. Pending RCOPs, the tenant failed to deposit the rent, hence the landlord was constrained to file two applications in M.P.No.583 and 584 of 2010, under Section 11(4) of the Act. The learned Rent Controller, after enquiry has come to the conclusion that the tenant has to pay arrears of rent at the rate of Rs.7000/- p.m., in M.P.No.584 of 2010 and at the rate of Rs.3,500/- p.m. in M.P.No.583 of 2010, for the period from February 2008 to February 2014, on or before 25.04.2014, failing which, all further proceedings in the main RCOPs will be stopped. Challenging the said orders, tenant has filed appeals in R.C.A.Nos.353 and 354 of 2014, before the learned Rent Control Appellate Authority.

(ii) Pending appeals, the tenant failed to pay the rent hence the landlord filed petitions under Section 11(4) of the Act in M.P.Nos.57 and 58 of 2018 respectively. Thereafter, the tenant filed two applications in M.P.Nos.208 and 209 of 2018 respectively, under Order VII Rule 11 C.P.C. to reject the above applications on the ground that the applications filed under Section 11(4) of the Act is not maintainable before the learned Rent Control Appellate Authority.

(iii) The learned Rent Control Appellate Authority has dismissed the applications filed by the tenant holding that the applications are maintainable and allowed the applications filed by the landlord and directed the tenant to deposit the arrears of rent after deducting the amount deposited by the tenant pursuant to the conditional order passed pending appeals.

5. Now, challenging the above orders, present revisions have been filed.

6. Mr.R.Munuswamy, learned counsel appearing for the petitioner/tenant would contend that Section 11(4) applications are only maintainable before the learned Rent Controller for payment of the past arrears and the said provision cannot be made applicable for any arrears which are due, pending appeals.

7. The learned counsel further contended that pending appeals, the learned Rent Control Appellate Authority has granted an order of interim stay of eviction on condition that, the tenant pays 50% of the arrears rent and the tenant has complied with the said conditional order. Subsequently, interim stay was also made absolute. In the said circumstances, second application filed under Section 11(4) of the Act, by the landlord, which, according to the tenant is not at all maintainable. The right of the tenant to conduct appeals cannot be taken away indirectly by filing the said applications by the landlord. According to the tenant, the learned Rent Control Appellate Authority without considering these issues mechanically dismissed the applications filed by the tenant and allowed the applications filed by the landlord.

8. It is further contended by the tenant that the title of the landlord was also in dispute, as the property belongs to a public trust (Waqf) and therefore the premises is exempted from the provisions of the Rent Control Act. In view of the termination of the appeals, the tenant is not in a position to contest the main RCOPs.

9. Per contra, Mr.S.A.Akbar, learned counsel appearing for the respondent/landlord would contend that there is no bar in the Act to file second application pending appeals. Under Section 11(1) of the Act, the tenant not only has to pay the past arrears of rent but he continue to pay the rent till the termination of the proceedings. Admittedly, the tenant did not paid the rent pending appeals. In the above circumstance only, present applications have been filed under Section 11(4) of the Act, by the landlord. According to the landlord, the tenant has undoubtedly committed default from February, 2008 to till the date he filed the petition in October, 2017. In one case, the arrears is Rs.7,78,055/- and in another case the arrears is Rs.2,78,250/- after deducting the deposit made by the tenant pursuant to the interim order passed by the learned Rent Control Appellate Authority. Considering all the above circumstances, the learned Rent Control Appellate Authority has rightly allowed the applications filed by the landlord. According to the landlord, the applications filed under Order VII Rule 11 of CPC by the tenant is not maintainable and the provisions of CPC is

not applicable to the applications filed under Section 11(4) of the Act.

10. I have considered the rival submissions and perused the records carefully.

11. The primordial contention of the learned counsel appearing for the tenant is that, the Rent control appeals are filed against the orders passed by the Rent Controller under Section 11(4) of the Act, and that the second application under Section 11(4) of the Act is not maintainable before the learned Rent Control Appellate Authority.

12. Before considering the rival submissions, it will be useful to refer to the relevant provisions of the Act.

"Section 11. Payment or deposit of rent during the pendency of proceedings for eviction:-

(1) No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 23 against any order made by the Controller on the application unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, 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,

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the appellate authority, as the case may be." (emphasis added)

13. A cursory reading of Section 11(1) of the Act, it could be seen that the tenant is not entitled to contest the applications before the Rent Controller or prefer any appeal against the orders made by the Rent Controller unless he paid or pays rent to the landlord or deposit with the Rent Controller or the Appellate Authority and that the tenant has to pay all the arrears of rent up to the date of payment or deposit and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Rent controller or the Appellate Authority as the case may be. Hence, the tenant necessarily has to pay the arrears of rent and also continue to pay future rent till the termination of the eviction proceedings either before the Rent Controller or before the Appellate Authority.

14. The above provision is intended to prevent defaulting tenant from continuing in possession of the property taking advantage of the pendency of the original application or appeal. During the pendency of the proceedings, if any tenant fails to pay or deposit the rent, he is liable to be evicted under Section 11(4) of the Act. If the tenant continues to commit default in paying the rent till the termination of the proceedings, it is always open to the landlord to file an application under Section 11(4) of the Act. There is no prohibition under the Act preventing the landlord from filing an application seeking for eviction under Section 11(4), if the tenant continues to commits default in paying the rent pending appeal. In the said circumstances, now, it is not open to the tenant to contend that the second set of applications is not maintainable before the Appellate Authority.

15. This Court in K.Maheswari Vs. Ashwani Kumar reported in 2011 (1) MWN (Civil) 533 in paragraph Nos.15 and 16 has held as under:

"15. A reading of the above provision shows that it imposes two obligations upon the tenant, one in respect of the past arrears and the other in respect of future rent. In respect of the past arrears, the above provision uses the expression "unless he has paid or pays to the landlord or deposits with the Controller all arrears of rent due in respect of the building upto the date of payment". In respect of future rent, the Section uses the expression "continues to pay or to deposit any rent which may subsequently become due until the termination of the proceedings". The Section also uses the conjunction "and" in between the first obligation relating to past arrears and the second obligation relating to future rent.

16. Therefore it is clear that a tenant will be entitled to contest an application for eviction only if he satisfies both the conditions viz., (i) payment or deposit of the entire arrears upto the date of the petition and (ii) the continued payment of the future rent upto the termination of the proceedings. The termination of the proceedings would happen only when an order of eviction is passed or when the petition for eviction is thrown out."

16. In the case in hand, originally the eviction petitions have been filed on the ground of willful default. Pending applications, the tenant failed to pay the rent. Hence, an application under Section 11(4) of the Act has been filed for the default in payment of rent from February, 2008 to September, 2010. The learned Rent Controller allowed the said applications in the year 2014 and directed the tenant to pay rent from February, 2008 to February, 2014. Challenging the said orders, the tenant filed appeals. Pending appeals, the learned Appellate Authority granted a conditional order of stay on eviction, directing the tenant to deposit 50% of the rent arrears. Even thereafter, admittedly, the tenant did not pay the contractual rent. In the above circumstances, the landlord filed petitions under Section 11(4) of the Act seeking a direction to the tenant to pay the rent from February, 2008 to September, 2017. In the above applications the only contention of the tenant was regarding the maintainability of the applications. Admittedly, the tenant failed to pay the rent pending appeals. Considering all these circumstances, the learned Appellate Authority rightly allowed the applications filed under Section 11(4) of the Act, and directed the tenant to pay the arrears of rent from February, 2008 to September, 2017. I do not find any illegality or irregularity in the order passed by the learned Appellate Authority. There is no merit in the

revisions filed challenging the orders passed in the applications filed under Section 11(4) of the Act and the same are liable to be dismissed.

17. So far as the applications filed by the tenant under Order VII Rule 11 C.P.C. to reject the application is concerned, the above applications are filed only on the ground that, the applications under Order VII Rule 11 C.P.C. is not maintainable before the Appellate Authority, and it should be rejected. It is settled law that Rent Control Court is not a Civil Court and C.P.C. is not made applicable to the extent provided in the Act, and the petitioner cannot maintain the above applications before the Appellate Authority. Further, as rightly held by the learned Appellate Authority, the second application filed under Section 11(4) of the Act is maintainable and the said applications necessarily to be rejected. The learned Appellate Authority after considering all the above aspects, rightly dismissed the applications filed by the tenant under Order VII Rule 11 C.P.C. and I do not find any illegality or irregularity in the order passed by the learned Appellate Authority and there is no merit in the revisions.

18. In the result, the civil revision petitions are dismissed and the orders impugned in these revisions, are hereby confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The VII Judge,
Small Causes Court, Chennai.

2.The Section officer
VR Section
High Court, Madras 104.

+4 Ccs to Mr.R.Munuswamy, Advocate sr 5976, 5977, 5978, 5979
+8 CCS to Mr.S.A.Akbar, Advocate sr 5561, 5562, 5563, 5564.

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BR(CO)
SP(05/03/2020)