



WEB COPY

C.R.P.(MD)No.820 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.12.2019

Delivered on : 20.05.2020

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P.(MD)No.820 of 2019

and

C.M.P.(MD)No.4980 of 2019

G.P.Nursery and Primary School,

Rep.By its Correspondent,

Dr.G.P.Hahnemann ... Petitioner/Respondent/Respondent-Tenant

Vs.

V.Seethapathy ... Respondent/Appellant/Petitioner-Landlord

Prayer : This revision petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act No.18 of 1960 as amended by Act No.23 of 1973 and Act No.1 of 1980, against the fair and decretal order dated 04.01.2019 passed in R.C.A.No.5 of 2007 on the file of the Subordinate Judge (Rent Control Appellate Tribunal), Thirumangalam, reversing the fair and decretal order dated 07.04.2017 passed in R.C.O.P.No.7 of 2015 on the file of the District Munsif (Rent Controller), Thirumangalam inso far it relates to the eviction on the ground of wilful default.

For Petitioner

: Mrs.P.Jeesi Jeeva Priya

For Respondent

: Mr.T.C.S.Thillainayagam

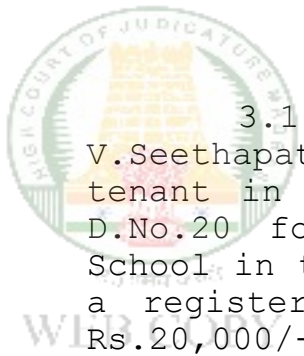
ORDER

This Civil Revision Petition is filed against the order dated 04.01.2019 made in R.C.A.No.5 of 2007 on the file of the Subordinate Judge (Rent Control Appellate Tribunal), Tirumangalam, insofar it relates to the eviction on the ground of wilful default.

2. The revision petitioner is the tenant and the respondent is the landlord. The landlord filed R.C.O.P.No.7 of 2015 seeking a prayer of eviction on the ground of wilful default and for own use. The R.C.O.P was dismissed by the Rent Controller. Against which, the landlord filed an appeal in R.C.A.No.5 of 2017 before the Rent Control Appellate Tribunal and the Rent Control Appellate Tribunal has partly allowed the appeal granting relief of eviction on the ground of wilful default in payment of rent. Against which, the tenant preferred this Civil Revision Petition.

3. Brief substance of the petition in R.C.O.P.No.7 of 2015 is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



3.1. One Velusamy Servai, father of the petitioner / V.Seethapathy is the landlord and he inducted the respondent as a tenant in respect of the eastern portion of the building bearing D.No.20 for non-residential purpose i.e. for running a Primary School in the year 2007 for a monthly rent of Rs.3,250/- by way of a registered lease agreement, dated 22.06.2007. An advance of Rs.20,000/- was paid and the period of lease was 5 years. The said Velusamy Servai died in the month of February - 2011 and thereafter, the petitioner was receiving the rent from the respondent through his Agent viz., Salai. Subsequently, the rent was enhanced to Rs.9,500/- from April 2011. As the temporary recognition granted by the Government in favour of the respondent to run the School was about to expire on 30.04.2013 and since the building was necessary for the own use of the landlord for letting it out to the pilgrims and tourist on daily rental basis, the tenant has to be evicted.

3.2 During the month of January 2013, the landlord requested the tenant to vacate the premises and the tenant promised to vacate the building within May 2013, but, all of a sudden the tenant filed a suit in O.S.No.269 of 2014, seeking permanent injunction not to evict him without due process of law. The temporary recognition granted to the petitioner tenant was cancelled by the then Chief Educational Officer by the proceedings, dated 31.01.2015. The petitioner tenant was directed to issue transfer certificates to all the students enabling them to join some other Schools. The tenant failed to pay the monthly rent from the month of February 2015 till May 2015 and hence, the tenant is liable to be vacated.

4. Brief substance of the counter in R.C.O.P.No.7 of 2015 is as follows:

4.1. The landlord's father/ Velusamy Servai leased out the suit property to the tenant on 22.06.2007 for a monthly rent of Rs.3,250/- and the tenant was running a School in the petition mentioned property and the Government has also recognized the School and granted licence. After the death of the said Velusamy Servai the present landlord was receiving the rent. In April 2011, the landlord enhanced the rent as Rs.9,500/- and he attempted to evict the tenant by force and therefore, the tenant filed a suit in O.S.No.269 of 2014 and also filed an application in I.A.No.808 of 2014 and has obtained a temporary injunction order, which is still in force.

4.2. The tenant had not committed default in payment of rent. Only at the instigation of the landlord, the Chief Educational Officer has passed an order, refusing to renew the recognition and has directed the tenant to close the School. The tenant filed an appeal on 23.03.2015, before the Director of Elementary Education, Chennai, and the appeal is pending. During the pendency of that appeal, the Education Department Officers came to the School building on 27.05.2015 and without prior notice, lock and seal the School. If the tenant is evicted, he will be put to heavy and



students will cause hardship. The landlord is having another building and he is leasing out the building to pilgrims on daily rental basis and the suit is to be dismissed.

5. After hearing both sides, the trial Court dismissed the R.C.O.P. No.7 of 2015. Against the dismissal order in R.C.O.P.No.7 of 2015, the landlord filed an appeal in R.C.A.No.5 of 2015 before the Rent Control Appellate Tribunal on the ground of wilful default and for own use of the landlord. The Rent Control Appellate Judge, after hearing both sides, has partly allowed the appeal in R.C.A.No.5 of 2015 on 04.01.2019. Against which, the tenant preferred this Civil Revision Petition.

6. On the side of the revision petitioner, it is stated that the revision petitioner tenant was paying rent regularly till December - 2014 but, the respondent landlord refused to receive the rent and the tenant revision petitioner has paid the rent for the month of September and October, but, the landlord refused to receive the rent and demand draft was sent to the landlord and the revision petitioner sent a notice, which was marked Ex.B3, dated 20.11.2015. The rent for the month of September and October, November and December - 2014 rent was sent through Money Order, which was received by the landlord and Ex.B6 is the document for the same.

7. The Money Orders sent during January - 2015 and February - 2015 were refused by the landlord. Hence, the tenant filed a petition in R.C.O.P.No.4 of 2015 not to evict him without due process of law and the landlord filed a petition in R.C.A.No.7 of 2015 to evict the tenant and the Rent Control Appellate Tribunal had rejected the prayer for own use and allowed the appeal on the ground of wilful default. Without an order from the Court, permitting the tenant to deposit the rent amount, the tenant was not able to deposit the amount. The rent for the period from January - 2015 to February - 2017 was deposited in the Court and the landlord received the entire amount. A compromise memo was filed and the landlord agreed to receive the rent directly. There is no subsequent default and there is no such pleadings, but the lower Court wrongly passed an order on the basis of wilful default.

8. On the side of the revision petitioner, it is stated that when the tenant in his additional counter has denied the title, the landlord should amend his application for eviction incorporating the averment as to the denial of title of the landlords. A judgment of the Hon'ble Supreme Court published in **2002 (3) SCC 98 [J.J.Lal Private Ltd and others Vs.M.R.Murali and another]** is cited.

9. On the side of the revision petitioner, it is stated that when a proceedings is pending, the landlord cannot institute a fresh proceeding on the ground of non-payment of rent. A Judgment of this Court published in **1989 (1) LW 155 [Durgai Ammal Vs. R.T.Mani]** is



cited.

10. On the side of the revision petitioner, it is further stated that whether the default in payment of rent is wilful or not is to be determined only on the basis of the facts of the case. A judgment of the Hon'ble Supreme Court published in **1985 (1) SCC 592 [Sundaram Pillai Vs. Pattabiraman]** is cited.

11. On the side of the revision petitioner, it is further stated that the petitioner can deposit the rent only after obtaining the order from the Court and the landlord cannot plead wilful default in such circumstances. A judgment of this Court published in **1990 (1) LW 591 [Avinasilingam.K. Vs. Hamsa]** is cited.

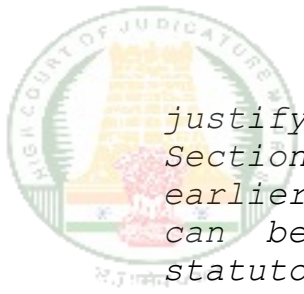
12. On the side of the respondent landlord, it is stated that the landlord prayed for eviction under two grounds, (i) own use (ii) for wilful default. The tenant filed R.C.O.P. stating that the landlord refused to receive rent from the month of January - 2015 and under Section 8(2), the tenant has to issue notice to the landlord to specify the bank, where, he has to deposit the rent, but the petitioner herein failed to send such notice under Section 8 steps can be taken to send the rent through Money Order only after the refusal to receive Money Order, the tenant can approach the Rent Controller. The tenant failed to follow the prescribed steps and that the proceedings taken by the tenant is not correct.

13. On the side of the respondent landlord, it is stated that benefits conferred by the statutory provisions are applicable only when the procedure is strictly followed. A judgment of the Hon'ble Supreme Court published in **2003 (1) SCC 123 [E.Palanisamy Vs. Palanisamy (Dead)]** is cited, wherein, it is stated as follows:-

"various steps which a tenant is required to take are prescribed. As per Section 8 of the T.N.Buildings (Lease and Rent Control) Act, 1960 the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. Strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant."

14. On the side of the respondent landlord, it is stated that the refusal of the landlord to receive rent is not sufficient to invoke Section 8(5) of the Act without following the procedure contained in the earlier subsections. A judgment of the Hon'ble Supreme Court published in **2002 (4) CTC 572 [E.Palanisamy Vs. Palanisamy (D)]** is cited, wherein it is stated as follows:

"mere refusal by the landlord to receive rent cannot



justify the action of tenant in straight-away invoking Section 8(5) of Act without following procedure contained in earlier sub-sections, but the benefits conferred on tenant can be enjoyed only on basis of strict compliance of statutory provisions and equitable considerations have no place in such matters. Strict compliance of procedure by tenant is necessary and omission to avail prescribed procedure disentitles the tenant to plead that there was no wilful default on his part and that the landlord is entitled to seek eviction of the tenant on the ground of wilful default in payment of rent."

15. On the side of the respondent landlord, it is stated that even if the tenant has deposited the arrears of rent in a lumpsum for a period of 26 months and the conduct of the tenant proves that there was a wilful default. A judgment of this Court published in **2013 (8) MLJ 465 [K.Ugrapandian Vs. K.R.Ramalingam]** is cited, wherein it is stated as follows:-

"the tenant's liability to pay rent to landlord does not cease merely because landlord had gone to Court seeking eviction and order passed by the Rent Controller and confirmed by the Appellate Authority, ordering eviction of tenant does not warrant interference."

16. On the side of the respondent landlord, a similar judgment of this Court published in **2007 (2) MLJ 636 [V.Kannadasan and others Vs. Sirajunnissa Bivi]** is cited, wherein, it is stated as follows:-

"when the tenants have failed to deposit the rent, after alleging that the landlord had refused to receive the rent and when they have not paid the rents regularly, even during the eviction proceedings initiated on the ground of wilful default, the tenants are liable to be evicted on the ground of wilful default".

17. On the side of the respondent landlord, another judgment of this Court Published in **2012 (6) CTC 557 [Sulochana Vs. R.Pangajam]** is cited, wherein, it is stated as follows:

" during the pendency of the eviction proceedings, the tenant being irregular in depositing the rent and rent was deposited only in lump sum landlord is entitled for the order of eviction of the tenant on the ground of wilful default in payment of rent."

18. On the side of the respondent landlord, it is stated that the tenant did not deposit the amount in the first instance and he paid the amount only after the expiry of 26 months and the duty is upon the defendant / tenant to prove that the default is not wilful. A judgment of this Court published in **2000 (II) CTC 577**



[K.M.Muneeruddin Vs. P.M.Punnoose] is cited, wherein it is stated that as follows:-

" the tenant failed to deposit rent on first date of hearing and has paid it after more than one year. Once tenant admits default, he has to prove that it was not wilful."

19. On the side of the respondent landlord, it is stated that mere attempt to send the rent by Money Order without taking further steps to pay the rent would amount to wilful default and the tenant depositing the unpaid rent on the first date of hearing will not disprove wilful default in payment of the rent. A judgment of this Court published in **1999 (1) CTC 221 [T.Easwara Rao Vs. N.E.Ansari (deceased)]** is cited, wherein it is stated as follows:-

"the tenant depositing unpaid rent on first the date of hearing and pleading that in view of this deposit default cannot be construed as no default."

20. On the side of the respondent landlord, it is stated that the tenant should meticulously follow the procedure enumerated for depositing the rent and that he is not entitled to the benefit under the Act, if he does not follow the procedure to pay the rent. A judgment of this Court published in **2007(2) CTC 472 [J.V.Bhoopalan Vs. Rajamanickammal]** is cited, wherein it is stated as follows:

"the tenant should meticulously follow the procedure enumerated under Section 8 to deposit the rent and the tenant is not entitled to the benefits under Act if he does not follow procedure to deposit rent."

A similar judgment of this Court published in **2009 (2) CTC 595 [K.Karuppiyah Vs. B.Kubendran]** is cited.

21. On the side of the respondent landlord, it is stated that when the tenant has not followed the proceeding under Section 8 (5) of the Act it is his duty to pay the rent in Court as and when it become due. A judgment of this Court published in **2006 (3) LW-8440 [Bahadurmul Sowcar and another Vs. M.R.Lakshmanan and others]** is cited, wherein it is stated as follows:

"when a tenant invokes Section 8(5) of the Act, it is his duty to pay the rent in Court as and when it be comes due."

Another judgment of this Court published in **2006 (6) CTC 83 [Rajappa Vs. Jonny D' Couto]** is cited, wherein it is stated as follows:-

"the subsequent conduct of tenant in continuing to commit default in payment of rent even after the initiation of the eviction proceedings."

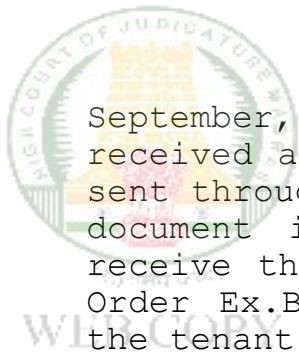


22. On the side of the respondent landlord, it is stated that only without prejudice to the right of the landlord, the landlord has withdrawn the rent amount. The purpose of lease of the property is to run a Primary and Nursery School and the agreement was for a period of five years ie. 2007 to 2012. The recognition of the School was only temporary and temporary recognition expired on 14.04.2013. The recognition was not extended and the lease agreement also expired. The eviction petition was remanded back only for marking of document and then again the eviction was ordered in favour of the landlord.

23. On the side of the respondent landlord, it is stated that there was no endorsement to show that the landlord refused to receive the rent and there is no document or pleading regarding the payment of rent for the month of February. Even after filing of the eviction petition, tenant has not deposited the rent as and when due and that the tenant did not come forward to deposit the rent regularly, R.C.A.No.11 of 2015 was posted for judgment on 07.04.2017 until then no deposit was made by the tenant and that only on 07.04.2017, the tenant filed a challan for a sum of Rs.2,47,000/- towards the arrears of rent for 26 months and the payment of rent for 26 months in a lumpsum will amount to wilful default. Until the date of order, no steps was taken by the tenant to pay the rent every month regularly. The District Educational Officer issued notice to the tenant on 15.12.2014, cancelling the temporary recognition and as on 31.01.2015, there was no recognition, a closure notice was issued to the tenant, after an inspection was conducted by the D.E.O, there is no School running in the premises and that the premises is only a residential house and the building is in a dilapidated condition and the case filed by the tenant ended against him and there is no appeal against that order. Now, the building is kept under lock and seal and E.B. service was also disconnected. For the past 5 years in another part of the building, the landlord is running a marriage hall, the building is within 100 meters away from the Tirupparankundram temple and the landlord wants the building for his own use to extend the marriage hall.

24. On the side of the respondent landlord, it is stated that for deposit of rent, no specific order from the Court is necessary. If the tenant is really interested, he can deposit the rent by way of challan and the averment that the tenant could not deposit the rent without a Court order is wrong.

25. On the side of the revision petitioner, it is stated that the tenant has complied the provision under Section 8(5) of the Act, till August -2014, he paid rent through the Agent of the landlord and that he send Demand Draft on 12.11.2014 for the month of September - 2014 and October - 2014 which was returned by the landlord. The tenant sent a notice/Ex.B3 on 20.11.2014, then again



September, October and November and the same was refused to be received and the document is marked as Ex.B4 and that the rent was sent through E-Money Order for the month of December - 2014 and the document is marked as Ex.B6 and again the landlord refused to receive the rent during January -2015 which was paid through Money Order Ex.B7. Since no order was passed in R.C.O.P.No.4 of 2017, the tenant was not able to deposit the rent.

26. It is seen that the revision petitioner was the tenant and he run a School in the premises. The contention of the revision petitioner is that there is no wilful default on his part and only due to the refusal of the landlord to receive rent, he has to send Demand Draft and Money Order to the landlord and as the Demand Draft and Money Order were refused to be received by the landlord, the tenant was constrained to file R.C.O.P.No.4 of 2017. It is seen that the temporary recognition given to the revision petitioner's School was subsequently, cancelled and the School premises was kept locked for the past five years. The contention of the respondent landlord is that the building is in dilapidated stage and is not fit for running a School and that the building is necessary for his own use. It is stated that the respondent landlord is having a marriage hall near the building and he wanted to renovate the building and to construct a huge block, for the marriage hall. However, the prayer for own use is rejected by the Rent Controller.

27. It is seen that since the recognition of the School was cancelled, the petitioner has also given transfer certificate to the students to enable them to continue their Education in some other Institutions. It is seen that the building is kept under lock and seal for the past five years and the lease agreement already expired long back, there is no use in keeping the premises locked any further.

28. The contention of the revision petitioner tenant is that the tenant deposited the rent before the Rent Controller. The case of the respondent landlord is that the rent was not deposited as when the rent become due and only a lump sum amount was paid towards rent arrears for 26 months and this itself amounts to wilful default. The tenant has not issued any notice to the landlord under Section 8(5) of the Act. Even the Money order and demand draft was only for two months or three months, the deposit was also made after 26 months. It is seen that the tenant has deposited the rent in a lump sum for 26 months, the tenant has not taken steps to pay the rent regularly as and when it was due which will amount to wilful default.

29. In the above circumstances, it is clear that there is a wilful default on the part of the revision petitioner tenant and there is nothing sufficient enough to interfere with the order of the trial Court. Hence, this Civil Revision Petition is dismissed.

<https://hccres.courts.gov.in/crpet/> The revision petitioner is directed to vacate the premises within a



period of two months from the date of receipt of copy of this order.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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Note: With the consent of both side counsels the
order is pronounced in the Open Court through
Video conference on this 20th day of May 2020.

To

- 1.The Subordinate Judge
(Rent Control Appellate Tribunal),
Thirumangalam.
- 2.The District Munsif (Rent Controller),
Thirumangalam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

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