



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.2546 of 2018

and

C.M.P. (MD)No.11193 of 2018

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1.P.Subburaman

2.P.Murugan

: Petitioners/Appellants/Tenants

.. Vs ..

Rathinambal

: Respondent/Respondent/Landlady

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, to call for the records relating to the fair and decreetal order, dated 03.08.2018 in R.C.A.No.05 of 2017 on the file of the Rent Control Appellate Authority/Subordinate Court, Devakottai, confirming the fair and decreetal order, dated 22.09.2017 in R.C.O.P.No.25 of 2013 on the file of the Rent Controller/Principal District Munsif-cum-Judicial Magistrate Court, Karaikudi.

For Petitioners

:Mr.AL.Kannan

For Respondent

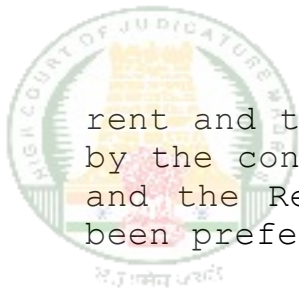
:Mr.K.Sekar

ORDER

This Civil Revision Petition is directed against the order of learned Rent Control Appellate Authority/Subordinate Judge, Devakottai, in R.C.A.No.5 of 2017, dated 03.08.2018, confirming the fair and decreetal order, dated 22.09.2017 in R.C.O.P.No.25 of 2013 on the file of the Rent Controller/Principal District Munsif-cum-Judicial Magistrate Court, Karaikudi.

2.Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.The revision petitioners are the tenants in respect of a premises owned by the respondent. The respondent herein filed a petition in R.C.O.P.No.25 of 2013 before the Rent Controller/Principal District Munsif-cum-Judicial Magistrate Court, Karaikudi, for evicting the tenants/revision petitioners on the ground of wilful default. Though the eviction petition was contested by the revision petitioners, the Rent Controller as well as the Rent Control Appellate Authority concurrently held that the revision petitioners have committed wilful default in payment of



rent and that therefore, they are liable to be evicted. Aggrieved by the concurrent orders of eviction passed by the Rent Controller and the Rent Control Appellate Authority, the above revision has been preferred by the tenants.

4.The learned Counsel for the revision petitioners submitted that the land lady had earlier filed a petition for fixation of fair rent before the Rent Controller in the year 1981 in R.C.O.P.No.09 of 1981 and the Rent Controller has fixed Rs.240/- per month as fair rent. The land lady preferred another petition in 2002 in R.C.O.P.No.18 of 2002 for fixing fair rent once again at the rate of Rs.3500/- per month. Though the Rent Controller, in the second application for fixing fair rent, enhanced the rent from Rs.240/- to Rs.1,500/-, in the appeal, it is stated that the order passed by the Rent Controller re-fixing fair rent in R.C.O.P.No.18 of 2002 was set aside and the order of appellate authority was confirmed by this Court in C.R.P.(MD)No.1763 of 2007. It is further stated that the land lady has refused to receive the rent thereafter, and that therefore, the tenants filed a petition under Section 8(5) Tamil Nadu Buildings (Lease and Rent Control) Act 1960, for depositing the rent into Court. It was only, thereafter, the petition for eviction in R.C.O.P.No.25 of 2013 was filed by the land lady. Referring to these sequence of events, the petitioners' Counsel contended that the petition for eviction lacks *bona fide* and not maintainable.

5.The Rent Controller and the Rent Control Appellate Authority considered the conduct of the tenants in depositing the rent before and after the petition under Section 8(5) was filed. Though the tenants filed the petition to deposit the rent into Court, the fact that the tenants did not deposit the rent regularly, prompted the Courts below to hold that the revision petitioners had committed default. It is well settled that subsequent payment is not an excuse and the tenant cannot be relieved from the consequences of wilful default prior to the filing of eviction petition, merely because, he paid the arrears subsequently. The Courts below have concurrently held that the tenants had committed wilful default, having regard to the admitted position that the revision petitioners committed default in payment of rent and that they were not regular in depositing the rent, even though they initiated a proceedings for depositing the rent into Court. In this case, the revision petitioners neglected in paying the rent in time and continued to deposit the rent irregularly during the pendency of the proceedings. Hence, the conduct of the tenants was held to be wilful by Courts below.

6.The learned Counsel for the revision petitioners submitted that since the petition already filed by the tenants under Section 8(5) of the Act is pending, the petition for eviction on the



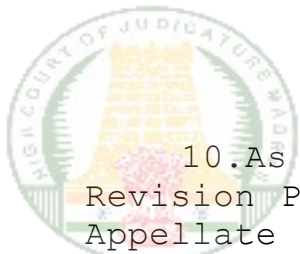
ground of wilful default is not maintainable. The learned Counsel then submitted that the revision petitioners have paid the rent regularly and there is no default as on date. The learned Counsel further submitted that the arrears as on date will be deposited in lump sum and that the tenants are willing to deposit the rent in advance.

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7.This Court is unable to accept the contentions of the learned Counsel for the revision petitioners. When eviction proceedings is initiated on the ground of wilful default, anyone would expect the tenant to pay the rent regularly, at least after the petition was filed. The learned Counsel for the revision petitioners submitted that the land lady had not withdrawn a pie out of the deposited amount made by the tenants before the lower Court. Since no prejudice is caused to the land lady by the delayed payment, it is further stated that the default cannot be treated as wilful. The conduct of the land lady in not withdrawing any amount from the deposited amount cannot be put against her and this Court treats such conduct as an act with caution fearing that the Court may take the acceptance of rent as an acknowledgment of a new tenancy.

8.It is well settled that it is the statutory obligation of every tenants to pay the rent regularly as per the terms of agreement. It is to be noted that the land lady has filed a petition for fixing fair rent in 1981 and got the fair rent fixed at the rate of Rs.240/- per month. It is brought to the notice of this Court that the land lady has to pay property tax at the rate of Rs.285/- per month. Though the petition for re-fixing the fair rent filed by the land lady was dismissed by holding that the second petition for fixing fair rent is not maintainable, the fact that the tenants have enjoyed all the legal proceedings to their advantage for several decades cannot be ignored. In the given circumstances, this Court is unable to show any indulgence to the revision petitioners, merely because, the tenants have agreed to pay rent or deposit the rent in advance to excuse the wilful default committed by them earlier.

9.Even before this Court, the learned Counsel for the respondent/land lady has produced the deposit particulars in R.C.O.P.No.19 of 2013, originally filed by the tenants for depositing the rent into Court. From the deposit particulars, it is seen that the tenants have not deposited any rent after 01.09.2019. This will demonstrate the attitude and conduct of the tenant. As pointed out earlier, the land lady has paid the property tax, more than the rent, that was fixed in a proceedings in the year 1981. In such circumstances, the conduct of the tenants in ignoring payment of rent promptly has to be taken seriously.



10.As a result, this Court finds no merit in the Civil Revision Petition. The orders of Rent Controller and Rent Control Appellate Authority do not suffer from any irregularity or illegality. As a result, this Civil Revision Petition is dismissed and the order of learned Rent Control Appellate Authority/Subordinate Judge, Devakottai, in R.C.A.No.5 of 2017, dated 03.08.2018, confirming the fair and decreetal order, dated 22.09.2017 in R.C.O.P.No.25 of 2013 on the file of the Rent Controller/Principal District Munsif-cum-Judicial Magistrate Court, Karaikudi, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

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Sub Assistant Registrar(CS)

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To

1.The Rent Control Appellate Authority
(Subordinate Judge), Devakottai.

2.The Rent Controller,
(Principal District Munsif cum Judicial Magistrate)
Karaikudi.

Copy to

The Record Keeper,

VR Section,

Madurai Bench of Madras High Court, Madurai-2 copies

+1 CC to Mr.K. SEKAR, Advocate (SR-14040[F] dated 13/08/2020)

C.R.P.(NPD)(MD)No.2546 of 2018

12.08.2020

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