

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD).Nos.456 & 457 of 2021

and

C.M.P.No.3974 of 2021

Mr.S.Subramani @ S.S.Mani (Deceased)
S/o.Subbiah

Tmt.Lakshmi (Deceased)
Mr.S.Subramani @ S.S.Mani

- 1.S.S.Chandrasekar
S/o.Late S.Subramani @ S.S.Mani
- 2.S.S.Gunasekaran
S/o.Late S.Subramani @ S.S.Mani
- 3.S.S.Venkatesh
S/o.Late S.Subramani @ S.S.Mani.

...Petitioners in both C.R.Ps.,
(Appellants 1 to 3 are added as parties as per order in M.P.No.682 of 2018 dated 09.01.2019)
(Tmt.Lakshmi (Deceased) amended as per the order passed in the Memo Sr.No.83132 of 2019 dated 27.01.2020)

Vs

Mrs.R.Anitha
W/o.K.I.Ramesh

...Respondent in both C.R.Ps.,

PRAYER in C.R.P.No.456 of 2021: Civil Revision Petition filed under Section 25 of Tamilnadu Building Lease and Rent Control Act 1960, to set aside the judgment and decree dated 24.02.2020 passed in R.C.A.No.196 of 2019 by the learned VII small Causes Court, Chennai confirming the Judgement and decree dated 09.08.2018 passed in R.C.O.P.No.139 of 2017 passed by the XIV Small Causes Court, Chennai.

PRAYER in C.R.P.No.457 of 2017: Civil Revision Petition filed under Section 25 of Tamilnadu Building Lease and Rent Control Act 1960, to set aside the judgement and decree dated 24.02.2020 in R.C.A.No.195 of 2019 by the learned VII Small Causes Court, Chennai confirming the Jusgement and decree dated 09.08.2018 passed in R.C.O.P.No.1453 of 2017 passed by the XIV Small Causes Court, Chennai.

For Petitioners : Mr.R.Ponnusamy (in both cases)
For Respondent : Mr.T.N.Rajagopal (in both cases)

ORDER

The present revision petitions have been filed challenging the judgment and decree passed by the learned VII Judge, Court of Small Causes, Chennai, in RCA Nos.195 and 196 of 2019 in and by which the judgment and decree passed in RCOP Nos.139 and 1453 of 2017 by the learned XIV Judge, Court of Small Causes, Chennai, were confirmed.

2. While RCOP No.139/17 has been preferred by the landlady, RCOP No.1453/17 has been preferred by the tenant. For the sake of convenience, the parties will be referred to as landlady and tenant.

3. It is the case of the landlady that she is the absolute owner of the premises and the ground floor of the premises has been rented out to the tenant for a monthly Rent of Rs.12,500/- for the purpose of running a textile business. In the month of March, 2015, the landlady sought for enhancement of rent to which the tenant agreed, however, the said enhancement in rent was not paid by the tenant. In the month of April, 2015, when the landlady sought for the enhanced rent, the tenant informed the landlady that he would vacate the premises within six months and the arrears of rent would be settled at that time. However, without paying the rent and handing over possession, in the month of October, 2016, the tenant filed O.S. No.4502/16. The letter sent by the tenant along with a demand draft for a sum of Rs.8,000/- towards the rent for the month of September, 2016, was returned by the landlady along with a suitable reply on the ground that the rent for the petitioner premises is Rs.12,500/- and that the tenant is due in arrears of rent and

that the tenant has wilfully and wantonly committed default in payment of rent.

4. The landlady, towards countering the contentions in RCOP No.1453/17 filed by the tenant, had submitted that the suit was dismissed for default on 23.03.2017, whereinafter the tenant sent a letter along with a demand draft for a sum of Rs.64,000/- to the landlady, being the rent for the months of September, 2016 to April, 2017, which was not received by the landlady, but returned with a reply stating that rent has to be paid from April, 2015 onwards. Further, it was noted therein that though the rent for the petition premises is Rs.12,500/-, the tenant had only paid rent at the rate of Rs.8,000/- per month. However, the tenant has not chosen to pay the rent, but after three months, the tenant's son had sent money through money order for the petitioner premises. Since the tenant's son is not the tenant, the landlady refused to receive the rent.

5. However, countering the above, it is the stand of the tenant that the present monthly rent is Rs.8,000/- excluding electricity charges and since the inception of the tenant on 1.2.1981, the tenant was paying a

rent of Rs.430/- per month, which was gradually increased and that the present rent is Rs.8000/- per month upto August, 2018. The tenant had sent a demand draft dated 05.10.2016 for a sum of Rs.8000/- through his advocate, which was returned by the landlady claiming that rent is due from April, 2015. It is the stand of the tenant that no receipts were issued by the landlady so far and that the landlady's husband used to collect rent on behalf of his wife and that demand draft was sent on 06.04.2017 for Rs.64,000/- towards rent for a period of eight months and that there is no wilful default committed by the tenant and that the petition has been instituted by the landlady with mala fide intention of throwing the tenant out of the petition premises for the purpose of getting higher rent.

6. Before the trial court, both oral and documentary evidence was adduced on behalf of either side and after exhaustive arguments, the trial Court held that the tenant has committed wilful default in payment of rent and accordingly directed the tenant to hand over vacant possession of the petition premises within a period of two months. Aggrieved by the said order, the tenant preferred appeals in RCA Nos.195 and 196 of 2019, which were dismissed confirming the order passed by the Rent

Controller, against which the present revisions have been preferred.

7. Similar contentions, as was raised by the tenant before the Courts below, have been raised even before this Court. It is the vehement submission of the learned counsel for the tenant that no receipts were issued by the landlady and the payment of rent sent through demand draft was returned by the landlady and, therefore, the claim of the landlady that there is wilful default in payment of rent by the tenant is erroneous and not substantiated by record. It is the further submission of the learned counsel for the tenant that though the tenant filed RCOP No.1453/17 for depositing the rents in Court, the said petition was also dismissed and the appeal preferred against the said order has also been dismissed, which clearly reveals that the Courts below have not applied their mind to the materials placed before them while coming to the conclusion that there is wilful default in payment of rent. Further, it is submitted that the exhibits, viz., Exs.R-1 to R-8, filed on behalf of the tenant have not been appreciated properly and that the landlady has not come to Court with clean hands as no legal notice was issued to the tenant for two consecutive months towards default in payment of rent.

The Courts below have, on mere surmises and conjectures, accepted the income tax returns filed by the landlady, though the returns are not specific as to the quantum of rent due. Further, it is submitted that the wilful default from April, 2015 has not been established by the landlady and in the absence of the same, the Courts below have erred in holding that the tenant has committed default in payment of rent. Accordingly, it is prayed that the revision petitions be allowed.

8. Heard the learned counsel appearing for the tenant/petitioner herein and also the caveator, appearing for the landlady/respondent in both the revision petitions and perused the materials available on record as also the orders passed by the Courts below.

9. It is not in dispute that the tenant had filed O.S. No.4502/16 seeking bare injunction not to dispossess him without following the due process of law, which has been dismissed. Pursuant to the dismissal, the tenant had sent a letter on 05.10.2016 along with a demand draft for a sum of Rs.8000/-, being the rent for the month of September, 2016. The counter letter of the landlady reveals that rents have not been paid since

April, 2015 and, therefore, the demand draft was returned and it was also highlighted that the tenant had committed wilful default in paying the rent. The said letter is also marked as Ex.P-3. Further, Ex.P-6 to P-10, being the income tax returns reveal that rental income was collected only upto 31.03.2015. The deposition of the witnesses, as also the exhibits, reveal that letters were exchanged between the landlady and the tenant pertaining to the rent to be paid and it reveals that rent has not been paid by the tenant since April, 2015. Though the tenant had sent a letter along with a demand draft for Rs.64,000/- being the rent for eight months, the same was not received by the landlady on account of the fact that the rent was not only due from April, 2015, but that the monthly rent was Rs.12,500/-.

10. The Courts below have elucidated from the documentary evidence that the income tax returns pertaining to the tenant clearly reveal the amounts paid towards rent and that the said income tax returns pertaining to three years together were filed during the pendency of the RCOPs on 07.02.2018. The income tax returns pertaining to the landlady clearly reveals that whenever the tenant paid the rents, the same

were reflected in the income tax returns of the landlady and that the monthly rent is shown in the income tax return as Rs.12,500/-. Therefore, from the above materials available on record, which have been properly appreciated by the courts below that not only the monthly rent is Rs.12,500/-, but the same is due and payable from April, 2015 and that the tenant has wilfully committed default in not paying the rents to the tune of Rs.12,500/- on time. On arriving at the said finding, the trial Court has ordered the tenant to vacate the premises and hand over vacant possession to the landlady, which has been duly affirmed by the Appellate Court.

11. Though the learned counsel for the tenant has raised very many contentions that it was the landlady, who has not received the rents properly and not issued any receipts, however, no documentary evidence in proof thereof have been filed. Further, even it is the undisputed case of the parties that the tenant has been in occupation of the premises since 01.02.1981. Without any proper documentary materials, the stand of the tenant that he was ready to pay the landlady the rent, which was refused to be received by the landlady, is not borne out by materials and the stand

taken by the tenant is only a futile attempt on his part to stick to the premises, which cannot be permitted.

12. For the reasons aforesaid, this Court is of the considered view that the judgment and decree passed by the Appellate Court confirming the judgment and decree passed by the Rent Controller does not call for any interference and accordingly, the civil revision petitions are dismissed. No costs. Consequently, connected civil miscellaneous petition is also closed.

10.03.2021

Index:Yes/No

Speaking order/Non Speaking order

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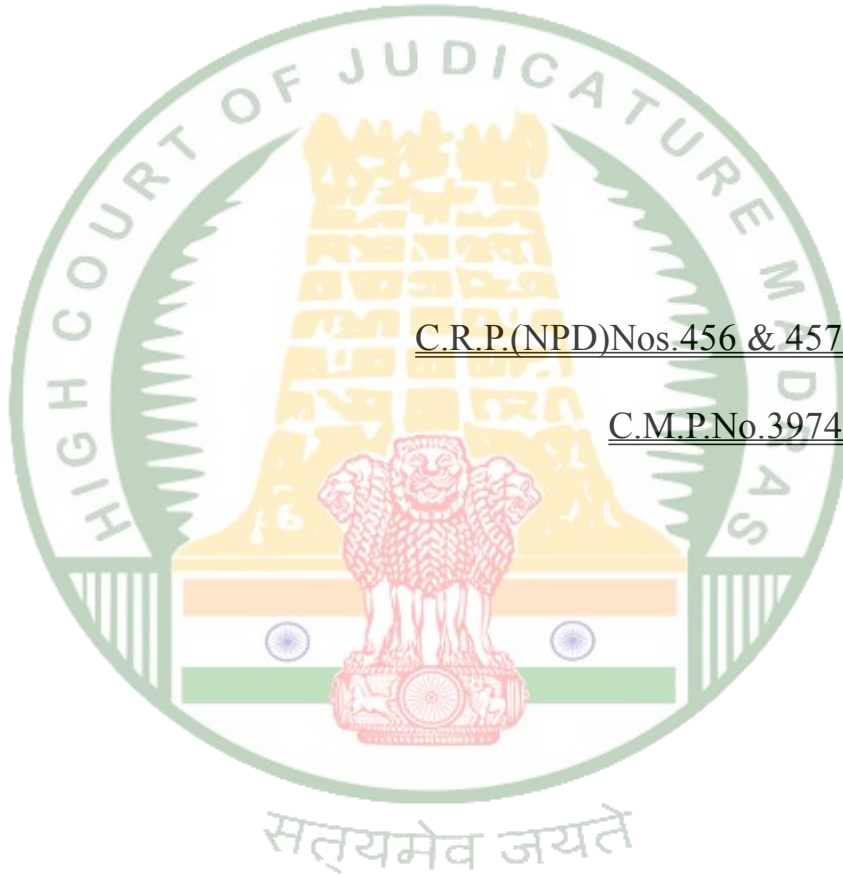
To

1. The VII Small Causes Court,
Chennai.

2. The XIV Small Causes Court,
Chennai.

V.BHAVANI SUBBAROYAN, J.

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