IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.NOS.1120, 1122 & 1123 OF 2019

1. Punjab National Bank
   Head Office at
   No.7, Bhikaji Cama Place,
   New Delhi.

2. Punjab National Bank
   Avadi Branch
   No.402, M.T.H.Road,
   JK Complex, Avadi,
   Chennai 600054. ...Petitioners in all cases/ Respondents

Vs

Mrs.J.Amsa Veni
Wife of Mr.B.Jayaraman ...Respondent in all cases/ Petitioner (Landlord)

Prayer in C.R.P.No.1120 of 2019:

Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease & Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 to set aside the final order and decree dated 28.11.2018 passed by the learned Rent Control Appellate Authority, Subordinate Judge, Poonamalle, in R.C.A.No.28 of 2017 confirming the fair order and decree dated 13.07.2017 passed by the learned Principal District Munsiff, Rent Controller, Poonamallee, in R.C.O.P.No.22 of 2014 and direct the learned Appellate Authority to dispose the appeal in R.C.A.No.28 of 2017 on its own merits.

Prayer in C.R.P.No.1122 of 2019:

Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease & Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 to set aside the Final and decreetal order dated 28.11.2018 passed by the learned Rent Control Appellate Authority, the learned Subordinate Judge, Poonamallee, in I.A.No.86 of 2018 in R.C.A.No.28 of 2017 and dismiss the said I.A.No.86 of 2018 in R.C.A.No.28 of 2017.

Prayer in C.R.P.No.1123 of 2019:

Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease & Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 to set aside the order dated 27.09.2018 passed by the learned Rent Control Appellate Authority, The learned Subordinate Judge, Poonamallee, in I.A.No.86 of 2018 in R.C.A.No.28 of 2017 and dismiss the said I.A.No.86 of 2018 in R.C.A.No.28 of 2017.

For Petitioner : A.Mohandoss

For Respondent : Mr.V.Srinivasababu
for K.Saisharavankumar

O R D E R

These civil revision petitions have been filed against the order passed in R.C.A.No.28 of 2017 confirming the order passed by the trial Court in R.C.O.P.No.22 of 2014. The petitioner and the respondent herein will be referred as tenant and landlord in these petitions. The landlord is the owner of the property and rented out the premises to the tenant/Punjab National Bank since 13.11.2002, initially for a monthly rent of Rs.9,000/-. Thereafter, in the year 2007, the landlord filed R.C.O.P.No.22 of 2007 for fixation of fair rent, which was allowed by the rent controller vide its order dated 23.10.2013, fixing the fair rent at Rs.44,426/-. However, the tenant failed to pay the fair rent fixed to the landlord and since 17.12.2007, the total due was Rs.33,31,915/-. Therefore, the present R.C.O.P.No.22 of 2014 was filed by the landlord for eviction of the tenant from the premises.

2. The matter was contested by the tenant stating that the fixation of fair rent order was passed without hearing the tenant and that the counsel who had represented the tenant was not a counsel authorized by the tenant and that the ex-parte order cannot be sustained as the fair rent is fixed on the higher side and it is also submitted by the tenant that he has filed the necessary petition for setting aside the fixation of fair rent. On the side of the landlord, one witness was examined as P.W.1 and three documents were marked as Exhibits P1 to P3. On the side of the tenant, one witness was examined as D.W.1 and Ex.D1 to D7 were marked. The trial Court, after taking into consideration the submissions advanced by either side and also on proper appreciation of the documentary evidence, held that the landlord had willfully failed to pay the fair rent and that the amount paid to the Income Tax Department on the basis of Ex.D5 without bringing the same to the notice of the landlord

is nothing but an admitted fact on the part of the tenant to evict the payment of rent to the landlord and accordingly, allowed the petition filed by the landlord, directing the tenant to vacate the premises within a period of two months.

3. Aggrieved by the said order, the tenant preferred R.C.A.No.28 of 2017 and along with the said appeal, I.A.No.86 of 2017 was filed by the tenant to set aside the ex-parte order. The Rent Control Appellate Authority on hearing the tenant directed the tenant to deposit the fair rent due to the landlord within a particular time frame. While agreeing with the findings and reasonings recorded by the trial Court, the Rent Control Appellate Authority directed the tenant to pay the arrears of Rs.55,08,824/- due till April 2018 and to pay the rent for a period from May 2018 to August 2018 within the particular time. Since the said order was not complied with, both the I.A. and R.C.A were dismissed upholding the reasons recorded by the Rent Controller. Aggrieved by the said order, the present civil revision petitions have been filed.

4. The learned counsel appearing for the tenant submitted that the rent has been duly paid to the Income Tax Department on the basis of the notice Ex.D5 received and therefore, the findings that there is a default in payment of rent is fully unsustainable. It is the further submission of the learned counsel for the tenant that the order was passed ex-parte without affording the opportunity of hearing to the tenant and the fixation of fair rent is also on the higher side. However, both the Rent Controller and Rent Control Appellate Authority have failed to appreciate the submission advanced on behalf of the tenant in proper perspective. It is the submission of the learned counsel for the tenant that the rent has been paid to the Income Tax Department for the due on behalf of the landlord, on the basis of the notice Ex.D5 served on the tenant by the Income Tax Department and therefore, the reasonings recorded by the trial Court as exhibited by the Appellate Court is not borne out by the materials available on record. It is the contention of the learned counsel for the tenant that the premises having been attached by the Income Tax Department in respect of the due from the landlord to the income tax department, the landlord has no right to claim any rent. Accordingly, he prays for allowing these petitions.

5. Per contra, the learned counsel for the landlord reiterated the submissions as advanced before the Court below and submitted that without paying the landlord on notice as to the notice received from the income tax department by the tenant, the tenant cannot get himself absconded from the responsibility of paying the landlord. Further, it is the submission of the learned counsel for the landlord that the

tenant has paid only a sum of Rs.10,800/- to the Income Tax Department, whereas, the fair rent fixed by the Rent Controller is to the tune of Rs.44,426/- and the said fixation having not been challenged by the tenant, the tenant is bound to pay the balance amount to the landlord. The Courts below have properly appreciated all the evidences placed before it and recorded the findings and the tenant has willfully defaulted in payment of fair rent fixed by the Court and therefore ordered eviction of the tenant, which calls for no interference.

6. This Court carefully considered the submissions on either side and also perused the materials available on record.

7. It is the contention of the tenant that on the basis of Ex.D5-notice received from the income tax department, the amount towards rent has been deposited with the income tax department. However, it is to be pointed out that fair rent fixed for the premises is to the sum of Rs.44,426/-, whereas, it is the admitted case of the tenant that he has paid a sum of Rs.10,800/-, however, monthly towards the dues to the Income Tax Department on behalf of the landlord. It clearly shows that there is a shortfall of more than a sum of Rs.30,000/- towards monthly rent due to the landlord from the tenant.

8. It is not the case of the tenant that he has paid the said amount to the landlord, but, this case is only to the extent that the property is attached with the Income Tax Department and therefore, the landlord is not eligible for receiving any rent. It is the admitted case of the tenant that the premises belongs to the landlord and that the tenant had entered into the tenancy with the landlord for occupation of premises. While that being the case, the tenant is duty bound to pay the rent due to the landlord and once the fair rent is fixed by the Court on the petition filed by the landlord and in the absence of fair rent fixed by the Court, it is not open to the tenant to fix a rent by himself and pay the same to the Income Tax Department on the notice received from the Income Tax Department.

9. Further, it is the case of the tenant that the tenant had paid the landlord on notice with regard to Ex.D5, the notice received from the Income Tax Department. Provisionally, without paying the landlord on notice with regard to the notice received from the Income Tax Department, the tenant started to pay a sum of Rs.10,800/- to the Income Tax Department towards the dues payable by the tenant, without disallowing the order of the fair rent fixed by the Rent Controller. Though an opportunity was given to the tenant to deposit a sum of Rs.55,08,824/-, which is the rent due to the landlord, which was directed to deposit with

the particular time, the tenant has shown has not shown interest in depositing the said amount.

10. At this juncture, it is pertinent to point out that with regard to arrears of the rent, ie., with respect to payment of fair rent from 2007, the petitioners, before the Court below, admitted that they have not paid the same and stated that they are not liable to pay. Further, the petitioners claim to have paid the contractual rent regularly, but, the said amount has not been paid to the respondent and seems to have paid to the IT Department. Hence, the petitioners contention that they are paying the rent to the respondent is not acceptable.

11. The contentions put fourth on behalf of the petitioners are that they are not liable to pay the rent at the rate fixed in R.C.O.P.No.22 of 2007, in view of the fact that under the lease deed, the initial monthly rent was Rs.9,000/- and the petitioners are presently paying rent with an enhancement of 20% i.e., Rs.10,800/- per month and hence they have not committed any default and the petitioners are also not remitting the monthly rents regularly cannot be accepted, because, when the Court has fixed the fair rent, the petitioners are bound to comply with the said order and instead of complying with the said order, the petitioners have deposited the rent regularly without any default till date.

12. Moreover, since the petitioners have failed to pay the contractual rent from the year 2013 and they have committed willful default, it would be appropriate to extract Paragraph No.25 of the Judgment of Hon'ble Supreme Court reported in AIR 1985 SC 582 [S.Sundaram Pillai etc., Vs. R.Pattabiaman] referred by Mr.M.S.Krishnan, learned Senior Counsel for petitioner:-

> "Thus, a consensus of the meaning of the words 'willful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequenes flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above"

13. It is clear from the above said decision of the Hon'ble Supreme Court that the willfull default must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The non-payment of arrears

of fair rent will also amount to conduct of willful default as the tenant deliberately did not remit the arrrears of fair rent, when this court has refixed the fair rent. Therefore, mere deposit of rent made by the petitioners, that too with the Income tax Department, and non-payment of arrears amount, will amount to wilful default.

14. That being the case, this Court is of the considered view that the findings recorded by the Court below for evicting the tenant from the premises is based on proper appreciation of oral and documentary evidences and the reasoning adduced and the notice received is also cogent and convincing and therefore, the same does not require any interference at the hands of justice. Accordingly, the civil revision petitions are dismissed.

15. Further, while entertaining these petitions, this Court had directed the petitioner/tenant to deposit a sum of Rs.45,05,844/- for grant of stay and pursuant to the said direction, the tenant had complied with the said deposit, which is evident from the memo dated 04.06.2019 on behalf of the petitioners and the amount is lying in the credit of Principal District Munsif, Poonamallee. Since this Court had dismissed the present civil revision petitions and taking note of the fact also the fact that the income tax department has initiated the proceedings for recovery of certain dues against the landlord, this Court hereby directs that the amount of Rs.45,05,844/- shall be kept in deposit till such time and it is open to the landlord to file necessary applications for withdrawal of the said amount by impleading the Income Tax Department as a necessary party and the Court below, after hearing the Income Tax Department on the dues and payable by the landlord, shall pass appropriate order on merits and in accordance with law as expeditiously as possible.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Subordinate Judge,
   Poonamalle.

2. The Principal District Munsif,
   Rent Controller, Poonamallee.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to A.Mohandoss, Advocate, S.R.No.32421
+2cc to Mr.K.Saisharavankumar, Advocate, S.R.No.32422

C.R.P.Nos.1120, 1122 & 1123 of 2019

LN(CO)
CS/13/08/2021