

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2021

Pronounced on : 30.07.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD) Nos.1419 & 1430 of 2019

and

C.M.P.Nos.9343 & 9384 of 2019

Manicka Selvi ... Petitioner / Appellant / Respondent / Tenant
(in CRP No.1419 of 2019)
... Petitioner / Appellant / Respondent / Respondent / Tenant
(in CRP No.1430 of 2019)

Vs

E.M.PR.Muthappan ... Respondent / Respondent / Petitioner/ Landlord
(in CRP No.1419 of 2019)
.. Respondent / Respondent / Petitioner / Petitioner / Landlord
(in CRP No.1430 of 2019)

Prayer in CRP.No.1419 of 2019: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, to set aside the Judgment and Decree dated 26.10.2018 passed in RCA.No.45 of 2018 by the learned Rent Control Appellate Authority, the IX Court of Small Causes, Chennai and subsequently reverse the Judgment and Decree dated 03.11.2017 passed in RCOP.No.1508 of 2016 by the XVI Judge, Court of Small Causes, Chennai.

Prayer in CRP.No.1430 of 2019: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, to set aside the Judgment and Decree dated 26.10.2018 passed in RCA.No.44 of 2018 by the learned Rent Control Appellate Authority, the IX Court of Small Causes, Chennai and subsequently reverse the Judgment and Decree dated 03.10.2017 passed in M.P.No.212 of 2017 in R.C.O.P.No.1508 of 2016 by the XVI Judge, Court of Small Causes, Chennai.

For Petitioner

..

Mr.S.S.Rajesh
(in both CRPs)

For Respondent

..

Mr.R.Raja Ramani
(in both CRPs)

COMMON ORDER

C.R.P.No.1419 of 2019 had been filed by the respondent / tenant in RCOP.No.1508 of 2016 on the file of the XVI Court of Small Causes, Chennai. The said Rent Control Petition in RCOP.No.1508 of 2016 was filed by the respondent / landlord seeking eviction of the revision petitioner under Sections 10 (2)(i) and 10(3)(d) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 as amended. The final Judgment and Decree in RCOP.No.1508 of 2016 was passed on

03.11.2017, pursuant to orders passed in M.P.No.212 of 2017 which had been filed under Section 11(3) and 11(4) of the said Act and since there was no compliance of the said direction, all further proceedings in Rent Control Original Petition was stopped and eviction was ordered.

2.Questioning that particular order, RCA.No.45 of 2018 was filed on the file of the IX Court of Small Causes, Chennai and by decree dated 26.10.2018, the Rent Control Appeal was dismissed and the order of the Rent Control in RCOP.No.1508 of 2016 was confirmed.

3.As stated, the respondent / landlord had also filed M.P.No.212 of 2017 in RCOP.No.1508 of 2016 and by order dated 03.10.2017, the said Miscellaneous Petition was allowed and the petitioner / tenant was directed to deposit the arrears of monthly from March 2015 to September 2017 at the rate of Rs.14,500/- per month totalling a sum of Rs.4,49,500/- on or before 02.11.2017. The revision petitioner was also directed to pay the future monthly rents on or before 5th day of every consecutive English calendar month. Since there was no compliance of the said direction, eviction was directed in RCOP.No.1508 of 2016.

4.Questioning the order in M.P.No.212 of 2017, the petitioner / tenant filed RCA.No.44 of 2018 before the IX Court of Small Causes,

Chennai and by judgment dated 26.10.2018, the Rent Control Appeal was dismissed and order in M.P.No.212 of 2017 was confirmed. Eviction was directed. Questioning that particular Judgment CRP.No.1430 of 2019 had been filed.

RCOP.No.1508 of 2016:-

5.The respondent herein filed the said Rent Control Original Petition under Section 10(2)(i) and 10(3)(d) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, as amended seeking eviction of the petitioner herein from the premises in the second floor of the building situated in Old No.22, New No.82, Temple Square, North Street, Mylapore, Chennai.

6.The respondent was the owner of the said premises. The petitioner was the Proprietor of M/s. Fitness Paradise Centre, which is a gym. A Rental Agreement had been entered into between the parties and the monthly rent was fixed at Rs.14,500/-. The agreement was entered on 07.04.2011 and the rental was for a period of 11 months only. The term was not extended thereafter. Claiming that the petitioner herein had no right to continue to be in possession, eviction was sought under Section 10(3)(d) of the Act. It was also stated that the petitioner herein had

refused to pay the monthly rent and was also running the gym without getting proper permission from the competent authorities. There were also criminal cases filed by both parties against both parties. It was stated that rents have not been paid from March 2015 amounting to a sum of Rs.2,61,000/- for the period of 18 months and claiming that the said default was wilful, the petition was also filed under Section 10(2)(i) of the Act.

Counter in RCOP.No.1508 of 2016:-

7.A counter was filed by the revision petitioner, wherein, it had been stated that the rent was fixed at Rs.10,000/- and an advance of Rs.1,20,000/- had been paid and thereafter, the rent was enhanced to Rs.14,500/- per month and a further advance of Rs.25,000/- had also been paid. It was further claimed that the respondent herein had refused to receive the rent from March 2015 and therefore, the revision petitioner sent the monthly rent through money order which was returned as refused. The respondent herein also filed O.S.No.4588 of 2016 on the file of the VIII Assistant City Civil Court, Chennai, restraining the petitioner from running the business of gym on the ground that consent was not granted from the year 2016. It had also been stated that the gym was

being run legally. It had also been stated that criminal complaints were filed by both parties. It was again stated that there was no due in the payment of rental arrears and non-payment of rent was not intentional and deliberate. It had been stated that the Rent Control Petition should be dismissed.

MP.No.212 of 2017:-

8.Pending the RCOP.No.1508 of 2016, respondent filed the above Miscellaneous Petition under Section 11(3) r/w 11(4) of the Act seeking a direction against the revision petitioner to pay the rental arrears of Rs.3,48,000/- together with future rent and on failure to stop further proceedings and pass an order of eviction against the revision petitioner.

9.In the affidavit filed in support of the said petition, it had been stated that the petitioner was liable to pay rent from March 2015 till February 2017 for 24 months at the rate of 14,500/- per month amounting to Rs.3,48,000/-. It was claimed that even pending the Rent Control proceedings, the revision petitioner did not pay the monthly rent and therefore, the said provisions were invoked seeking a direction against the revision petitioner to pay the monthly rents and on failure to stop further proceedings in the Rent Control proceedings and direct

eviction.

Counter in M.P.No.212 of 2017:-

10.A counter had been filed by the revision petitioner denying allegations of wilful default in the payment of rent. It had been stated that the respondent had refused to sign necessary documents with respect to obtaining licenses for running the gym. It had been further stated that the respondent had locked the premises and at that point of time, gym materials worth about Rs.18,00,000/- and cash of about Rs.5,00,000/- were inside the premises. A police complaint was also given in this regard. It had been further stated that the gym was being run legally. It was stated that the gym was locked without the permission of the petitioner. It was further stated that there were no rental arrears and even if there was a default, it was not wilful. It was further stated that the petition should be dismissed.

Order Passed in M.P.No.212 of 2017 in RCOP.No.1508 of 2016:-

11.The said Miscellaneous Petition came up for consideration on 03.10.2017 before the XVI Court of Small Causes, Chennai. The learned Rent Controller observed that no oral or documentary evidence had been filed by both sides. He also noted that there was no dispute with respect to the jural relationship of landlord and tenant between the parties and

there was no dispute in the quantum of rent namely, Rs.14,500/-. It had also been observed that it was the case of the revision petitioner that the respondent / landlord had refused the rent from March 2015 and therefore rents were sent through money order. It was observed that the revision petitioner had a duty to take steps under Section 8(5) of the Act, to deposit the monthly rents into the Court. It was also observed that the revision petitioner had not filed copies of the money order receipts by which he claimed to have sent the monthly rents to the respondent. Holding that there was arrears of rent and further holding that there was arrears of rent even pending the Rent Control proceedings and further holding that such default was wilful, the petition was allowed and a direction was issued to deposit the arrears of monthly rent from March 2015 to September 2017 at the rate of Rs.14,500/- per month totalling a sum of Rs.4,49,500/- on or before 02.11.2017, failing which further proceedings in RCOP.No.1508 of 2016 would be stopped. The revision petitioner was also directed to pay future monthly rents on before 5th day of every English calendar month.

Order Passed in RCOP.No.1508 of 2016:-

12.The learned Rent Controller noted that there was no compliance

of the directions in M.P.No.212 of 2017 and therefore, on 03.11.2017 in the presence of both the counsels stopped all further proceedings in RCOP.No.1508 of 2016 and eviction was ordered and time of two months was granted for vacating the premises.

RCA.No.44 of 2018:-

13.This Rent Control Appeal was filed to set aside the fair and decreetal order passed in M.P.No.212 of 2017 in RCOP.No.1508 of 2016 dated 03.10.2017.

RCA.No.45 of 2018:-

14.This Rent Control Appeal was filed to set aside the fair and decreetal order in RCOP.No.1508 of 2016 dated 03.11.2017.

15.Both these Rent Control Appeals came up for consideration before the IX Court of Small Causes, Chennai on 26.10.2018. The learned Rent Control Appellate Authority noted that there was no dispute with respect to jural relationship of landlord and tenant and with respect to monthly rent of Rs.14,500/-. It was also noted that though it was the contention of the revision petitioner that he had paid an advance of Rs.1,20,000/- and at the time of when rent was enhanced to Rs.14,500/- a further advance of Rs.25,000/- had been paid, the revision petitioner had not produced any evidence with respect to the same. The learned Rent

Control Appellate Authority also observed that the revision petitioner had not produced any money order receipts to show that the monthly rents were actually tendered through money order or that the petitioner herein had invoked the provisions of Section 8(5) of the Act to deposit the monthly rent to the Court. It was also observed that documents relating to the Civil Suit or with respect to the police complaint were not filed by the revision petitioner herein. In view of these facts, the learned Rent Control Appellate Authority confirmed the order passed in M.P.No.212 of 2017 and dismissed both RCA.No.44 of 2018 and RCA.No.45 of 2018 and directed eviction of the revision petitioner.

CRP.Nos.1419 & 1430 of 2019:-

16.As stated, the revision petitioner herein filed the two Revision Petitions questioning the orders passed in RCA.No.44 of 2018 and RCA.No.45 of 2018 by IX Court of Small Causes, Chennai, dated 22.06.2018.

17.Heard arguments advanced by Mr.S.S.Rajesh, learned counsel for the appellant and Mr.R.Raja Ramani, learned counsel for the respondent.

18.For the sake of convenience, the revision petitioner shall be called as tenant and the respondent shall be called as landlord.

19.The landlord had filed RCOP.No.1508 of 2016 seeking eviction of the tenant for wilful default in the payment of rent under Section 10(2)(i) of the Act and also for termination of the lease under Section 10(3)(d) of the Act.

20.The landlord claimed that he is the owner of the premise, which had been leased out for the purpose of running a gym by the tenant. The monthly rent agreed between the parties as on date the filing of the Rent Control Original Petition was Rs.14,500/-. It was claimed that there was wilful in the payment of monthly rents and therefore, eviction was sought under Section 10(2)(i) of the Act.

WEB COPY

21.It is the contention of the tenant that a sum of Rs.1,45,000/- was available towards advance. It was also the contention that the premises was unlawfully locked and there were materials worth about Rs.18,00,000/- inside the premises and cash of Rs.5,00,000/-. It was

stated that in this connection a police complaint had been given against the landlord. It is to be seen that no documents have been filed with respect to the same.

22.It is the further contention of the tenant that the landlord refused to receive the rents from March 2015. The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 as amended, provides for deposit of the monthly rent by the tenant in case of refusal to receive the monthly rents by the landlord. Specific provision under Section 8(5) of the Act, has been provided. No documents have been produced either before the Rent Controller or before the Rent Control Appellate Authority by the tenant to show that there has been compliance of the said provision. The tenant has voluntarily not come forward to deposit the monthly rents into the Court. The tenant claimed that he had sent the rents by money order. But neither before the Rent Controller nor before the Rent Control Appellate Authority, had documents to that effect been produced. The tenant had also not offered to graze the witness box and subject herself for cross-examination on all these aspects.

23.Pending the Rent Control proceedings, the arrears of rent only increased, necessitating the landlord to file M.P.No.212 of 2017 claiming rental arrears from March 2015 to September 2017 for 24 months at the

rate of Rs.14,500/- per month amounting to Rs.3,48,000/-. A counter had been filed on the same lines to the said petition by the tenant. It is seen that no documents had been filed by the tenant to show deposit of monthly rent or tender of the monthly rent.

24. Therefore, the order of the learned Rent Controller directing payment of the admitted arrears within a stipulated period cannot be faulted upon and I concur with such order. There was no compliance of the said order and therefore further proceedings in RCOP.No.1508 of 2016 was stopped and eviction was ordered. The order is perfectly lawful and valid.

25. The tenant then filed RCA.Nos.44 of 2018 and 45 of 2018, even before the learned Rent Control Appellate Authority, the tenant did not come forward to produce any documentary evidence to show either tender of the monthly rents or deposit of monthly rents into the Court. The arrears of monthly rents only increased and it had spiralled to Rs.4,49,500/- being the arrears from March 2015 to September 2017. It is thus seen that the tenant had no intention of paying the monthly rents. The arrears just kept increasing. It kept increasing during the pendency of the Rent Control proceedings. It also kept increasing during the pendency of the Rent Control Appeal proceedings. The default has not been

explained to be bonafide by the tenant. The default is wilful and naturally, both the Rent Control Appeals was dismissed by the IX Court of Small Causes, Chennai, and a perusal of the order shows that the Appellate Court had also re-examined the entire records and again observed that no documents have been filed by the tenant to show either tender of the monthly rents or steps to deposit the monthly rent into the Court. The tenant continued to be in possession. The tenant continued to in arrears of rent. Possession had become unlawful. The default in payment of rent is wilful. No other conclusion can be reached on the facts of the case. The Judgment passed in RCA.Nos.44 and 45 of 2018 dated 26.10.2018 cannot be faulted and they are confirmed.

26.In view of these facts and observations, both the Civil Revision Petitions are dismissed with total costs of Rs.50,000/- payable by the tenant to the landlord and recoverable by the landlord by due procedure. Consequently, the connected Civil Miscellaneous Petitions are closed.

WEB COPY

30.07.2021

smv

Index : Yes / No

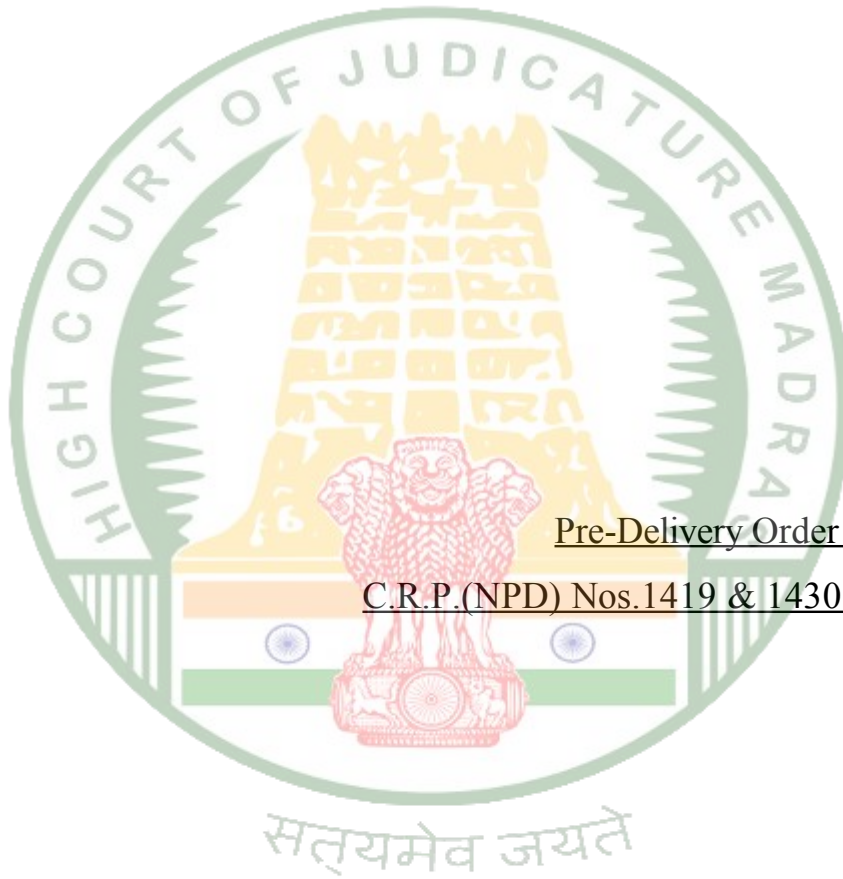
Internet : Yes / No

Speaking order : Yes / No

To,
1.The IX Court of Small Causes Chennai.
2.The XVI Court of Small Causes Chennai.

C.V.KARTHIKEYAN, J.,

smv



Pre-Delivery Order made in

C.R.P.(NPD) Nos.1419 & 1430 of 2021

WEB COPY

30.07.2021