

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4625 of 2015
and M.P.Nos.1 and 2 of 2015

S.Natarajan

.. Petitioner

Vs.

1.P.Sukumar

2.N.Jamunarani

.. Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960, against the fair and decreetal order dated 24.02.2015 made in R.C.A.No.19 of 2014 on the file of the Principal Sub Court, Salem (Rent Control Appellate Authority), confirming the fair and decreetal order dated 22.09.2014 made in R.C.O.P.No.10 of 2012 on the file of the Principal District Munsif, Salem (Rent Controller).

For Petitioner : Mr.T.T.Ravichandran

For Respondents : Mr.T.Murugamanickam (For R1)
Senior Counsel
for M/s.A.Murugan

Mr.M.Balasubramanian (For R2)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 24.02.2015 made in R.C.A.No.19 of 2014 on the file of the Principal Sub Court, Salem (Rent Control Appellate Authority), confirming the fair and decreetal order dated 22.09.2014 made in R.C.O.P.No.10 of 2012 on the file of the Principal District Munsif, Salem (Rent Controller).

2.The petitioner is 1st respondent in R.C.O.P.No.10 of 2012 on the file of the Principal District Munsif, Salem (Rent Controller). The 1st respondent filed the said R.C.O.P. for eviction of the petitioner and 2nd respondent/wife of the petitioner, on the ground of wilful default and

owner's occupation. According to the 1st respondent, originally, one Karuppanna Pillai was owner of petition premises. He leased out the petition premises to the petitioner for non-residential purposes. The petitioner and 2nd respondent were carrying on Gunny Bag business. The said Karuppanna Pillai sold the petition property by a deed of sale dated 06.08.1999 to the 1st respondent. According to the 1st respondent, he met the petitioner and 2nd respondent in August, 1999 itself and informed them about the purchase of petition premises by the 1st respondent and requested them to vacate the petition premises and till that time, to pay the rent to the 1st respondent. The 2nd respondent filed suit in O.S.No.368 of 1999, for specific performance of agreement of sale and for permanent injunction, contending that the said Karuppanna Pillai entered into an agreement of sale. After contest, the said suit was dismissed on merits by the judgment and decree dated 28.09.2006, with regard to relief of specific performance and refund of advance amount of Rs.1,40,000/- only was ordered. The petitioner has not paid monthly rent of Rs.700/- to the 1st respondent from the date of purchase i.e., on 06.08.1999, even after dismissal of First Appeal by the Principal District Judge, Salem in

A.S.No.74 of 2006 on 25.06.2007 and dismissal of Second Appeal in S.A.No.1260 of 2007 by this Court on 26.08.2011. The petitioner deliberately committed wilful default in payment of rent.

2(i) Further, the 1st respondent, along with his mother and brother viz., Mohanraj, was carrying on Silver Articles business in a rented building at D.No.172, Shevapet Main Road Shevapet, Salem -2 and the 1st respondent is not owning any non-residential building in Salem or elsewhere. The petition premises is required for his own Silver Articles business. In such circumstances, the 1st respondent issued notice dated 13.01.2012 to the petitioner and 2nd respondent, through his Advocate. The 2nd respondent alone sent a reply dated 03.02.2012. The petitioner did not send any reply or vacate the petition premises. Hence, the 1st respondent filed the said R.C.O.P.No.10 of 2012, for eviction of the petitioner and 2nd respondent on the ground of wilful default and owner's occupation.

3. The petitioner filed counter statement, which was adopted by the

2nd respondent. The petitioner has denied that they committed wilful default in payment of rent. The petitioner stated in the counter statement that he was paying the rent to Karuppanna Pillai, pending suit and subsequently to his sons. The Second Appeal filed by the 2nd respondent was dismissed by this Court only on 26.08.2011. Till such dismissal, there is no landlord-tenant relationship between the 1st respondent and petitioner. The 2nd respondent agreed to purchase the petition premises from Karuppanna Pillai and entered into an agreement. She was ready and willing to perform her part of the contract, but the sons of the Karuppanna Pillai coerced Karuppanna Pillai to execute the sale deed in favour of the 1st respondent. The petitioner is running Gunny Bag business at petition premises in Leigh Bazaar, Salem. In that place only, the grains and Gunny Bag business is carried on. The said place and the petition premises are not suitable for carrying on Silver Articles business. The 1st respondent is carrying on Silvery Articles business in D.No.172, Shevapet Main Road, Salem – 2. The 1st respondent has made allegation that he requires petition premises for his Silver Articles business, only with a view to evict the petitioner by hook and crook method and prayed

for dismissal of R.C.O.P.

4.The learned Rent Controller, considering the pleadings, oral and documentary evidence, allowed R.C.O.P., directing the petitioner and 2nd respondent to vacate the petition premises and handover the vacant possession to the 1st respondent within a period of two months from the date of that order.

5.Against the said order dated 22.09.2014 made in R.C.O.P.No.10 of 2012, the petitioner and 2nd respondent filed R.C.A.No.19 of 2014. The learned Appellate Authority, considering the order of the learned Rent Controller and grounds of appeal, dismissed the R.C.A, by the judgment and decree dated 24.02.2015.

6.Against the judgment of the learned Appellate Authority dated 24.02.2015 made in R.C.A.No.19 of 2014 and order of the learned Rent Controller dated 22.09.2014 made in R.C.O.P.No.10 of 2012, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner submitted that Courts below failed to consider that 1st respondent did not comply with the ingredients of Section 10 (2)(a)(i) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter, referred to as 'the Act'). The 1st respondent has not given any details of default, much less wilful default. The 1st respondent has not told his bonafide requirement as contemplated under Section 10(3)(a)(iii) of the Act. Therefore, the Courts below ought not to have entertained the petition filed by the 1st respondent for eviction on the ground of bonafide requirement for own use. The 1st respondent failed to prove that he does not own any non-residential building within Salem Corporation limit, except marking fabricating documents as Exs.P12 and P13. Silver Articles business cannot be done in the locality of Leigh Bazaar, where the petition premises is situated. The Courts below failed to see that the 1st respondent did not prove that Ex.P12 is used for non-residential purpose. The Courts below failed to see the 2nd respondent, wife of the petitioner entered into an agreement of sale dated 12.05.1996 with the

landlord, to purchase the petition premises and paid Rs.1,40,000/- as advance. In view of the said agreement, title of the 2nd respondent is bonafide. The learned counsel appearing for the petitioner further submitted that the petitioner paid a sum of Rs.25,000/- as advance to the landlord on 01.01.1990 and paid property tax with consent of original landlord and spent considerable amount for developing the petition premises. The said amount ought to have been adjusted for the rent due from 06.02.1999. Hence, the order of eviction cannot be sustained. Till the disposal of the suit for specific performance and the Second Appeal in S.A.No.1260 of 2007, the question of payment of rent does not arise and the 1st respondent cannot be termed as a wilful defaulter. As per the judgment in O.S.No.368 of 1999, the suit was not dismissed in its entirety, but the relief of specific performance alone was dismissed and the defendants 2 to 9 therein were directed to refund Rs.1,40,000/-, paid as advance by the 2nd respondent, together with interest. The said amount ought to have been adjusted for rent, which is Rs.8,400/- per year, from and out of the said amount or from the interest payable on Rs.1,40,000/-, instead of ordering eviction. The sale deed under which the 1st

respondent claims title is forged one and therefore, the 1st respondent cannot maintain the petition for eviction. The learned counsel appearing for the petitioner further submitted that the 1st respondent issued notice dated 13.01.2012, but filed R.C.O.P. on 29.02.2012, within two months, violating the provisions, as contemplated by the Act and therefore, there is no default much less wilful default.

8. In support of his contentions, the learned counsel appearing for the petitioner relied on the following judgments:

(i) **1996 AIR (SC) 1214 [K.Narasimha Rao Vs. T.M.Nasimuddin**

Ahmed]:

“7.....The character or the excess amount undoubtedly is that it is the tenant's money in the hands of the landlord for return to the tenant or for adjustment towards the dues of the tenant's at the tenant's option. Any other stipulation in contravention to it has no legal effect being null and void.

.....
13.*In the present case, excluding from consideration the tenant's claim for adjustment of the amount of Rs.1000/- spent on repairs and the amount of Rs.750/- sent by demand draft on receipt of the notice, the amount of Rs.2850/- with the landlord*

as the excess amount of advance paid by the tenant to the landlord, was alone sufficient to negative the landlord's claim of ejectment. The arrears of rent from July to November 1990 was only Rs.750/- , while the excess amount of advance was Rs.2850/-, far in excess of the arrears. The landlord was bound to immediately refund that excess amount even before the arrears accrued, and he not having made the refund was bound to adjust it towards the rent due from the tenant. On these facts, the tenant could certainly not be held to be a willful defaulter in the payment of rent. The High Court is, therefore, right in deciding against the landlord."

(ii) (2000) 9 SCC 339 [R.Kanthimathi and another Vs. Beatrice

Xavier]:

"6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when appellants were inducted into tenancy it only means both agreed that their relations is to be that of a landlord and tenant. Later when landlord decides to sell this property to the tenant and tenant agreed by entering into agreement they by their positive act changed their relationship as purchaser and seller. When seller-landlord accepts sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change then their relationship of landlord tenant ceases."

(iii) (2003) 10 SCC 610 [P.M.Punnoose Vs. K.M.Munneruddin

and another]:

“13.The explanation appended to sub-Section (2) of section 10 if the Act enacts a rule of evidence. After the issuance of two month's notice claiming the rent, the default by tenant shall be construed as wilful raising a presumption in that regard and it will be for the tenant to show availability of sufficient cause or circumstances beyond his control to escape from the consequence of default. The landlord is not prevented from initiating proceedings for eviction on the ground of default under Section 10(2) (1) of the Act, without serving a notice under the Explanation but in that case it will be for the landlord to make out a case of wilful default by tenant failing which the Controller may exercise his discretion under the proviso giving the tenant a reasonable time, not exceeding fifteen days for payment or tender.

16.There appears to be a bona-fide dispute as to the quantum of arrears, that is, as to what was the exact amount of rent paid by the tenant appellant to the landlord-respondents and consequent upon which payment the liability for how many number of months came to be extinguished. The facts found indicate the tenant-appellant remitting the amount of rent by money orders before and after and even during the pendency of the proceedings and some of the money orders having been refused by the landlord - respondents. The present one is a fit

case where the Controller should have exercised his power under proviso to sub-Section (2) of Section 10 of the Act by passing an order thereunder and giving the tenants-appellant a reasonable time, not exceeding 15 days, to pay or tender the rent due by him to the landlord upto the date of such payments of rent. If such order was complied with by the appellant-tenant, then the application for eviction should have been rejected. The learned Controller has erred in not passing that order.”

(iv) The learned counsel appearing for the petitioner relied on the judgment reported in **(2000) 1 SCC 451 [C.Chandramohan Vs. Sengottaiyan (dead), rep. By legal heirs and others]** and submitted that the 1st respondent did not specify the amount of default and therefore, the petition is not maintainable.

9.The learned Senior Counsel appearing for the 1st respondent contended that original owner did not inform the 1st respondent about pendency of the suit, while selling the petition premises to the 1st respondent. After decree in O.S.No.368 of 1999, directing the refund of advance amount paid by the 2nd respondent, the 1st respondent deposited the said amount of Rs.1,40,000/- to the credit of the suit, even though the

1st respondent has paid entire sale consideration to the defendants 2 to 8 in O.S.No.368 of 1999. The 2nd respondent could have taken the amount from the Court deposit. The petitioner ought to have verified whether the 1st respondent has deposited the advance amount as directed by the Trial Court in O.S.No.368 of 1999. The 1st respondent informed the petitioner as well as 2nd respondent about his purchase in August, 1999 itself and called upon them to vacate and handover the petition premises and pay the rent to him till they vacate the petition premises. The petitioner has stated that he was regularly paying the rent to Karuppanna Pillai and subsequently to his sons, the defendants 2 to 8 in O.S.No.368 of 1999. Contrary to the said statement, the petitioner has come out with a new case that the 2nd respondent, being an agreement holder, need not pay the rent. Further, the petitioner, now admitting non-payment of rent, claimed that the 1st respondent ought to have adjusted all the rent payable from and out of advance amount directed to be refunded to the 2nd respondent. These contentions clearly show that the petitioner has committed wilful default in payment of rent. The 1st respondent has proved that he is carrying on Silver Articles business in partnership in a rented building.

The 1st respondent has stated that he does not own any non-residential building in Salem city or anywhere else. The petitioner failed to prove that the 1st respondent is owning a non-residential building in Salem city or anywhere else. It is for the landlord to chose the premises to carry on his business and tenant cannot dictate terms that said premises is not convenient to carry on Silver Article business of 1st respondent/landlord. The Courts below have considered all the materials placed before it and ordered eviction and there is no reason to interfere with the same and prayed for dismissal of the Civil Revision Petition.

10.In support of his contentions, the learned Senior Counsel appearing for the 1st respondent relied on the following judgments:

(i)***VOL 64 LW 396 [Lingambhotla Vs. Sub Judge, Vijayawada]:***

“.....It may be that, the landlord was not insisting on regular payments & was accepting without protest arrears of rent which had accumulated ; but when he choose a to apply Under Section 7 of the Act, he will be entitled to an order of eviction if he can prove that the tenant has not paid or tendered the rent by the last day of the month nest following that for which the rent is payable. It is not suggested that the tenancy

was not a monthly tenancy; therefore, the rent for each month was payable before the last day of the month next following. Both the Rent Controller & the Appellate Tribunal have found that there was default in payment of rent according to this provision. They ought to have, therefore, passed an order of eviction. The orders of the Rent Controller & the Appellate Tribunal are quashed & there will be an order for eviction in favour of the petitioner.”

(ii) 2018 (2) MWN (Civil) 528 [Deepak Parekh Vs. Uma

Maheswari]:

“20.....The contention of the petitioners that there was no order directing the petitioners to pay arrears of rent by this Court and the petitioners voluntarily paid the rent, is not correct. When M.P.Nos.1 of 2014 in Civil Revision Petition Nos.4877, 4879 and 4881 of 2014 for stay were taken up for hearing on 18.12.2014, the learned counsel for the petitioners tendered three demand drafts. This Court by order dated 18.12.2014 directed the petitioners to pay arrears if any within two weeks. The petitioners have not complied with the said order within time granted by this Court. However, from the materials on record, it is seen that the petitioners have not paid monthly rent even during pendency of the R.C.As. as well as pendency of the Civil Revision Petitions.....

.....

22.The contention of the learned counsel for the petitioners that the Appellate Authority ought to have granted time for payment of arrears of rent is untenable. From the beginning, the petitioners have not paid rent in spite of the demands made by the respondents as well as the order of the learned Rent Controller. In view of the said attitude, the learned Appellate Authority has rightly dismissed the appeals without granting time. The petitioners have failed to comply with the order of the learned Rent Controller directing them to pay the arrears of rent and therefore, the learned Rent Controller stopped the proceedings and ordered eviction of the respondents and the said order is valid and as per law, which is rightly confirmed by the learned Appellate Authority. There is no error in the judgment and decree dated 15.09.2014 passed by the learned Appellate Authority.”

(iii) 2012 (6) CTC 557 [Sulochana Vs. Pangajam]:

“10. Further, it is not her case that she was paying the rent continuously to Mr.Ravi even after receipt of notice. As stated supra, from September 1997, she has not paid the rent either to the erstwhile landlord viz., Mr.Ravi or to the respondents herein and she was keeping the rent with herself and filed R.C.O.P.No.44 of 1999 only in the month of February 1999, after the respondents filed petition for eviction in R.C.O.P.No.11 of 1998. Further, even during the pendency of the eviction petition filed by the landlord and even during the pendency of

the application filed by the tenant to deposit the rent, she was not regular in depositing the rent in court and she was depositing the rent only in lumpsum and that was considered by both the courts below and it was held that the default is wilful and on that ground, eviction was ordered. As a matter of fact, the lower appellate court elaborately discussed the conduct of the revision petitioner in committing default in payment of rent to arrive at a conclusion that the default is nothing but wilful and the tenant was not regular in depositing the rent before the court below.

11. In the judgment reported in 1999 (3) MLJ 691, this court has held that the default committed by the tenant even after issuance of notice is deemed to be wilful default. In the judgment in PRAMOD WILSON, T. v. DR. HARI RAMESH (1999 (I) CTC 372), it has been held that the deposit of arrears of rent pursuant to the order passed by the Rent Controller will not erase the wilful default committed by the tenant. In the judgment reported in (2008) 1 MLJ 963 it has been held that there is no need to attorn the tenancy and when the landlords are the owners of the building and the tenant admitted the tenancy, even though there is no attornment, the tenant will have to pay rent and failure on the part of the tenant to pay the rent will amount to wilful default. In that judgment, the learned Judge relied upon the judgment in MOHAR SINGH (DEAD BY L.Rs. v. DEVI CHARAN AND OTHERS (AIR 1988 SC 1365) wherein the Hon'ble Supreme Court has held that as per the provisions of section 109 of the Transfer of Property Act, the assignee of a

part of the reversion is entitled to exercise all the rights of the landlord in respect of the portion of which, reversion was so assigned and there is no need for a consensual attornment and the attornment is brought about by operation of law. Therefore, the contention of the learned counsel for the revision petitioner that there was no attornment of tenancy and therefore, there is no landlord and tenancy relationship cannot be accepted.”

11. Heard the learned counsel appearing for the petitioner, learned Senior Counsel appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

12. From the materials on record, it is seen that the petition premises was originally owned by Karuppanna Pillai. The petitioner was tenant under the said Karuppanna Pillai on monthly rent, carrying on Gunny Bag business. The 1st respondent purchased the property from Karuppanna Pillai, by the deed of sale dated 06.08.1999. The said sale deed is marked as Ex.P1, before the learned Rent Controller. According to the 1st respondent, he met the petitioner as well as the 2nd respondent in

the month of August, 1999 itself and informed about his purchase and asked them to vacate the petition premises, deliver the vacant possession and pay the rent to him, till they vacate the petition premises. According to the petitioner, the 2nd respondent, who is wife of the petitioner, was an agreement holder with Karuppanna Pillai to purchase the petition premises. She filed O.S.No.368 of 1999 for specific performance against the said Karuppanna Pillai and 8 others. The 1st respondent is 9th defendant in the said suit. This reveals that the petitioner knew about the purchase of the petition premises by the 1st respondent. The suit filed by the 2nd respondent for specific performance was dismissed, but the Trial Court directed the defendants 2 to 9 to deposit the advance amount of Rs.1,40,000/- paid by the 2nd respondent to Karuppanna Pillai. The First Appeal and Second Appeal filed by the 2nd respondent were dismissed, confirming the judgment of the Trial Court. The petitioner, in his cross-examination, admitted that he did not pay rent to the 1st respondent, as the 1st respondent did not demand. At the same time, the petitioner has stated that he has paid rent to Karuppanna Pillai and after death of Karuppanna Pillai, he paid rent to his sons. These contentions are not

acceptable, as the petitioner knew about purchase of the petition premises by the 1st respondent when they impleaded the 1st respondent as 9th defendant in the suit. Further, the petitioner has not filed any document to show that rents were paid to Karuppanna Pillai and subsequent to death of Karuppanna Pillai, to his sons. The petitioner has taken contradictory statement to the effect that they asked Karuppanna Pillai to adjust the advance amount of Rs.1,40,000/- paid by the 2nd respondent towards rent payable by him. The petitioner has not produced any document to show that he requested Karuppanna Pillai to adjust the rent payable from and out of the advance amount paid by him. This is not the case of the petitioner before the learned Rent Controller or the learned Appellate Authority.

12(i) Another contradictory stand taken by the petitioner is that after receipt of notice dated 13.01.2012, issued by the 1st respondent, the petitioner tendered rent to the 1st respondent, but he refused to receive the same. The learned Rent Controller has rightly held that if really the 1st respondent refused to receive the rent. The petitioner ought to have taken

steps as per Section 8 of the Act to get order to deposit the rent into the Court. The learned Rent Controller also took note of the fact that even during pendency of R.C.O.P., the petitioner did not pay the rent. From the materials on record, it is seen that even though the petitioner has taken a stand that till disposal of the Second Appeal, the 1st respondent has not become the landlord, the petitioner has not paid the rent even after dismissal of S.A.No.1260 of 2007 on 26.08.2011. The learned Rent Controller, considered all these facts and held that the petitioner committed wilful default. The learned Appellate Authority, considering all the materials, pleading and order of the learned Rent Controller, ordered eviction of the petitioner and 2nd respondent and held that they have committed wilful default. The learned Appellate Authority has also took note of the fact that the petitioner has not paid the rent even during pendency of R.C.A. and confirmed the order of the learned Rent Controller with regard to wilful default. There is no error in the order of the learned Rent Controller as well as the judgment of the learned Appellate Authority, warranting interference by this Court.

13.As far as owner's occupation is concerned, the 1st respondent has stated that he is carrying on Silver Articles business at D.No.172, Shevapet Main Road, Shevapet, Salem, in a rented premises, along with his mother and brother, in a partnership. The 1st respondent has also stated that he is not owning any non-residential building within Salem city or in any other place. The 1st respondent produced Exs.P12 and P13, lease agreement and rent receipts paid by him to his landlord and proved that he is carrying on business in a rented premises. The petitioner has denied the claim of the 1st respondent that he is not owning any immovable property for non-residential building. When the petitioner has taken such a stand, it is for him to prove that the 1st respondent is owning another non-residential building and claim of the 1st respondent is not bonafide.

13(i) Both the learned Rent Controller as well as the learned Appellate Authority considered the pleadings, oral and documentary evidence in proper perspective and held that the requirement of the petition premises by the 1st respondent, for his Silver Articles business is

bonafide. The Courts below also rightly held that it is for the landlord to decide which premises is suitable for him to do business and it is not for the tenant to dictate which premises will be suitable for the landlord's business. In view of the above facts, the judgments relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner.

13(ii) The contention of the learned counsel appearing for the petitioner that the 1st respondent could have adjusted the rent payable by the 1st respondent from and out of the sum of Rs.1,40,000/- or interest payable for the said amount and therefore, there is no default much less wilful default in payment of rent, is without merits. The learned Senior Counsel appearing for the 1st respondent submitted that the 1st respondent has deposited a sum of Rs.1,40,000/- as directed by the Trial Court to the credit of O.S.No.368 of 1999 and the said contention was not disputed by the learned counsel appearing for the petitioner. Further, the petitioner has not given any instructions to adjust the rent payable by him from and out of the advance amount of Rs.1,40,000/-. Without any instruction by

the petitioner or 2nd respondent, the 1st respondent cannot deduct the rent payable by the petitioner, from and out of Rs.1,40,000/-.

13(iii) Considering the entire materials, the petitioner has not made out any case for interfering with the order of the learned Rent Controller as well as the judgment of the learned Appellate Authority. Both the learned Rent Controller as well as the learned Appellate Authority have given cogent and valid reason for ordering eviction. There is no error or irregularity in the order and judgment of the learned Rent Controller and learned Appellate Authority respectively, warranting interference by this Court.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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22.10.2021

Index :: Yes/No
gsa

To

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

2.The Principal District Munsif,
(Rent Controller),
Salem.

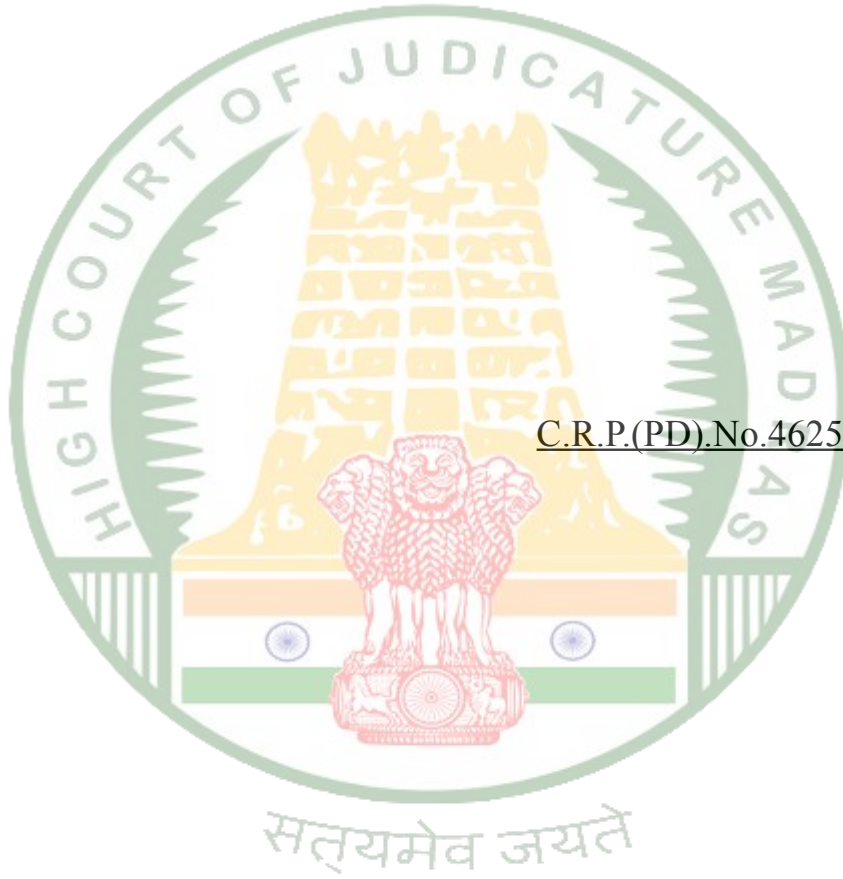


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