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C.R.P.(NPD) No.3679 of 2016

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>26.08.2021</i>
<i>Pronounced</i>	<i>02.09.2021</i>

CORAM

THE HONOURABLE MR.JUSTICE MRS.S.KANNAMMAL

C.R.P.(NPD) No.3679 of 2016

and

C.M.P.No.18666 of 2016

1. S.Vemmana

2. M.V.Bupathy

... Petitioners

Versus

Shri Rajasthani Jain Samaj

..Respondent

Prayer: Revision petition is filed against the judgment and decree passed in RCA No.21 of 2014 dated 31.03.2016 on the file of VIII Small Causes Court, Chennai, confirming the fair and decretal order passed in RCOP No.2161 of 2010 dated 20.09.2013 on the file of XIV Small Causes Court, Chennai.

For Petitioner : Mr.K.S.Saravanan

For Respondent: Mr.R.Vishnu for K.Ramu



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ORDER

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This Civil Revision Petition has been filed by the petitioner, against the judgment and decree passed in RCA No.21 of 2014 dated 31.03.2016 by the learned VIII Judge, Small Causes Court, Chennai, confirming the fair and decretal order passed in RCOP No.2161 of 2010 dated 20.09.2013 of the XIV Judge, Small Causes Court, Chennai.

2. The petitioners herein are the tenants and the respondent is the landlord in respect of the a Shop bearing No.7 admeasuring an extent of 1250 sq.ft. in ground floor and 900 sq.ft.in Mezzanine floor. The monthly rent was fixed at Rs.16,675/- per month with rental security deposit of Rs.1,56,000/-.

3. According to the respondent/landlord, the petitioners were not prompt in payment of rents and committed default for the period of November 2009 to February, 2010 and later at the instance of the respondent, they paid the arrears of rent. thereafter, again the petitioners committed default in payment of rents from March, 2010 till November, 2010, which works out to Rs.1,50,075/- for total period of 9 months and



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after adjusting the security deposit, still the petitioners were due in arrears

of payment of rent for a sum of Rs.10,750/-. In such circumstances, the respondent/landlord, has moved the Rent Controller, seeking eviction of the petitioners herein on the ground of willful default.

4. Resisting the petition filed by the landlord, the petitioners/tenants, by way of counter, while denying the averments contained in the petition, have stated that they have not committed any willful default in payment of rents. According to them, due to financial crises in their business, they made payment of rents little bit late, which cannot be termed as willful default and the landlord, without any reluctance, was receiving the rents though paid belatedly and after adjusting the security deposit towards arrears of rent, when the petitioners/tenants were about to issue cheque, but the landlord refused to receive the same. Therefore, according to the petitioners/tenants, they have not committed any default in payment of rents and the calculation given by the landlord, showing due of arrears is wrong. With these averments, the petitioners/tenants sought for dismissal of the eviction



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petition.

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5. The Rent Controller, on going through the entire material both oral and documentary as well as case laws cited before him, came to the conclusion that the petitioners/tenants committed willful default and accordingly, by order, dated 20.09.2013, allowed the petition, directing the respondents to vacate and deliver vacant possession within two months from the date of the order. Aggrieved by the order of the Rent Controller, the petitioners/tenants have preferred an appeal in RCA No.21 of 2014.

6. The Rent Control Appellate Authority, on appreciation of the evidence and the findings of the Rent Controller, has also come to the conclusion that the petitioners/tenants committed willful default and accordingly, confirmed the order of the Rent Controller. Questioning the same, the petitioners/tenants have come forward with the present Revision.

7. The learned counsel appearing for the petitioners/tenants

would submit that the findings of the Courts below are without proper



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appreciation of the facts and evidence and admittedly, the landlord received 10 months advance amount of Rs.1,56,000/- and the same has to be adjusted to the rents due and payable by the tenants and though there is delay in payment of rents, but it cannot be termed as willful default so as to order eviction of the tenants.

8. On the other hand, the learned counsel appearing for the respondent/landlord would submit that on analysing the entire evidence, both the Courts below have rightly found that the petitioners/tenants have committed willful default and in fact, RW.1 who is the tenant has admitted that the calculations made by the landlord in his petition are correct, which clearly shows that the petitioners/tenants are still in due after adjusting the security amount, a sum of Rs.10,750/- towards arrears of rent. Therefore, having found that the petitioners/tenants committed willful default in payment of rents, the Courts below have rightly ordered eviction, which do not warrant interference by this Court.

9. Heard the learned counsel for the petitioners/tenants and the

learned counsel for the respondent/landlord and perused the entire



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material available on record.

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10. It is not in dispute that the the petitioners/tenants were inducted as tenants of a shop owned by the respondent/landlord on a monthly rent of Rs.16,675/- and they also paid Rs.1,56,000/- towards rental security deposit. It is also not in dispute that the petitioners/tenants have not paid rents initially for the period November 2009 to February 2010, which later when, the landlord insisted, they paid. As regards the period from March 2010 to November 2010, it is admitted fact that the petitioners/tenants have not paid the rents, which works out to a sum of Rs.1,50,075/-. Even in regard to this, the petitioners/tenants have stated that already the respondent/landlord was paid rental security deposit of Rs.1,56,000/- and after adjusting the same, there would be no arrears and thereby, they have not committed default. It is pertinent to note that the petitioners/tenants were not prompt in paying rent at every month and only when the arrears accrued, then only, they used to clear the same. As could be seen, earlier during the period November, 2009 to February, 2010, they have not paid the rent, which prompted the



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respondent/landlord to write a letter dated 15.03.2010 and thereafter only, they cleared the rents. This aspect was admitted by the tenant when he examined as RW.1. He also admitted that the cheque dated 24.03.2011 towards rent for the month of February was returned as insufficient funds. Therefore, by this, the attitude of the petitioners/tenants is clearly established that they were not regular in payment of rents. Even after adjusting the rental security deposit, the landlord/respondent pointed out by way of calculations mentioned in the petition, that the petitioners/tenants were still in due for a sum of Rs.10,750/- which was not cleared by them. The calculations made by the landlord/respondent were not denied by the petitioners/tenants, which proves that the petitioners/tenants were due for a sum of Rs.10,750/-.

11. In the light of the above, it is clear that the petitioners/tenants were not regular in payment of rents at every month as per the agreed contract and as and when rental arrears accrued, they used to pay the same and finally, they did not clear the arrears, by giving explanation that the respondent/landlord was already paid rental security



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deposit and the same can be adjusted. This conduct of the petitioners/tenants, in the opinion of this Court, is willful in not having paid regularly rents month after month as per the monthly rental arrangement. In this regard, it is worthwhile to refer a decision of this Court reported in "**S. Rajam v. M/s. Raja Stores, represented by its Proprietor, S. Ravichandran**, 2005 (4) MLJ 195, wherein, it is held thus:

“The conduct of the Tenant in this case clearly goes to indicate that he was never regular in payment of rents and particularly even after filing of the R.C.O.Ps. he was not regular in paying rents and such conduct is nothing but a wilful one. No doubt, the Landlords have been receiving the rents in lumpsum without any other go and it does not mean that the Landlords have given a go by to monthly tenancy argument considering the conduct of the Tenant and the Landlord, the conduct of the Landlord appears to be reasonable and the conduct of the Tenant only appears to be a wilful one in not having paid regularly rents month after month as per the monthly tenancy arrangement”.



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12. For the foregoing reasons, this Court does not find any infirmity or irregularity in the concurrent findings of the Courts below in order to interfere with the same. Hence, the Revision Petition fails and it is dismissed. No costs. Consequently, connected CMP is closed.

Mpa

02.09.2021

To

1. VIII Judge, Small Causes Court, Chennai
2. XIV Judge, Small Causes Court, Chennai.



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S.KANNAMMAL, J.

mpa

**Pre delivery order in
C.R.P.No.3679 of 2016**

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