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C.R.P.(NPD).No.2949 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2949 of 2021

and

C.M.P.No.21121 of 2021

K.Thiyagarajan

.. Petitioner

Vs.

V.Kannan

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 18 of 1960 as amended by Act 23 of 1973, praying to allow the Civil Revision Petition and set aside the decree and judgment dated 23.01.2021 made in R.C.A.No.489 of 2017 on the file of the Rent Control Appellate Authority (learned IX Judge Court of Small Causes) FAC, Chennai reversing the fair and decreetal order dated 11.01.2017 made in R.C.O.P.No.208 of 2016 on the file of the learned Rent Controller (XIII Small Causes Court), Chennai.

For Petitioner : Mr.S.Kumarswamy

For Respondent : Mr.M.Arunachalam



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ORDER

WEB COPY Challenge in this Revision, filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, is to the order of the learned Appellate Authority refusing to extend time granted for deposit of arrears of rent.

2. The landlord initiated RCOP.No.208 of 2016 under Section 10(2)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act contending that the tenant has defaulted in payment of difference between the contractual rent and fair rent fixed. Agreed rent was Rs.3,500/- per month. The defendant filed RCOP.No.1721 of 2009 seeking fixation of fair rent. The same was allowed and the fair rent was fixed at Rs.7,693/- per month. The landlord issued notice requiring the tenant to pay the arrears, that is, difference between agreed rent and fair rent fixed. Since the tenant failed to pay the arrears, the landlord launched the present proceedings. The tenant resisted the proceedings contending that he has filed appeal against the order fixing fair rent and since the order fixing fair rent has not become final, there is no question of willful default.



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3. The Rent Controller allowed the petition on the ground that once the fair rent has been fixed, it is for the tenant to pay the arrears also. Despite the notice being served, the tenant failed to pay the arrears, which would amount to willful default. On the claim of the tenant that he has filed appeal, the Rent Controller recorded a factual finding that no material has been produced to show that the appeal is pending or an appeal had been preferred.

4. Aggrieved, the tenant, preferred an appeal in R.C.A.No.489 of 2017. Pending appeal, the landlord filed an application in M.P.No.228 of 2019 under Section 11 of the Act seeking stoppage of proceedings for non-payment of rent. The Appellate Authority by order dated 12.02.2020 allowed the M.P.No.228 of 2019 directing the tenant to pay the arrears of rent. The tenant did not comply with the order, but, filed an application in M.P.No.2 of 2020 seeking extension of time.

5. This was opposed by the landlord contending that the arrears is due for more than 6 years and the tenant does not deserve any benevolence from



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the Court. The Appellate Authority dismissed the application for extension of time and as a consequence stopped further proceedings and directed eviction.

6. Mr.S.Kumarswamy, learned counsel appearing for the petitioner would submit that the tenant has been very regular in payment of rent and non-payment of difference is due to lock-down imposed and his own ill-health. He would seek the Court to approach the case on humane consideration than on law.

7. Per contra, Mr.M.Arunachalam, learned counsel appearing for the respondent/ landlord would submit that the tenant knew that he had to pay arrears prior to 25.01.2016, when the notice of demand was served on him. The tenant contested the case setting up false defence as to the filing of the appeal. He did not come forward to pay the entire arrears even during the pendency of the Rent Control Original Proceedings for more than 3 years. Therefore, according to the counsel for the respondent, the tenant does not deserve any indulgence from this Court.



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WEB COPY 8. The liability of the tenant to pay rent is statutory. Once the fair rent is fixed and the order fixing fair rent has become final, the tenant is duty bound to pay difference between the agreed rent and fair rent within reasonable time. In the case on hand, the fair rent was fixed on 29.10.2015. Admittedly, neither the tenant nor the landlord preferred appeal against the said fixation. The landlord issued notice demanding difference in rent on 16.12.2015. Therefore, it is almost for 6 years now the tenant has been evading payment of difference, except paying a sum of Rs.50,000/- during the pendency of Rent Control Appeal. Moreover, the eviction for non-payment of rent is a statutory consequence and this Court sitting in Revision under 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act cannot interfere with the consequence of non-compliance as prescribed in the statute.

9. No doubt, the argument of the counsel that the Court must adopt a humane approach is very attractive. But, considering the nature of the statute viz., special legislation, I do not think, there is any elbow room for the Court



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to introduce the concept of humane approach and relieve the tenant from the statutory consequence which are at times harsh. I therefore see no merits in the Revision. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

10. The learned counsel for the petitioner seeks some time to vacate. Considering the fact that the petitioner is doing business in the premises, he is granted 8 months time i.e., till 31st August 2022 to vacate and handover possession subject to the following conditions:

1. The tenant shall file an affidavit before this Court on or before 07.01.2022 undertaking to vacate and deliver vacant possession on or before 31.08.2022 without driving the landlord to execution proceedings.

2. The tenant shall pay the entire arrears of rent upto date on or before 28.02.2022 and also continue to pay arrears of rent as fixed by the learned Rent Controller till such time he vacates.



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11. In the event of non compliance with any one of the above two conditions, the landlord will be entitled to execute the order, as if, no time has been granted by this Court.

21.12.2021

dsa

Internet : Yes

Index : No

Speaking order

To

- 1.The Rent Control Appellate Authority,
IX Judge Court of Small Causes, FAC, Chennai.
- 2.The Rent Controller,
XIII Small Causes Court, Chennai.



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R.SUBRAMANIAN, J.

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