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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2021

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2053 of 2020 and
C.M.P.No.12898 of 2020

K.Subramaniam (died)

1. K.S.Balakrishnan
2. S.Annapoorani
3. Balasaraswathi

... Petitioners/Respondents/Tenants

Vs.

M/s Krishna Mills Pvt., Ltd.,
rep by its Director
J.Anand
1082, Avinashi Road,
Coimbatore - 18.

... Respondent/Appellant/Landlord

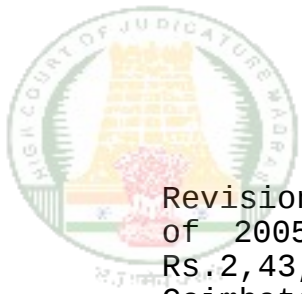
Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 to set aside the Fair and Decretal order passed in R.C.A. No.32 of 2019 dated 25.02.2020 on the file of learned Principal Subordinate Judge, Coimbatore by reversing the fair and decretal order passed in R.C.O.P. No.134 of 2007 on the file of learned I Additional District Munsif, Coimbatore.

For Petitioners : Mr.M.S.Krishnan
Senior Counsel for
Mr.Edwin Prabakar

For Respondent : Mr.M.Ravindran
Senior Counsel for
Mr.R.Nandhakumar

O R D E R

The present Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act, 1960 as against the Fair and Decretal order passed in R.C.A No.32 of 2019 dated 25.02.2020 by the learned Principal Subordinate Judge, Coimbatore reversing the finding made in R.C.O.P.No.134 of 2007 dated 06.02.2019 on the file of learned First Additional District Munsif, Coimbatore.



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2. The Tenant since deceased, his legal heirs are the Revision Petitioners before this Court. Initially R.C.O.P.No.44 of 2005 was filed by the landlord for fixing fair rent as Rs.2,43,600/- before the learned I Additional District Munsif, Coimbatore. Thereafter, R.C.O.P.No.134 of 2007 was filed by the landlord under Section 10(2)(1) of Tamilnadu Buildings Lease and Rent Control Act, 1960 on the fact that the tenant took the property measuring 16,500 square feet from the previous management of the landlord. During the year 1999, the tenant took front portion of 5,000 square feet on the monthly rent of Rs.15,000/- and thereafter, the northern portion measuring another 5,000 square feet of land and building was taken on lease by the tenant during October, 2000 for a monthly rent of Rs.15,000/-. Further, a separate shed on the western side measuring 500 square feet was given on lease to the tenant from 01.05.2000 on a monthly rent of Rs.3,000/- and an extent of 5000 was rented out to the tenant in October, 2001 on a monthly rent of Rs.15,000/-, totally an extent of 15,500 square feet of land and building on a monthly rent of Rs.48,000/- was to be paid by the tenant. However, the tenant seems to have been contending that the monthly rent is only Rs.33,000/-. Meanwhile, the landlord had taken out the petition in R.C.O.P.No.44 of 2005 for fixing of fair rent in which fair rent proceedings the tenant has submitted his trading profit and loss account for the year ended 31.03.2000 had shown the monthly rent payable to the landlord as Rs.48,000/-, which seems to have been admitted in the cross examination in R.C.O.P.No.44 of 2005. The landlord was receiving the reduced rent without prejudice to their right held that from 01.10.2000 till 01.07.2007, the tenant has defaulted to pay the balance of Rs.15,000/- as monthly rent. Furthermore, in the fair rent case filed by the landlord, the fair rent was fixed as Rs.2,43,600/- from 01.02.2005, the tenant has not paid the said fair rent so fixed and continued to pay Rs.33,000/- per month. Despite there being an order of the court in fair rent, the tenant had willfully defaulted the rent and liable to be evicted on the ground of willful default.

3. As per the counter filed by the tenant in R.C.O.P.No. 134 of 2007 filed for eviction, the tenant had denied the allegation and stated that the tenant took the front portion of the subject property measuring an extent of 5,000 square feet in the year 1989 on a monthly rent of Rs.15,000/- from the landlord and thereafter took another portion of the said godown measuring an extent of 4,200 square feet situated in north of the front portion in October, 2000 on a monthly rent of Rs.10,000/-. Thereafter, in October, 2001 the tenant took the rear portion of the godown measuring an extent of 4,200 square feet on a monthly rent of Rs.5,000/- from the landlord and earlier, the tenant had taken another ground on measuring 500 square feet on 01.05.2000 on a monthly rent of Rs.3,000/- from the landlord and ever since of taking of the possession by the



tenant, the monthly rent for the above said godowns and the adjacent building is Rs. 33,000/- and not Rs.48,000/- .

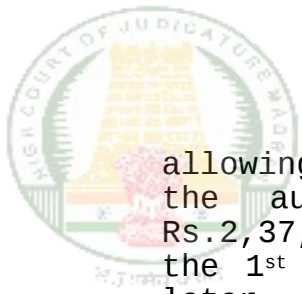
4. Meanwhile, as against the fair and final order made in R.C.O.P.No.44 of 2005 dated 10.01.2007 passed by the learned I Additional Munsif, Coimbatore, who had fixed the fair rent at Rs.2,43,600/-, R.C.A.No.21 of 2007, was filed by the tenant and R.C.A.No.24 of 2007, was filed by the landlord, the appellate authority by fair and final order dated 20.02.2008 dismissed both the appeals filed by the tenant as well as the landlord and confirmed the fair and decreetal order passed in R.C.O.P.No.44 of 2005 dated 10.01.2007 confirming the fair and rent fixed by the 1st Additional District Munsif Court at Rs.2,43,600/- .

5. The tenant approached this Court under Section 25 of the Act as against the fair and final order made in R.C.A.No.21 of 2007 dated 20.02.2008. This Court by order dated 30.07.2008 in M.P.No.1 of 2008 in C.R.P.NPD No.2511 of 2008 had passed an interim order, which is as follows:-

" 5. After hearing both the learned counsel, to meet the ends of justice, I find it reasonable to direct the petitioner / tenant to deposit Rs.25,00,000 (Rupees twenty five lakhs only) without prejudice to the claim of both the parties. Accordingly, the revision petitioner is hereby directed to deposit a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) on or before 29.09.2008 before the court below, failing which, this petition shall stand automatically dismissed and the respondent / landlord would be at liberty to execute the E.P. The learned counsel appearing for the respondent submitted that the arrears of rent as on the date of the order would be computed approximately to Rs.86,67,600/- Accordign to the learned counsel appearing for the revision petitioner, the fair rent would be at Rs.75,000/- and the arrears payable is for a period of 40 months and therefore as contended by the learned counsel for the respondent / landlord, I find it reasonable to permit the respondent / landlord to withdraw the said amount to be deposited by the petitioner / tenant.

6. It is seen that as per the report of the engineer engaged by the revision petitioner, the fair rent fixed would be at Rs.75,000/- Hence, based on the said report the revision petitioner is directed to pay Rs.75,000/- (Rupees seventy five thousand only) as rent without prejudice to the claim of both the parties in the Civil Revision Petition for the subsequent period."

Thereafter, this Court by order dated 09.09.2011 which finally decided the C.R.P.NPD No.2511 of 2008 filed by the tenant

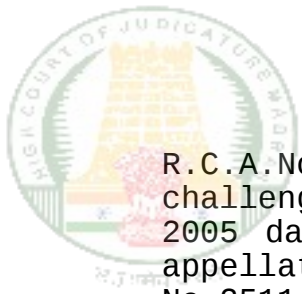


allowing the revision petition and modified the order passed by the authorities and refixed the fair rent payable at Rs.2,37,500/- as against the fair rent of Rs.2,43,600/- fixed by the 1st Additional District Munsif Court, Coimbatore, which was later confirmed by the Appellate Authority, the learned Principal Sub Judge, Coimbatore in R.C.A.No.21 of 2007. The tenant, thereafter filed S.L.P.Nos. 6500 and 6501 of 2012 before the Hon'ble Supreme Court of India, as against the final order made in C.R.P. No.2511 of 2008 dated 09.09.2011. The Hon'ble Supreme Court by order dated 23.03.2012 while dismissing the S.L.P., observed as follows:-

'However, we direct that the arrears be paid by the petitioner, at the rate of Rs.15,00,000/- (Rupees fifteen lakhs only) per month along with regular rent, i.e., Rs.2,37,500/- (Rupees two lakhs thirty seven thousand five hundred only) fixed by the learned Single Judge of the said High Court by 15th of each month till arrears are not cleared, thereafter, the payments be made. We also made it clear that the above said payment would be made without any prejudice to the rights of either party in the pending suit.'

6. Thereafter, there were several communications between the landlord and the tenant. Meanwhile, the R.C.O.P. No.134 of 2007 filed by the landlord under Section 10(2)(i) of Tamilnadu Building Lease and Rent Control Act, 1960 for willfull default came to be finally decided against the landlord by a fair and final order dated 06.02.2019 by the Rent Control Authority, Coimbatore holding that there is no willful default committed by the tenant. The landlord had approached the Rent Control Appellate Authority in R.C.A. No.32 of 2019 under Section 23 of Tamilnadu Lease and Rent Control Act, 1960 and the Appellate Authority by fair and decreetal order dated 25.02.2020 allowed the appeal in favour of the landlord holding that the tenant has committed willful default in payment of arrears of fair rent and he is liable to be evicted thereby setting aside the fair and final order dated 06.02.2019 made by the Rent Control Authority, as against which, the present Revision Petition has been filed by the tenant.

7. Mr.M.S.Krishnan, learned Senior Counsel appearing for the Petitioner / Tenant contended that when the tenant had started paying the fair rent fixed by this Court from 25.10.2011 itself, even before filing the SLP before the Hon'ble Supreme Court and when this Court has allowed the Revision Petition in C.R.P. NPD No.2511 of 2008 dated 09.09.2011 modifying the fair rent fixed as Rs.2,35,500/-, as against Rs.2,48,000/- fixed by the Rent Controller, the question of willful default does not arise and the appellate authority miserably failed to appreciate the said factual position. The learned senior counsel further contended that when the tenant as well as the landlord filed



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R.C.A.No.21 of 2007 and R.C.A.No.24 of 2007 respectively, challenging the fair and final order made in R.C.O.P No.44 of 2005 dated 10.01.2007, which subsequently was dismissed by the appellate authority and thereafter, the tenant filed C.R.P No.2511 of 2008, this Court modified order passed in fair rent, until the finality being attained in the proceedings before District Courts, the question of willful default as held by the appellate authority in R.C.A. No.32 of 2019 is not correct and has to be set aside.

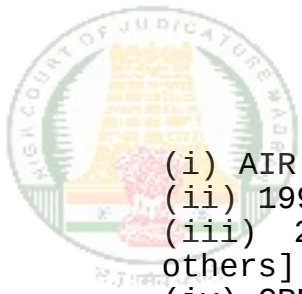
8. The learned Senior Counsel for the Petitioner also contended that the lower appellate authority misunderstood the fact and proceeded on a wrong presumption that the tenant did not make payment after the order passed by the High Court and waited till the dismissal of the S.L.P., which according to the learned counsel is incorrect, as the tenant had commenced his payment at rent as early as 25.10.2011 itself, even before filing of the S.L.P. before the Hon'ble Supreme Court.

9. The learned Senior Counsel for the Petitioner submits that when the Civil Revision Petition was allowed on 09.09.2011, the tenant had complied with the above order from 25.10.2011 and has paid Rs.2,56,50,000/- which would prove that the tenant was not a willful defaulter and the presumption by the appellate authority that the tenant failed to pay the fair rent modified by the High Court in C.R.P. filed by the tenant in C.R.P. No.2511 of 2008 and had waited till the disposal of the SLP by the Hon'ble Supreme Court.

10. The learned senior counsel for the petitioner would also further contend that the Hon'ble Supreme Court while dismissing the S.L.P. had granted a direction to the tenant to pay the arrears of Rs. 15,00,000/- per month along with the regular rent of Rs.2,37,500/- fixed by this Court by 15th of each month till the arrears was clear and thereafter, regular payment to be paid without prejudice to the rights of either parties pending suit and in compliance to the said order, the arrears of Rs.1,22,22,000/- was paid without any default, which the landlord is acknowledged by receiving the same, which was totally overlooked by the 1st Appellate Authority.

11. The learned senior counsel for the petitioner also represented that when the tenant has received the legal notice dated 01.10.2011 calling upon the tenant to pay the rental amount, the tenant promptly started paying rental dues from 25.10.2011 itself, which was not taken into account by the 1st Appellate Authority while allowing the appeal filed by the landlord, which is absolutely incorrect and is liable to be set aside.

12. The learned senior counsel for the petitioner apart from the above submissions has relied on the following Judgments:



- (i) AIR 1985 SC 582 [Sundaram Pillai Vs. Kousalaya]
(ii) 1996 [2] LW 849 [Visalakshi Vs.Sathyanarayana]
(iii) 2000 [3] SCC 282 [Chordia Automobiles Vs.S.Moosa and others]
(iv) CRP NPD No.3084 of 2015 Equivalent: 2017 SCC online MAD 6043 [Nirmala Daga and another Vs. C.Subramanian]
(v) 2008 5 CTC 409 [P.Sivachandran Vs.Purushotham]
(vi) C.A.No.6145 of 2009 ; SC Equivalent: 2009 9 SCC 359 [Arjunan Vs. Universal Fertilizer co]
(vii) 2001 [1] LW 823 [Agarwal Vs.Zeear Sultan]
(viii) CRP NPD No.2655 of 2013 [South India Vaniar Educational Trust Vs. Broad Lands]

13. In contrary to the argument put forth by Mr.M.S.Krishnan, learned senior counsel for the petitioner, Mr.Ravindran, learned senior counsel appearing for the respondent / landlord contended that the landlord, who initially filed R.C.O.P.No.44 of 2005 sought the intervention of the Rent Controller to fix Rs.3,76,800/- as fair rent, however, the learned Rent Controller by order dated 10.01.2007 had fixed only Rs.2,43,600/- as fair rent from the date of petition, i.e., from 01.02.2005. As such, immediately after the passing of the final order in R.C.O.P. No.44 of 2005 the difference between the contractual rent and fair rent becomes payable immediately. Though there are statutory appeals, the dues have to be calculated from the date of petition. Furthermore, the learned senior counsel for the respondent had pointed out that even in an appeal filed before the 1st Appellate Authority, though there is a statutory remedy under Section 23(2) of Tamilnadu Building Lease and Rent Control Act, 1960, there was no stay obtained by the tenant as against the fixation of fair rent by the Rent Controller.

14. Even at this stage, the tenant, who ought to have remitted the differential amount between the contractual amount and the fair rent amount, failed to pay the same. Nevertheless, when the R.C.A.No.24 of 2007 filed by the tenant was dismissed by the 1st appellate authority by its order dated 20.02.2008 but confirming the fixation of fair rent by the Rent Control Authority, the tenant ought to have deposited the differential amount atleast even at that stage, however, the tenant had filed Revision Petition before this Court in C.R.P. No.2155 of 2008, the Court had initially directed the tenant to deposit a sum of Rs.25,000/- without prejudice to the claim of both the parties on or before 29.09.2008 before the lower court, failing which, the petition shall automatically be dismissed and the landlord would be at liberty to file the execution petition.

15. However, when the Revision petition was taken up for final hearing, this Court by order dated 09.09.2011 allowed the Revision petition for a limited extent modifying the amount



fixed by the Rent controller as Rs.2,37,500/- instead of Rs.2,43,600/- fixed by the court below. As such, when the court has passed and when the tenant has exhausted all its statutory remedy available under the Act and when this Court modified the fair rent by order dated 09.09.2011, the fair rent has become final and attained finality once the statutory remedy available were exhausted.

16. The learned senior counsel for the respondent would also contend that though the tenant received the notice dated 01.10.2011 was in arrears to an extent of Rs.1,22,22,000/- the tenant started paying the rent, which was modified by this Court at Rs.2,37,000/- and choose to approach the Hon'ble Supreme Court in S.L.P.(Civil) Nos.6500 and 6501 of 2001, however, the Hon'ble Supreme Court in S.L.P.(Civil) number had dismissed the S.L.P. permitting the tenant to pay the arrears in installment and continue to pay the fair rent fixed by the court below in the caveat without any prejudice to the rights of either party in the pending suit. It is only thereafter the tenant started paying the fair rent fixed by this Court. Hence the tenant had committed willfull default and he is liable to be evicted.

17. The learned senior counsel for the respondent has relied on the following Judgments to defend his case:-

1. 2011 (5) CTC 252 [Girdharilal chandak and Bros. And others Vs. S.Mehdi Ispahani and others]
2. 2011 (5) CTC 837 [C.Raghunatha Reddy Vs. S.Rajasekaran and another]
3. 2011 (2) MWN (Civil) 138 [G.Sureshkumar Vs.O.L.Muthu]
4. 2014 - 4- L.W. 158 [P.Thangamani Ammal Vs. K.Ramachandra Chetty]
5. (2001) 7 SCC 503 [N.Kamalam (Dead) and Another Vs. Ayyasamy and Another]
6. (2004) 2 SCC 663 [Chairman and MD, NTPC Ltd., Vs. Reshmi Constructions Builders and contractors]
7. (1978) 3 SCC 113 [Superintendent (Tech.I) Central Excise, I.D.D.Jabalpur and others Vs. Pratap Rai]

18. Heard both the learned senior counsels appearing for the petitioners and the respondent and perused the materials available on record.

19. The only issue to be decided to arrive at a finality in the present petition is that when the fair rent has reached the finality?; guided by the various decisions cited by the either learned senior counsels, the Court shall now deal with the above issue.

20. The contention of the tenant / petitioner that the fair rent fixed by the Court had not attained finality until the order of the Hon'ble Supreme Court, there cannot be any willful



default in payment of the differential amount between the contractual amount and fair rent fixed, this Court is unable to accept the contention raised by Mr.M.S.Krishnan, learned senior counsel for the petitioner. The petition for fixation of fair rent was filed only on 01.02.2005, which came to be allowed on 10.01.2007. Thereafter, R.C.O.P.No.134 of 2007 was filed on 17.07.2007, as against the fixation of fair rent by order dated 10.01.2007, R.C.A.No.21 of 2007 was filed by the tenant. However, though the Appellate authority is empowered to grant stay under Section 23(2), it is seen from the record that there was no stay granted by the Appellate Authority in R.C.A.No.21 of 2007.

21. The Judgment of this Court reported in 2011 (5) CTC 252 [[Girdharilal chandak and Bros. And others Vs. S.Mehdi Ispahani and others] referred by Mr.Ravindran, learned Senior Counsel for the respondent would be apt for the present case and the relevant portions are as follows:-

"14. Irrespective of whether the order passed by this Court on 28.10.2005 in CRP (NPD) Nos.1657 and 1658 of 2005 was a conditional order or not, it is an admitted fact that the petitioner himself did not seek a stay of the orders passed by the Rent Controller and the Appellate Authority, while challenging the same by way of revision. If a person does not seek stay of an order passed by a Court below, it would only indicate either of the two things viz., (i) that he is willing to comply with the order or (ii) that he has no objection to the orders of the Court below being put into execution. The failure of a person to seek from an appellate forum, a stay of the order of a subordinate forum, cannot mean anything else than the above two factors. Take for instance, a case where a decree for recovery of money is passed. If out of fear that an Appellate Court may impose a condition for the grant of stay, the judgment-debtor chooses not to seek stay of the decree for money at all, it would either mean that he has no objection to the decree being put to execution or that he is even willing to pay the decretal debt subject to his rights in the first appeal. The failure of a person to seek a stay from an Appellate Court, cannot lead to a disastrous consequence viz., that though he would not seek stay, there will automatically be a clog on the right of the decree holder to execute it. Such an interpretation, can never be permitted.

15. Order 41, Rule 5 (1) CPC, makes it clear that an appeal shall not operate as a stay of the proceedings under a decree or order appealed from, except so far as the Appellate Court may order. It also makes it clear that the execution of a decree need not be stayed merely by reason of an appeal having been preferred from the decree. As a matter of fact,



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the Explanation to Sub Rule (1) of Rule 5 of Order 41, goes a step further by stating that even an order granted by the Appellate Court for the stay of execution will be effective only from the date of communication of such order to the Court of first instance. However, it permits the Court of first instance even to act upon an affidavit sworn to by the appellant, to the effect that an Appellate Court had stayed the execution of the decree. In other words, the stay is made operative only prospectively.

16. In *Kamla Devi vs. Takhatmal* {AIR 1964 SC 859}, the Supreme Court pointed out that Order 41, Rule 5 CPC, embodies the general principle of law that an appeal shall not operate as a stay of proceedings under a decree. To hold that Order 41, Rule 5 CPC, embodies only the general principle of law, the Supreme Court quoted with approval the opinion of the Judicial Committee in *Juscurn Bold vs. Pirthi Chand Lal* {(1918) LR 46 Indian Appeal 52}, to the following effect:-

"Under the Indian Law and Procedure, a original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal"

17. Therefore, the petitioner cannot even contend that the principles of Order 41, Rule 5 CPC, cannot be invoked to the proceedings under the Rent Control Act, in view of the above observations of the Supreme Court that Order 41, Rule 5, embodies only a general principle of law. In any case, in *Atma Ram Properties (P) Ltd vs. Federal Motors (P) Ltd* {2005 (1) SCC 705}, which arose out of the provisions of Delhi Rent Control Act, 1958, the Supreme Court held in paragraph 8 that it is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the Court below. The Court pointed out that a prayer for the grant of stay of the proceedings or on the execution of the decree or order appealed against has to be specifically made to the Appellate Court. In paragraph 9 of the Report, the Supreme Court further reiterated that "to secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant". To come to the above conclusions, the Supreme Court relied upon the provisions of Order 41, Rule 5 CPC, despite the fact that the proceedings in that case also arose only under the Rent Control Act. Therefore, if a person who seeks an order of stay and suffers a refusal, is himself obliged to pay the fair rent, the petitioner who did not even seek a stay of the orders of both the Courts below, cannot be placed better of.

18. Therefore, the contention raised by the respondents that the first petitioner was guilty of willful default in payment of the fair rent fixed by the two Courts



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below, was rightly sustained by both the authorities, in view of the very failure of the petitioner to seek stay of those orders in the revision filed by them. In other words, the orders of eviction passed by both the Courts below, cannot be and need not be made relatable to the order passed by this Court in CRP (NPD) Nos.1657 and 1658 of 2005. Only if the contention regarding willful default is linked to the order dated 28.10.2005 passed in CRP (NPD) Nos.1657 and 1658 of 2005 that the question as to whether it was a conditional order or not and the next question as to whether this Court is competent to impose such a condition or not, would arise. In plain and simple terms, if the conduct of the petitioner is looked into, the same makes it clear that though he challenged the orders of fixation of fair rent, he did not want stay of those orders. If the Court did not grant stay of those orders and if he himself did not seek stay of those orders, the consequences of the same would have to follow.

19. The above issue can also be looked at from another angle. Take for instance a case, where a revision is filed against orders fixing the fair rent and the tenant also seeks stay of the orders of the Court below. For the grant of stay, if this Court imposes a condition and the revision petitioner fails to comply with those conditions, it would automatically result in the vacation of the stay order. Once a stay is sought and it is also granted on condition and once the conditional order is not complied with, the default on the part of the tenant would automatically become a willful default. If this is the position even with regard to a person who obtains a conditional order of stay, the case of a person who does not even seek stay, cannot be placed in a better position. In other words, to say that a person who seeks stay and suffers a conditional order is worse off than a person who does not seek stay would be a travesty of justice. Therefore, the Courts below were right in looking at the issue in plain and simple terms in the sense that on account of the very action of the petitioner in not seeking a stay, the petitioner became liable to pay the fair rent."

22. It is clear from the records that no stay has been granted by the Appellate Authority; as held by Hon'ble Mr. Justice V. Ramasubramanian in the above referred case, 'Mere pendency of appeal before the appellate authority cannot be construed as stay'. It is also seen from the Revision Petition filed by the tenant in C.R.P. No.2511 of 2008, that there was only a direction to deposit Rs.25 Lakhs and directed the tenant to pay a sum of Rs.75,000/- per month as an interim measure. This is for the purpose of admission of the Civil Revision Petition, this Court has not granted any stay of the order. In the similar situation, this Court in the Judgment reported in 2011 (2) MWN (Civil) 138 [G.Sureshkumar



Vs.O.L.Muthu] relied on by the learned senior counsel appearing for the respondent, the relevant paragraphs are extracted hereunder:-

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" 13. Before the Hon'ble Supreme Court in the case of Maragathammal vs. Kamalammal, 2006 (5) CTC 698, a some what identical issue came up for consideration. In the said case, the landlord had filed an application under Section 11 of the Act and the Rent Controller directed the tenant to deposit the entire admitted arrears into Court on or before a particular date failing compliance of which, the tenant's defence would be struck off. In the said case, the date fixed by the Rent Controller was 22.11.1995. The tenant filed a lodgment schedule on 21.11.1995, stating that he desires to deposit the amount. The said lodgment schedule was considered and challan was issued only on 29.11.1995. The learned Rent Controller therein held that the tenant failed to comply with the order and ordered that the defence should be struck off. Thereupon, an appeal was filed before the Appellant Authority and pending appeal, there was an interim order passed to deposit the rent and this was complied with and the appeals were finally disposed by the learned Appellate Authority. Aggrieved by such order, revision petitions were filed before this Court. This Court in its order took note of the conduct of the tenant pending appeal and held that the tenant has displayed her bonafide by payment of rent during the pendency of the appeal proceedings and should be allowed to contest the eviction petition on merits. The Hon'ble Supreme Court reversed the decision of this Court and in doing so held as follows :-

10. We are afraid that we cannot agree with the view taken by the High Court.

14. In this case an order was passed under Section 11 dated 9-11-1995, directing the respondent tenant to deposit the entire admitted arrears of rent in court on or before 22-11-1995 failing compliance with which the respondents defence would be struck off. Admittedly, the respondent tenant did not deposit the arrears of rent on or before 22-11-1995 and instead of that lodged a schedule on 21-11-1995. In this lodgment schedule the respondent stated that she wanted to deposit the rents from the month of June 1992 to October 1995 i.e. a sum of Rs.26,650 covering 41 months. This lodgment schedule came to be considered and the issue of challan for depositing the sum of Rs.26,650 was ordered on 29-11-1995.

15. We see no reason why the respondent lodged the schedule as late as on 21-11-1995 i.e. just the previous day prior to 22-11-1995 by which date when she was directed to deposit the entire admitted arrears in court under Section 11. The respondent could have lodged this schedule on the



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very next day after the order dated 9-11-1995 i.e. on 10-11-1995 or within a day or two thereafter. We see no reason why she waited till the eve of 22-11-1995, which was the last date of depositing the entire rent in court. It is admitted that the respondent tenant has been deliberately avoiding the payment of the rent as and when it fell due. Thus, we respectfully disagree with the view taken by the Madras High Court and we uphold the orders of the Rent Controller dated 9-11-1995 and 22-3-1996. The impugned judgment of the High Court is set aside and the respondent tenant is granted two months time to vacate the premises in question, failing which she will be evicted by police force. The appeal is allowed. No costs."

23. The above mentioned decision of this Court referring to the decision of Hon'ble Supreme Court squarely applies to the present case on hand. Mere deposit of amount as specified as an interim measure unless, the Court specifically grants stay does not amount to stay of the order. As such, in the present case, it is clear that while passing the interim order it was only an interim arrangement till the disposal of the main revision pending before the Court, as such, it cannot be construed as an stay, unless expressly stayed by this Court.

24. Furthermore, this Court when finally decided the Revision Petition by its order dated 09.09.2011, refixing the fair rent from Rs.2,43,600/- as ordered by the Rent Control Authority to Rs.2,37,500/- in the statutory appeal under Section 25 of Tamilnadu Buildings Lease and Rent Control Act, 1960 filed by the Revision Petitioner ; the statutory remedy available to the tenant has been exhausted and once this Court in Revision Petition No.2511 of 2008 had refixed the fair rent from that of the rent fixed by the Rent Control Authority, the fair rent attains the finality, once the statutory remedy available was exhausted by the tenant, though it is stated by the learned senior counsel for the petitioner that the tenant did not wait for the verdict before the Supreme Court in SLP filed by the tenant as against the order passed by this Court in C.R.P. No.2511 of 2008 that they have started to pay the rent as per the orders of this Court even prior to filing of the SLP, could not said that the fair rent did not attain finality and there was no willful default.

25. It would be appropriate to extract the Tables 1 and 2 furnished in the grounds of revision petition filed by the Revision Petitioner:-

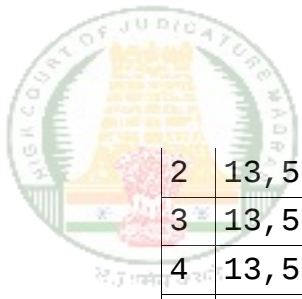


TABLE 1

Sl	Rent paid after deducting TDS	Cheque no. and date	RPAD Sent	RPAD Received by landlord	Cheque passed in our A/C on	Bank
1	2,13,750/-	001031/21.10.2011	102111	102211	102511	City Union Bank, Ramnagar, CBE
2	2,13,750/-	001061/08.11.2011	110811	110911	111011	CUB
3	2,13,750/-	002117/08.12.2011	120911	121011	121211	CUB
4	2,13,750/-	002165/07.01.2012	010912	011012	011112	CUB
5	2,13,750/-	002210/08.02.2012	020812	020912	021012	CUB
6	2,13,750/-	002276/08.03.2012	030912	031012	031312	CUB
7	2,13,750/-	002338/09.04.2012	040912	041012	041112	CUB
8	2,13,750/-	002413/05.05.2012	050512	050712	050812	CUB
9	2,13,750/-	002477/09.06.2012	061212	061312	061412	CUB
10	2,13,750/-	002550/11.07.2012	071212	071312	071412	CUB
11	2,13,750/-	002612/11.08.2012	081112	081312	081412	CUB
12	2,13,750/-	002667/12.09.2012	091212	091412	091512	CUB
13	2,13,750/-	002711/12.10.2012	101312	101512	101612	CUB
14	2,13,750/-	002757/12.11.2012	111212	111412	111512	CUB
15	2,13,750/-	002809/14.12.2012	121412	121512	121712	CUB
16	2,13,750/-	002856/11.01.2013	011213	011613	011813	CUB
Till, October 2020 the petitioner herein has paid sum of Rs.2,56,50,000/- [Rupees Two Crores Fifty Six Lakhs and Fifty Thousand only) towards rent and arrears						

TABLE 2

Sl	Installment amount (after deducting TDS)	Cheque no. and date	RPAD Sent	RPAD Received by landlord	Cheque passed in our A/C on	Bank
1	13,50,000/-	002414/05.05.2012	050512	050712	051212	City Union Bank Ltd., Ramnagar, CBE



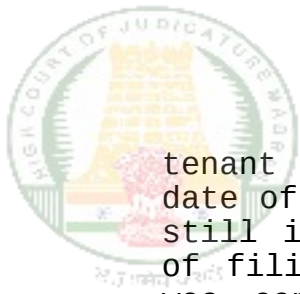
2	13,50,000/-	002478/09.06.2012	061212	061312	061412	CUB
3	13,50,000/-	002552/11.07.2012	071212	071312	071412	CUB
4	13,50,000/-	002613/11.08.2012	081112	081312	081412	CUB
5	13,50,000/-	002668/12.09.2012	091212	091412	091512	CUB
6	13,50,000/-	002712/12.10.2012	101312	101512	101612	CUB
7	13,50,000/-	002758/12.11.2012	111212	111412	111512	CUB
8	13,50,000/-	002810/14.12.2012	121412	121512	121712	CUB
9	1,99,800/-	002857/11.01.2013	011213	011613	020213	CUB
TOTAL					1,22,22,000/-	

26. On a careful perusal of the above tables as furnished by the Revision Petitioner / tenant, it is true that the tenant has started to pay the rent as fixed by this Court from 21.10.2011, which is not in dispute. However, it would be appropriate to refer the notice dated 01.10.2011, wherein the landlord had issued a notice through their lawyer immediately after the order being passed in CRP No.2511 of 2008 dated 09.09.2011 terminating the lease and calling the tenant to pay the entire arrears of Rs.1,22,22,000/- and it is thereafter only the first payment was made by the tenant for Rs.2,13,750/- after deducting TDS on Rs.2,37,500/-, the fair rent revised by this Court by its order dated 09.09.2011 in C.R.P. No.2511 of 2008.

27. It is a categorical admission made by the tenant that they started paying the arrears of rent accumulated from the date of petition 01.02.2005 in R.C.O.P. No.44 of 2005 only from 05.05.2012 after the Hon'ble Supreme Court ordered dismissing the SLP Nos.6500 and 6501 of 2012. It is seen from the orders passed by the Hon'ble Supreme Court that the Hon'ble Supreme Court has not interfered with the findings of the order made in C.R.P. No.2511 of 2008 dated 09.09.2011, however, permitted the tenant to pay the accumulated arrears of rent in instalments of Rs.15,00,000/- per month with the caveat that the claim would be without any prejudice to the rights of either parties in the pending suit.

28. It would be appropriate to mention here that, in the present case, the Hon'ble Supreme Court did not interfere with the orders passed by this Court in C.R.P No.2511 of 2008 dated 09.09.2011. Thus making it very clear that the fair rent fixed has attained finality on 09.09.2011 itself on which day the final order was passed by this Court in CRP No.2511 of 2008.

29. This Court is unable to accept the contention of the learned Senior counsel for the petitioner, that they started paying the revised fair rent fixed by this Court even before filing the SLP. Mere payment of fair rent does not absolve the



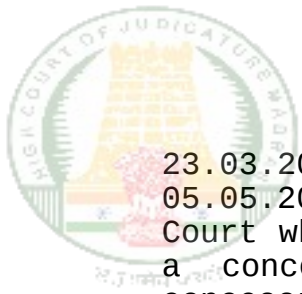
tenant from his conduct of willful default as a tenant as on date of payment of the revised fair rent fixed by this court was still in due of the accumulated arrears from the original date of filing of RCOP No.44 of 2005, ie., 01.02.2005. The tenant was conscious enough to receive the notice dated 01.10.2011 issued on behalf of the landlord which categorically claimed the due as on 01.10.2011 was Rs.1,22,22,000/- as arrears of differential amount between the contracted amount and the fair rent amount as revised by this Court in C.R.P. No.2511 of 2008.

30. 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 consequences 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"

31. It is clear from the above said decision of the Hon'ble Supreme Court that the wilfull default must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. As far as the present case is concerned, the tenant was conscious with full knowledge that he is in due of Rs.1,22,22,000/- as on the date of notice dated 01.10.2011 issued on behalf of the landlord. However, the tenant choose to remit only the revised rent as fixed by this Court before filing the SLP before the Hon'ble Supreme Court. The non-payment of arrears of fair rent will also amount to conduct of wilful default as the tenant deliberately did not remit the arrears of fair rent when the fair rent has attained finality on 09.09.2011 itself, when this court has refixed the fair rent. Therefore, mere deposit of rent made by the tenant pursuant to the orders of this Court alone and non-payment of arrears amount will amount to wilful default.

32. In the light of the above discussion, this Court has no hesitation in holding that the fair rent has attained finality when the statutory remedy available has been exhausted by the tenant and when this Court finally decided the revision petition in CRP No.2511 of 2008 refixing the fair rent and the payment made by the tenant after dismissal of the SLP on



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23.03.2012. The 1st installment of Rs.13,50,000/- was paid on 05.05.2012 would amount to wilful default as the Hon'ble Supreme Court while dismissing the SLP filed by the tenant had only given a concession to deposit the arrears in instalments, this concession cannot be inferred anything in favour of the tenant, when the fair rent has attained finality as early as 09.09.2011.

33. Under these circumstances, this Court does not find any infirmity in the fair and decretal order passed in R.C.A.No.32 of 2019 dated 25.02.2020 by the learned Principal Subordinate Judge, Coimbatore and the said order is confirmed. Accordingly, the present revision petition fails, as no laudable grounds has been raised to interfere with the order passed by the learned Principal Subordinate Judge, Coimbatore. Hence the Civil Revision Petition stands dismissed and consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

ssd

To

1. The Principal Subordinate Judge,
Coimbatore
2. The I Additional District Munsif,
Coimbatore.
3. The Section Officer,
V.R.Section,
High Court, Madras

+1CC to M/s.R.Nandha Kumar, Advocate, SR.No. 29223

+3CCs to Mr.A.Edwin Prabakar, Advocate, SR.No. 28860(29/09/2021)

C.R.P.No.2053 of 2020 and
C.M.P.No.12898 of 2020

SRA(CO)
B.VC (20/09/2021)