

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.07.2021
Delivered on	16.07.2021

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRP.(NPD).No.1282 of 2017

C.Udaychand

... Petitioner/Landlord

Vs.

M.Mohan

... Respondent /Tenant

PRAYER: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decretal order passed in RCA.No.135 of 2016, dated 05.01.2017 on the file of the IX, Court of Small Causes at Chennai.

For Petitioner .. Mr.M.L.Ramesh

For Respondent ... Mr.K.S.Ganesh Babu

ORDER

(Heard through video conferencing)

This Civil Revision Petition has arisen out of the order of the Rent Control Appellate Authority passed in RCA.No.135 of 2016, dated 05.01.2017, wherein the Eviction Order passed by the Rent Controller/ the XV Small Causes Court at Chennai in R.C.O.P. No.2354 of 2012, dated 29.01.2016 was reversed.

2. The petitioner is the Landlord and the respondent is the tenant.

3. The landlord has filed a petition for eviction against the respondent on the ground of willful default in payment of rent. The contention of the respondent/tenant is that he has been paying the rent promptly by depositing it in the Court without any default by filing a petition in RCOP.NO.2045 of 2009 and hence the ground of willful default can not be made applicable against him. The Rent Controller has appreciated the facts and evidence and arrived at a finding that the conduct of the respondent/tenant in paying the rent by way of deposit in the court in the name of the earlier owner of the premises itself would show his evasive attitude and because of that the land lord was deprived to take the rent deposited in the Court.

4. While the respondent claimed that the rent for the premises is at Rs.800/- per month, the petitioner claimed that the rent is at Rs.1500/-. The petitioner has further submitted that the respondent was making a false claim about the quantum of the rent by knowing pretty well that the revised rent after the purchase of the property by the petitioner is at 1,500/- per month. But the learned First Appellate Authority has chosen to reverse the order of eviction on the ground that the revision of rent at Rs.1500/- was not intimated to the respondent/tenant and hence he cannot be found fault for paying the rent at Rs.850/- p.m.

5. In the order of the rent controller a portion of the evidence of RW1 (respondent) has been extracted in order to show that the respondent had admitted that he had knowledge about the purchase of the property by the petitioner on 13.07.2009 and the said fact was intimated to by issuing a notice. So the respondent was aware of the change of ownership of the demised premises immediately after the sale and he continued to be the tenant under the new owner also.

6. At the completion of the conferment of title in favour of the petitioner, attornment of tenenacy becomes automatic. Having known well about the transfer of ownership, the respondent had chosen to file a petition to deposit the rent in Court by filing a petition to deposit the rent. In the said petition he has strangely impleaded the earlier owner and not the petitioner. On coming to know about the deposit petition through the previous owner, the petitioner filed a petition and get himself impleaded as a party and claimed that the rent could be paid to him directly. Despite that, the respondent has chosen the short-circuit way of depositing the rent in court, just in order to evade from paying the revised rent.

7. Before filing a petition to deposit the rent, the tenant ought to have issued a notice to the landlord by tendering the rent to him directly. Only if the landlord refuses to receive the same, he could opt to deposit the same by way of filing a petition in the

Rent Control Court. But the respondent did not offer the rent to the petitioner by sending him a notice. In fact, he had sent the mandatory pre litigation notice to the previous owner and on her refusal, he started to deposit the rent in the court. By keeping the petitioner under dark, he had chosen to deposit the rent in court. At least, after the petitioner got himself impleaded as a party to the deposit application, the respondent should have paid the rent directly to him. Making the landlord to loiter here and there to collect rent itself, should also be construed as nothing but supine indifference on the part of the respondent in paying the rent. And that is sufficient to attract the ground of willful default.

8. Further, the petitioner has also initiated a proceedings for fixation of fair rent in RCOP.No.1324 of 2010 and in which the fair rent was fixed at Rs.4,210/- on 10.04.2012. The respondent has challenged the order of fixing the fair rent before the First Appellate Rent Control Authority and thereafter by way of filing a Civil Revision Petition in CRP.No.4424/2013 before this Court. Only after the fair rent fixed by the Rent Controller was confirmed by the Appellate Authority and this Court, the respondent had chosen to pay the arrears of rent to the Petitioner. Despite the respondent was contesting with his new land lord in the petition for fixation Fair Rent, he continued to deposit the rent in Court till January-2015.

9. At every stage , the tenant was just playing hide and seek in order to evade paying the revised rent to the petitioner. He has further stated that the attornment of tenancy has not completed. The respondent can not find the pleasure in denying the right of the petitioner to receive the rent directly from the respondent, in total contravention to the provisions of sec.109 of the Transfer of Property Act. For the purpose of convenience sec.109 T.P Act is extracted as below:

“109. Rights of lessor's transferee:-

If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

PROVIDED that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and in case they disagree, such determination may be made by any Court having jurisdiction to entertain a Suit for the possession of the property leased”.

10. So the above provision makes it clear that when the lessor transfers his title to the transferee, at the completion of such transfer, the transferee gets all rights which have been enjoyed by the lessor and which includes the right to collect rent from the tenants. However, the transferee is not entitled to claim the past rent or arrears if any, paid by the tenant to the earlier owner before or after the transfer of ownership. By virtue of sec. 109 of Transfer of Property Act, the attornment takes place automatically and it is a statutory attornment. So the lessee can not claim that he had not consented to it or the attornment has not taken place or become complete. Since the attornment is the product of law, the completion of the transfer makes the attornment also complete. If the lessee does not opt to continue his lease under the transferee, it is upto him to vacate the premises by putting the transferee under notice.

11. The Hon'ble Supreme Court has held in *Mohar Singh (dead by LRs.) v. Devi Charan*, (AIR 1988 SC 1365), that there is no need for a consensual attornment and that the attornment is brought out through operation of law. The Patna High Court has also adopted the said principle in *Kalawati Tripathi v. Damayanti Devi*, (AIR 1993 Pat. 1) and held as under:

“Attornment is creature of contract. Attornment is not a mere agreement in favour of a mere agreement in favour of a third party to pay rents but has

been defined as an act of the Tenant putting one person in the place of another as his Landlord. It is clear from Section 109 that after the transfer of lessor's right in favour of the transferee he gets all the rights and liabilities of the lessor in respect of the subsisting tenancy. This Section does not insist that the transfer will take effect only when the Tenant attorns. The provisions of this Section give a validity to the transfer made by the lessor with regard to his right in favour of the transferee regarding the subsisting tenancy.

An attornment by lessee to the assignee of lessor is not necessary for creating a subsisting tenancy. The transferee of the lessee steps into the shoes and possess all the rights which the transferor has. The attornment by Tenant is not essential to give validity to the transfer made in favour of the transferee. The submission made on behalf of the Tenant that the Suit for eviction was not maintainable, as there was no attornment by the tenant, therefore is without any substance.”

सत्यमेव जयते

WEB COPY

12. The same principle has been followed by this court in **Sasikala Vs Wilson D.Doss (2011 CTC 342)**, wherein it is held that the attornment of tenancy is automatic and neither the transferee nor the tenant need to approach each other in order to effect an attornment, subsequent to the transfer of title. In the said judgement it is held as below:

13. Under Section 109 of the said Act, the Transferee automatically steps into the shoes of transferor and possesses all rights which the transferor had. Therefore, when there is automaticattornment of tenancy in favour of the subsequent purchaser of the property, there is no need for the tenant to approach the subsequent purchaser for the said effect. In this regard, it would be useful to refer the judgments relied on by the learned Counsel for the Appellant.

.....

17. On going through the principles laid down in the above said judgments, it is clear that the attornment by lessee to the assignee of lessor is not necessary for creating a subsisting tenancy and the attornment by Tenant is not essential to give validity to the transfer made in favour of the transferee. Therefore, I am of the opinion that the submission made by the learned Counsel Respondent/Plaintiff that the Appellant has not approached him for attornment of tenancy, has no force in the eye of law.

13. The respondent in this case, did not opt to vacate the demised premises and was contesting with the petitioner in all the rent control proceedings and thereby asserted his intention of continuing as a tenant. It is neither the contention of the respondent that the petitioner had claimed the rent, which he had already paid to the earlier owner for the period before the transfer. But it is the respondent who had been playing hide and seek by depositing the rent in court by impleading his earlier owner as a party. Despite the earlier owner refused to receive the rent, the respondent was

reluctant to pay the rent to the petitioner. It is strange to note that the respondent was pleading non- attornment of tenancy, despite he elected to remain in the demised premises as a tenant.

14. The first Appellate Rent Control Authority has omitted to note that the respondent by his conduct had deprived the petitioner to get rent from the respondent in his capacity as the landlord. Had he sent a notice to the petitioner instead of his earlier owner, the petitioner would have got the opportunity to receive the rent under protest with regard to quantum. Despite knowing the change of ownership as early as in the year 2009 itself, the respondent did not implead the petitioner as a party to the proceedings. So the conduct of the respondent would show that he did not have any *bona fide* reason to deposit the rent in court. The learned Rent Controller has rightly pointed out that the said conduct respondent/tenant would prove his intention of not allowing the true owner to receive the rent and thereby committing willful default. But the learned Rent Controller First Appellate Authority has misguided himself and omitted to take note of the relevant facts and evidence before reversing the Eviction Order. Since the materials on record would prove that the respondent has committed willful default in paying the rent by being reluctant to pay the rent directly to the petitioner, the order of the Rent Control First Appellant Authority is liable to be set aside.

In the result, this Civil Revision Petition is **allowed** and the order passed in RCA.No.135 of 2016, dated 05.01.2017, on the file of the IX, Court of Small Causes at Chennai, is hereby set aside. The respondent is directed to vacate the demised premises within 3 months from the date of receipt of copy of this order. No costs. Connected Miscellaneous petitions if any are also closed.

16.07.2021

Speaking/Non-speaking

Index : Yes/No

Internet : Yes/No

jrs

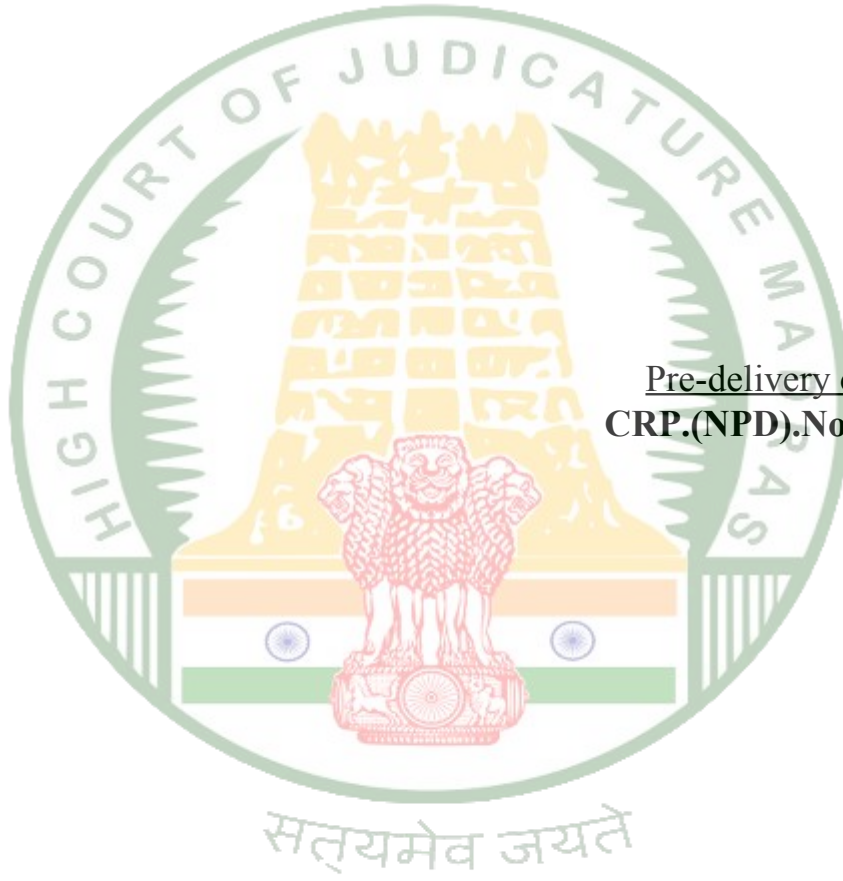
To

1. The IX Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

R.N.MANJULA,J.

jrs



Pre-delivery order made in
CRP.(NPD).No.1282 of 2017

WEB COPY

16.07.2021