

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2977 of 2017
and C.M.P.No.14057 of 2017

M.Muthu Kumar

.. Petitioner

Vs.

G.S.Sugumar

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended Act, against the judgment and decree dated 20.04.2017 made in R.C.A.No.2 of 2016 on the file of Sub Court, Ponneri, confirming the fair and decretal order dated 06.11.2015 made in R.C.O.P.No.20 of 2013 on the file of the District Munsif Court, Thiruvottiyur.

For Petitioner : Mr.T.V.G.Kartheeban

For Respondent : Mr.R.Krishnaswamy

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the judgment and decree dated 20.04.2017 made in R.C.A.No.2 of 2016 on the file of Sub Court, Ponneri, confirming the fair and decretal order dated 06.11.2015 made in R.C.O.P.No.20 of 2013 on the file of the District Munsif Court, Thiruvottiyur.

2.The petitioner is tenant in the petition premises owned by the respondent. According to the respondent, the petitioner was inducted as a tenant in the year 2006 on a monthly rent of Rs.3,300/- and petitioner has agreed for increase of rent every year. After such increase every year, the petitioner agreed to pay a sum of Rs.4,500/- as monthly rent from March 2011. But the petitioner has paid only Rs.4,000/- as monthly rent and there was arrears of rent to the tune of Rs.12,000/-, which was payable by the petitioner. The respondent is residing in a rented house at Chrompet

and paying monthly rent of Rs.6,500/-. The respondent required petition premises for his own occupation and in view of the above, he filed R.C.O.P.No.20 of 2013 on the file of the District Munsif Court, Thiruvottiyur, for eviction of the petitioner on the ground of wilful default and owner's occupation.

3.The petitioner filed counter statement and denied all the averments made by the respondent. According to the petitioner, the monthly rent is only Rs.4,000/- and not Rs.4,500/- as claimed by the respondent. The petitioner is regularly paying monthly rent and there is no arrears of rent payable by the petitioner. When the respondent filed R.C.O.P., on the first hearing date, the petitioner tendered rent for the month of July 2014 and August 2014 by filing a memo. On that date, the counsel for the respondent did not appear before the Court and on the next hearing date, the petitioner deposited the rent for July 2014 and August 2014 in the respondent's Bank account. The petitioner has not committed any wilful default in payment of rent and is paying monthly

rent regularly till date. The respondent has not stated for which period, the petitioner defaulted in payment of rent of Rs.12,000/-. The respondent has been demanding the petitioner to vacate the petition premises, since the respondent wanted to sell the petition premises to third parties and sent rowdy elements to vacate petition premises. The petitioner sent notice dated 31.12.2011 calling upon the respondent not to indulge in the act of evicting the petitioner without due process of law and petitioner is ready to purchase the petition premises. The respondent has also sent reply notice dated 11.01.2012 and in the reply notice, the respondent admitted that the monthly rent is only Rs.4,000/-. Further, the respondent permitted the petitioner to carry out repairs in the petition premises and agreed to pay the expenses incurred by the petitioner. The petitioner has spent a sum of Rs.50,000/- for repairing work. The respondent is residing in his own house at Chrompet and only to evict the petitioner, he has filed present R.C.O.P. and prayed for dismissal of the R.C.O.P.

4.Before the learned Rent Controller, the respondent examined himself as P.W.1 and marked three documents as Exs.P1 to P3. The petitioner examined himself as R.W.1 and marked one document as Ex.R1.

5.The learned Rent Controller considering the pleadings, judgments of this Court and the Hon'ble Apex Court, both oral and documentary evidence, allowed the R.C.O.P. holding that the petitioner has committed wilful default and since the respondent requires petition premises for his own use, directed the petitioner to vacate the petition premises, within a period of three months.

6.Against the said order dated 06.11.2015 made in R.C.O.P.No.20 of 2013, the petitioner filed R.C.A.No.2 of 2016 on the file of Sub Court, Ponneri. The learned Appellate Authority considering the materials placed before him, order of the learned Rent Controller and grounds of appeal, dismissed R.C.A. and confirmed the order of the learned Rent Controller.

7. Against the said judgment and decree dated 20.04.2017 made in R.C.A.No.2 of 2016, the petitioner has come out with the present Civil Revision Petition.

8. The learned counsel appearing for the petitioner contended that the finding of both the learned Rent Controller and learned Appellate Authority that the petitioner has committed wilful default in payment of rent is erroneous and contrary to the evidence let in before the learned Rent Controller. The learned Rent Controller and the learned Appellate Authority ought to have seen that the respondent/landlord is having advance amount of Rs.20,000/- towards four months rent in advance even at the time of alleged claim of arrears of rent. Both the Courts below failed to see that the respondent/landlord did not specifically state in his petition and proof affidavit as to which period of three months, the petitioner/tenant has committed default. The respondent has filed and marked Ex.P3, Bank statement, which clearly shows that on the date of filing of R.C.O.P., there was no arrears of rent. Both the Courts below

failed to appreciate the fact that the petitioner has paid rent to the Bank account of the respondent, a sum of Rs.8,000/- on 04.04.2013, another sum of Rs.8,000/- on 18.07.2013 and Rs.8,000/- on 22.08.2013. The Courts below erred in holding that the petitioner has committed wilful default, when there is no pleadings in the petition filed by the respondent that the petitioner was irregular in payment of rent by making lumpsum payment bi-monthly. Hence, the finding of the Courts below that the petitioner has committed wilful default by making irregular lumpsum payment bi-monthly is erroneous. The learned counsel for the petitioner further contended that the respondent is residing in a flat owned by his father Subbaiah, petitioner is working in HCL at Sholinganallur, his daughter is studying in a school at Chrompet and his son is studying in Tambaram, the petition premises will not be convenient for the respondent for his own occupation. In view of the above facts, claim of the respondent that the petition premises is required for his own use is not a valid ground. Both the Courts below without properly appreciating the pleadings, oral and documentary evidence and grounds of appeal in

R.C.A., erroneously ordered eviction and prayed for dismissal of the R.C.O.P. and allowing Civil Revision Petition.

9.The learned counsel appearing for the respondent made submissions in support of the order of the learned Rent Controller, judgment of the learned Appellate Authority and prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

11.From the materials on record, it is seen that the respondent is the owner of the petition premises and petitioner is the tenant. According to the respondent, from March 2011, the petitioner agreed to pay monthly rent of Rs.4,500/-. The petitioner paid a sum of Rs.4,500/- only for March and April 2011 and subsequently, he was paying only Rs.4,000/-

per month that too once in two months or three months as rent. That payment is reflected in the Bank statement of the respondent marked as Ex.P3. Subsequent to April 2011, the petitioner was depositing the rent to the respondent's Bank account, the amount of Rs.8,000/- once in two months and therefore, a sum of Rs.12,000/- has become arrears. Further, the petitioner has also filed statement of account as Ex.R1. From the statement of account of the petitioner, it is seen that the petitioner has not paid monthly rent regularly. He has paid lumpsum amount once in two months or three months. The petitioner has admitted in the cross-examination that he has paid monthly rent in lumpsum of Rs.8,000/- once in two months. Similarly, in the grounds of appeal, the learned counsel for the petitioner has also stated that the petitioner has paid rent only once in two months or three months. In the grounds of revision, the petitioner has stated that he has paid rent of Rs.8,000/- on 04.04.2013, Rs.8,000/- on 18.07.2013 and Rs.8,000/- on 22.08.2013. It is not in dispute that the tenancy is according to English calendar month and tenant is liable to pay rent every month. When the rent is not paid

every month, but paid in lumpsum, that amounts to wilful default. Further, the contention of the learned counsel appearing for the petitioner that the petitioner has paid an advance of Rs.20,000/- and the respondent ought to have adjusted the arrears of rent from and out of advance amount is without merits.

12.It is well settled that when landlord is having advance amount in excess as contemplated under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, excess amount can be adjusted only at request of the tenant. It is not the case of the petitioner that he requested the respondent to adjust the arrears of rent or rent from and out of the advance amount paid by him. The learned Rent Controller and the learned Appellate Authority considering the pleadings, oral and documentary evidence placed before them with regard to wilful default in proper perspective, held that the petitioner has committed default in payment of rent. There is no error in the order of the learned Rent Controller and the judgment of the learned Appellate Authority.

13.As far as the owner's occupation is concerned, the respondent has contended that he is residing in a rented house on a monthly rent of Rs.6,500/- at Chrompet. The petitioner has not produced any material to show that the respondent is residing in his own house. On the other hand, the petitioner admitted in his cross-examination that he has not produced any material to show that the respondent is residing in his own house. The contention of the learned counsel for the petitioner that the petition premises is not convenient for the respondent for residing as he is working at Sholinganallur, his daughter is studying at Chrompet and his son is studying at Tambaram, is without merits. It is for the landlord to decide which premises owned by him is convenient for him and which premises he has to occupy. A tenant like the petitioner cannot dictate terms to the landlord. Both the Courts below have considered all the materials in proper perspective with regard to claim of the petitioner for owner's occupation based on the materials placed before them and ordered eviction on these grounds also. There is no error or irregularity in

the order of the learned Rent Controller and the judgment of the learned Appellate Authority warranting interference by this Court.

14.For the above reasons, the Civil Revision Petition stands dismissed. The learned counsel appearing for the petitioner submitted that the petitioner shall vacate and handover the petition premises to the respondent within three months and he shall file an affidavit of undertaking to that effect on 28.09.2021. No costs. Consequently, connected Miscellaneous Petition is closed.

Post this matter on 28.09.2021 for filing affidavit of undertaking.

21.09.2021

Index : Yes/No
Internet: Yes/No
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To

- 1.The District Munsif, Thiruvottiyur.
- 2.The Subordinate Judge, Ponneri.

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V.M.VELUMANI, J.

The learned counsel appearing for the petitioner submitted that this Court by order dated 21.09.2021 dismissed the Civil Revision Petition filed by the petitioner and at the request of the learned counsel appearing for the petitioner, it is posted today for filing affidavit of undertaking to vacate the petition premises within three months and hand over the possession to the respondent.

2.Today, when the matter is taken up for hearing, the learned counsel appearing for the petitioner submitted that the petitioner will vacate and hand over the vacant possession to the respondent shortly and hence, he is not filing the affidavit today.

3.Recording the submission of the learned counsel for the petitioner, no further order is necessary in this Civil Revision Petition.

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