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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2021

Pronounced on : 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (PD) (MD) .No.203 of 2020

and

C.M.P(MD)No.1213 of 2020

R. Rajalakshmi : Petitioner/Appellant/Respondent/Tenant

Vs.

K. Arumugam, (died)

A.Subramanian : Respondent/Respondent/Petitioner/Landlord

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decretal order, dated 02.07.2019 passed in R.C.A.No.15 of 2018, by the Rent Control Appellate Authority (Principal Sub Judge) Madurai, confirming the Fair Order and Decretal order dated 28.11.2017 passed in R.C.O.PNo.208 of 2009, by the Principal Rent Controller (Principal District Munsif) Madurai Town.

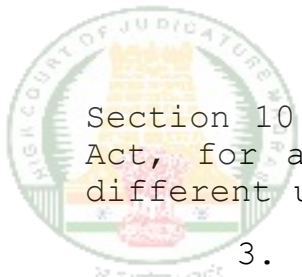
For Petitioner : Mr.D. Malaichamy

For Respondent : Mr.S. Mahesh Babu

ORDER

The Civil Revision is directed against the order passed in R.C.A.No.15 of 2018, dated 02.07.2019 on the file of the Rent Control Appellate Authority / Principal Subordinate Judge, Madurai, confirming the order passed in R.C.O.P No. 208 of 2009, dated 28.11.2017, on the file of the Rent Controller / Principal District Munsif, Madurai Town.

2. Admittedly, the revision petitioner/ appellant / respondent is the tenant and the first respondent / petitioner is the land lord. After filing of the eviction petition, the first respondent / land lord had died and the second respondent / second petitioner, who is the son of the first respondent / land lord has been prosecuting the case. The respondents have filed a petition in R.C.O.P No. 208 of 2009, against the revision petitioner, claiming eviction on the grounds of willful default in payment of rent under



Section 10 (2) (i) of Tamil Nadu Buildings (Lease and Rent Control) Act, for additional accomodation under Section 10 (3) (c) and for different user under Section 10 (2) (ii) (b) of the said Act.

3. During trial before the Rent Controller, the respondents have examined the second respondent as PW-1 and exhibited 16 documents as Ex.P.1 to Ex.P.16. The revision petitioner / tenant has examined herself as RW-1 and exhibited 5 documents as Ex.R1 to R5.

4. The learned Rent Controller, upon considering the evidence adduced and on hearing the arguments advanced by both the sides, has passed an order, dated 28.11.2017, allowing the petition and ordered eviction on the grounds of willful default in payment of rent and additional accomodation, but rejected the ground of different user and thereby, directed the revision petitioner to vacate the petition mentioned premises and handover the vacant possession of the same to the second petitioner within a period of two months. Aggrieved by the said order of eviction, the tenant has filed an appeal in R.C.A No. 15 of 2018, and the learned Rent Control Appellate Authority, upon considering the materials placed and on hearing the arguments of both sides, has passed the impugned order, dated 02.07.2019, dismissing the Rent Control Appeal and thereby, confirming the eviction order passed in R.C.O.P No. 208 of 2009, dated 28.11.2017. Aggrieved by the dismissal of the appeal, the tenant has come forward with the present revision.

5. As already pointed out, the tenant alone has challenged the order of eviction passed on the grounds of willful default in payment of rent and additional accomodation and since the appeal was dismissed, he has preferred the present revision.

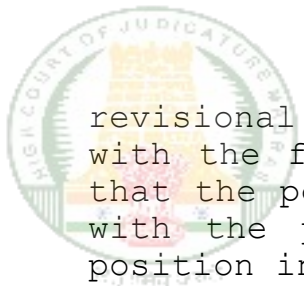
The points that arise for consideration are:

(i) Whether the findings of the Courts below that the tenant has committed willful default in payment of rent are proper in accordance with law.

(ii) Whether the Courts below erred in deciding that the requirement of the petition mentioned premises for additional accomodation of the land lord is bonafide ?

6. It is pertinent to mention that the jurisdiction of this Court under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act is confined to legality, propriety and correctness of the orders of the Courts below. No doubt, the power under Section 25 of the said Act, is wider than Section 115 of the Code of Civil Procedure. This Court, while exercising the revisional jurisdiction under Section 25 of the said Act, should not act as if it was exercising the Appellate jurisdiction, by appreciating the evidence, weigh the same and by that process, come to a different conclusion and reverse a finding of the fact arrived at by the Courts below.

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revisional Court cannot substitute its own view so as to interfere with the findings of the Courts below. It is pertinent to mention that the power under Section 25 of the said Act is not co-extensive with the power of the appellate Court. Bearing the above legal position in mind, let us consider the case on hand.

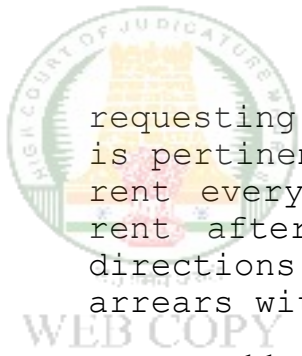
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7. It is not in dispute that the monthly rent for the petition mentioned premises at the time of filing the eviction petition is Rs.1,200/- . The petitioners have claimed in the eviction petition that the respondent was in arrears of rent for two months of July and August 2009, the respondent has herself admitted that she had paid rent up to June 2009, but when she was attempting to pay the rents for the subsequent months, the petitioners have refused to receive the same. It is also not in dispute, that the respondent has filed an application under Section 8 (5) of the said Act, seeking permission of the Rent Controller to deposit the rents and that subsequently, after the death of the first petitioner, since the respondent has not taken steps, the said petition in R.C.O.P. No. 227 of 2009, was ordered to be dismissed on 31.08.2016.

8. It is not the case of the respondent that she has already taken steps for restoring the petition in R.C.O.P. No. 227 of 2009. It is also not the case of the respondent that she had obtained orders for depositing the rents from the Rent controller and had deposited the rent into the Court. As rightly pointed out by the Courts below, the respondent has not prosecuted the petition filed under Section 8 (5) of the said Act and allowed the same to be dismissed for default and that therefore, the respondent cannot take any advantage from the mere filing of the said petition for deposit.

9. It is evident from the records that during pendency of the eviction petition before the Rent Controller, the respondent has filed a petition to recall PW-1 in I.A.No. 216 of 2016, the learned Rent Controller has passed a conditional order, directing the respondent to pay the arrears of rent for the period between July 2009 and September 2016 for Eighty Seven months at Rs.1,04,400/- on or before 05.11.2016, and that since the respondent has not complied with the said order, eviction was ordered. It is further evident that the respondent has filed an application in I.A.No. 384 of 2016 for setting aside the eviction order and at that time, she has paid a sum of Rs.1,04,400/- to the petitioners.

10. As rightly observed by the Rent Controller, the respondent has paid rent arrears for Eighty Seven months in one lump sum. The respondent has taken a specific stand that the land lord is dutybound to adjust rent from the advance amount. No doubt, PW-1 in her cross examination would admit that they have received Rs.15,000 towards advance. Since the petitioners have received more than one month rent as advance, they are liable to adjust the rents from the advance amount. But in the case on hand, it is not the case of the respondent that she had submitted a representation



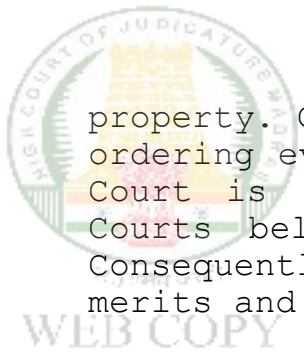
requesting the land lord to adjust the rents from the advance. It is pertinent to mention that though the respondent has agreed to pay rent every month, as already pointed out, she has paid 87 months rent after passing of eviction order and moreover, despite the directions of the Rent Controller, she has failed to pay the rent arrears within the time stipulated.

11. During pendency of the Rent Control Appeal, since the respondent has not paid the subsequent rent, the second petitioner has filed a petition under Section 11 (4) of the said Act in I.A.No. 84 of 2018 and that in pursuance of the order passed by the Appellate Authority, the respondent has paid the rent for the period between 01.10.2016 and 28.02.2018 for Seventeen months at Rs.20,400/-. It is pertinent to mention that even after passing of eviction order and during the pendency of Rent Control Appeal, the respondent has not chosen to pay the rent and that only after the orders passed by the Appellate Authority, she has chosen to pay the rent. Considering the above, the findings of the Courts below that the tenant had committed willful default in payment of rent, cannot be found fault with.

12. The case of the petitioners with respect to their requirements of the petition mentioned premises for additional accomodation is that they are running a coffee works in the shop situated on the Eastern Side of the petition mentioned premises, that they are dealing with wholesale of coffee seeds, coffee powder besides general merchants, that the petitioner had also taken a building on lease at Nethatji Road, Madurai, for their coffee seeds wholesale business and that therefore, since the existing portion is not sufficient, they are requiring the petition mentioned premises bonafidely for their additional accomodation.

13. It is pertinent to mention that the respondent in her evidence would admit that the petitioners are having their shop adjacent to the petition mentioned premises and that if the wall of the petition mentioned premises is removed, the petitioners can extend their shop and could enjoy it as one shop. She would further admit that the petitioner had rented a building for storing coffee seed in nearby street. As rightly observed by the Courts below, the respondent has not produced any materials or evidence to show that the claim of the petitioners is not *bona fide*. Considering the above, the findings of the Courts below that the petitioners have established that their claim is bonafide, cannot be found fault with.

14. It is pertinent to mention that the Rent Control Petition was filed in the year 2009 and eviction was ordered on 28.11.2017, after the lapse of nearly eight years and that thereafter, the Rent Control Appeal was disposed of on 02.07.2019. As rightly contended by the learned Counsel for the petitioners, the tenant has successfully protracted the proceedings for the past twelve years and thereby, preventing the land lords from getting



property. Considering the above, the decision of the Courts below in ordering eviction of the tenant cannot be found fault with and this Court is in entire agreement with the findings recorded by the Courts below and there is nothing to interfere with the same. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed. The revision petitioner / tenant is directed to vacate the petition mentioned premises and handover the vacant possession of the same to the land lord within a period of one month from the date of receipt of copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Sub-Judge,
(Rent Control Appellate Authority),
Madurai.

2.The Principal District Munsif,
(Rent Controller),
Madurai Town.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-29355[F] dated 16/09/2021)
+1 CC to M/s.S.MAHESHBABU, Advocate (SR-29285[F] dated 16/09/2021)

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C.M.P (MD) No.1213 of 2020**

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