



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.03.2020

Delivered on : 12.02.2021

WEB COPY

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .Nos.1442 & 1434 of 2009

and

MP (MD) No.1 of 2009

C.R.P. (PD) (MD) .No. 1442 of 2009

S.Seenivasa Gupta

:Petitioner/Appellant/
Respondent/Tenant

Vs.

1.S.Venkataraman (Died)

:Respondent/Respondent/
Petitioner/Landlord

2.V.Jeyakumar

3.V.Ananthakrishnan

4.J.Rajalakshmi

5.V.Vijayalakshmi

:Respondents/Defendants

(Respondents 2 to 5 are brought on record as LR's of deceased sole respondent vide Court order dated 30.01.2020 made in C.M.P(MD)No.749 of 2020 and M.P(MD)No.1 of 2010 in CRP(MD)No.1442 of 2009 by RSMJ))

PRAYER in C.R.P. (PD) (MD) .No. 1442 of 2009: This Civil Revision Petition has been filed under Section 25(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decretal order dated 19.06.2009 made in R.C.A.No.110 of 1999 on the file of the Rent Control Appellate Authority Principal Subordinate Judge, Tiruchirapalli, confirming the fair and decretal order dated 02.08.1999 made in R.C.O.P.No.175 of 1994 on the file of Rent Controller (Principal District Munsif), Tiruchirapalli and allow the Civil Revision Petition.

For Petitioner
For R-2 to R-5

: Mr.P.Thiagarajan
: Mr.K.S.Vamsidhar



C.R.P. (PD) (MD) .No. 1434 of 2009

1.S.Venkataraman (Died)

:Appellant/Respondent/
Petitioner/Landlord

2.V.Jeyakumar

3.V.Ananthakrishnan

4.J.Rajalakshmi

5.V.Vijayalakshmi

:Petitioners/Plaintiffs

(Appellants 2 to 5 are brought on record as LR's of deceased sole appellant vide Court order dated 24.02.2016 made in M.P(MD) No.2 of 2015 in CRP(MD)No.1434 of 2009 by VMVJ)

(2nd petitioner is represented as power agent of 3rd petitioner vide Court order dated 15.02.2016 made in M.P(MD) No.1 of 2015 in CRP(MD)No.1434 of 2009 by VMVJ)

Vs.

S.Seenivasa Gupta

: Respondent/Appellant/
Respondent/Tenant

PRAYER in C.R.P. (PD) (MD) .No. 1434 of 2009: This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings(Lease and Rent Control)Act, 1960 against the fair and decretal order of the Rent Control Appellate Tribunal (Principal Subordinate Judge), Tiruchirapalli, made in R.C.A.No.110 of 1999, dated 19.06.2009 partly allowing the appeal and setting aside the fair and decretal orders of the Rent Controller (Principal District Munsif), Tiruchirapalli, dated 02.08.1999 made in R.C.O.P.No.175 of 1994.

For Petitioner

: Mr.K.S.Vamsidhar

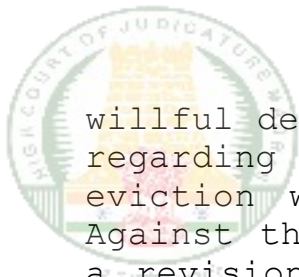
For Respondent

: Mr.P.Thiagarajan

COMMON ORDER

Both the Civil Revision Petitions are filed against the order passed in R.C.A.No.110 of 1999 on the file of the Rent Control Appellate Tribunal (Principal Subordinate Judge), Tiruchirapalli, dated 19.06.2009.

2.One S.Venkataraman as the landlord has filed a petition in R.C.O.P.No.175 of 1994 for evicting the tenant Seenivasa Gupta on the ground of willful default in payment of rent and for own use. The Rent Control Tribunal allowed that petition. Against which, the tenant preferred an appeal in R.C.A.No.110 of 2019. That appeal was partly allowed by deciding that there was no



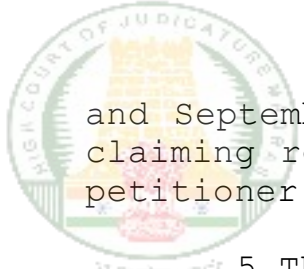
willful default in payment of rent and the portion of the judgment regarding the finding as to willful default was set aside and eviction was ordered on the ground of requirement of own use. Against that order of the Appellate Authority, the landlord filed a revision petition in C.R.P.(PD)(MD).No. 1434 of 2009 and the tenant filed a revision petition in C.R.P.(PD)(MD).No. 1442 of 2009. Since, both the Civil Revision Petitions are filed against the same order, the common order is passed.

3. Brief substance of the petition in R.C.O.P.No.175 of 1994 is as follows:-

The petitioner is the landlord and the respondent is the tenant under him. The petition mentioned property is a non residential building. The respondent is running a jewellery shop in the name and style of 'Gupta Jewellery House' and the rent was fixed as Rs.300/- per month, which is to be paid on or before 7th of every English Calendar month. The premises is required by the landlord for his own use and occupation. The petitioner is running a jewellery shop and bankers in the name and style of 'T.M.V.Sadasivan Chetty & Sons' at No.14, Gurunatha Pillai Lane, Diamond Bazaar, Trichy-8. The petitioner intended to conduct a retail business of gold jewellery in the petition mentioned premises. The premises is situated near the premises for the whole sale business conducted by the petitioner and his brothers. The petitioner does not have a non residential building except the petition mentioned premises. The petitioner is having the requisite licence for running a whole sale business. He is having the ability to start a retail business in the petition mentioned property. The respondent has promised to vacate the premises before the end of June 1994. In spite of repeated reminders and requests, he has not chosen to vacate the premises and he has not paid the rent from the month of August 1994 and there is a willful default in payment of rent and the respondent is to be evicted from the premises.

4. Brief substance of the counter filed by the respondent is as follows:-

The allegation that the petition mentioned premises is required by the petitioner for his own use and occupation is wrong. The petitioner has not doing any business. There is no intention for the petitioner to conduct retail business in gold jewellery. The petitioner has not taken any steps to commence a business. The respondent never offered to vacate the premises. There was no willful default in payment of rent. The rent due for August 1994 has to be paid only in September 1994. The petitioner told the respondent that he will receive the rent later on. Believing his words, the respondent has not taken steps to send the rent through money order and on the first hearing date itself, the respondent has paid the rent for the months of August



and September 1994. Further, no notice was sent by the petitioner claiming rent. There is no *bonafied* intention in the claim of the petitioner.

5.The landlord examined himself as P.W.1 and 3 documents were marked as Ex.P1 to Ex.P3. The respondent/tenant examined as R.W.1.

6.After considering both sides, the Rent Controller came to a conclusion that the respondent has to be evicted on the ground of willful default in payment of rent and on the ground of own use.

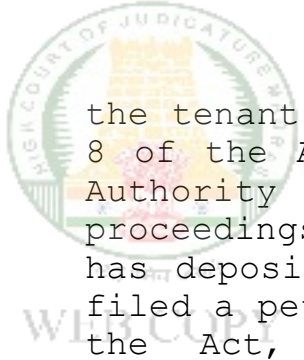
7.Against the order, the tenant preferred an appeal in R.C.A.No.110 of 1999 before the Rent Control Appellate Authority, Thiruchirappalli. The Rent Control Appellate Authority has decided that there was no wilful default in payment of rent. But, has decided that the premises is required by the landlord for his own use. The Appellate Tribunal has decided that the landlord is having the eligibility to run a jewellery shop and ordered eviction on the ground of requirement for the own use of the landlord.

8.Against the decision of the Rent Control Appellate Authority in R.C.A.No.110 of 1999, the tenant preferred a revision in C.R.P. (MD)No.1442 of 2009 on the following grounds:-

The Appellate Authority has rightly decided that there was no willful default on the part of the tenant. The landlord has admitted that he was carrying on business in his own building. The landlord has admitted that he has not made any arrangement to do retail business and that only after vacating the premises, he intend to make arrangements. It reveals that the requirement of landlord is not *bona fied* and eviction can be ordered only on the ground of own occupation only if the landlord is not occupying anyother building of his won in the city or town and the order of eviction passed by the Rent Control Appellate Authority is to be set aside.

9.Against the order of the Rent Control Appellate Authority, the landlord filed a revision in C.R.P. (MD)No,1434 of 2009 on the following grounds:-

The Appellate Tribunal has held that the landlord did not produce any evidence to show that the tenant was guilty of willful default and it is not possible to produce any evidence to prove the failure of the tenant in payment of rent. The tenant himself has admitted that he has not paid the rent for the months of August and September 1994 and he has paid the rent for both the months only on 14.10.1994, that is on the date of first hearing of the eviction petition. If the landlord did not receive the rent,



the tenant ought to have taken steps to pay the rent under Section 8 of the Act by depositing the rent in the Court. The Appellate Authority failed to consider that during the pendency of the proceedings, the tenant did not pay the rent to the landlord. He has deposited the rent only in the Court. Only when the landlord filed a petition in I.A.No.256 of 2001 under Section 11 (4) of the Act, the tenant paid the rent. Though fair rent was fixed as Rs.2,500/-, the tenant has paid only a sum of Rs.300/- per month. This also amounts to willful default. The landlord filed a suit in O.S.No.387 of 2006 for recovery of the arrears. Subsequent conduct of the tenant, amount to willful default and the landlord prayed that portion of the order to be set aside.

10. On the side of the tenant, it is stated that the premises is only 200 sq.ft and the tenant occupy the premises in the year 1980 for the rent of Rs.300/-, which is to be paid on or before 7th of every English calendar month. Under section 10 (2) (1) of Rent Control Act, the tenant has not paid the rent within 15 days. In September 1994, the petition was filed. Rent was refused during the month of August 1994 and that before the tenant was taking steps to send the rent through money order, the landlord rushed to the Court and filed a petition for eviction. The tenant has paid the rent on the first hearing date to prove his bonafied. The First Appellate Court rightly dismissed the petition on this ground.

11. On the side of the tenant, it is stated that the original landlords was having two sons and two daughters and that they were not doing any business in jewellery and that they are not having any intention to do any such business in that area and that the Appellate Court confirmed the order of eviction only because the deceased petitioner was capable of running a chit. The landlord was doing his own business in his own building and he is not entitled to evict the tenant on the ground of own use.

12. A judgment of this Court published in **2001 (1) MLJ 241** is cited wherein it is decided as following issues:-

"Once the landlord is already in occupation of a premises of his own, for running a business or to start another business, he cannot seek for the eviction of the tenant, who is occupying the other building. Therefore, to the facts of the case in the above C.R.P. Since on facts, it comes to be proved that the landlord is running a different industrial unit in a different non-residential premises, belonging to him in the town, is not entitled to seek for the eviction of the tenant so far as the language and construction of the section is



concerned as decided by this Court as well as the Supreme Court of India, therefore the Rent Control Appellate Authority, not only on facts, but also on the legal basis, has arrived at the valid decision that the claim of the landlord for the eviction of the tenant for owner's occupation under Section 10 (3) (a) (iii) of the Act is not bona fide and hence, as rightly set aside the fair and decretal order passed by the Rent Controller."

13. On the side of the landlord, it is stated that the tenant has not paid rent for two months. That is for August and September 1994. Only after filing the petition for eviction, the tenant has paid the rent on 14.10.1994. Even during the pendency of the proceedings, the tenant has failed to pay the rent properly. Only after the landlord filed I.A.No.56 of 2001 under Section 4 of the Act, the tenant paid the rent upto date. If the landlord refused to receive the rent, the tenant has to send the same through money order. The tenant has not taken any steps to pay the rent in time. It is further stated that the fair rent fixed by the Court was Rs.2,500/-. But the tenant paid rent only at the rate of Rs.300/- per month. The landlord has filed a suit in O.S.No.387 of 2006 for recovery of the rent.

14. On the side of the landlord, it is further stated that willful default in payment of rent was proved. Merely, because, the tenant paid or deposited the arrears of rent on the first hearing date, it cannot be considered that the tenant had not committed any willful default in payment of rent.

15. A judgment of this Court published in **1999 (1) CTC 221** is cited wherein it was held as follows:-

"so, merely because the tenant pays or deposits the arrears of rent on the first bearing date it cannot be said that the landlord cannot sustain the petition, if otherwise it is established that the tenant had committed wilful default in payment of rent"

16. On the side of the landlord, it is stated that law is settled that it is the duty of the tenant to pay the rent regularly every month without expecting any demand from the landlord. A judgment of this Court published in **1999 (1) MLJ 154** is cited wherein it was held as follows:-

"... it is settled law that it is the duty of the tenant to pay the rent regularly every month as enjoined in the statute without expecting any demand from the landlord in that regard ... The fact that the tenant deposited the rent subsequently and quite



early, after the inception of the proceeding may serve to extenuate his default in the sense that he might be now granted a reasonable time for vacating the premises. But, it is not a ground that the law can recognise for holding that a tenant who deposits such rent, it not guilty of 'wilful default' to the period of default proceeding the petition for eviction."

17. On the side of the landlord it is further stated that no notice is required before filing a petition before the Rent Controller. A judgment of this Court published in **1999 (3) CTC 199, (1999) 3 MLJ 398** wherein it was held as follows:-

"The conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to wilful default and such subsequent conduct of the tenant can be taken into consideration in deciding the matter."

18. On the side of the landlord, it is stated that mere fact of paying rent in a pending proceedings without being any acceptable explanation for non payment of the same as and when it became due would not absolve the tenant of the disqualification. A judgment of this Court published in **1999 (2) MLJ 701** is cited wherein it was held as follows:-

"the mere fact of paying the rent pending proceedings without being any acceptable explanation for non payment of the same as and when it became due would not absolve the tenant of the disqualification.."

19. On the side of the tenant, it is stated that the tenant is doing business in the premises for the passed 40 years and he is running chit schemes and atleast 1 year is necessary to hand over possession that he can recover the chit amount.

20. On the side of the landlord, it is stated that the eviction proceedings was started in the year 1994. Requisition of one year time to hand over the possession is not *bonafied*. There is no necessity for granting 1 year time for eviction. During the pendency of the suit, the landlord has filed a petition in I.A.No.256 of 2015 for arrears of rent. Only after that the tenant deposited the rent. I.A.No.256 of 2005, clearly reveals that there is default of payment of rent.

21. It is seen that the landlord claims arrears of rent and he has initiated proceedings before the Civil Court in O.S.No.287 of 2006. The landlord claiming rent at the rate of Rs.2,500/- per



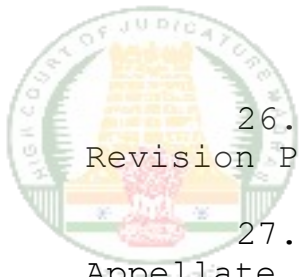
month. It is stated that the tenant is paying a sum of Rs.300/- per month. Whether any amount is due for the landlord can be decided in the civil suit.

22.It is seen that there was default in payment of rent in the month of August 1994. The case was filed at the end of September 1994 and the first date of hearing falls on October 1994. The tenant paid the rent for the months of August and September on the first hearing date. The allegation of the tenant is that the landlord told him that he will receive the rent later. If the landlord is not ready to receive the rent, it is the duty of the tenant, to approach the landlord again and to take steps to pay the rent. It is seen that until the filing of the eviction Petition, the respondent has not taken any steps to pay the rent. There cannot be any document to show that the rent was not paid. In the above circumstances, the decision of the Rent Control Appellate Authority, that there was no default in the payments of rent is not correct.

23.The next point raised by the landlord is that the premises is required for own use of the landlord. It is stated that the landlord was running the whole sale jewellery business along with his brothers. It is stated that he wanted to start retail business in the petition mentioned premise. The Rent Controller and the Rent Control Appellate Authority have decided that the petitioner was capable of running jewellery business. The contention of the tenant is that when the landlord is running a business in his own premises, there is no necessity to evict the tenant. It is seen that the landlord is doing only a joint wholesale business with his brothers and there cannot be anything wrong in his intention to start his individual retail business.

24.The contention of the tenant is that after the death of the landlord, his two sons and two daughters were not doing any business in jewellery and there is no necessity for own house at the present stage and the order of eviction is to be set aside. There is no proof that the legal heirs of the landlord were not doing any business in jewellery and they don't require the premises for their own use.

25.On the side of the tenant, it is stated that the tenant require atleast 1 year time to vacate the premises. So that he can collect the amount due for the chit schemes. After 1 year time is granted there is possibility for the tenant to collect fund for new chit schemes again and there won't be earned for the chit schemes. In the above circumstances, the request of the tenant is not acceptable.



26.Hence, it is decided that there is no merits in Civil Revision Petition in CRP(MD)No.1442 of 2019.

27.In view of the facts discussed above, the Rent Control Appellate Authority is wrong in deciding that there was no willful default in payment of rent and that portion of the order is to be set aside.

28.The tenant is directed to vacate the premises within a period of three months from the date of receipt of a copy of this order.

29.With the above observation, the Civil Revision Petition in CRP(MD)No.1442 of 2019 is dismissed. The Civil Revision Petition in CRP(MD)No.1434 of 2019 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note: (i) Both sides present. The learned counsel for both sides consented for pronouncing the order today. Order was already ready and only due to lockdown, the order could not be pronounced earlier. With the consent of the learned counsel for both sides, the order is pronounced today.

(ii) 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,
Tiruchirapalli.

2.The Rent Controller
(Principal District Munsif)
Tiruchirapalli.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.P.THIYAGARAJAN, Advocate (SR-5235,5234[F] dated
15/02/2021)

+1 cc to Mr.K.S.Vamsidhar , Advocate SR.No.5173

order
made in
C.R.P. (PD) (MD) .Nos.1442 & 1434 of 2009
and
MP (MD) No.1 of 2009
12.02.2021

KM(02.06.2021) 10P 8C