



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.2569 of 2018

and

C.M.P(MD) No.11291 of 2018

M.Arunachalam

... Petitioner/Appellant/Respondent

Vs.

Mubarak (died)

...1st Respondent/1st Petitioner

1.Syed Nisha

...1st Respondent/2nd Respondent/
2nd Petitioner

2.Hasanathul Shalika

3.M.Ithris

4.Ahamed Pathumal

5.Ahamed Akila

6.Asanthul Sulaika

...Respondents 2 to 6/Respondents 3 to 6/
3rd Parties

PRAYER:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decretal order dated 26.09.2018 passed in R.C.A.No.25 of 2012 on the file of the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli, confirming the fair and decretal order dated 23.02.2012 passed in R.C.O.P.No.86 of 2006 on the file of the 1st Additional Rent Controller (1st Additional District Munsif Court), Tirunelveli, by allowing this revision petition.

For Petitioner : Mr.H.Arumugam

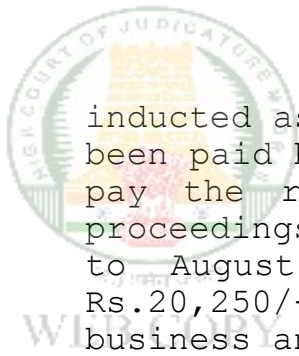
For R1 & R4 : Mr.M.P.Senthil

ORDER

This civil revision petition is filed challenging the concurrent orders of eviction passed against the revision petitioner herein.

2.The facts in brief which are essential for disposing of the above civil revision are as follows:-

(i) One Mubarak, the deceased respondent and the first respondent herein had filed RCOP No.86 of 2006 on the file of the 1st Additional Rent Controller (1st Additional District Munsif Court), Tirunelveli, for evicting the revision petitioner herein on the ground of wilful default and ceasing to occupy the building for over six months. It is their case that the petitioner had been



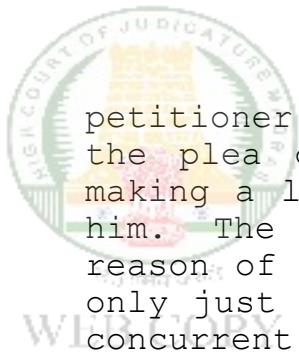
inducted as a tenant on a monthly rental of Rs.675/-. The rents had been paid by him upto February 2004 and thereafter, he has failed to pay the rents. On the date of the filing of the rent control proceedings, the petitioner was in arrears of rent from March 2004 to August 2006 for a period of 30 months to the tune of Rs.20,250/-. That apart, the revision petitioner had closed his business and had ceased to occupy the buildings for over six months.

(ii) The revision petitioner herein had filed a counter contending that he had been inducted as a tenant by Ali Fathimal and Hasanathul Shalika and the petition is totally bereft of details as to how the first respondent and Mubarak claim a right to the suit property.

(iii) The defence was that the revision petitioner was in the habit of paying the rents in a lumpsum. That apart, the revision petitioner had not been served with any notice prior to the institution to the proceedings. The summon issued to him has been received by him on 14.07.2006 stating that the case would be listed on 27.10.2006. The petitioner had paid the entire arrears of rent to the counsel appearing for the said Mubarak and the first respondent herein on 26.10.2006 itself. Therefore, he would contend that there is no wilful default. That apart, a sum of Rs.1,00,000/- has been paid as advance which remains with the earlier landlord. He would also state that after September 2006, he has been paying rents without any default. He would deny the contention that he has ceased to occupy the property.

(iv) The Rent Controller by his order dated 23.02.2012 was pleased to allow the rent control petition only on the ground of wilful default and not on the ground of ceasing to occupy. The Rent Controller had observed that the revision petitioner as R.W.1 had admitted that the monthly rent had to be paid before expiry of the following months and that he had not paid the rent, because the landlord had not come to collect the same. He had however not taken any steps to deposit the rent, though the landlord had not turned up to collect the same. The revision petitioner had questioned the title of Syed Nisha and Mubarak to the demised premises. In answer thereto, Ex.A2, settlement deed, had been produced which shows that the Hasanathul Shalika had executed the settlement in favour of the first respondent herein and under Ex.A1, a release deed had been executed in favour of the Mubarak by his sisters Hasanathul Shalika and Ali Fathimal on 07.04.2002.

(v) The learned Judge, taking into account the fact that the arrears of rent had been paid in a lumpsum, came to the conclusion that the revision petitioner was in default in the payment of rents. The said order was taken up on appeal to the Rent Control Appellate Authority (Principal Sub Court) Tirunelveli in R.C.A.No.25 of 2012. The learned Judge also confirmed the order passed by the



petitioner herein. The Appellate Authority has also observed that the plea of the revision petitioner that he is in the habit of making a lumpsum payment of the rents, has not been established by him. The failure to pay the rents for 30 months is admitted by reason of the fact that the revision petitioner had paid the money only just before the first date of the hearing. Aggrieved by this concurrent orders, the revision petitioner is before this Court.

3. On 10.12 2021, both counsels had made their submissions on the merits of the case. The primary contention raised by Mr.H.Arumugam, learned counsel appearing on behalf of the tenant was that the rent had been paid even prior to the first hearing. He would draw the attention of this court to the relevant dates. The petitioner had pleaded that the rent for 30 months i.e., from March 2004 to August 2006 to the tune of Rs.20,250/-, was due on the date of the filing of the Rent Control Petition, namely, RCOP No.86 of 2006.

4. The petitioner would contend that on 14.10.2006, he had received the summon in the above Rent Control Proceedings from the learned Rent Controller (First Additional District Munsif Court), Tirunelveli, putting him on notice that the petition is posted for his appearance on 27.10.2006. On 26.10.2006, the entire arrears of rent had been tendered to the respondent's counsel Mr.Mohammed Jamaldeen. Therefore, he would contend that there is no wilful default, although there is a default. The learned counsel would further submit that the respondents herein are the subsequent owners and there was no prior notice about the property falling to the share of the respondents 1 and 2 herein. He would therefore submit that the finding of both the Courts below regarding wilful default, has to be set aside. As regards the second ground on which the Rent Control Petition has been filed namely ceasing to occupy the petition premises has been dismissed by the Rent Controller and the landlord has not challenged the said order. Therefore, the order insofar as it related to Section 10(2)(6) of the Act had attained finality.

5. Per contra, Mr.M.P.Sentil. Learned counsel appearing for the respondents would contend that not only was there was a default prior to the filing of the petition, but the default had continued even thereafter. He would further submit that this Court has to take note of the subsequent events, since the petition is one for eviction on the ground of wilful default. The learned counsel would rely on the judgment reported in **1997 (3) CTC 39** in the case of **S.Venkatesulu Vs V.Chandra and others**, wherein this Court relying on the earlier judgment, had held that the subsequent conduct of non-depositing or non-payment of rent till the date of disposal of the case, can be taken note of which would go to show wilful default and supine indifference on the part of the tenant. The learned Judge had observed as follows:-

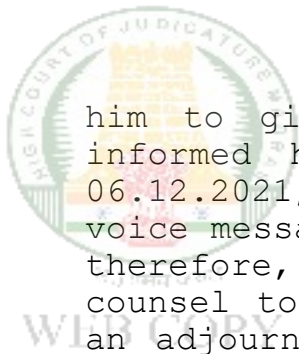


7. Apart from this, it may be worth to refer the subsequent conduct of the petitioner also. When once the petitioner is under the threat of eviction on the ground of wilful default, the first and foremost duty cast upon him is to pay the rent or at least ought to have seek the permission of the Court to deposit the rent to show his bona fide. Otherwise, the subsequent conduct in non-depositing or non-paying the rent till date can be taken not of which would establish the deliberate wilful default on the part of the petitioner.

6. The ratio would squarely apply to the facts of the instant case. He would also draw the attention of the Court to the fact that the first respondent had not adduced evidence and it is the brother of the first respondent, who had adduced evidence. In the course of his cross examination, RW1 has admitted that the rents were paid only as a lumpsum and the same was so paid only on account of the fact that the landlord had not come to collect the rents. The learned counsel had submitted an additional typed set of papers containing a letter dated 12.10.2018 sent by the petitioner's advocate to the second respondent enclosing the rent for three months i.e., for the period August 2018 to October 2018. Another letter dated 06.12.2021 would show the rent for the period November 2018 was sent by cheque. Once again on 28.03.2019 the rent for the period December 2018 to March 2019 constituting four months rent, has been sent by cheque dated 26.03.2019. These documents have been filed to show the subsequent events viz., the continuing default. He would therefore submit that the petitioner continued to commit the default. That apart, a demand draft dated 06.12.2021 has been forwarded by the revision petitioner himself to the second respondent enclosing the rent for a sum of Rs.14,175/- which constituted the rents till December 2020, according to the covering letter of the respondent. Once again a letter enclosing a demand draft date 06.12.2021 has been sent constituting the rents for October 2021 and November 2021. All these would show that even after the proceeding for eviction on the ground of wilful default had been filed and ordered, the petitioner continued to default in the payment of rent.

7. When the learned counsel for the respondent had submitted that the default continued and rents have not been paid, the learned counsel for the petitioner sought time to get necessary instructions and this Court had also suggested that the learned counsel should get instructions as to the time frame within which the revision petitioner would vacate the premises.

8. When the matter was called on 03.12.2021, the learned counsel who was appearing for the revision petitioner stated that he had conveyed the message to the revision petitioner and requested



him to give the details of the payment of rents and had also informed him that the matter was listed on 06.12.2021. On 06.12.2021, the learned counsel would submit that he received the voice message that the petitioner's father-in-law was indisposed and therefore, he could not come with the receipts and requested the counsel to take time. Accordingly, the learned counsel had sought an adjournment to 10.12.2021. Meanwhile, the learned counsel for the respondents had served the copies of the affidavits detailing the arrears to the learned counsel for the petitioner who in turn had sent the same to his counter-part in the trial Court. The petitioner's counsel would submit that thereafter his client did not receive any response from his client to his call and ultimately a whatsapp message was sent on 09.12.2021 asking the counsel to return the brief.

9.The learned counsel had informed the petitioner to come in person to collect the bundle, however, there was no response. Along with the memo the learned counsel has enclosed the transcript of the whatsapp message. The message dated 09.12.2021, which is sent by the petitioner, would contain the following text:-

Sir,

1.I am regularly watching ecourts about my case particulars

2.Respondents No.2,3,5 and 6 are not appeared so far in my case. Then there is no possibility of hearing our case

3.U sent affidavit signed on 04.12.2021 by one Seyad Nisha alone without mentioning other respondents and without other side advocate's name and no court on 04.12.2021 Saturday

4.I Paid rent upto November 2021 and no arrears but your are not having words of my statement.

5.I am having fair chance in succeeding my case. Please sent my case bundle and fees and vakalat consent.

I will engage another advocate

Very sorry sir

M.Arunachalam

10.This Court had taken on file the memo on 13.12.2021 and considering the above referred message, it was clearly evident that the revision petitioner was closely following the proceedings and was aware of the day-to-day happenings. Therefore, this Court had directed the matter to be listed on 14.12.2021, printing the name of the petitioners. The Court had passed the above order only on account of the fact that the arguments of both sides had been heard extensively and the matter had been adjourned only for the purpose of clarifying the statement of the learned counsel for the respondents that the petitioner is continued to be in default in payment of rents. Therefore, on 13.12.2021 this Court proceeded to pass orders on the basis of the arguments already addressed and the



documents submitted by way of an additional typed set by the counsel for the respondents which documents have not been refuted by the petitioner.

11.The main contention of the learned counsel in his submission made on 03.12.2021 was that there was no wilful default, since the petitioner had paid the rent even before the first hearing date. The records would reveal that the rent had been paid. However, on considering the additional typed set filed by the respondents, it is crystal clear that the tenant, who has already suffered orders of eviction on the ground of wilful default, continues to be in default of the rents. It is clearly demonstrates the supine indifference on the part of the revision petitioner / tenant in paying the rents.

12.After the arguments had been concluded and the statement made by the learned counsel for the respondent that the petitioner continues to be in arrears of rent, a demand draft has been taken out on 06.12.2021 which was the date to which the case had been adjourned constituting the rents for the period October 2021 and November 2021 and another demand draft for total sum of Rs.40,175 was sent under a cover of an undated letter by the petitioner to the second respondent. This would constitute the rents for the period of 21 months. Therefore, the default continued even after the passing of the orders of eviction and this default is nothing, but wilful in nature. In the judgment of the Hon'ble Supreme Court reported in **Maganlal Son of Krishanlal Godha Vs Nanasaheb son of Udhaorao Gadewar** reported in **2010 3 SCC 470**, the Hon'ble Supreme Court has held as follows:-

"17.While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted."

13.Therefore applying the ratio of the above judgment and the judgment reported in **1997(3) CTC 39** supra, this Court dismisses the revision petition. The rent control petition has been filed as early as in the year 2006, therefore, the landlord is free to proceed with the execution proceeding, if any.



14.In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

// True Copy //

/ /2022

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 Subordinate Judge,
The Rent Control Appellate Authority,
Tirunelveli.
- 2.The 1st Additional District Munsif
The 1st Additional Rent Controller,
Tirunelveli.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,Madurai. (2 Copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-38733[F] dated 15/12/2021)

C.R.P(MD)No.2569 of 2018 and

C.M.P(MD) No.11291 of 2018

14.12.2021

SR (CO)

GC(23.02.2022) 7P 6C