



CRP.No.2360 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Civil Revision Petition [NPD] No.2360 of 2015

& M.P.Nos.1 & 2 of 2015 & CMP.No.20312 of 2019

S.Arunkumar

... Petitioner

..Vs..

1. M.Nazee Ahmed [died]
2. Yasmeen Nigar
3. N.Muthuhar Ahmed
4. N.Aafreen Salma

[R2 to 4 brought on record as LR's of the deceased
R1 vide Order dated 21.12.2021 in CMP.Nos.17443
to 17445 of 2019 in CRP.No.2360 of 2015 by VMVJ] ... Respondents

Prayer: This Civil Revision Petition has been filed under section 25[1] of Tamil Nadu Buildings [Lease and Rent Control] Act against the judgment and decree dated 22.08.2014 made in RCA.No.186 of 2012 on the file of the IX Judge, Small Causes Court, Chennai confirming the fair and decretal Order dated 09.12.2011 made in RCOP.No.318 of 2010 on the file of the XIV Judge, Small Causes Court, Chennai.



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For petitioner : Mr.R.Bharathikumar

For respondents : Mr.G.Ilangovan

ORDER

Aggrieved against the decree and judgment dated 22.08.2014 made in RCA.No.186 of 2012 on the file of the IX Judge, Small Causes Court, Chennai confirming the fair and decreetal Order dated 09.12.2011 made in RCOP.No.318 of 2010 on the file of the XIV Judge, Small Causes Court, Chennai, the petitioner has preferred the present Civil Revision Petition.

2. For the sake of convenience, the parties are referred as per their ranking before the trial Court.

3. The case of the petitioner therein before the Court below is that he has let out the petition mentioned property to the respondent's father one Mr.K.Sankar for non residential purpose. After the death of the respondent's father, the respondent is continuing the business of his father



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and hence, he is treated as a tenant with respect to the petition premises.

The rent of the premises is Rs.1200/- and the respondent continued to pay the rent after the death of his father and as the rent was paid by way of cheque, there arose no requirement for issuance of receipts. In spite of repeated requests and demand made by the petitioner, the respondent failed to pay the rents from September 2009 to November 2009. The respondent issued a cheque dated 19.10.2009 for a sum of Rs.2000/- towards part payment of rental arrears, but the same was dishonoured for want of sufficient funds. Further, the earlier cheque issued by the respondent towards rent was also dishonoured. Hence, the petitioner issued a legal notice dated 12.12.2009 calling upon the respondents to pay the arrears of rent. But the respondent has not sent any reply or paid the arrears or cleared the cheque amount of Rs.2000/-. It is contended that the respondent is taking advantage of the sickness and old age of the father of the petitioner and adopting strategies which are not permissible under law. Therefore, the default committed by the respondent in payment of monthly rent is deliberate, wilful and wanton and therefore, he filed a petition in



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RCOP.No.318 of 2010 against the respondent who is liable to deliver the vacant possession of the demised premises.

4. Admitting the tenancy and the quantum of rent paid, the contention of the respondent therein in the counter submitted before the trial Court is that the petitioner never issued receipts for the rent paid by his father by way of cash. It is his further contention that the petitioner asked for a loan of Rs.2000/- to pay the water charges and assured to adjust the same in the rent. But when the cheque was deposited, the same has been returned for want of sufficient funds. The respondent has paid the cheque amount, but failed to take back the cheque. The respondent has not received any legal notice dated 12.12.2009. The petitioner used to come to the petition premises and collect the rents during the lifetime of his father. But after the death of his father, the petitioner who was residing in the adjacent portion has shifted his resident and did not furnish his new address. Only after filing of the RCOP, the respondent came to know about the petitioner's address and thereafter, he had sent three money orders for a sum of



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Rs.12,800/- and the same was received by the petitioner. Further, the respondent has obtained the service connection in his father's name and is paying the charges directly. Hence, he prayed to dismiss the petition.

5. Before the trial Court, on the side of the petitioner, petitioner was examined as P.W.1 and exhibits Ex.P.1 & Ex.P.2 were marked. On the side of the respondent, respondent was examined as R.W.1 and exhibits Ex.R1 to Ex.R.4 were marked. On considering the evidence and documents, the learned Rent Controller has ordered eviction vide Order dated 09.12.2011 in RCOP.No.318 of 2010 as against which the tenant/respondent filed an appeal in RCA.No.186 of 2012 before the IX Judge, Small Cases Court, Chennai. The lower appellate Court confirmed the eviction Order passed by the Rent Controller. Challenging the same, the present Civil Revision Petition has been filed.

6. The main contention of the petitioner herein is that the fair and decreetal Order of the Courts below are against the law, contrary to the



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evidence available on record and suffers from material irregularities and if the same is allowed to stand, it would occasion a failure of justice. The Courts below have failed to consider the non payment of monthly rent from September 2009 to November 2009 is not wilful and it occurred only due to shifting of the residential premises by the landlord without any intimation to the petitioner. Therefore, non payment of rent in the present case cannot be termed as wilful default and it is only unintentional default and the same can be condoned. The Courts below have failed to consider that the cheque was issued by the petitioner to the respondent as a hand loan to clear the water charges and not relating to any alleged arrears of rent. Admittedly, the respondent retained the rental advance of Rs.5000/- with him and if at all any arrears of rent accrued that can be adjusted, he is entitled to retain only one month rent as advance. Therefore, the petitioner has not committed any default, much less wilful default in payment of the monthly rent. The Rent Control Authorities have failed to apply the law relating to wilful default in the proper prospective while ordering eviction and had ordered eviction on mere conjectures and surmises.



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7. In support of his contentions, the counsel for the petitioner has filed the rental receipts from the year 2010 to 2020 and the Bank Statement of the petitioner and submitted that the petitioner has not committed any default in payment of rent. Therefore, the reasons assigned by the Courts below in ordering eviction are not sustainable, legal and sound and are liable to be set aside. Hence, prayed to allow this revision.

8. The learned counsel for the respondent would state that the petitioner committed wilful default in payment of rent and even after filing of this Civil Revision Petition, the petitioner committed default in payment of rent and the respondents have also filed statement of rent details paid by the petitioner to prove the wilful default committed by the petitioner. Hence, submitted that well reasoned Orders of the Courts below need no interference and prayed for dismissal of this petition.



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9. Heard the learned Counsel for both sides and perused the materials placed before this Court.

10. The trial Court and the first appellate Court while ordering eviction, had considered the entire materials available on record and held that the act of the petitioner is wilful and intentional. The previous and subsequent conduct of the petitioner proves his malafide intention to continue in the possession without paying rent and the same is clearly proved by the respondents through evidence. During the pendency of this revision, though the petitioner has filed additional documents stating that he has not committed any wilful default, the rental receipts filed by the petitioner and the statement of rent details filed by the respondents would go to show that there is wilful default committed by the petitioner. Hence, the Courts below have appreciated the evidence and documents in the right perspective and Ordered eviction which do not warrant any interference of this Court.



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11. Accordingly, this Civil Revision Petition is dismissed.

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Consequently, connected miscellaneous petitions are closed. No costs.

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Index:yes/no

Internet:yes

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To

1. The IX Judge, Small Causes Court, Chennai
2. The XIV Judge, Small Causes Court, Chennai.



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J.NISHA BANU, J.

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