



C.R.P.(NPD)No. 2078 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2022
Pronounced on : 28.04.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P.(NPD). No. 2078 of 2017
and
CMP.No. 9968 of 2017

1.A. Shameem Bagum
2.A. Ehtasham
3.A. Sameena Banu

...Petitioners

Versus

M.Shahul Hameed

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree in RCA.No. 92 of 2015 on the file of IX Judge Small Causes Court, Chennai, dated 09.12.2016 reversing the judgment and decree in RCOP.No.1884 of 2012 on the file of X Judge Small Casues Court, Chennai, dated 06.01.2015.

For Petitioners : Mr.C.T. Mohan

For Respondent : Mr.ARL.Sundaresan, Senior Counsel
for Mr. Ajmel Azzath

ORDER

The landlords have come up with this Civil Revision Petition aggrieved by the judgment dated 09.12.2016 passed by the learned Rent Control
Appellate Authority, allowing the Rent Control Appeal No.92 of 2015 filed by



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the tenant/respondent and reversing the judgment and decree dated 06.01.2015 passed in RCOP.No.1884 of 2012.

2. The facts that has given rise to the filing of the revision is stated as follows.

3. The revision petitioners/landlords have filed RCOP.No.1884 of 2012 under Section 10(2)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act, (in short, the Act) for eviction of the respondent/tenant on the ground of willful default in payment of rent. According to the petitioners, the respondent was inducted as a tenant in a land measuring an extent of 1200 sq ft., consisting of Shed with cement sheeted roof, for carrying non-residential business of selling fire wood. Initially, the respondent paid Rs.400/- as rent in the year 2002 and subsequently it was revised to Rs.500/- until the year 2007. From July 2007, the respondent has been paying Rs.1,000/- as rent. However, the respondent has paid rent lastly on 10.04.2011 and thereafter, he committed default in payment of rent from April 2011 to July 2012 for a period of 16 months. Therefore, for the default in payment of rent, the original petition was filed by the landlords for eviction.

4. On notice, the respondent/tenant has filed a counter affidavit



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stating that non payment of rent is neither willful nor wanton. In fact, on receipt of notice in RCOP.No.1884 of 2012 he has immediately contacted his counsel and paid a sum of Rs.18,000/- towards arrears of rent on 17.10.2012 representing rent from April 2011 to September 2012. The sum of Rs.18,000/- was also received by the landlords under protest. In the counter affidavit, the tenant has strongly denied the title of the landlords by saying that he was originally inducted as a tenant in the year 1953 under one M.A.Mohamed Burhanudeen for running a fire wood depot and obtained a licence from the Corporation of Madras on 11.05.1953 for carrying on such business. At that time, he was only offered the vacant land for running the business and thereafter, the respondent put up Tin Sheets and AC sheets, besides constructing a compound wall at his own cost. In the year 1953, the rent was Rs.17/- and Rs.500/- was paid as rental advance. After the death of M.A.Mohamed Burhanudeen, his son Sulthan Sahib was collecting the rent from him. It is also stated that the respondent is an illiterate and taking advantage of the same, by citing the alleged non payment of rent, the original petition was filed for eviction. It is stated that the question of wilful default in payment of rent will not arise in this case and therefore, he prayed for dismissal of the Rent Control Original Petition.

5. A reply was filed to the counter of the tenant. In the reply it was



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stated that after the death of M.A.Mohamed Burhanudeen, his son Sulthan Sahib was collecting the rent from the respondent. Subsequently, from the year 2002, the respondent/tenant has been paying the rent to the revision petitioners herein. While so, it is futile to contend that the revision petitioners have no title to the land. It was also specifically denied that the respondent did not put up the construction on his own and it is a blatant lie.

6. On the above pleadings, the parties went for trial. During trial, the second petitioner examined herself as PW1 and Exs.P1 to P5 were marked. The respondent/tenant examined himself as RW1 and Exs.R1 to R14 were marked.

7. The learned Rent Controller upon considering the oral and documentary evidence found that the respondent/tenant has committed willful default in payment of rent. As regards, denial of title the learned Rent Controller observed that the tenant has no authority to deny the title of landlords without any bonafide reason. On the one hand, the tenant admitted the title of the landlords and on the other he denies it. Therefore, the Rent Controller directed eviction of the tenant.

8. Aggrieved by the same, the tenant has filed RCA.No.92 of 2015



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before the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority reversed the judgment of eviction passed by the Rent Controller on the ground that the tenant has paid the entire arrears of rent prior to the first date of hearing in RCOP.No.1884 of 2012 and absolved him of the wilful default said to have been committed by him. The learned Rent Control Appellate Authority relied on the decision of the Hon'ble Supreme Court of India reported in **C. Chandramohan vs. Sengottaiyan (dead) by Lrs and others** reported in 2000 (1) CTC 239 and concluded that when the arrears of rent paid by the tenant has been received by the landlords, they are precluded from raising the plea of willful default. Consequently, the eviction of the tenant on the ground of willful default in payment of rent does not subsist on the date of when the eviction petition was filed. The Rent Control Appellate Authority has also relied upon the decision of the Hon'ble Supreme Court of India in the case of *Abdul Hameed v. M.Sultan Abdul Kader* in CRP.No.1273 of 1991 to conclude that when the tenant has paid the entire arrears of rent on the date of first hearing of the MCOP, it cannot be stated that he committed willful default in payment of rent. The Appellate Authority has also concluded that in Ex.R10 the tenant has paid property tax for premises in question on 05.01.2007 itself. If the tenant paid the property tax even without any instructions from the landlords it has to be held that the landlords cannot succeed in getting an order



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of eviction against the tenant. For this purpose, the Appellate Authority has relied on the decision in **Sowkath Ali and two Others Vs. Pappu and three others** and concluded that the landlords have not come out with sufficient evidence to show that they had put up the superstructure. On the other hand in Para No.8 of the order, the Appellate Court concluded that it was the tenant who had put up the superstructure. As regards title, the Appellate Authority in Para No.9 of the Judgment concluded that the tenant has not denied the title of the landlords over the petition premises and he admitted that the vacant land belonged to Mohammed Abdul Buddin. At the same time, it was held that the legal heirs Mohammed Burhanudeen, are not impleaded as party to the RCOP and therefore, non-joinder of the legal heirs is fatal to the case of the landlords. In effect, it was held that framing of issue with regard to denial of title is unnecessary and need not be gone into by the Court. For the above reasons, the Appellate Authority allowed the appeal filed by the tenant and reversed the order passed by the learned Rent Controller.

9. The learned counsel appearing for the landlords would vehemently contend that the Appellate Authority did not take note of the period of willful default in payment of rents from April, 2011 to April, 2012. According to them, willful default would mean a deliberate and intentional default knowing



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fully well the legal consequences thereof. Referring to Words and Phrases, Volume 11-A (Permanent Edition) at page 268 where the word ' default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In Volume 45 of Words and Phrases, the word ' wilful' has been very clearly defined thus :

- 'Wilful' - intentional; not incidental or involuntary;
- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;
 - in common parlance word ' wilful' is used in sense of intentional, as distinguished from accidental or involuntary.
- P. 296 – 'Wilful' refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

10. Referring to the above, it was contended that where the tenant deposited the arrears of rent and the landlord withdraws it without prejudice, it would not absolve the tenant of his wilful default. The Appellate Authority failed to take note of the period during which the tenant failed to pay the rent. According to the learned counsel for the landlords, the tenant is duty bound to pay the rent month after month without any default even without any demand on the part of the landlord. It is his statutory duty and upon his failure to pay the rent would entail him for eviction. The reference made by the Appellate Authority to Ex.R1 to Ex.R3 has nothing to do with the wilful default committed by him. The Appellate Authority ought not to have held that the



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landlords have not adduced evidence with regard to the superstructure by overlooking Ex.A3, rent control receipts where there is no mention that the rent paid for the land and superstructure. In other words, the rent was only for the land but not for the superstructure. The learned counsel for the revision petitioners by placing reliance on Ex.R12 would contend that the tenant paid rent at his whims and fancies, as and when demands were made and not regularly, which was lost sight of by the Appellate Court. For all these reasons, the learned counsel for the appellants prayed for dismissal of this revision petition. In this context, the learned counsel for the revision petitioners-landlords also placed reliance on:

- (i) *Dharaniammal Vs. P.J.Raphal* reported in 1999 (3) MLJ 232.
- (ii) *Nagammal Vs. Boomi and Sundaram* reported in 2002 4 LW 150.
- (iii) *Surajmal Sowear and sons rep. By its Administrator, Premchand Vs. Arokia Mary* reported in 1987 11 MLJ 50.
- (iv) *Majati Subbarao Vs. P.V.K.Krishna Rao (d) by Lrs* reported in 1989 SC 2187 SC
- (v) *S.Thangappan Vs. P.Padmavathy* reported in 2000 1 LW 782 (SC).
- (vi) *P.Vasuvaithiar Vs.R.M.Rangoo Chettiar* reported in 2000 2 LW 708.

11. Per contra, the learned Senior Counsel appearing for the respondent would vehemently oppose this revision and prayed for confirmation of the order passed by the Appellate Authority. According to him, the learned



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Rent Controller erred in passing an order of eviction. On the other hand, the Appellate Authority has rightly held that denial of title is not necessary to be gone into in the present case and that the tenant has not committed wilful default. It is further stated that the original petition was filed only for eviction of the tenant. The tenant, assuming has denied title of the landlord, the landlords have not chosen to amend the original petition. In the absence of such amendment, the landlords are not entitled to urge the plea of the denial of title. He placed on the reliance on the decision of the Hon'ble Supreme Court of India in **J.J.Lal Pvt.Ltd and Others Vs. M.R.Murali and Another** reported in **2002 (1) CTC 487** and contended that in the absence of any pleadings with respect to denial of title, the subsequent conduct cannot be taken into consideration unless the factual foundation that the denial is not bonafide is established.

12. The learned Senior Counsel also placed on reliance on several decisions and contended that on the first date of hearing of the Original Petition, the tenant has paid the arrears of rent which would absolve him from willful default in payment of rent.

13. Above all, it was specifically contended that under Section 25 of the Act, this Court cannot appreciate the factual issues and unless legal



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infirmities are noticed in the judgment under Appeal, this Court cannot interfere at the revisional stage. The scope of revision under Section 25 of the Act is to see whether the judgment of the Appellate Authority is perverse. If not, this Court cannot interfere with the judgment of the Appellate Authority in exercise of Section 25 of the Rent Control Act.

14. The learned Senior Counsel further submitted that admittedly the landlords have not issued any notice to the tenant before instituting the Original Petition. Had it been issued the tenant would have immediately paid the arrears of rent. Thus, on receipt of the notice in the Original Petition, he has immediately paid the entire arrears of rent and therefore, the question of willful default will not arise in this case.

15. The learned counsel appearing for the respondent has also produced the typed set of papers to show that the respondent-tenant had been continuously paying the rent from 09.07.2010 to 31.07.2021. By pointing out the proof of payment of rent until 31.07.2021, it is contended by the learned Senior Counsel that the default, if any, committed by the tenant cannot be regarded as a willful default when the rent has been paid by the tenant immediately after receipt of notice in the Original Petition. This aspect was



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rightly appreciated by the Appellate Authority while upturning the decision of the learned Rent Controller. To fortify this submission, the learned Senior counsel for the respondent-tenant also placed reliance on the decisions in **V. Krishna Mudaliar vs. Lakshmi Ammal** reported in **1999 (5) SCC 689**, **Abdul Hameed vs. Sultan Abdul Khader** reported in **1995 (2) LW 525** wherein it was held that if the tenant, on notice in the Original Petition, deposits or pays the entire arrears of rent during the first hearing, then the question of eviction on the ground of wilful default in payment of rent will not arise.

16. The learned Senior counsel for the respondent-tenant also made reference to the decision reported in **Chordia Automobiles vs. S. Moosa and another** reported in **(2000) 3 SCC P.282** wherein, it was held in para No.8 of the judgment that payment of 12 months rent at the first hearing and the plea by the tenant that the landlord was receiving the rent in lump sum of Rs.916 has been accepted and held that in such circumstances eviction should not be ordered as against the tenant.

17. Heard the learned counsel for both sides and perused the materials placed on record.



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18. Admittedly, the predecessors of the landlords have put the tenant in possession of the schedule mentioned premises for carrying non-residential business. The relationship between the tenant and the predecessors of the landlords is not in dispute. The Rent Control original petition was filed by the landlords mainly on the ground of willful default in payment of rent. Of course, while filing the reply statement, the counter affidavit has raised a defense that the revision petitioners herein are not their landlords. On considering this portion of the defense raised by the tenant, it could be seen that it was only a passive observation made by him. The tenant has only stated that he was originally inducted by M.A. Mohamed Burhanudeen and after his death his son Sulthan Sahib was collecting the rent. But nowhere in the counter affidavit it was stated by the respondent/tenant that the revision petitioners are not his landlord. In Paragraph No.3 of the counter statement to the original petition, it was merely stated that the petitioners/landlords have not disclosed as to how they became landlords or owners of the property. But that does mean the respondents herein had denied the title of the landlords. In fact, after receipt of notice in the original petition, the tenant accepted the revision petitioners herein as his landlord and paid the rent. Therefore, this Court is of the view that dealing with the question of denial of title in this revision is



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unnecessary.

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19. The main ground on which the present Civil Revision Petition is filed by the revision petitioners is that the tenant had committed willful default in payment of rent. This has to be examined in the light of the oral and documentary evidence adduced by the parties.

20. At the first blush, admittedly, on receipt of notice in the original petition, the tenant paid a sum of Rs.18,000/- representing rent from April 2011 to September 2012. In this context, the learned senior counsel appearing for the respondents submits that when the tenant had deposited the entire arrears upon receipt of notice in the original petition, during the first hearing of the Original Petition, it will absolve him of wilfull default in payment of rent.

21. Per Contra, the counsel for the revision petitioners submitted that merely because the tenant paid the arrears of rent on the first date of hearing it will not absolve him of the liability to get evicted from the demised premises. In this context, the learned counsel for the revision petitioners as well as the learned counsel for the respondents placed reliance on various judgments.



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22. The learned senior counsel placed reliance on the decision of the

Hon'ble Supreme Court in the case of **S. Sundaram Pillai and Others Vs.**

V.R.Pattabiraman and Others, reported in **1985 1 SCC 591**, wherein it was

held that mere default simplicitor would not be sufficient to evict the tenant

but, it must be shown that the default was not willful. In Paragraph No.22 and

of the judgment, the Hon'ble Supreme Court has explained as to what

constitutes 'willful default' in payment of rent. The observation of the

Honourable Supreme Court in Paragraph No.26 of the Judgment can be

profitably referred to hereunder:-

26. Thus a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of willful default because such a course of conduct manifestly amounts to willful default as contemplated either by the Act or by other Acts referred to above

23. Further, in paragraph No.63 (ii) it was held that before instituting

the original petition seeking eviction of the tenant, the landlord has an



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obligation to put the tenant on notice and to call upon him to clear the entire arrears of rent. If this observation of the Honourable Supreme Court is considered, in this case, the landlords have not issued any notice before instituting the original petition. It is in this context, the learned senior counsel for the respondent submitted that had such a notice been issued to the respondent/ tenant, he would have cleared the entire arrears of rent and there may not be any necessity for the landlords to institute the Original Petition. This stands testimony to the fact that upon notice in the original petition, the tenant has cleared the entire arrears of rent as on that date. Admittedly, the landlords have also withdrew the amount deposited by the tenant, without prejudice.

24. Therefore, it is clear that to pass an order of eviction on the ground of willful default in payment of rent. It must be shown that the conduct and attitude of the tenant in non-payment of rent to the landlords is willful, deliberate, intentional and wanton, thereby the tenant had deprived the landlords of their lawful amount in the form of rent. It is needless to mention that a tenant has an obligation to pay the monthly rent, month after month, as and when demanded or even if there is no demand made by the landlords. If in a case where there were repeated demands made and yet the tenant fails to



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fulfil his statutory obligation to pay the rent, then it can be construed as a 'wilful default' requiring the tenant to vacate and handover vacant possession of the premises to the landlords. In the present case, this Court finds that the tenant has not intentionally evaded payment of rent to the landlords and therefore, the above such settled parameters are not made out by the landlords as against the tenant. Further, even during the pendency of the original petition, the Rent Control Appeal as well as the present Civil Revision Petition, the tenant continued to pay the rent month after month and the proof for such payments had been produced by way of typed set of papers dated 24 September 2021. The respondent had, in the typed set of papers filed proof to show that rent was continuously paid from 31.01.2015 to 31.07.2021 during the pendency of this litigation. If this is taken note of, definitely the conduct of the tenant will not fall within the scope and ambit of 'wilful default' contained under Section 10 (ii) (i) of the Act. The appellate authority, in the opinion of this Court, has rightly appreciated all the above factors while setting aside the order of eviction passed by the learned Rent Controller. Thus, this Court is of the view that this is not a fit case where the respondent-tenant has to be branded as a chronic and wilful defaulter in payment of rent requiring him to vacate and handover the vacant possession of the property in question to the landlords. In such view of the matter, this Court does not find any legal



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infirmity in the order passed by the Rent Control appellate authority
warranting interference.

25. Accordingly, this Civil Revision Petition stands dismissed, confirming the judgment and decree dated 09.12.2016 passed in RCA.No. 92 of 2015 on the file of the IX Judge, Small Causes Court, Chennai,. No Costs. Consequently, connected Miscellaneous Petition is closed.

28.04.2022

msm/gbi

Index: Yes/ No

Speaking Order / Non-Speaking Order

To

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

2.The X Judge,
Small Casues Court,
Chennai.



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S.KANNAMMAL, J.,

msm/gbi

Pre-delivery Judgment in
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