IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2022

Pronounced on :15.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.2144 of 2017
and
CMP.No.10256 of 2017

Poongothai
... Respondent / Tenant / Appellant / Petitioner
Vs.

M.Y.Rahaan Beevi ...Petitioner/Landlord/Appellant/Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order made in I.A.No.31 of 2013 in R.C.O.P.No.23 of 2010 dated 28.10.2014 on the file of the Rent Controller / District Munsif at Mannargudi confirming the fair and decreetal order made in R.C.A.No.1 of 2015 dated 11.01.2017 on the file of the Rent Control Appellate Authority / Sub Court, Mannargudi.

For Petitioner .. Mr.Thiruvenkatasamy

For Respondent .. Mr.S.Sounthar

ORDER

The tenant who suffered an order of eviction passed in I.A.No.31 of 2013 in RCOP No.23 of 2010 by order dated 28.10.2014 on the file of the Rent Controller / District Munsif Court, Mannargudi, which Interlocutory Application had been filed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the Act) and having again suffered further adverse order in an appeal filed under RCA No.1 of 2015 dated 11.01.2017 passed by the Rent Control Appellate Authority / Sub Court, Mannargudi is the revision petitioner herein.

2.RCOP No.23 of 2010 had been filed by the respondent seeking eviction of the petitioner under Section 10(2)(i) of the Act, for willful default in the payment of rent with respect to the premises, which had been let out on tenancy, namely, a shop measuring 158 Sq.ft., at Door No.63/137 Periyakadai Street, Mannargudi. It was claimed in the petition that the father of the respondent, by name Namashivayam Chettiyar had let out the aforementioned shop for tenancy at monthly rent of Rs.500/- and had received an advance of Rs.2,000/-. It was further stated that the petitioner / tenant had demolished the shop and put up further construction without any permission. It was stated that there were arrears of rent and in this connection, an advocate notice was issued calling upon the tenant to pay arrears of rent till 30.09.2009. Stating that the arrears had not been paid and that it amounted to willful default, petition for eviction had filed.

3.In the said petition an application in I.A.No.31 of 2013 had been filed under Section 11(4) of the Act, calling upon the revision petitioner / tenant to pay the arrears of rent and in default to stop further proceedings and direct eviction.

4.A counter had been filed by the revision petitioner, wherein, it had stated that he had renovated the shop and spent a sum of Rs.72,000/- for that purpose and had also paid property tax of Rs.7,147/-. It was stated that the total rent from September 2009 till September 2013 at Rs.500/- per month would be a sum of Rs.24,500/- and after adjusting the sum of Rs.7,147/- paid towards property tax, the actual arrears was only Rs.17,353/-. It was also stated that there was no willful default in the payment of rent and that the application should be dismissed.

5.The said application in I.A.No.31 of 2013 came up for consideration before the Rent Controller / District Munsif, Mannargudi, who by order dated 28.10.2014 had negatived the contention of the revision petitioner that he had spent a sum of Rs.72,000/- towards renovation of the shop on the ground that bills towards the same had not been produced. With respect to the payment of property tax it had been stated that it would not amount to payment of rent and therefore, a direction was issued that the arrears of rent from 16.03.2002 till 16.08.2013 amounting to a sum of Rs.68,750/- which had accrued towards arrears of rent and after adjustment of the property tax paid, a sum of Rs.60,662/- should be paid within the period stipulated by the Rent Controller.

6.Aggrieved by that order the revision petitioner filed RCA.No.1 of 2015. That came up for consideration before the Rent Control Appellate Authority / Sub Court, Mannargudi. By judgment dated 11.01.2017, the Rent Control Appellate Authority dismissed the appeal, and affirmed the findings of the Rent Controller. Once again it was held that the amount spent towards renovation cannot be taken into consideration, since bills had not been produced and once again, the adjustment towards property tax had been allowed, but again it had been found that still there was default and it was held that such default was willful. Eviction was directed.

7.Questioning that particular order, the tenant had filed the present Civil Revision Petition.

8.Heard arguments advanced by Mr.S.Thiruvenkatasamy, learned counsel for the petitioner and Mr.S.Soundhar, learned counsel for the respondent.

9.The facts are not in dispute. The respondent is the landlord and the petitioner is the tenant. The portion let out on tenancy was a shop. The tenancy was for commercial purpose. The monthly rent was for Rs.500/- per month. The revision petitioner claims that towards renovation of shop a sum of Rs.72,000/- had been spent. However, to substantiate that particular fact, bills had not been produced convincing oral evidence had also not been adduced. It is the contention of Mr.Thiruvenkatasamy, learned counsel for the revision petitioner that the said issue can be decided only during the course of trial, in the main Rent Control Original Petition. The learned counsel therefore stated that such opportunity must be granted.

10.However, it is not the contention of the learned counsel that opportunity was denied while hearing the Interlocutory Application to the revision petitioner to lead evidence on that particular aspect. The revision petitioner had marked documents before the Rent Controller, relating to payment of property tax and demands relating to property tax as Ex.R1 to R10. These documents had been considered by the Rent Controller and necessary credit had been given to the tax paid, but holding that still there was arrears of rent, in fact to quite substantial amount at the rate of Rs.500/- per month, a direction was given to pay the arrears. Still the petitioner did not come forward to pay the arrears and therefore, he suffered an order of eviction. The Rent Control Appellate Authority again confirmed the order of the Rent Controller on all those aspects.

11.It is seen that the revision petitioner had taken up the opportunity to mark documents relating to payment of tax. If actually a substantial sum of Rs.72,000/- had been spent towards repairs and renovation of the shop, which measured to just 158 Sq.ft., then more certainly he should have been in possession of documents relating to the same. He cannot claim innocence and ignorance of the necessity to mark such documents as exhibits and seek indulgence of the Court. Such indulgence cannot be granted to a willful defaulter in the payment of rent.

12.When the present Civil Revision Petition came up for admission my learned predecessor had directed that 50% of the arrears should be paid. I am informed by Mr.S.Thiruvenkatasamy that the condition had been complied with. But the question which begs an answer is what happened to the remaining 50% of the arrears. They have not been paid.

13.The respondent/landlord had let out the shop for occupation by the revision petitioner and the petitioner would certainly call into question the conduct of the respondent/landlord if it were to be stated that the tenant can occupy only 50% of the rented out space and not the entire portion. The revision petitioner will not certainly accept that condition. He cannot therefore contend that the respondent should be satisfied with payment of 50% of the arrears and that the remaining arrears need not be paid even during the pendency of the revision petition.

14.In ***P. S. Venkatarajan v T.A. Govindarajan 1990 1 MLJ 508,*** a learned Single Judge of this Court, had observed as follows:

"5. ......It follows that the incurring of the expenditure by the petitioner for repairs was not in any manner binding on the respondent of the rents payable by the petitioner to the respondent for the period between May, 1984 and March, 1985 towards the amount spent by the petitioner for repairs was also not in order. It would not make any difference whether the amount spent by the petitioner was limited to a month's rent or was in excess of it. In either event, the tenant cannot be heard to seek an adjustment of the amount spent towards repairs against the rents payable by him, as he did not resort to S. 22 of the Act at all."

15.In ***The Associated Traders and Engineers Ltd, by its Director Incharge, New Delhi v. Alamelu Ammal, 1984 1 MLJ 251,*** a learned Single Judge of this Court, had held as follows:

"3.So far as the next ground of wilful default is concerned, it is admitted that the tenant withheld Rs.1,200 towards alleged execution of repairs to the building. The alleged execution of repairs to the

building is nothing but whitewashing to the building according to the revision petitioner. It is not in dispute that the petitioner did not obtain the written consent of the landlady before spending for whitewashing. The fact that the consent of the landlady is paramount for spending any portion of the rent towards execution of repairs to the demised building will be seen from the provision in the Rent Control Act to the effect that in case that the landlord is not wiling to execute repairs to permission of the Rent controller before spending any amount by way of repairs to the building. In fact, the landlady appears to have refused permission for spending any amount of the rent towards executing repairs or white-washing is apparent from the notice sent by the landlady under Exhibit A-10, dated 9th June, 1977. Repeatedly the landlady was demanding the amount of Rs.1,200 which was deducted by the tenant. Admittedly, the tenant has not obtained the permission of the Rent Controller for executing such repairs. The appellate authority has found that the alleged white-

washing of the building by the tenant is without the written consent of the landlady and that as such the deduction of Rs.1,200 from the rent due at Rs.100 per month amounted to wilful default.

16.The position of law is quite clear. The expenses incurred towards repairs or renovation of the shop cannot be adjusted towards the arrears of rent, unless the repairs / renovation had been sought by the landlord and permission had been granted for such repairs / renovation to be done. Even otherwise, there is no evidence that the petitioner herein had actually spent the amount of Rs.72,000/- towards repairs and renovation. He claims that he has no receipts / bills for the same. If the revision petitioner is to be given an opportunity at this late stage, then a suspicion would also arise that documents now produced are made out for the purpose of the case. When opportunity was available during the course of hearing of the interlocutory application, wherein, the provision of law is very straight forward that if arrears are not paid, then eviction will automatically follow, the revision petitioner had not consciously taken up that opportunity to produce bills towards renovation and repairs. Since he had not produced those documents, a reasonable presumption can be drawn, that documents had not been produced only because they are not available with the revision petitioner and also because, if they are produced they would only be adverse to the case of the revision petitioner. Illustration (g) of Section 114 of the Evidence Act, 1872, directly applies on this aspect.

17.There cannot be a notice to produce those documents. The revision petitioner had a duty to produce those documents. He produced documents relating to payment of property tax for a smaller sum of Rs.7,147/- and when he claims that a substantially larger sum of Rs.72,000/- had been incurred as expenses, he should have been in possession of the receipts for the same. Having not produced the same, no leverage can now be granted. Moreover, since the repairs / renovations were unauthorized, even if the bills were produced, the petitioner cannot seek adjustment with arrears of rent. Either way, the petitioner has to suffer an order of dismissal.

18.The findings of both the learned Rent Controller / the District Munsif, Mannargudi, and the learned Sub Judge Mannargudi / Rent Control Appellate Authority, that such a statement, that he had spent a sum of Rs.72,000/- towards repair and renovation is false and is affirmed by me.

19.The Civil Revision Petition stands dismissed. The revision petitioner / tenant is directed to vacate the premises within a period of three months from the date of this order. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.03.2022

Internet:Yes/No
Index:Yes/No
smv

To

1.The Rent Controller / The District Munsif Court, Mannargudi.

2.The Rent Control Appellate Authority / The Sub Court, Mannargudi.

C.V.KARTHIKEYAN,J.

smv

C.R.P.NPD.No.2144 of 2017
and
CMP.No.10256 of 2017

15.03.2022