



CRP (NPD) No.2638 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2021

Pronounced on : 28.02.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

Civil Revision Petition (NPD) No.2638 of 2017

and

CMP No. 14334 of 2019

B.V.Mohan Sundar

.. Petitioner

Vs

1.Anil Agarwal

2.Akash Agarwal

3.Suraj Agarwal

.. Respondents

Prayer: Civil Revision Petition is filed against the judgment and decree, dated 27.06.2017, passed in RCA No.605 of 2015 on the file of Rent Control Appellate Authority -cum- IX Court of Small Causes, Chennai, reversing the fair and decretal order, dated 08.09.2015, passed in RCOP No.693 of 2014 on the file of Rent Controller -cum- XII Court of Small Causes, Chennai.



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For Petitioner .. Mr.N.Suresh

For Respondents .. M/s.Chennai Law Associates

ORDER

This Civil Revision Petition is directed against the judgment and decree, dated 27.06.2017, passed in RCA No.605 of 2015 on the file of Rent Control Appellate Authority -cum- IX Court of Small Causes, Chennai, reversing the fair and decretal order, dated 08.09.2015, passed in RCOP No.693 of 2014, on the file of Rent Controller -cum- XII Court of Small Causes, Chennai.

2.The case of the petitioner before the trial Court in a nutshell was as follows :

The Petitioner was the landlord and the respondents were the tenants of the petition premises. Initially, the respondents used to tender rent to the petitioner. Thereafter, they defaulted in payment of rent from May,2012 onwards. Subsequent to the issuance of legal notices, the respondents issued seven cheques, dated 20.11.2012, each for Rs.9,000/-.



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However, pursuant to their issuance, it was stated by the respondents that there were no sufficient funds. Therefore, the cheques were not presented in the bank for realization. In spite of issuance of legal notices, since the payment of rent was defaulted, the petitioner filed R.C.O.P.No.693 of 2014 before the learned Rent Controller for eviction of the respondents.

3. The contention of the respondents before the trial Court was that they were the tenants of the erstwhile owner from the year 1986 and that they had not committed any default in payment of rent, but, however, due to loss in business from the year 2012, they could not pay the rent and hence the petition was liable to be dismissed.

4. Before the trial Court, on the side of the petitioner, two witnesses were examined as P.W.1 and P.W.2 and as many as 13 documents viz., Exs.P-1 to P-13 were marked. On the side of the respondents, one witness was examined as R.W.1 and four documents were marked as Exs.R1 to Ex.R4.



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5. On considering the oral and documentary evidence, the trial Court allowed the petition, thereby directing the respondents to vacate and hand over the possession of the petition premises to the petitioner within a period of two months, against which, the respondents filed an appeal before the Rent Control Appellate Authority in R.C.A.No.605 of 2015.

6. The Rent Control Appellate Authority, after hearing both sides, allowed the appeal, thereby setting aside the order of the trial Court. Aggrieved over the said order, the petitioner/landlord is before this Court with this Civil Revision Petition.

7. Learned counsel for the petitioner would contend that the lower appellate Court has erred in holding that there is no wilful default by the respondents, when the respondents have themselves admitted in the counter affidavit that they committed wilful default, and also that the amount deposited has been withdrawn during the pendency of the appeal.



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He would also submit that it is the duty of the tenant to pay the rent monthly and not in lump sum, by way of arrears.

8. On the other hand, learned counsel for the respondents would contend that during the pendency of the legal proceedings, the petitioner refused to receive the rent and, therefore, there was accumulation of arrears of rent, which would not be construed as wilful default on the part of the respondents. According to him, the lower appellate Court has correctly assessed the circumstances and allowed the appeal, which cannot be faulted with.

9. I have heard the learned counsel for the petitioner and the respondents and also perused the material available on record.

10. The relationship of landlord and tenant between the parties is not in dispute, so also the quantum of rent. It is also not disputed that from May,2012, the respondent have committed default in payment of rent, as the same is admitted by the respondents in their counter before



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the trial Court that they were unable to pay rent from the year 2012 due to loss in business.

11. During the pendency of R.C.O.P.No.693 of 2014, M.P.No.393 of 2014 was filed by the petitioner praying for a direction to put him in possession of the petition mentioned building, whereupon, the trial Court directed the respondents to pay a sum of Rs.9,000/- per month to the petitioner towards rent from May,2012, till the date of the order viz., 17.10.2014 on or before 05.11.2014 and also to pay the subsequent monthly rent before 5th of every English Calendar month, but the said order was not complied with by the respondent. Ultimately, the said R.C.O.P. came to be allowed and eviction was ordered, against which, the respondents, initially, filed R.C.A.No.122 of 2015, in which, as a condition for grant of stay, a direction was issued to the respondents in M.P.No.55 of 2015 to deposit arrears of rent of Rs.2,97,000/- on or before 04.03.2015. Pursuant to the said order, the amount was deposited and the same was also withdrawn by the petitioner. As against the very same order passed in R.C.O.P.No.693 of 2014, now, the present appeal in



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R.C.A.No.605 of 2015 was filed by the respondents before the Rent Control Appellate Authority, which was allowed on the ground that there was no wilful default on the part of the respondents.

12. Whether default of payment of rent is wilful or not, it is a default *per se*, which is also a *res ipsa loquitor*. Landlord cannot be subjected to embarrassment regarding payment of rent by tenant, which he is rightfully entitled to. It is also not appropriate either for tenant to pay the rent in arrears as lump sum by default of payment every month or it is equally for landlord to receive the same in such a manner, when tenant is bound to make payment of rent every month.

13. It is also seen from the records, that towards payment of rent from May,2012, after several demands made by the petitioner, the respondents issued seven cheques, dated 20.11.2012, each for a sum of Rs.9,000/- totalling to Rs.63,000/-, but the same could not be realised by the petitioner, as there were no sufficient funds, and, even thereafter, in spite of notices being sent to the respondents, they have not paid the rent



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to the petitioner. Instead, they forced the petitioner to initiate legal proceedings for receipt of rent, by incurring many expenses, which cannot be afforded to lose. This conduct on the part of the respondents would definitely amount to wilful default and it is condemned. If this attitude on the part of the respondents continues, the petitioner would never get his rent, but for the legal proceedings. It is also the case of the petitioner that the respondents have again not paid rent from the month of February, 2017. The lower appellate Court, however, allowed the appeal filed by the respondents on the only ground that there was no wilful default on the part of the respondents, which act, in the standpoint of this Court, would not be tolerated.

14. If Courts do not come to the rescue of genuine litigants, especially the commoners, where do they go for resolution of their grievances. For this, the litigants are left with no other alternative, except to approach judicial fora, such as, Courts. In such a situation, the slipshod order impugned herein is a classic example, where public lose confidence in judiciary. Because of the wrong approach of Courts at lower level,



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litigants should not suffer and be made to run from pillar to post in search of justice towards higher fora. Further, it would also lead to multiplicity of proceedings, which has to be curbed in a solid manner.

15. The attitude of the present respondents, as understood by this Court from the sequence of events as narrated above, is that they tried their maximum to avoid payment of rent for years together and, only under compelling circumstances, that too on intervention of Court, they made payment in arrears and, thereafter, they again defaulted. Such an attitude shall never be permitted in law. Since the respondents have committed wilful default on more than one occasion that too for years together, which has put the petitioner to struggle in receiving the rent, which he is entitled to, this Court is of the firm view that the mental cruelty endured by the petitioner all these years, coupled with his all out efforts in legal proceedings, cannot be simply ignored and has to be compensated suitably.



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16. Accordingly, this Civil Revision Petition is allowed with costs of Rs.10,000/-, to be payable by the respondents jointly to the petitioner within a period of one month from the date of receipt of a copy of this order. The said cost has to be paid or deposited in the name of the petitioner before the trial Court and the same shall be withdrawn by the petitioner thereafter. As such, the judgment and decree, dated 27.06.2017, passed in RCA No.605 of 2015 on the file of Rent Control Appellate Authority -cum- IX Court of Small Causes, Chennai, is set aside and the fair and decretal order, dated 08.09.2015, passed in RCOP No.693 of 2014 on the file of Rent Controller -cum- XII Court of Small Causes, Chennai, is confirmed. Time for eviction of respondents is two months. Consequently, the connected Miscellaneous Petition is closed.

28.02.2022

Index : Yes
Internet : Yes
Speaking Order

RR/dixit



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To

1.Rent Control Appellate Authority,
IX Court of Small Causes,
Chennai

2.Rent Controller,
XII Court of Small Causes,
Chennai.



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S.KANNAMMAL, J.

RR/dixit

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