



CRP (MD) No. 424 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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and

CMP (MD) No. 1984 of 2022

1.Sri Durga Fancy Store
Represented by one of its partner
Durairaj

2.Durairaj

3.Maheswari

4.Kalpana

5.Balakrishnan

6.Jawahar @ Jawaharlal

Vs

... Petitioners

R.Keyerikrishnan

... Respondent

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, as against the fair and executable order passed in RCA No.17 of 2020 on the file of the Rent Control Appellate Tribunal (Principal Sub Court), Madurai dated 26.11.2021 against the fair and executable order passed in RCOP.No.272 of 2014 on the file of the Rent Controller (Principal District Munsif), Madurai Town dated 18.11.2019.

For Petitioner : Mr.V.Srinivasan

For Respondent : Mr.R.G.Shankar Ganesh



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ORDER

WEB COPY This Civil Revision Petition is filed as against the order dated 26.11.2021 passed in RCA No.17 of 2020 by the learned Rent Control Appellate Authority, Madurai confirming the order dated 18.11.2019 passed in RCOP.No.272 of 2014 by the learned Rent Controller, Madurai Town.

2.The petitioners are the tenants. The respondent/ landlord filed a petition for eviction as against the petitioners/ tenants on the ground of wilful default and for own use and it was allowed by the rent controller. Challenging the said order, the petitioners filed an appeal before the rent controller appellate authority and it was dismissed. Aggrieved over the dismissal order, the present civil revision petition is filed.

3.The learned Counsel for the petitioners submits that the petitioners are the tenants based on the rental agreement executed between them and the father of the landlord / respondent dated 01.08.1988. Originally the rent was fixed as Rs.1,200/- and advance amount was fixed as Rs.20,000/-, later on the rent was increased as Rs.25,315/-



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and advance was increased as Rs.2,50,000/- by way of latest agreement dated 25.08.2011 and the petitioners have also paid the advance amount and have been paying the rent as per the agreement dated 25.08.2011. While so the landlord has filed the eviction petition as against the petitioners on the ground of wilful default from the month February 2014 to September 2014 and for own use. The petitioners paid a sum of Rs.2,50,000/- as advance. However, the arrears of rent for the particular period is only Rs.2,02,520/-, which can be adjusted in the advance amount by the landlord. Even if it adjusted so, an excess amount of Rs.47,480/- lies with the landlord. While so, without adjusting the advance amount, the landlord has no cause of action to file an eviction petition. Therefore, the question of wilful default does not arise at all. In so far as the ground of own use is concerned, the landlord is having several non residential buildings and he can choose any one of them for his business. So requirement of the building for own use is not a bonafide one. However, both Courts below have failed to consider the above and passed the orders mechanically.



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on the ground of willful default and for own use. The rent controller allowed the said petition and the appeal filed by the petitioners was dismissed. This civil revision petition is filed by the petitioners/ tenants on the ground that the landlord can have only one month rent as advance amount and the remaining amount can be adjusted towards the arrears of rent and when the petitioners already paid a sum of Rs.2,50,000/- as advance and the landlord can very well adjust the same from it and the claim of the respondent regarding the requirement of the suit building for own use is not bonafide, since the landlord is having several non residential buildings and he can choose any one of them for his business.

7.The main contention of the petitioners is that there is no wilful default, since advance amount is with the landlord and arrears of rent can be adjusted from it. The Hon'ble Apex Court in ***Bhoja Vs Rameshwar Agarwala and others*** reported in ***AIR 1993 SC 1498***, has held that a tenant cannot save himself from the consequences of eviction under the Act on the ground of default in the payment of rent by claiming automatic adjustment of any excess rent



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paid consequent upon mutual enhancement of rent, even if illegal unless there is an agreement between the parties for such an adjustment. The tenant may also in a given case seek adjustment of the excess rent in the hands of the landlord against the arrears by specifically asking the landlord for such an adjustment before filing of the suit or in response to the notice to quit and even in the written statement by way of set off within the period of limitation and by following the procedure for claiming such a set off, while resisting the claim for eviction on the ground of default in payment of arrears of rent but, he cannot claim 'automatic adjustment'.

8. Thus it is clear that unless there is a specific clause in agreement, mandating adjustment of arrears from the advance amount, tenant cannot escape from the liability by citing the advance amount remains with the landlord, after initiation of eviction proceedings for default. When the tenants raised a ground of automatic adjustment, they have to prove that such a clause is existing in their agreement. Perusal of the records shows that in the cross examination RW1 himself has stated he does not



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have any knowledge about any such clause is existing in the agreement. Further, the petitioners have not produced the rental agreement in support of their plea of automatic adjustment nor had offered any explanation for non production of the rental agreement. Therefore, the plea of the petitioners with regard to the automatic adjustment cannot be accepted.

9.The other ground raised by the petitioners is that suit property is a non residential building and the requirement of building for own use is not bonafide, since the landlord is having several other buildings. In this regard it is relevant to refer to the decision of the Hon'ble Apex Court in **Hasmat Rai and another vs Raghunath Prasad** reported in **1981 3 SC 103**, wherein it has been held that if a landlord bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business.

10.Further, the Hon'ble Apex Court in **Ragavendra Kumar Vs Firm Prem Machinery and Co**, reported in **AIR 2000 SC 534**



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reiterated that it is an exclusive choice of the landlord to choose the place for his business, which would be more suitable to him and in that regard he has got a complete freedom in the matter and it has been observed that the need of the landlord is to be seen from the date of the application and hence the tenant cannot in his advisory capacity enjoy a privilege to take a defence that the need of the landlord is not bonafide of the fact that there was other available shops, as it has been pleaded in the instant case and the relevant portion is extracted as under:

"10.The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement



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for residential or business purpose and he has got complete freedom in the matter, (See: Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC 353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

11. In the light of the above discussion this Court is not inclined to entertain this revision petition on the grounds raised by the petitioners and there is no reason to interfere with the orders of the rent controller appellate authority. Accordingly the civil revision petition is dismissed. Consequently connected miscellaneous petition stands dismissed. No costs.

07.12.2022

Index: Yes/No.

dsk

To

1. The Rent Control Appellate Authority/
The Principal Sub Judge,
Madurai.
2. The Rent Controller /
The Principal District Munsif,
Madurai Town.



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B. PUGALENDHI, J.

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