



CRP(MD)No.1764 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.12.2022

CORAM:

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

CRP(MD)No.1764 of 2022
and
CMP(MD)No.7794 of 2022

Rajesh Kannan

: Petitioner

Vs.

Amudha

: Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, to call for the records pertaining to the judgment and decree dated 26.04.2022 in RCA.No.1 of 2021 on the file of the Sub Court, Devakottai, Sivagangai District, confirming the judgment and decree dated 14.11.2019 in RCOP.No.26 of 2015 on the file of the Principal District Munsif cum Judicial Magistrate Court, Karaikudi, Sivagangai and set aside the same.

For Petitioner : Mr.M.Vallinayagam,
Senior Counsel
for Mr.J.Anandkumar

ORDER

The petitioner is the tenant and the respondent is the landlord. The respondent has filed RCOP.No.26 of 2015 before the Rent Controller / learned



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Principal District Munsif cum Judicial Magistrate, Karaikudi, Sivagangai District seeking eviction on the ground of wilful default. The Rent Controller by judgment and decree dated 14.11.2019 allowed the application and ordered for eviction. Challenging the same, the petitioner preferred RCA.No.1 of 2021 before the Rent Control Appellate Authority / learned Subordinate Judge, Devakottai, Sivagangai District and the Rent Control Appellate Authority, by judgment and decree dated 26.04.2022, dismissed the appeal. As against the concurrent findings of the Courts below, the petitioner / tenant has moved the instant civil revision petition.

2.Learned Senior Counsel appearing for the petitioner submitted that the eviction petition was filed on the ground of wilful default. But, there is no wilful default as claimed by the respondent. The petitioner has duly paid the rent from February, 2012 to November, 2015 at the rate of Rs.1750/- per month. The respondent claimed rent at the rate of Rs.3200/-, however, she has not placed any documents to substantiate the same. In fact, the respondent has filed an application under Section 11(4) of the Tamil Nadu Buildings (Lease & Rent Control) Act [hereinafter referred to as 'the Act'] and the same was dismissed by the Rent Controller, considering the rent amount paid by the petitioner upto the period of October, 2016. The petitioner, pending disposal of RCOP and RCA, has regularly



deposited the rent amount without any default. Therefore, there cannot be any wilful default on his part as held by the Courts below.

3.He further submitted that there was an advance amount of Rs.50,000/- with the respondent / landlord, which was admitted by the respondent in the plaint itself. As per the proviso to Section 7(1)(a) of the Act, the landlord may receive an amount not exceeding one month rent as advance. Therefore, the respondent / landlord is entitled to receive a sum of Rs.1750/- as advance from the petitioner, however, a sum of Rs.50,000/- [rent amount for 28 months] was received as advance. Even if there is any default in payment of rent, the excess amount in the advance can be equated with the same and as such, there cannot be any wilful default. In this regard, the learned Senior Counsel has relied upon the decision of this Court in ***Mahalingam v. Pichaiammal* [2000 (2) MLJ 202]**.

4.This Court paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the materials placed on record.

5.The petitioner was inducted as a tenant on 16.04.2004. He was running a studio in the premises. The original lease is for the period from 16.04.2004 to



15.03.2005. The rent was fixed as Rs.1350/- per month. The lease deed was subsequently renewed in the year 2005 with an increased rent of Rs.1420/- and in the year 2011 [for the period from 29.10.2010 to 28.09.2011] with an increased rent of Rs.1720/- per month. The landlord claims that the rent amount was increased with effect from February, 2013, as Rs.3200/-, but the same was denied by the tenant. There is no agreement to substantiate the same.

6.It is the further claim of the respondent that the petitioner, while inducting as a tenant, was permitted to start a digital studio in the subject premises. However, the petitioner started doing two other businesses in the premises, without her concurrence. This Court is not expressing anything in this regard, inasmuch as the eviction petition was filed only on the ground of wilful default.

7.It appears that the lease agreement was not extended after 29.09.2011 and as on that date, the admitted rent amount was Rs.1720/-. It is the case of the respondent that the petitioner has not paid the rent from February, 2012 to March, 2013. In this regard, she has issued notices dated 30.05.2012 & 04.07.2012 [Ex.P5 & Ex.P6] demanding rent including arrears. Thereafter, the petitioner has issued a cheque dated 29.04.2014, for a sum of Rs.21,000/-, towards rental arrears for the



period from February, 2012 to January, 2013. It also appears that for the period from July, 2014 to October, 2016, the petitioner has paid a sum of Rs.49,000/-, by way of a cheque dated 03.11.2016.

8.As per the decision of the Hon'ble Supreme Court in ***P.Vasuvaithiar v. R.M.Rangoo Chettiar*** [2000 (2) LW 708], if a tenant is not paying the monthly rent as per the agreement, he is to be construed as a defaulter. From the above, it is clear that the petitioner is not regular in payment of rents and the rental arrears were paid in lump-sum, that too, belatedly. Therefore, he has to be treated as a defaulter.

9.The petitioner / tenant took a plea that the respondent / landlord has received a sum of Rs.50,000/- towards advance [rent amount for 28 months], over and above the admitted amount as per law and therefore, if the excess advance amount is automatically adjusted with the rental arrears, there would be no default at all.

10.In the decision relied upon by the learned Senior Counsel for the petitioner in ***Mahalingam's*** case (supra), a learned Single Judge of this Court,



after referring to the decision of the Hon'ble Supreme Court in **K.Narasimha Rao v. T.M.Nasimuddin Ahmed [(1996) 3 SCC 45]**, has held as follows:-

“12.In view of the law declared by the Hon'ble Supreme Court, it has to be held that landlady has no cause of action to file application for eviction on the ground that tenant has committed default in paying rent. As stated earlier; landlady has taken advance of 60 months rent, though law permits to take advance of only one month rent. Excess advance is liable to be adjusted in the rent payable by tenant as and when becomes due even without any demand from tenant. If that be so, landlord cannot expect payment of rent for the alleged period of default. If landlord cannot demand any rent for that period, notice issued by her intimating default also will be invalid and of no legal consequence. On the date when notice was issued, no rent was due nor payable by tenant. If notice issued is invalid merely because tenant did not pay rent within a period of two months, he also cannot be deemed as defaulter. Appellate authority has not taken into consideration the above legal position while confirming the order of eviction.”

11.However, the Hon'ble Supreme Court in **Bhoja Vs Rameshwar Agarwala and others, [AIR 1993 SC 1498]**, has held as follows:-

“We are in broad agreement with the view of the Full Bench of the Patna High Court and the Madras High Court on the question of 'automatic adjustment' and hold 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 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 be cannot claim 'automatic adjustment'."

12. *In Re Raminder Singh Sethi v. D.Vijayarangam* [(2002) 4 SCC 675],

the Hon'ble Supreme Court has held as follows:-

"4. Every tenant is obliged to pay or tender rent to the landlord within 15 days of the month to which the rent relates. The purpose of advance rent is to protect the landlord from the unscrupulous tenant who may run into arrears and vacate the premises and comfortably walk away with the arrears. The advance rent is available for adjustment or is liable to be refunded at the time of vacating of the premises except where the law or the contract between the parties provides to the contrary. ..."



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13. Section 7 of the Tamil Nadu Buildings (Lease and Rent Control) Act reads as follows:-

“7. Landlord not to claim or receive any thing in excess of fair rent or agreed rent:-

(1) Where the Controller has fixed [or refixed] the fair rent of a building -

(a) the landlord shall not claim, receive or stipulate for the payment of any premium or other like sum in addition to such fair rent, or save as provided in Section 5 or Section 6, anything in excess of such fair rent:

Provided that the landlord may receive or stipulate for the payment of an amount not exceeding one month's rent, by way of advance;

(b) save as provided in clause (a), any premium or other like sum of any rent paid in addition to, or in excess of, such fair rent, whether before or after the date of the commencement of this Act, in consideration of the grant, continuance or renewal of the tenancy of the building after the date of such commencement, shall be refunded by the landlord to the person by whom it was paid or at the option of such person, shall be otherwise adjusted by the landlord.”



14. Referring to the above, a learned Single Judge of this Court in **Vikesh**

Kumar O.Jain v. Hemalatha Ben S.Thakker and Others

[MANU/TN/7410/2021], has held as follows:-

“13. ... Section 7 makes it clear that if the landlord receives more than one month's rent as advance, he should refund it to the tenant or at the option of the tenant should adjust the rent. Whether the adjustment is automatic without exercise of option by the tenant is a moot question. There are divergent views in this regard. The judgments relied on by the learned counsel for the petitioner show that even in the absence of any option exercised by the tenant, the landlord is bound to adjust the advance amount towards rent. However, it is seen from the judgment reported in AIR 1988 SC 1821 in the case of Nand lal Agarwal ..vs.. Ganesh Prasad Sah, the Hon'ble Supreme Court held that unless the tenant has called upon the landlady to adjust the excess amount towards rent, he cannot escape from the consequences of wilful default. In CRP. (NPD) No.1198 of 2017 (M.K.Swaminathan ..vs.. V.Thangam) it was held that in the absence of any request by the tenant to adjust the rent from advance, it is not open to the tenant to contend that he has not committed wilful default and the landlord ought to have adjusted the rent from the advance amount. The relevant portion is extracted hereunder:-

“14. As rightly submitted by the learned counsel appearing for the revision petitioner that our High Court consistently held that in the absence of any request by the tenant to



adjust the rent from advance, it is not open to the tenant to contend that he has not committed wilful default and the landlord ought to have adjusted the rent from the advance amount. In the judgment reported in 1994(2) MLJ 264, in the case of S.Sahabudeen represented by his power of attorney, S.Mohameed Mansoor vs. Muniammal, the learned Judge after referring to the Honourable Supreme Court judgment reported in AIR 1988 S.C.1821, in the case of Nand Lal vs. Ganesh Prasad, held that unless the tenant has called upon the landlord to adjust the excess payments toward arrears of rent, he cannot escape the consequences of wilful default in the payment of rent. The learned Judge also relied on the Division Bench of this Court reported in 1950(2) MLJ 579, in Navaneethammal, In re., case to arrive at the conclusion.

15. In the judgment reported in 1999(2) MLJ 68, in the case of K.Nanjappan vs. V.K.Janaki, the learned Judge discussed the case law on this aspect and held that unless the tenant called upon the landlord to adjust the advance against the arrears, he cannot escape the consequences of wilful default. Further in this case, the conduct of the tenant should also prove that the default is nothing but wilful. As stated supra, without sending pay order along with Ex.R5, the tenant has claimed that rent for 3 months representing Avani, Puratasi to Ayppasi 2001 was paid. Further, even after the relationship was strained, he claimed to have paid the rent in person without getting receipt. These conduct on the part of the tenant would lead only to the conclusion that he has committed



wilful default, even though the landlord had the advance with him. Therefore, the finding of the Lower Appellate Court that the landlord ought to have adjusted the amount from the advance and therefore, there is no wilful default in the payment of rent cannot be accepted. ...””

15.This is the view consistently taken by this Court in a number of decisions, viz., **Venkatraman v. Nageswari** [MANU/TN/6253/2021], **M.Muthukumar v. G.S.Sugumar** [MANU/TN/7190/2021]. In fact, the decision of this Court in **Vikesh Kumar O.Jain's** case (supra) was put into challenge before the Hon'ble Supreme Court and the appeal was dismissed very recently on 27.01.2022 [MANU/SCOR/09981/2022].

16.From the above, it is clear that either there should be a specific clause in the agreement mandating adjustment of arrears from the advance amount or the tenant should call upon the landlord to adjust the advance amount with the rental arrears. In the absence of the same, the tenant cannot escape from the liability saying that the advance amount remains with the landlord, after the initiation of eviction proceedings for default. If the tenant raises a ground of automatic adjustment, he should prove the existence of such a clause in their agreement. If



the tenant raises a plea that the landlord failed to adjust the advance amount, despite his request for such adjustment, he should establish that he made such a request.

17. In the case on hand, the petitioner has neither produced any such materials / agreement nor pleaded for adjustment of advance amount even before the Courts below. In fact, it is the case of the respondent / landlord that the agreement was not at all extended after 29.09.2011. Therefore, the plea of the petitioner with regard to the automatic adjustment from the excess advance amount, in the absence of any efforts on his part for such adjustment, cannot be accepted.

18. This Court is aware of the fact that the decisions in **Bhoja's** case (supra) and **Nand Lal Agarwal's** case (supra) emanates from Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982. It has to be seen that both the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 are from a different era which are meant for the prevention of unreasonable eviction of tenants. But the times have changed now and there is a need to balance the rights and duties of the landlords and tenants.



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The tenants now are no longer in a weaker position as before and many of them are using the legislation as a sword of abusing the process instead of protecting their rights. Therefore, it is the need of the hour to address the rights of landlords as well. Now, with the advent of Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017, the rent law has shed its inclination towards the tenants and treats both the landlords and tenants equally. Hence, this position has been inculcated by this Court which can be seen from the series of decisions passed by this Court recently, viz., **Venkatraman's** case (supra), **M.Muthukumar's** case (supra) and **Vikesh Kumar O.Jain's** case (supra), in which, **Vikesh Kumar O.Jain's** case (supra) was affirmed by the Hon'ble Supreme Court by dismissing the Special Leave Petition.

In the light of the above discussions and the decisions referred supra, this Court is not inclined to entertain this revision petition. Accordingly, the same is dismissed, at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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B.PUGALENDHI, J.

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To

- 1.The Subordinate Judge,
Devakottai, Sivagangai.
- 2.The Principal District Munsif cum Judicial Magistrate,
Karaikudi, Sivagangai.

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