



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2022

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (MD)No.2046 of 2021
and M.P(MD) No.10948 of 2021

G.Muthuvel ... Petitioner/Petitioner/
Respondent/Respondent
Vs.

Karkuvel Ayyanar Swamy Kumbidum
Pankalikal Sangam through its
Secretrary P.S.T.A.B.Prithivirajan,
S/o.P.S.T.A.Baskaran, Door No.67,
Animuthu Pillyar Kovil Street,
Virudhunagar. ... Respondent/Respondent/
Petitioner/Petitioner

PRAYER:- Civil Revision Petition filed under Section 115 CPC., to set aside the fair and decreetal order dated 26.08.2021 passed in E.A.No.74 of 2013 in E.P.No.6 of 2013 in R.C.O.P.No.8 of 2012 on the file of the District Munsif Court, Virudhunagar and allow this revision.

For Petitioner : Mr.P.Athimoolapandian

ORDER

This civil revision petition is filed by the defendant challenging the order passed in E.A.No.74 of 2013 in E.P.No.6 of 2013 by the District Munsif Court, Virudhunagar. The above said application filed by the revision petitioner herein to declare the order passed in RCOP.No.8 of 2012 dated 29.04.2013 as nullity. The application filed invoking the provision of Order XLVII and Section 151 CPC.

2.Brief facts of the case are that the respondent/land lord had filed RCOP.No.8 of 2012 on the file of the Rent Controller(District Munsif), Virudhunagar for evicting the petitioner herein on the ground of willful default in the payment of rent. The petitioner herein had filed a written statement *inter alia* contending that the Rent Controller does not have the jurisdiction to entertain the said application and it is only the civil Court that has the jurisdiction. That apart, he also contended that there is no default in payment of rent.



3. In the said application, the respondent/land lord had filed an application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for a direction to deposit arrears of rent and thereafter, proceed with the rent control proceedings. A sum of Rs.87,000/- was shown to be arrears and the said application was allowed in favour of the respondent herein by order dated 20.03.2013. The Rent Controller had directed the petitioner herein to deposit the arrears of rent on or before 19.04.2013 and thereafter, the application in I.A.No.15 of 2012 was posted for hearing on 24.04.2013. It appears that the petitioner had not deposited the said amount, but, filed an application in I.A.No.9 of 2013 under Section 148 CPC., seeking extension of a month's time. The Rent Controller allowed the said application but granted four days time for depositing the arrears of rent and the IA was posted on 29.04.2013. Since the petitioner had failed to comply with the order, the application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was allowed and further proceedings in the Rent Control was stayed.

4. Thereafter, the Rent Control petition was also allowed by order dated 29.04.2013 in and by which, the petitioner herein had been directed to hand over the possession to the respondent herein on account of failure of payment of arrears of rent. Thereafter, the respondent herein filed an execution proceedings in E.P.No.6 of 2013. In the said application, the petitioner has come forward with the instant impugned application.

5. The respondent/land lord had filed detailed counter *inter alia* contending that the Rent Controller had passed orders only after considering the arguments on both sides as well as respective pleadings. The petitioner had sought for extension of time to deposit the rent and despite time being extended, the petitioner herein failed to comply with the order. Hence, the respondent/land lord sought for the dismissal of the application.

6. The learned District Munsif, Virdhunagar, after hearing both parties, was pleased to dismiss the said application. The learned Judge has observed that the petitioner herein has not filed any document whatsoever to prove his contention that Rent Control Act will not apply in respect of the property in question. Challenging the same, the petitioner/tenant is before this Court.

7. Heard the learned counsel appearing for the petitioner. He would submit that in respect of another tenant, the respondent/land lord had filed suit and the same was for recovery of money. He would further submit that the present Rent Control petition is not maintainable and it is only suit that will lie.

8. However, it is seen that the petitioner had participated in the proceedings and also filed an application to extend the time for payment of arrears and thereby, submitting himself to the



jurisdiction of the Rent Controller. Therefore, the present application under Section 47 is misconceived, particularly, when the order has already been challenged in an appeal.

9.The arguments of the learned counsel for the petitioner that in respect of another tenant the respondent/land lord had filed suit, may not apply to the facts of the instant case, since in the instant case, the demised premises is not only a vacant land but also has a building constructed there on. The petitioner has not filed any document before the learned District Munsif and had filed documents before this Court for the first time. Therefore, this Court is not taking cognizance of the said application.

10.Reading of order dated 29.04.2013 in I.A.No.15 of 2012 in RCOP.No.8 of 2012 would show that the petitioner has sought time to deposit arrears of rent into the Court, which only indicates that the petitioner had submitted himself to the jurisdiction of the Court and had only sought time to abide by the orders thereto. Having submitting himself to the jurisdiction, the petitioner would now turn up and state that the Rent Control Act would not apply in respect of the petition mentioned premises. It is also to be noted that the petitioner has moved an appeal against the order passed in I.A.No.15 of 12 as well as the consequential order in RCOP.No.8 of 2012. Therefore, the learned District Munsif, Virudhunagar has rightly dismissed the application filed by the petitioner wherein, I do not find any infirmity. Accordingly, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif Court, Virudhunagar.

C.R.P. (MD)No.2046 of 2021

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