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CRP.No.1940 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2023

Pronounced on : 15.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1940 of 2008 and

CMP.No.14394 of 2019 and MP.No.1 of 2010

M/s.Wrenn Bennett & Co. (India) Ltd.,
Rep. by its Director,
No.2, General Patters Road,
Chennai 600 002

... petitioner

Vs.

1.M/s.C.P.Gupta & Company,
Rep. by partners Mrs.Urmila Gupta and
Rajesh Gupta,
No.71, Santhome High Road,
Chennai 600 028

(Mrs.Urmila Gupta brought on record as LR of the deceased
Dr.C.P.Gupta – amended vide court order dated 17.06.2019
made in CMP.No.10117 of 2019 in CRP.No.1940 of 2008)

2.The Executive Officer,
Arulmighu Parthasarathy Swamy Temple,
Triplicane,
Chennai 600 005

3.The Commissioner,
Hindu Religious and Charitable Endowments Departments,
No.119, Uttamar Gandhi Salai,
Nungambakkam,
Chennai 600 034

(R2 & 3 *suo motu* impleaded as party respondents vide
court order dated 24.03.2021 made in
CRP.No.1940 of 2008)

... Respondents



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PRAYER: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 and Act 1 of 1980 to set aside the order and decretal order dated 16.11.2007 made in RCA.No.75 of 2004 on the file of the VIII Judge, Small Causes Court (Rent Control Appellate Court), Chennai confirming the order and decretal order dated 10.12.2003 made in RCOP.No.2312 of 1992 on the file of the XIII Judge, Small Causes Court, Chennai and to allow the civil revision petition.

For Petitioner : Mrs.Chitra Sampath,
Senior Counsel
for Mr.S.Vasudevan

For Respondents

For R1 : Mr.A.Muthu Kumar

For R2 : Mr.D.Raja Gopal

For R3 : Mr.C.Sathish,
Government Advocate

ORDER

This civil revision petition has been filed to set aside the order and decretal order dated 16.11.2007 made in RCA.No.75 of 2004 on the file of the VIII Judge, Small Causes Court (Rent Control Appellate Court), Chennai confirming the order and decretal order dated 10.12.2003 made in RCOP.No.2312 of 1992 on the file of the XIII Judge, Small Causes Court, Chennai, thereby ordered for eviction on the ground of wilful default.



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2. While pending the present civil revision petition, the petitioner has also filed a miscellaneous petition in CMP.No.14394 of 2019 to receive the following additional documents:

- (a) Copy of the plaint in CS.No.2114 of 1995
- (b) Copy of the written statement in CS.No.2114 of 1995
- (c) Copy of the plaint in OS.No.1718 of 1996 and the written statement filed therein
- (d) Order dated 24.10.2018 and 26.10.2018 passed by this Court in Application No.6470 of 2018 in CS.No.2114 of 1995
- (e) Order dated 15.11.2018 passed by this Court in Applications No.6470 of 2018 in CS.No.2114 of 1995

3. The petitioner is the tenant and the first respondent is the landlord. The first respondent filed petition for eviction on the ground of wilful default. The case of the first respondent is that the petition premises is situated at No.2 General Patters Road, Chennai-2 and for non residential purpose, for the monthly rent of Rs.631, it was rented out in favour of the petitioner herein. The first respondent already filed petition for fixation of fair rent in RCOP.No.1245 of 1992. The first respondent also filed petition for eviction on the ground of



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wilful default in RCOP.No.1246 of 1992. The learned Rent Controller allowed both the petitions and fixed fair rent at Rs.12,128/-. Aggrieved by the same, the petitioner filed appeal in RCA.Nos.1617 of 1983 and 252 of 1984. Both were dismissed and confirmed the order passed by the learned Rent Controller by order dated 21.03.1985. Feeling aggrieved over the same, the petitioner herein preferred civil revision petition before this Court in CRP.No.2751 of 1985 and the same was also dismissed by this Court by order dated 21.03.1992. Thereafter, the petitioner also filed review petition and the same was also rejected by order dated 10.04.1992. The petitioner also challenged the order of eviction before the Hon'ble Supreme Court of India in SLP.Nos.5926 & 5927 of 1992 and the Hon'ble Supreme Court of India also dismissed the same on 21.05.1992. Therefore, the fair rent fixed by the learned Rent Controller had been confirmed at Rs.12,128/- per month payable from 15.03.1982. After dismissal of the SLP by the Hon'ble Supreme Court of India, the first respondent caused notice on 02.06.1992, thereby called upon the petitioner for payment of rental arrears as per the fair rent fixed by the learned Rent Controller from 15.03.1982. Even then, the petitioner failed to make any payment as per the fair rent fixed by the learned Rent Controller. Therefore, the petitioner has committed wilful default of payment of rent and rental arrears. As on 15.03.1982, there was arrears of rent to the tune of Rs.11,34,412/-.



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4. Resisting the same, the petitioner filed counter and stated that the petition premises belong to the family of one, D.Italia and only the ground rent Rs.103/- per month for the leasehold land which the petitioner had been paying to the vendor M/s. C.P.Gupta and Co. who in turn paid it to the temple was stopped after the sale deed. The temple had refused to accept the ground rent from the vendee when Dr.C.P.Gupta sent it shortly after the sale. Thereafter, the petitioner had paid the entire arrears of ground rent only on 29.02.1984 to the temple by means of demand draft, for the temple, duly passed a receipt dated 22.05.1984 to the petitioner herein. Therefore, the petitioner was paying rent regularly without defaulting to the vendee. After dismissal of the SLP on 11.05.1992, the petitioner did not pay the fair rent at Rs.12,128/- per month instead of only Rs.631/- monthly rent payable for the portion not included in the sale deed to the vendee. The sale deed dated 21.01.1979 being the unregistered partnership firm of mother and son, no finality attached to the amount of Rs.631/- per month being raised to Rs.12,128/- per month. Even in the letter dated 18.11.1992, whereunder Dr.C.P.Gupta acknowledged the demand draft dated 14.11.1992 sent by the petitioner herein for the monthly rent of Rs.631/-. Therefore, the petitioner never committed any wilful default and prayed for dismissal of the eviction petition.



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5. On the side of the first respondent, examined PW1 and marked Ex.P1 to Ex.P20. On the side of the petitioner, the petitioner had examined RW1 and marked Ex.R1 to Ex.R17. On perusal of oral and documentary evidence, the learned Rent Controller allowed the petition for eviction on the ground of wilful default. Aggrieved by the same, the petitioner preferred appeal before the learned Rent Control Appellate Authority in RCA.No.75 of 2004 and the same was also dismissed by order dated 16.11.2007. Feeling aggrieved over the same, the present civil revision petition has been filed.

6. Mrs.Chitra Sampath, the learned Senior Counsel appearing for the petitioner submitted that the total measurement of the petition property consists of freehold land and leasehold land in a portion of which there is a building. Freehold land is admeasuring 5627 sq.ft and leasehold land admeasuring 5141 1/6 sq.ft, in total 10,768 1/6 sq.ft. The leasehold land belongs to Arulmighu Parthasarathy Swamy Thirukoil. One, Dinroze Estate was the lessee under the temple. They were enjoying the adjacent land and the leasehold land together. It had put up the superstructure. They leased out the entire property to the petitioner. Therafter, it sold this property inclusive of leasehold interest under the registered sale deed dated 22.01.1979 to Mrs.Kasturi Gupta and



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Dr.C.P.Gupta carrying on business in the name of M/s.C.P.Gupta and Co., which was an unregistered firm. The Dinroze Estate by letter dated 23.01.1979 informed about the sale and called upon the petitioner to attorn the tenancy to the said M/s.C.P.Gupta and Co. The vendee had filed petition for fixation of fair rent in RCOP.No.1245 of 1982 and filed petition for eviction on the ground of wilful default in RCOP.No.1246 of 1982. Though the property was purchased in the name of the firm, since it was unregistered one, the eviction petition and fair rent petition were filed in the name of individual partners i.e. C.P.Gupta and Kasturi Gupta. As against the order of eviction, the petitioner filed civil revision petition before this Court in CRP.Nos.2751 and 2752 of 1985 and when both the civil revision petitions were pending, Mrs.Kasturi Gupta died and one Rajesh was brought on record as her legal heir and not as a partner of M/s.C.P.Gupta & Co.

6.1 She further submitted that while pending the civil revision petitions, they formed a new firm in the same name and registered on 22.01.1992. Thereafter, they had issued notice to the petitioner demanding arrears of rent as per the fair rent fixed by the learned Rent Controller. The petitioner also had been sending the rents in the name of the firm right from the date of the attornment of tenancy. Now the present eviction petition has been filed on the ground of wilful default in the name of the firm i.e. M/s.C.P.Gupta



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and Co. rep. by its partners. While pending the eviction petition, the petitioner filed writ of prohibition prohibiting the learned Rent Controller from proceeding further with the eviction petition. The writ petition was dismissed with cost. Aggrieved by the same, the petitioner filed writ appeal in WA.No.987 of 1999. While pending the writ appeal, the first respondent filed petition under Sections 11(3) and 11(4) of Tamilnadu Buildings (Lease and Rent Control) Act and the same was allowed by order dated 21.04.2001. In the writ appeal, the Hon'ble Division Bench of this Court set aside the order of the learned Single Judge of this Court and issued writ of prohibition thereby prohibited the learned Rent Controller to proceed further in the eviction petition in RCOP.No.2312 of 1992 on condition that the petitioner shall deposit the entire arrears of rent in three equal instalments of two months each commencing from 16.11.1999. In addition to that, the petitioner shall pay the monthly fair rent as already determined commencing from 01.01.1999 till the disposal of the suit filed by the temple and the suit filed by the petitioner.

6.2 She further submitted that the petitioner did not comply with the condition imposed by the Hon'ble Division Bench of this Court while issuing the writ of prohibition and as such, the learned Rent Controller allowed the petition filed for eviction on the ground of wilful default and the same was also



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confirmed by the learned Rent Control Appellate Authority. The petitioner also challenged the order passed under Sections 11(3) and 11(4) of Tamilnadu Buildings (Lease and Rent Control) Act in CRP.No.3681 of 2001 and the same was also dismissed by order dated 19.12.2001. It was challenged before the Hon'ble Supreme Court of India in SLP.No.1147 of 2002 and the same was allowed and time was granted to deposit the arrears of rent by order dated 08.02.2002. In the meanwhile, the temple filed suit in CS.No.2114 of 1995 for eviction of the petitioner as well as the first respondent.

6.3 She further submitted that PW1 categorically admitted that unregistered firm M/s.C.P.Gupta and Co. was dissolved and not reconstituted thereafter. Therefore, the assets of the firm owned by the partners of the unregistered firm devolved absolutely on one of its partners i.e. C.P.Gupta. The share of another partner Kasturi Gupta will be inherited by only C.P.Gupta. Another partner Mr.Rajesh Gupta cannot inherit the same since he is not her heir when his father is very much alive. In fact, the said Rajesh Gupta was not impleaded in the earlier proceedings as a partner of M/s.C.P.Gupta and Co. and he was impleaded as a legal representative of the deceased grandmother Kasturi Gupta. The property purchased in the name of unregistered firm was not brought as capital for newly registered firm i.e. the first respondent herein.



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Since the first respondent firm was registered only on 22.01.1992 and as such, they cannot claim ownership over the petition property purchased in the year 1979 unless the partners of the dissolved firm had brought this property as their capital of the newly registered firm. Therefore, the first respondent cannot maintain the eviction petition itself since the newly registered firm never owned the petition property. The first respondent also failed to produce any document to show that it had stepped into the shoes of the erstwhile firm. Therefore, they cannot sue in the name of the newly registered firm as landlord as there was no landlord tenant relationship between the newly registered firm and the petitioner herein.

6.4 She further submitted that this Court *suo motu* impleaded the Executive Officer of Arulmighu Parthasarathy Swamy Temple, Triplicane, Chennai and the Commissioner of HR&CE Department as respondents in the present civil revision petition on production of order passed by this Court in application No.6470 of 2018 in CS.No.2114 of 1995 filed by the temple where the rents paid and payable by the petitioner had been apportioned between the temple and the first respondent herein. Therefore, there are two landlords for the same premises who is entitled to receive the rent and as such, the first respondent is not entitled to maintain eviction petition. In fact, non payment of rent for the default period of three months only due to bonafide doubt as to the



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identity of the land. Therefore, there was no wilful default in payment of rents and now, as directed by this Court, the petitioner is continuously depositing the rent before the learned Rent Controller and prayed for dismissal of the eviction petition.

7. Mr.A.Muthukumar, the learned counsel for the first respondent would submit that in the earlier round, petitions filed for fixation of fair rent and for eviction on the ground of wilful default were allowed by the learned Rent Controller and confirmed by the learned Rent Control Appellate Authority. So far as fixation of fair rent was concerned, this Court confirmed the order passed by the learned Rent Controller and also confirmed by the Hon'ble Supreme Court of India. However, this Court in CRP.No.1858 of 1984, dismissed the eviction petition on the ground of wilful default for the reason that in view of the acceptable explanation offered by the petitioner herein for the delay in the payment of rent for the months of December 1981 and January 1982 coupled with fact that the rent for two months have been sent to the landlord even before the petitioner entered appearance through its counsel in the petition for eviction, it cannot be said that the default committed by the petitioner is wilful in the sense that it was intentional, deliberate, calculated and conscious.



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7.1 While confirming the order of fixation of fair rent, this Court categorically dealt with the grounds raised in this civil revision petition and held in favour of this first respondent. This court held that the petition filed for fixation of fair rent by the partners of the unregistered firm cannot be said that it is not maintainable in view of Section 69(2) of the Partnership Act for the reason that it was not raised before the learned Rent Controller by way of counter. Such a contention was raised for the first time before the Appellate Authority. The said plea will have to be taken at the earlier stage before the learned Rent Controller itself. Therefore, it will be open to the petitioner to raise plea either in the appeal or before the revisional court. Further held that the petition for fixation of fair rent is not filed in the firm name, but it is filed in the individual partner's name i.e. Dr.Gupta and Mrs.Kasturi Gupta describing themselves as partners of M/s.Gupta and Co. The firm is merely a compendious name for the partners who constituted it. The firm not being a legal entity, in substance, the partners of the firm will be the landlords. When a firm purchased property, that purchase is really by its partners and it follows. Therefore, when a firm let out a residential building belonging to it, in effect, its partners become the landlords.



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7.2 He further submitted that admittedly the petitioner accepted the first respondent as landlord and paying the contractual rent. Therefore, this Court held that the Act is self contained code in its field. Section 4 of the Tamilnadu Buildings (Lease and Rent Control) Act deals with the fixation of fair rent and says that any application for fixation of fair rent can be filed before the Rent Controller either by the landlord or by the tenant. The landlord is defined under Section 2(6) of the said Act as follows:

"landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant".

Therefore, a person who is actually receiving or who is entitled to receive rent of a building will be a landlord within the meaning of Section 2(6) of the said Act and such a person can maintain the petition for fixation of fair rent against the tenant.

7.3 He further submitted that admittedly the petitioner has not disputed the landlord tenant relationship and it is not the case of the petitioner that they



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are not liable to pay any rent for the petition premises. Therefore, the first respondent can very well maintain the petition for eviction on the ground of wilful default. Though the Hon'ble Division Bench of this Court issued writ of prohibition with certain conditions, those conditions were not complied with by the petitioner. Therefore, the learned Rent Controller rightly passed order of eviction on the ground of wilful default. The Hon'ble Division Bench of this Court imposed condition directing the petitioner to deposit the entire arrears of rent in three equal instalments of two months each commencing from 16.11.1999 and shall pay the fair rent to the landlord as determined by the learned Rent Controller commencing from 01.01.1999 till the disposal of the suit filed by the petitioner. However, the petitioner failed to pay any rent and also failed to deposit any arrears of rent as directed by the Hon'ble Division Bench of this Court. Hence, the learned Rent Controller passed order of eviction on that ground and the same was confirmed by the learned Rent Control Appellate Authority. In fact, the petitioner preferred SLP as against the order passed under Sections 11(3) and 11(4) of Tamilnadu Buildings (Lease and Rent Control) Act in SLP.No.1147 of 2002 and the Hon'ble Supreme Court of India extended the time by order dated 08.02.2002. Only thereafter, the petitioner complied with the condition of deposit. Therefore, the petitioner had committed wilful default on payment of rental arrears and the rent.



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7.4 He further submitted that once the fair rent has been fixed and thereafter if the tenant failed to pay fair rent, it would amount to wilful default.

In support of his contention, he relied upon the following judgments:

- (i) ***Govindaraju Chetty by P.U.Dulabdass and Co.***
reported in ***1967(2) MLJ 465***
- (ii) ***M/s.Wren Bennett & Co. India Ltd Vs. Dr.C.P.Gupta***
and others reported in ***1992(2) MLJ 440***
- (iii) ***J.Visalakshi Ammal Vs. T.B.Sathyanarayana***
reported in ***1996-2-LW 849***
- (iv) ***N.A.S.Ansari Vs. M.Sarangan*** reported in
1996-2-LW 315
- (v) ***V.Kannadasan and others Vs. K.Swaminatha Pathar***
reported in ***2007 (2) CTC 127***

8. Mr.D.Raja Gopal, the learned counsel for the second respondent and Mr.C.Sathish, learned Government Advocate appearing for the third respondent submitted that the second respondent filed suit before this Court in CS.No.2114 of 1995 as against the petitioner and the first respondent and another for possession in respect of the petition premises and also seeking damages for use and occupation of the petition premises. While pending the said suit, the third respondent filed application in A.No.6470 of 2018 and by



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order dated 24.10.2018, the petitioner herein was directed to deposit the arrears of rent in which the first and second respondents are permitted to withdraw the same in the ratio of 50:50. Only a sum of Rs.6,67,040/- was deposited by the petitioner and even till today, the second respondent is not able to withdraw the same since the entire bundle itself is missing from the file of the learned Rent Controller. He further submitted that now the petitioner herein also filed another suit and both the suits were transferred and it is pending for trial on the file of the XXII Additional City Civil Court, Chennai. Therefore, he prayed for direction, directing the trial court to dispose of the said suits within the stipulated time.

9. In respect of the miscellaneous petition in CMP.No.14394 of 2019, the learned Senior Counsel appearing for the petitioner submitted that the superstructure has been built partly in a freehold land and partly in a leasehold land, which admittedly belongs to the second respondent herein. The second respondent already filed suit in CS.No.2114 of 1995 before this Court for order of eviction as against both the petitioner as well as the first respondent herein. While pending the suit, the second respondent also filed application in A.No.6470 of 2018 claiming damages and this Court directed the petitioner to deposit a sum of Rs.10,02,457.50/- to the credit of the learned Rent Controller.



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Therefore, those documents are essential to decide this civil revision petition and

the documents are as follows:

- (a) Copy of the plaint in CS.No.2114 of 1995
- (b) Copy of the written statement in CS.No.2114 of 1995
- (c) Copy of the plaint in OS.No.1718 of 1996 and the written statement filed therein
- (d) Order dated 24.10.2018 and 26.10.2018 passed by this Court in Application No.6470 of 2018 in CS.No.2114 of 1995
- (e) Order dated 15.11.2018 passed by this Court in Application No.6470 of 2018 in CS.No.2114 of 1995

10. Heard, Mrs.Chitra Sampath, the learned Senior Counsel appearing for the petitioner, Mr.A.Muthu Kumar, the learned counsel for the first respondent, Mr.D.Raja Gopal, the learned counsel for the second respondent and Mr.C.Sathish, the learned Government Advocate appearing for the third respondent.

11. The petitioner is the tenant and the first respondent is the landlord. Originally the first respondent filed petition for fixation of fair rent in RCOP.No.1245 of 1982 in which the monthly rent was fixed at Rs.12,128/- by the learned Rent Controller and the same was confirmed upto the Hon'ble Supreme Court of India. However, the petitioner failed to pay the fair rent for



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the petition property and as such, the first respondent filed petition for eviction on the ground of wilful default and the same was allowed and confirmed by the learned Rent Control Appellate Authority. Aggrieved by the same, the present civil revision petition has been filed.

12. The learned Senior Counsel mainly contended on the following issues:

(a) Whether the first respondent can claim ownership over the petition property which originally purchased by unregistered firm during the year 1979 without bringing it as their capital for newly registered firm?

(b) Whether the learned Rent Controller and the learned Rent Control Appellate Authority can order for eviction on the ground of wilful default when the Hon'ble Division Bench of this Court issued order of prohibition?

(c) Whether there is any relationship of landlord tenant in respect of the petition property between the petitioner and the newly registered firm i.e the first respondent herein.

(d) Whether the non payment of fair rent fixed by the learned Rent Controller would amount to wilful default?



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13. The petition property is situated at No.2, General Patters Road, Chennai and it is a non residential building admeasuring 10,768 1/6 sq.ft, in which 5,627 sq.ft. is freehold land and 5,141 1/6 sq.ft. is leasehold land. The leasehold land belongs to the temple. The first respondent owned freehold land. Dinroze Estate was the original lessee. The Dinroze Estate was enjoying the adjacent land and the leasehold land together. It had put up superstructure. Thereafter it leased out the entire property to the petitioner herein. While being so, the Dinroze Estate sold the entire property inclusive of leasehold interest by the registered sale deed dated 22.01.1979 in favour of the firm M/s.C.P.Gupta and Co. represented by its partners Dr.C.P.Gupta and his mother Mrs.Kasturi Gupta. The Dinroze Estate by their letter dated 23.01.1979 informed the above fact and called upon the petitioner to attorn the tenancy in favour of M/s.C.P.Gupta and Co. Though the said C.P.Gupta and Mrs.Kasturi Gupta were partners of M/s.C.P.Gupta and Co., it was unregistered one. After purchase, the first respondent filed petition for fixation of fair rent for eviction in RCOP.No.1245 of 1982 and also filed petition for eviction on the ground of wilful default in RCOP.No.1246 of 1982. Both the petitions were allowed and the learned Rent Controller fixed fair rent at Rs.12,128/-. It was confirmed upto the Hon'ble Supreme Court of India. However, the petition for eviction on the ground of wilful default was allowed by the learned Rent Controller and the



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learned Rent Control Appellate Authority. It was reversed by this Court on the ground that in view of the acceptable explanation offered by the petitioner herein for the delay in payment of rent for the months of December 1981 and January 1982 coupled with the fact that the rent for those two months have been sent to the first respondent even before the petitioner herein entered appearance through its counsel before the learned Rent Controller. Therefore, it cannot be said that the default committed by the petitioner is wilful in the sense that it was intentional deliberate, calculated and conscious. Though the fair rent was fixed at Rs.12,128/- per month for petition premises, the petitioner failed to pay the fair rent and as such, the first respondent filed petition for eviction on the ground of wilful default.

14. While pending the eviction proceedings before the learned Rent Controller, the petitioner filed writ of prohibition in WP.No.10612 of 1993 and the same was dismissed by order dated 30.04.1999 and aggrieved by the same, the petitioner preferred writ appeal in WA.No.987 of 1999. The Hon'ble Division Bench of this Court issued writ of prohibition on the ground that part of the premises belongs to temple as leasehold and other part viz. freehold and leasehold lands and superstructure standing on the said lands belongs to the first respondent. Therefore, the dispute regarding the relationship of landlord



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and tenant with regard to the said property is yet to be decided. Under the said circumstances, as this issue goes to the root of the matter ascertaining the jurisdiction which was not there, the Hon'ble Division Bench of this Court were of the view that despite the determination of fair rent, an order of eviction cannot be passed by the learned Rent Controller under Section 11 of the Act for non payment of the fair rent fixed by the learned Rent Controller. Further concluded that the temple filed separate suit for eviction as against the petitioner and the first respondent herein. The petitioner also filed suit and both are pending. Without deciding the issue, no order can be passed in the eviction petition. Under the said circumstances, a writ of prohibition was issued. However, the Hon'ble Division Bench of this Court directed the petitioner to deposit the entire arrears of rent in three equal instalments of two months each commencing from 16.11.1999. In addition to that, the petitioner shall pay to the landlord monthly fair rent as already determined by the learned Rent Controller commencing from 01.11.1999 till the disposal of the suits. In the event of non compliance of any of the conditions, the writ of prohibition so issued exercising the discretionary power under Article 226 of the Constitution will get automatically discharged.



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15. Admittedly, after confirmation of the fixation of fair rent by the Hon'ble Supreme Court of India as fixed by the learned Rent Controller, the petitioner failed to pay the fair rent for the petition property. The fair rent was fixed from 15.03.1982 for the petition property. Therefore, the petitioner was in arrears of rent from 15.03.1982. Till the filing of the petition for eviction i.e. September 1992, there was an arrear of Rs.11,34,412/-. In fact, pending the eviction petition, the first respondent filed petition under Sections 11(3) and 11(4) of the Tamilnadu Buildings (Lease and Rent Control) Act in MP.No.353 of 1993 and the same was allowed by order dated 21.03.2001 and thereby directed the petitioner to pay arrears of rent from March 1982 at Rs.12,01,726/- and the same was confirmed by the learned Rent Control Appellate Authority. Aggrieved by the same, the petitioner also filed civil revision petition before this Court in CRP.No.3681 of 2001 and the same was also dismissed and confirmed the order passed by the learned Rent Controller in view of non compliance of the order passed by the Hon'ble Division Bench of this Court in WA.No.987 of 1999, order of prohibition stands discharged. The learned Rent Controller rightly ordered for eviction on the ground of wilful default and confirmed by this Court. Aggrieved by the same, the petitioner preferred also SLP.No.1147 of 2022 and the Hon'ble Supreme Court of India confirmed the said order by order



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dated 08.02.2002 and directed the petitioner to pay the arrears in three instalments.

16. Insofar as the landlord tenant relationship between the petitioner and the first respondent is concerned, the petition property originally owned by Dinroze Estate and thereafter, it was purchased by the first respondent herein. Admittedly, the petitioner was inducted as a tenant by the Dinroze Estate and as such, the petitioner cannot deny the title of the erstwhile landlord. The erstwhile landlord had conveyed the petition premises along with leasehold right to the first respondent. Thereafter, the petitioner also had paid rent in favour of the first respondent. It is also not the case of the petitioner that the tenancy was not attorned in favour of the first respondent. That apart, the landlord tenant relationship is confirmed upto the Hon'ble Supreme Court of India in the first round of litigation. Therefore, the petitioner is admittedly a tenant and the petitioner is estopped from raising plea of 'there is no landlord tenant relationship' under Section 116 of Indian Evidence Act and the petitioner is barred from disputing the title of the first respondent in respect of the petition property.



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17. When the petition property was purchased in the name of M/s.C.P.Gupta and Co. by its partners C.P.Gupta and Kasturi Gupta, the said firm was not registered one. Thereafter in the year 1982, the fixation of fair rent petition was filed by the partners of M/s.C.P.Gupta and Co. The learned Rent Controller fixed the fair rent and confirmed upto the Hon'ble Supreme Court of India. However, the petitioner failed to pay the fair rent and as such, the first respondent filed petition for eviction on the ground of wilful default. Before filing the petition for eviction, the said firm M/s.C.P.Gupta and Co. got registered on 22.01.1992 consisting C.P.Gupta and Rajesh Gupta as partners. The present petition for eviction was filed by the partnership firm i.e. M/s.C.P.Gupta and Co. rep. by its partners Dr.CP.Gupta and Rajesh Gupta. The petition property was purchased in the name of M/s.C.P.Gupta and Co. At the time of purchasing the property, it was not registered. Therefore, the petitioner had taken the same stand before this Court challenging the order of fixation of fair rent in the civil revision petitions in CRP.No. 2751 and 2752 of 1985 and this Court held that the petition for fixation of fair rent is filed not in the name of firm but in the name of individual partners. The firm is merely compendious name for partners who constitute it and when the firms purchase the petition mentioned property, the purchase is really purchased by the partners and after the purchase, the partners become the landlord within the meaning of Section



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2(6) of the Tamilnadu Buildings (Lease and Rent Control) Act as they are entitled to receive the rent for the petition mentioned property as an agent of the firm from the tenant. It is needless to point out that every partner of a firm is an agent of the firm and as an agent of the firm, the partners are entitled to receive the rent for the petition mentioned property from the tenant. In view of the inclusive definition of landlord contained in Section 2(6) of the said Act and inasmuch as the petitioners are partners of the unregistered firm are entitled to receive the rent due for the petition property, therefore there is no difficulty in holding that the first respondent is landlord within the meaning of Section 2(6) of the Act and they can very well maintain the petition for fixation of fair rent.

18. Now, the learned Senior Counsel vehemently contended that after registration of the firm by name M/s.Gupta and Co. consisting the present partners Dr.C.P.Gupta and Dr.Rajesh Gupta, failed to brought the petition property as capital for the firm. Therefore, the first respondent firm cannot claim ownership over the petition property which was purchased in the year 1979 in the name of unregistered partnership firm unless the partners of the dissolved firm had brought the petition property as their capital for the newly registered firm. As held by this Court, once the petitioner paid contractual rent for the petition property even after registration of the firm on 22.01.1992, in view of



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Section 2 (6) of the Act, the first respondent is the landlord. Therefore, the petition for eviction filed by the first respondent herein on the ground of wilful default is very much maintainable. Further even after fixation of fair rent, the petitioner failed to pay the fair rent. In this regard, the learned counsel for the first respondent relied upon the judgment of the Hon'ble Division Bench of this Court in the case of *J.Visalakshi Ammal Vs. T.B.Sathyanarayana* reported in **1996-2-LW 849**, wherein it is held that the fair rent is also the rent of the building and the words used in Section 10(2)(i) of the Act are that “the tenant has not paid or tendered the rent due by him in respect of the building”. Its non payment of difference between the fair rent fixed and the agreed rent is the arrears of rent for the building, and it becomes payable when the order fixing the fair rent becomes final. In the event of the tenant failing to pay the arrears of rent pursuant to the notice, it would be open to the landlord to institute a proceeding for eviction on the ground falling under Section 10(2)(i) of the Act. It is not necessary for the landlord to go to a civil court to recover such arrears of rent.

19. Though the said Rajesh Gupta was impleaded as legal representative of the deceased partner Kasturi Gupta, now he has been inducted as partner and registered the firm M/s.C.P.Gupta and Co. Both the partners



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were the parties to the earlier proceedings upto the Hon'ble Supreme Court of India. The firm is merely a compendious name for partners who constitute it and when the firm purchased the petition property, the purchase is done by the partners and after the purchase, the partners become the landlords. Even after demise of the said Kasturi Gupta, her share devolved upon her son i.e. C.P.Gupta. Therefore, both the partners have stepped into the shoes of the newly registered firm M/s.C.P.Gupta and Co. Hence, the first respondent can very well maintain the eviction petition on the ground of wilful default in respect of the petition property.

20. The conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to wilful default and such subsequent conduct of the tenant can be taken into consideration in deciding the matter. When the eviction proceedings have been initiated on the ground of wilful default, one would expect the tenant to pay the rent regularly every month atleast after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to wilful default. In fact, the petitioner had knowledge about the legal consequences on its omission to pay the rent. Therefore, the petitioner ought to have been more



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careful. In this regard, this Court held in the case of ***V.Kannadasan and others*** vs. ***K.Swaminatha Pather (died) and others*** reported in ***2007 (2) CTC 127***, wherein it is held that the tenant was aware of the legal consequences of his omission to pay the rent. Therefore, he ought to have been more careful. In spite of it he has not chosen to pay the rent which would only indicate that he has been supinely indifferent and callous in attitude. Therefore, any default committed by the tenant in this context can be nothing but wilful default within the meaning of the Act.

21. After dismissal of the SLP by the Hon'ble Supreme Court of India, the first respondent caused legal notice dated 09.03.1992 which was marked as Ex.P4, thereby called upon the petitioner to pay a sum of Rs.10,73,772/- ending February 1992 as rental arrears. Even on receipt of the same, the petitioner failed to pay the fair rent fixed by the learned Rent Controller. Therefore again on 02.06.1992, the first respondent caused another notice which was marked as Ex.P6 to the petitioner thereby called upon to remit the entire arrears of rent, failing which the first respondent will be constrained to initiate appropriate proceedings for the recovery of the said sum and it will amount to wilful default.

22. Admittedly the petitioner failed to pay the fair rent as fixed by the learned Rent Controller in RCOP.No.1245 of 1982. In fact, till the direction



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issued by the Hon'ble Supreme Court of India in SLP.No.1147 of 2002 and

even after the direction issued by the Hon'ble Supreme Court of India, the petitioner failed to pay the fair rent and committed wilful default. Therefore non payment of fair rent while pending the eviction petition till the direction issued by the Hon'ble Supreme Court of India and also while pending the appeal before the learned Rent Control Appellate Authority will amount to wilful default. Though the petition property was purchased in the name of the firm, the firm not being a legal entity, in substance the partners of the firm will be the landlords. When a firm purchased property, the purchase is really by its partners and it follows. Therefore, when a firm lease out the property belong to it, in effect, its partners become landlords. The arrears of rent was deposited by the petitioner only after period of ten years. That apart, the total extent of the property is admeasuring 10768 1/6 sq.ft. i.e. nearly 5 grounds that too situated in the heart of the city i.e. No.2 General Patters Road, Madras-2. Originally, the agreed contractual rent was Rs.631/- till the year 1982 and from the month of March 1982, fair rent was fixed at Rs.12,128/-. Even now, the same rent is payable by the petitioner herein. There is no subsequent enhancement for the petition property. Now, the property value itself would fetch at approximately Rs.10,00,00,000/- per ground. However, no further fair rent is fixed for the petition property. The petitioner without even paying the fair rent fixed from



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1982, squatting over the petition property, that too disputing the ownership of the petition property. Therefore, the learned Rent Controller and the learned Rent Control Appellate Authority rightly ordered for eviction on the ground of wilful default.

23. Now the learned Senior counsel also produced receipts for the deposit of rent at Rs.12,128/- to the credit of the learned Rent Controller. It revealed that though the petitioner deposited rent in the name of Registrar, Small Causes Court, Chennai, it is not credited to the credit of RCOP.No.2312 of 1992 on the file of the XIII Small Causes Court, Chennai. In fact, though this Court directed the first respondent and the second respondent to withdraw the amount which was deposited by the petitioner as 50:50 ratio, they could not able to trace the bundle and deposited amount. Therefore, it would be appropriate to direct the Registrar, Small Causes Court, Chennai to disburse whatever the amount deposited by the petitioner so far to the first and second respondents at the ratio of 50:50 on filing proper application.

24. Insofar as the miscellaneous petition in CMP.No.14394 of 2019, the petitioner seeks permission to receive the petition mentioned documents as additional documents. However, on perusal of those documents, revealed that the second respondent filed suit for ejectment as against the first respondent and



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the petitioner herein. The petitioner also filed suit as against the respondents and the orders passed in application No.6470 of 2018 in the suit filed by the second respondent. Those documents are not required for deciding the issues involved in the present civil revision petition. Therefore, the said petition in CMP.No.14394 of 2019 is dismissed. However, considering the fact that now the suits filed by the second respondent and the first respondent have been transferred to the file of the XXII Additional City Civil Court, Chennai and renumbered and both the suits are pending for trial, the trial court i.e. XXII Additional City Civil Court, Chennai is directed to conduct joint trial in both the suits in OS.Nos.5950 & 7270 of 2022 and dispose of the same within a period of six months from the date of receipt of copy of this order.

25. In view of the above discussion, this civil revision petition is liable to be dismissed and to confirm the order passed by the learned Rent Controller and the learned Rent Control Appellate Authority. Accordingly, this civil revision petition is dismissed. The petitioner shall vacate and hand over the petition property within a period of eight weeks from the date of receipt of copy of this order. The first respondent and the second respondent are at liberty to claim rental arrears, if any as against the petitioner in the manner known to law for their respective portion of the petition property. Consequently, connected



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miscellaneous petitions are closed. There shall be no order as to costs.

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Speaking/non-speaking

Index : Yes/No

Internet : Yes

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The VIII Judge,
Small Causes Court (Rent Control Appellate Court),
Chennai
- 2.The XIII Judge,
Small Causes Court,
Chennai
- 3.The XXII Additional City Civil Court,
Chennai
- 4.The Public Prosecutor,
High Court of Madras

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