



WEB COPY



C.R.P.(NPD)No.4042 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.4042 of 2012

1.S.Suresh Babu

2.V.R.Srinivasan (Died)

3.Padmaja

4.Sakala Sajini Shashank

5.Sandresh V.S.

.. Petitioners

(Petitioners 3 to 5 brought on record as LR's of the deceased

2nd Petitioner viz. V.R.Srinivasan vide Court order dated 15.09.2023

made in CMP.No.10403 of 2023 in CRP(NPD)No.4042/2012)

Vs.

1.N.Ramakrishnan

2.S.Lakshmi

3.S.Veena

4.S.Indumathi

5.G.Kannan

.. Respondents

PRAYER: Civil Revision Petition is filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980, setting aside the Judgement and Decree, dated 30.04.2012, passed by the Learned Rent Control Appellate



C.R.P.(NPD)No.4042 of 2012

Authority (Subordinate Judge, Hosur), in R.C.A.No.2 of 2009 and restore the Fair Order and Decreetal Order, dated 25.03.2009, passed by the Learned Rent Controller (District Munsif, Hosur) in R.C.O.P.No.1 of 2003.

For Petitioners : Mr.T.M.Hariharan

For Respondents : Mr.K.Kishore Kumar
for Mr.N.S.Sivakumar (for R1)

Mr.R.Baskar (for R4)

: R2, R3 and R5 - (Given up)

ORDER

The landlord is the revision petitioner. The landlord preferred a petition in RCOP.No.1 of 2003, on the file of the Rent Controller-cum-District Munsif, Hosur. He had pleaded four grounds, namely,

- (i) Wilful default,
- (ii) change in user,
- (iii) own use and occupation and
- (iv) demolition and reconstruction.



C.R.P.(NPD)No.4042 of 2012

WEB COPY

2. The trial Court ordered eviction on the grounds of wilful default, unauthorised user and own use and occupation. It dismissed the petition on the grounds of demolition and reconstruction.

3. The tenant preferred an appeal in RCA.No.2 of 2009 before the appellate authority. In and by way of an order dated 30.04.2012, the Rent Control Appellate Authority allowed the appeal holding that none of the three grounds proved before the trial Court are made out. Therefore, it allowed RCA.No.2 of 2009 and dismissed the RCOP in full.

4. Against this reversal finding, the present Civil Revision Petition has been presented.

5. This revision had already been allowed by an order dated 07.11.2019. At that time, Mr.N.S.Sivakumar, learned counsel for the respondent was not heard. On presentation of the Execution Petition against the tenant, he came to know of the order passed by this Court and moved an application in CMP.No.1401 of 2023. In and by way of an order dated 28.03.2023, the order passed in this revision on 07.11.2019 was recalled and the Civil Revision Petition was restored on to the file.



C.R.P.(NPD)No.4042 of 2012

6. Today, I heard Mr.T.M.Hariharan, learned counsel appearing for the petitioners and Mr.K.Kishore Kumar, learned counsel appearing for Mr.N.S.Sivakumar, learned counsel on record for the respondents.

7. For the sake of convenience, the parties will be referred to as landlord and tenant.

8. At the outset, Mr.K.Kishore Kumar raised an objection that the revision cannot be continued since the original petitioners namely, S.Lakshmi, S.Veena and S.Indumathi, who are the legal heirs of the original landlord Mr.Singaravelu had sold the property in favour of Mr.S.Suresh Babu and Mr.V.R.Srinivasan. Therefore, according to him, the basis of claim for eviction does not exists any more.

9. It is settled position of law that this Court can take into consideration the subsequent events for the purpose of either granting or denying the relief. This position has been settled by the Supreme Court in ***Pasupuleti Venkateswarlu v. The Motor & General Traders reported in AIR 1975 SC 1409***. The sale of the property by original petitioners 1 to 3 in favour of Mr.S.Suresh Babu and Mr.V.R.Srinivasan is not in dispute.



C.R.P.(NPD)No.4042 of 2012

In fact, the said Mr.S.Suresh Babu and Mr.V.R.Srinivasan were impleaded as respondents 4 and 5 in the appeal. Hence, we have to analyse the scope of Section 10 of Act 18 of 1960.

10. There are two aspects of Section 10. Section 10(2) deals with the orders of eviction on account of the default by the tenant. Section 10(3) deals with the orders of eviction that might be passed by the Court for grounds which are personal to the landlord. Sale of a property will affect the grounds which are personal to the landlord, which means the plea of additional accommodation or own use and occupation cannot be continued by the purchasers from the original landlord. However, Section 10(2) dealing with default committed by the tenant can more certainly be continued, because the ground of eviction is not based on the grounds personal to the landlord, but on grounds which the tenant has committed, which invites the wrath of Section 10. Knowing this position of law, Mr.T.M.Hariharan very fairly stated that he is not pursuing the ground of own use and occupation. That leaves out only the two other grounds namely wilful default and unauthorised use by the tenant.



C.R.P.(NPD)No.4042 of 2012

WEB COPY

11. Turning to the principle of wilful default, it is the specific case of the landlord that the tenant was liable to pay Rs.3,000/- per month as rentals whereas the stand that has been taken by the tenant is that he is liable to pay only Rs.1,000/- per month. Since there is no finding by the Trial Court as well as by the Appellate Court, as to the amount that the tenant is liable to pay per month, I will go as per the case of the petitioner himself.

12. The petitioner had admitted that the monthly rental is Rs.1,000/-. The ground on which eviction was ordered by the Trial Court that not only the tenant has not produced any evidence before the Court with respect to the payment of rents from September 1995 till the death of Mr.Singaravelu on 07.10.2002, but also had returned a finding that the tenant has not deposited, even the agreed rents month on month into Court, as contemplated by the Act.

13. The Rent Control Original Petition was filed on 16.12.2002. The tenant had entered appearance on 14.02.2003. Even thereafter, he has not deposited the rents. The rents for the periods from September



C.R.P.(NPD)No.4042 of 2012

2002 to May 2003 were only deposited on 22.07.2003. That still leaves out one month rent namely, of June 2003, not being paid till date.

14. Apart from that, the Rent Controller has found that even during the pendency of the proceedings, the tenant has not paid the rents month on month, but has been lackadaisical in payment of the same. Yet again I recall the position of law that where a tenant does not pay the rents regularly even after presentation of the eviction proceedings, law presumes that the non-payment is not only a case of default, but a case of supine indifference and the case of wilful default is made out.

15. The memo on date of deposits of rents pending litigation that has been presented on 07.11.2019 by Mr.T.M.Hariharan was put to Mr.K.Kishore Kumar. To my specific question, as to why the rents were not paid from the periods October 2004 to April 2005, Mr.K.Kishore Kumar was not able to give me a convincing reply for the period of default.



C.R.P.(NPD)No.4042 of 2012

WEB COPY

16. Apart from that two aspects, what would have to be crucially noticed is that the tenant has not produced any evidence before the Trial Court for the purpose of proving that during the lifetime of Mr.Singaravelu, he had paid the rents regularly. While I can take notice of the subsequent conduct of the tenant, to come to a conclusion that default is wilful, I am afraid that the tenant has not discharged the burden on him that for the period of nine (9) years that is, from August 1995 till 07.10.2002, when Mr.Singaravelu unfortunately passed away, no evidence has been let in by the tenant to prove that he had paid the rents month on month.

17. The second aspect that I have to take into consideration is the deposit that have been made by the tenant is itself contrary to law. As per Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, a tenant is entitled to deposit the rents into Court only if he follows the procedures contemplated under Section 8 step-by-step. If the landlord refuses to receive the rents, he should first send the same, by way of money order. If the money order is refused, then he has to issue notice, in



C.R.P.(NPD)No.4042 of 2012

writing calling upon the landlord to give his bank account number. If the bank account number is furnished, the tenant can deposit the amount into the bank. In case, the bank account number is not furnished, thereafter the tenant can approach the Court by way of a petition under Section 8(5) of the Act. It has been settled by the Supreme Court in ***E.Palanisamy v. Palanisamy (Dead) By LRs and others reported in (2003) 1 SCC 123***, that if the tenant does not follow the steps under Sections 8(1) to 8(5) one after another, his deposit itself is no deposit and the petition to deposit the rents is not maintainable.

18. Fortunately for me in this case, Mr.K.Kishore Kumar has very fairly submitted that the tenant did not resort to filing an application under Section 8(5) of the Act before the Court. The tenant has also not adduced any evidence to show that he had secured the permission of the Court prior to such deposits.

19. Apart from that, there is no notice in writing as completed under Section 8(3) or a money order under Section 8(2). Therefore, there is absolutely no explanation for the periods from August 1995 to



C.R.P.(NPD)No.4042 of 2012

December 2002 or for the subsequent periods. The finding of the Rent Control Appellate Authority that no landlord would keep quiet for years and that it is improbable that the landlord would have kept idle for about eight (8) years without demanding rents, is not a presumption supported by law.

20. Theoretically, it is possible that a landlord would not have demanded the rents due, but the law imposes a duty on the tenant to pay the same. It is also possible that a false petition for wilful default could be presented against the tenant. It is at that stage, the tenant should be vigilant enough to let in evidence to prove that the case of the landlord is false as he had paid the rents month on month. There being no proof for payment of rents from August 1995 to January 2002, the Court should not have proceeded to dismiss the petition on the basis of presumptions.

21. Apart from that, after filing of the RCOP petition and after being served with the notice, still there is no explanation why the tenant kept quiet from September 2002 to May 2003 and deposited the rents due only in July 2003. As already pointed out above, there is no explanation



C.R.P.(NPD)No.4042 of 2012

for non payment of rent for June 2003.

WEB COPY

22. The default looms large in the light of the specific averment that Mr.Singaravelu convened several Panchayats and still the respondent did not pay rents. This shows that the relationship between the landlord and tenant was already strained by August 1995. The tenant should have been careful to maintain a record or atleast should have approached the Court under Section 8 for deposit.

23. All these facts constrain me to conclude that the tenant is a wilful defaulter and therefore, his actions come within the teeth of Section 10(2)(i) of the Act.

24. Insofar as the plea on change in user is concerned, it is the specific case of the landlord that the property was let out to the tenant only for the purpose of residential occupation. In the counter affidavit in paragraph-6, it is admitted by the tenant that the original purpose for which the property was let out was for residential purposes. Thereafter, he would plead that since he is a physiotherapist, he had utilised the premises for consultation and treatment and this did not change the



C.R.P.(NPD)No.4042 of 2012

nature of use.

25. It is possible that a professional can reside in the house and can also utilise the premises for the purpose of consultation. However, if he were to start using the premises or a major portion thereof for the purpose of his profession, then there is a change in use. It is here that the evidence that was given by DW1 and DW2 becomes relevant. The evidence that has been recorded is as follows:-

'மருத்துவமனையில் பணிபுரிந்த நேரம் போக மீதிநேரத்தில் என்னுடைய வீட்டில் பிசியோ தெரபி வைத்தியம் செய்து வருகிறேன். மசாஜ், உடற்பயிற்சி செய்யக்கூடிய உபகரணங்கள் என்னுடைய வீட்டில் வைத்து வைத்தியம் செய்து வருகிறேன். வீட்டில் என்னுடைய பெயர் பலகையும், வீட்டிற்கு முன்பாகவும் காம்ப்வுண்டு சுவற்றின் மீதும் வைத்துள்ளேன். 10.9.1995-ம் தேதி முதல் நான் பிசியோ தெரபிஸ்ட் வைத்தியம் அந்த வீட்டில் செய்து வருகிறேன். என்னுடைய வீட்டில் வரும் நோயாளிகளுக்கு வைத்தியம் செய்கிறேன்.'



C.R.P.(NPD)No.4042 of 2012

This statement of the tenant has been confirmed by his father who was examined as DW2 wherein he has stated as follows:-

'என் மகள் வீட்டில் மருத்துவத்திற்கு
உபயோகப்படும் இயந்திரங்கள் முன்றை
வைத்திருக்கிறார்.'

26. These two portions are sufficient to conclude that having taken the premises for residential purposes, he had installed medical equipment and machinery in the premises and had started using it for the purpose of his profession, which is a non-residential use. The change in use having been admitted by the tenant, nothing further need to be proved by the landlord.

27. The Rent Control Appellate Authority, while dealing with this issue has stated that the landlords have not taken out any commission to show the existence of the clinic in the premise. When the tenant himself has admitted that he is using equipment and machinery for the purpose of his practice, the question of the landlords taking a commission does not arise. Admitted facts need not be proved. When the tenant himself admitted it, there is no necessity for the landlord to take out the



C.R.P.(NPD)No.4042 of 2012

commission application in order to prove that the tenant is using the premises as a clinic.

28. Two crucial aspects having been wrongly appreciated by the Rent Control Appellate Authority, I am constrained to interfere with the same in exercise of the powers under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Consequently, this civil revision petition is allowed. The order passed by the Rent Control Appellate Authority in RCA.No.2 of 2009, dated 30.04.2012 is set aside. The order of eviction passed by the Rent Controller in RCOP.No.1 of 2003, dated 25.03.2009 is restored, insofar as the grounds relating to wilful default and change in use.

29. The ground of own use and occupation does not exist as on today, as it has already been withdrawn by Mr.Hariharan. The ground of demolition and reconstruction having been concurrently found against the petitioners, I am not interfering with the same. Since I have allowed the revision, the stay granted by this Court with respect to REP.No.13 of 2020, on the file of the Rent Controller, Hosur stands vacated. The Rent



C.R.P.(NPD)No.4042 of 2012

Controller shall proceed with respect to the eviction in accordance with law.

30. In fine, this civil revision petition is allowed. No costs.

15.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
mkn2/vs

To

1. The Learned Rent Control Appellate Authority,
Subordinate Judge, Hosur.
- 2.The Learned Rent Controller,
District Munsif, Hosur.



WEB COPY



C.R.P.(NPD)No.4042 of 2012

V.LAKSHMINARAYANAN,J.

mk2/vs

C.R.P.(NPD)No.4042 of 2012

15.09.2023