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CRP. No.1150 & 1151 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. Nos. 1150 & 1151 of 2016

1.Marvel signs
2.Ramkumar
3.Senthilkumar

...Petitioners in both CRPs

Vs.

1.B.Susheela (Died)
(R1 died vide order Court dated 18.01.2017 by RMJ made in CRP NPD
1150 & 1151 of 2016 in memo Sr.No. 540 and 541 of 2017)
2.R.Sunitha
3.B.B.Rajkumar

...Respondents in both CRPs

PRAYER in RCOP NO. 1150 of 2016 : This Civil Revision Petition is filed under Section 227 of the Constitution of India, praying to set aside the order and decreetal order in R.C.A NO. 69 of 2014 by the Appellate Authority, Principal Subordinate Court, Coimbatore, dated 22.07.2015 confirming the order in R.C.O.P No. 89 of 2012 by the learned Rent Controller, Principal District Munsif, Coimbatore dated 06.03.2014 by allowing the revisions.

PRAYER in RCOP NO. 1151 of 2016 : This Civil Revision Petition is filed



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under Section 227 of the Constitution of India, praying to set aside the order and decretal order in R.C.A NO. 68 of 2014 by the Appellate Authority, Principal Subordinate Court, Coimbatore, dated 22.07.2015 confirming the order in R.C.O.P No. 89 of 2012 by the learned Rent Controller, Principal District Munsif, Coimbatore dated 06.03.2014 by allowing the revisions.

For Petitioners : Mr.K.J.Parthasarathy
in both CRPs

R1 : Died

For R2 & R3 : Mr.R.Bharathkumar
in both CRPs

COMMON ORDER

The revision petitioners herein are the tenant in RCOP No.89 of 2012 filed by the first respondent herein/land lord seeking to evict the tenants under the ground that the tenant committed wilful default in payment of rent and also the building is seventy years old needs immediate demolition and re-construction. Further, land lord also obtained necessary plan approval from the corporation. Thereafter, notice issued on 07.01.2012 by terminating lease agreement and called upon the tenant to vacate and hand over the vacant possession for which the tenant failed to comply. Hence the land lord filed petition for evict the tenant but the tenant contested the proceedings by filing his objection. In the meanwhile, the land lord filed



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I.A 112 of 2013 under rule 11(4) of Tamil Nadu Building (Lease and Rent Control) Act 1960 (in short "rent control Act") claiming arrears of rent for the month of August 2011 to March 2013 to the tune of Rs.1,90,000/- (19 months X Rs.10,000/- = Rs. 1,90,000/-). The tenant appeared through their counsel and admitted the land lord tenant relationship denied the allegation of land lord but they have not filed any objection for the petition filed under 11(4) of Rent Control Act. Thereafter, when the said application was reserved for orders the tenant paid a sum of Rs. 1,00,000/- by cheque dated 01.10.2013 and for remaining amount of 90,000/- they issued post dated cheque but the rent controller passed the order directing him to pay entire arrears but the same was not complied by the tenants. Hence the rent controller on 06.03.2014 struck off the defence of the tenants and order of eviction was passed in main RCOP.

2. Challenging the said findings the tenants preferred an appeal against the RCOP RCA against 68 and 69 of 2014 before the rent control Appellate Authority-cum- Principal Sub judge, Coimbatore, without depositing arrears of rent. On hearing both sides, rent controller held that tenant committed wilful default of rent and also not complied the order passed by the rent controller in Rule 11(4) of Rent Control Act those



application was dismissed by confirming order of the rent controller.

Challenging the said findings the tenant preferred this petition.

3. The learned counsel appearing for the tenant submitted that the Court below failed taken note of the fact that payment of arrears of rent by the tenants in the 11(4) application and also failed to consider the request on the side of the tenant to reopen the matter to put forth defence without giving such opportunity issued order of eviction as such is totally erroneous and liable to be set aside. Furthermore, appellate authority as well as rent controller failed take note of the fact that advance amount to the tune of Rs.2,50,000/- is lying in the hands of the land lord and the same could be deducted for the rental arrears on the date of main application in such circumstances there is no default on the side of the tenant but the Court below failed appreciate the said aspects as such is totally erroneous and misconception of law and facts and liable to be set aside. In fact, land lord refused to receive the balance rent arrears a sum of Rs.90,000/- and the same was not appreciated by the rent controller and the same confirmed by the appellate authority as such is unsustainable liable to be set aside. Hence he prayed to allow this petition.

4. Per contra, the learned counsel for the respondent landlord



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submitted that RCOP was filed in the year 2012 itself before that there was rental arrears on the side of the tenant from August 2011 after filing of the RCOP tenant are not inclined to deposit arrears of rent so he filed I. A No. 112 of 2013 under Rule 11(4) of Rent Control Act claiming arrears of rent from the month of August 2011 to March 2013 for 19 months totally 1,90,000/- arrears. The Court below passed conditional order with the condition to deposit a sum of Rs.1,90,000/- arrears of rent. But the tenant paid only 1,00,000/- and issued post dated cheque for a sum of Rs.90,000/- and they committed disobedience of conditional order hence the rent controller rightly struck off the defence of the tenant in main RCOP and ordered for eviction as such is valid under law. Hence he prayed to dismiss this petition. Further to support his contention he relied the judgment of this Court reported in 2000 (1) MLJ 757:

" 23.....The conduct of the petitioner before the eviction petition and subsequent to the eviction petition can be taken note of by this Court. Under Rule 28(7) of the Rent Control Act, the decision of the Rent controller as well the Appellate Authority is based on the justice, equity and good conscience, the fact that there are rent arrears is proved in this



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case..."

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4.1. Petitioners and the respondents are denoted as tenants and land lords.

5. Considering the submissions on either side, and also on perusal of records, in the year 2012 RCOP was filed by the land lord for eviction of tenant under Rule 10 (2) (1) 14(1)(8) of Rent Control Act for committing default in payment of rent and also for demolition of 70 years old building in order to put up new building. On the other side, the tenant contested the RCOP proceedings. In the meanwhile, the land lord filed petition under Rule 11(4) of Rent Control Act in I.A No. 112 of 2013 claiming arrears of rent for the month of August 2011 to March 2013 (19 months X 10,000) = Rs.1,90,000/-. Thereafter on 12.11.2013 rent controller passed a preliminary order directing the tenant to pay a sum of Rs. 1,90,000/- on or before 20.01.2014. In spite of that order, the tenant paid a sum of Rs.1,00,000/- by way of cheque and for remaining 90,000/- tenant issued post dated cheque and the tenant not paid entire arrears of rent as ordered by the rent controller. Since, the tenant failed to comply with the conditional order in I.A No. 112 of 2013 rent controller struck off the defence of the tenant and passed order of eviction on 06.03.2014. Challenging the above order the



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tenant filed R.C.A NO. 68 and 69 of 2014 before the Principal Subordinate Court, Coimbatore, which held that tenant committed wilful default and also not complied with the conditional order passed by the rent controller thereby confirmed the order of the rent controller.

6. Now the learned counsel for the tenant submitted that rent controller failed to taken into note of the fact that part of the arrears was paid by the tenant in spite of that rent controller passed order of eviction as such is un fair and liable to be set aside. But on seeing the conduct of the tenant even prior to filing of the petition before the Rent Controller from the month of August 2011 to March 2013 he committed defaulted in payment of rent and also rental arrears to the tune of Rs. 1,90,000/- payable to the land lord hence the land lord filed application in I.A No. 1123 of 2013 in RCOP No. 89 of 2012 under rule 11(4) of Rent control Act claiming arrears of rent and same was ordered by the rent controller. In spite of order passed by the rent controller the tenant failed to comply with the order nor depositing entire arrears of rent. Though he paid part of the arrears of rent, It is settled proposition that if the land lord issued notice on the ground of wilful default the tenant should have paid the rental arrears forthwith in



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order to show his bonafideness. But case in hand in spite of order passed in

11(4) application tenant failed to pay entire arrears of rent and also he committed wilful default in payment of rental arrears. Further, the judgments relied by the land lord is squarely applicable to this case. Hence the order passed by the rent controller as well as order of the lower appellate Court needs no interference thereby reason assigned by the petitioner as such is not maintainable. Accordingly order passed by the Courts below is confirmed. Further the tenant is directed to vacate the premise within a period of 8 weeks from the date of receipt of a copy of this order.

7. In result, this Civil Revision petitions are dismissed. No Cost. Consequentially Connected Miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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