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C.R.P. No.2100 of 2023 &
C.M.P.No.12838 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.2100 of 2023 &
C.M.P.No.12838 of 2023**

A.Gurusamy

...Petitioner

Vs.

Kishore Subramaniam

...Respondent

Civil Revision Petition filed under Section 25 of Tamilnadu Buildings (Lease and Rent Control Act, 1960) to set aside the Judgment and decree dated 31.03.2023 passed in RCA No.50 of 2021 on the file of the Rent Control Appellate Authority / IX Judge, Court of Small Causes Chennai by confirming the order and decreetal order dated 28.11.2019 made in RCOP No1228 of 2018 on the file of the Rent Controller / XV Judge, Court of Small Causes, Chennai by allowing the present Revision.

For Petitioner : M/s R.Thenmozhi

For Respondent : Mr.N.Senthilkumar

ORDER

The present petition has been filed to set aside the Judgment and decree dated 31.03.2023 passed in R.C.A. No.50 of 2021 on the file of the Rent Control Appellate Authority / IX Judge, Court of Small Causes



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Chennai by confirming the order and decretal order dated 28.11.2019 made in R.C.O.P. No.1228 of 2018 on the file of the Rent Controller / XV Judge, Court of Small Causes, Chennai.

2. The brief facts of the case are as follows:-

The respondent filed R.C.O.P.No.1228 of 2018 seeking an order of eviction against the petitioner from the building premises and a counter was filed by the petitioner. Pending R.C.O.P, M.P.No.122 of 2019 was filed by the respondent seeking to pay the rental arrears due and payable for 14 months, viz., from March 2018 to March 2019 for 14 months at the rate of Rs.20,000/- per month, failing which, sought a direction for eviction and to stop all further proceedings in the RCOP and the court below had ordered eviction and a period of two months was granted for eviction, further, the RCOP Proceedings were stopped. As against the same, the petitioner has filed R.C.A.No.50 of 2021 and the said appal was dismissed. Aggrieved over the same, the petitioner has filed the present Revision.

3. The learned counsel for the petitioner would submit that the appellate authority has failed to note that the petitioner entered into rental agreement on 04.11.2016 and paid Rs.4 Lakhs as advance and another one lakh as caution deposit. Apart from that, the petitioner has also paid monthly rental into two bank accounts of the respondent through online



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apart from paying Rs.75,000/- by way of conditional order, therefore there is no willful default.

4. The learned counsel for the petitioner also submits that even though monthly rent was fixed as Rs.20,000/-, no amenities have been given by the respondent and not even a metro water connection has been given and the petitioner is fetching water in lorry by paying Rs.600/- every day. The appellate authority failed to note that the respondent has not produced any document to show that the petitioner has committed wilful default, thereby pleaded to set aside the order passed by both the courts.

5. Per contra, the learned counsel for the respondent submits that the respondent is the absolute owner of the premises and since the respondent is presently residing at USA, he executed the deed of special power of attorney dated 11.08.2018 and appointed the said G.Anilkumar Reddy as his power agent. The monthly rent for the premises is fixed at Rs.20,000/- exclusive of electricity and maintenance charges payable to the Tapovan Flat Owners Welfare Association for residential purpose payable on every consecutive english calendar month. Further, the petitioner is not prompt in payment of monthly rent and maintenance charges and was not in the habit of making payments in time.

6. The learned counsel for the respondent also submits that



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payments made by the petitioner will clearly reflect in the statement.

Further, the petitioner defaulted in payment of monthly rents during April 2017 and from March 2018 till the date of the filing of the RCOP (Total 8 months rent as on 5th September, 2018, total rent of 8xRs.20,000/- = Rs.1,60,000/- and maintenance charges from the inception, i.e., November, 2016 to September 2018 (22 months x Rs.2,000/- = Rs.44,000/-) The petitioner wantonly and willfully failed to pay and tender the monthly rent and the maintenance charges and he is fully aware of the consequence of non-payment of monthly rents, therefore, it is clear that the petitioner has committed willful, wanton, supine indifference and callousness, thereby pleaded to dismiss the petition.

7. Heard the learned counsel on either side and perused the documents placed on record.

8. It is pertinent to point out that a conditional order under Section 11(4) of the Act has been passed directing the petitioner / tenant to pay the arrears of rent and the same has not been complied with, therefore, the petitioner suffered a consequential order of eviction. However, without challenging the order passed in the petition filed under Section 11(4) in M.P.No.122 of 2019, the consequential order of eviction alone cannot be challenged. In the instant case, the petitioner had neither challenged the



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order passed in M.P.No.122 of 2019 nor the consequential order stopping further proceedings in the RCOP but only challenged the order of eviction, which is improper. Also, the grounds of revision filed by the petitioner is silent about the order passed in M.P.No.122 of 2019.

9. In fact, the order passed in M.P.No.122 of 2019 dated 24.10.2019 would go to show that the 'petitioner was directed to pay a sum of Rs.3,20,000/- being the arrears of rent at the rate of Rs.20,000/- per month for the period April, 2017 and from March 2018 to September 2019 (after adjustment with the advance and retaining one month rent) on or before 27.11.2019, failing which, further proceedings will be stopped in the main R.C.O.P., and eviction will be ordered and also directed to pay the subsequent future rents on or before 5th of every succeeding English calender month'.

10. It is relevant to point out that on earlier occasion, viz., 05.07.2023, the learned counsel for the petitioner submitted that as per the order dated 24.10.2019 in M.P.No.122 of 2019 in R.C.O.P.No.1228 of 2018, the petitioner had paid a sum of Rs.75,000/- by way of Demand Draft on 08.06.2021 and sought time to pay the balance amount. Accordingly, this Court granted time till 03.08.2023 and directed to pay the balance amount of Rs.2,45,000/- and directed to list the matter on 04.08.2023,



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thereby Interim stay was granted.

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11. Subsequently, on 31.08.2023, an affidavit has been filed by the petitioner stating that the petitioner has no business and his daughter is a special child and seriously ill and his mother is a senior citizen, therefore, he was not able to raise funds. The said circumstances were explained in detail to the counsel for the respondent and he spoke with the respondent for amicable settlement. Thereafter, the respondent had waived all the arrears of rent, in the event of the petitioner hands over the key on or before one month. Further, the petitioner is searching for the house and making arrangement to shift his family. Therefore, sought time to vacate the house till 31.12.2023 and handover the key along with possession on 01.01.2024.

12. Considering the facts and circumstances of the case and taking note of the medical report filed by the learned counsel for the petitioner from MIOT International, which shows that petitioner's daughter is a special child and undergone Tetralogy of Fallt Complete Repair 2020 and that holter reveals complete heart block and that the petitioner undertook by way of an affidavit to vacate and handover the possession of the property to the respondent on 31.12.2023, this Court, hereby directs the petitioner to vacate the premises and handover the possession to the respondent on



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31.12.2023 and the respondent shall take possession on 31.12.2023.

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In view of the above, the present Revision is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

31.10.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Rent Control Appellate Authority / IX Judge,

Court of Small Causes Chennai

2. The Rent Controller / XV Judge,

Court of Small Causes, Chennai



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V.BHAVANI SUBBAROYAN J.

ssd

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