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CRP No.2206 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

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1.K.M.Abdul Rahman (died)
2.Mariyama Kutty P.
3.Bushra K.T
4.K.M.Jaseela
5.Muammed Jamsheer K.M
6.Jahana Shirin K.M
7.Jasna Thasneem K.M
8.Jadwa Bathool K.M
(Petitioners 2 to 8 brought on record as LR's
of the deceased 1st petitioner vide Court order
dated 20.09.2019 made in CMP No.13057/21)

.... Petitioners

Vs

Dessawala Estate
Rep by its Co-owner Taherbhai,
No.21, Errabalu Chetty Street,
Chennai-600 001

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgement and decree passed by VIII Judge, Court of Small Causes, Chennai made in RCA No.567 of 2014 dated 07.12.2018, confirming the fair and decretal order passed by XIII Judge, Court of Small Causes, Chennai in RCOP No.2060 of 2011 dated 25.07.2014.



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For Petitioners : Mr.S.Sridhar

For Respondent : Mr.A.Babu

ORDER

This civil revision petition arises against the concurrent findings of eviction. There is no dispute in the relationship of landlord and tenant. There is no dispute in the amount of rents payable by the tenant to the landlord. The dispute is one on wilful default.

2. The landlord invoked Section 10(2)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act. He alleged that rents had not been paid from September 2007 till filing of the RCOP in December 2011. According to him, the default was amounted to Rs.30,000/-.

3. The defense of the tenant was that he had paid the municipal and water taxes that had been demanded by the statutory authorities and therefore, he is entitled for adjustment of a sum of Rs.55,238/- towards the rent.

4. The Rent Controller found that the default period which is September 2007 is wrong because the landlord himself admitted that the rent had been



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paid till May 2008. Apart from that, the Rent Controller also found that there was no demand by Corporation of Chennai or by CMWSSB on the tenant to pay the amount, which would entitle him to adjust the amounts paid against rentals.

5. On the contrary, the evidence was that notice to pay the arrears was given only to the landlord, but, the tenant had paid the same. The Rent Controller ordered eviction in RCOP No.2060 of 2011, which was confirmed in RCA No.567 of 2014.

6. I have heard Mr.S.Sridhar, learned counsel for the revision petitioners and Mr.A.Babu learned counsel for the respondent.

7. Mr.S.Sridhar assails the impugned judgment on two grounds –

(1) that all the co-owners did not join the petitioner and file the eviction petition and

(2) the taxes which had been paid by the tenant were not accounted for by the landlord.



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He would rely upon the judgment of this Court in order to substantiate his case.

It is the case of *M.K.Sankaran vs S.Birlasekaran and another* reported in **1998 2 L.W 123**

8. Mr.A.Babu, learned counsel appearing for the respondent would contend that both grounds are not available. He urges that this revision being against concurrent findings of the fact, this Court should not re-appreciate the evidence.

9. I have heard the arguments made on either side and perused the records.

10. On the first argument that only one co-owner has filed RCOP, it has now been settled by a catena of judgments that one co-owner can maintain a RCOP and the possession taken by him is for and on behalf of all the co-owners. Therefore, the first argument fails.

11. Insofar as the second argument is concerned, I am unable to agree with Mr.S.Sridhar for the simple reason that the notice of which he has invited



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my attention to, Ex.R.10, is addressed to the landlord. It is not in the name of the tenant. At no point of time, during the proceedings, either Corporation of Chennai or CMWSSB called upon the tenant to pay arrears, by way of distraint notice, permitting him to adjust the payment against rentals.

12. Insofar as the judgment cited by the learned counsel for the petitioners, careful perusal of the same would show that in that case, not only had the tenant paid the taxes upon being called upon specifically, but had also sent the entire arrears by way of rentals immediately to the landlord on a demand being made. Apart from that distraint notice was issued to the tenant and only in order to avoid those proceedings, the payment has been made. In that particular case, Ex.R.7 was specifically addressed to the tenant to pay the arrears and in case of default, it was specifically stated that the authorities will proceed against the occupier. Both the situations do not arise in the present case. Therefore the judgment in the case of ***M.K.Sankaran vs S.Birlasekaran and another*** reported in ***1998 2 L.W 123*** does not arise.

13. No other point was addressed before me. I am not agreeable with both the points raised. Therefore, I have to confirm the order passed by VIII



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Judge, Court of Small Causes, Chennai in RCA No.567 of 2014 dated

07.12.2018 in confirming the order passed by XIII Judge, Court of Small Causes, Chennai in RCOP No.2060 of 2011 dated 25.07.2014 and Civil Revision Petition is dismissed.

14. Considering the fact that the tenant has been in occupation for more than 50 years, I am inclined to grant time for eviction till 31.03.2024. The time granted is on the following conditions:-

(i) That the tenant shall file an affidavit of undertaking that they will not induct any fresh person into the property;

(ii) That the tenants will hand over peaceful possession of the property on or before 31.03.2024;

(iii) All the arrears will be paid and the tenants shall continue to pay rent as long as they are in occupation of the premises.

(iv) Time is granted till 31.07.2023 to file affidavit of undertaking.



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(v) In case, the tenants do not file affidavit of undertaking on or before 31.07.2023, the landlord is free to proceed with eviction.

In the result, Civil Revision Petition is dismissed. No costs.

26.07.2023

Index:Yes/No

Speaking order/Non-speaking order

sr

To

1. VIII Judge, Court of Small Causes, Chennai
2. XIII Judge, Court of Small Causes, Chennai



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V.LAKSHMINARAYANAN,J.,

SR

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