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C.R.P.No.1671 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1671 of 2021
and
C.M.P.No.12937 of 2021

K.Mohanraj

.. Petitioner

VS

R.Adikesavan

.. Respondent

Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree dated 22.02.2021 made in RCA No.322 of 2017 passed by the learned VIII Judge, Court of Small Causes, Chennai, confirming the order and decree dated 16.02.2017 made in R.C.O.P. No.1736 of 2014 passed by the learned XVI Judge, Court of Small Causes, Chennai.

For Petitioner	:	Mr.M.Lakshmipathi for Mr.S.Ganesh
For Respondent	:	Mr.V.Shivakumar for Mr.P.B.Ramanujam



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ORDER

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The tenant is the revision petitioner. The respondent is the landlord. For the sake of convenience, the parties shall be referred to as landlord and tenant.

2. The tenant entered into possession of the schedule mentioned property under a lease agreement with Late Ranganathan, the father of the present landlord. There is no dispute in the jural relationship or the monthly rent payable. The monthly rent on the date on which RCOP was filed was Rs.2,800/-. The period of default was from July, 2013 to September, 2014. Since it went beyond the period contemplated under Section 10(2)(1) of CPC, the petition was filed only on the ground of wilful default.

3. It is the case of the tenant that he had been paying rents from 1998 till October, 2013 without any default. According to him, for the reasons best known to the landlord, who was not in the habit of issuing receipts, he refused to receive the rents for the period upto October, 2013. Therefore, he caused a notice on 21.12.2013 and presented a petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The said



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petition was taken on file as RCOP No.341 of 2014. The landlord's wife examined herself as a witness and produced five documents. The respondent examined himself as witness and marked two documents. The learned Rent Controller came to a conclusion that there is no explanation for the period from July, 2013 till the date of filing of RCOP and came to a conclusion that there is wilful default and ordered eviction. This order was appealed against before the learned VIII Court of Small Causes in RCA No.322 of 2017. The said RCA No.322 of 2017 was dismissed on 22.02.2021, against which, the present civil revision petition is filed.

4. Heard learned counsel on either side and I have carefully gone through the records.

5. As I have already premised, there is no dispute with the relationship between the parties. The period of default has arisen from July, 2013 till September, 2014. Though, the tenant had pleaded that till October, 2013, he had paid the rents, he has not tendered any evidence before the Court. The factum that the relationship between the parties is strained even before the presentation of the RCOP is clear from Exs.P2 to P5, which are the suit filed in O.S.No.6098 of 2013 and the Section 8(5) petition filed



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under RCOP No. 341 of 2014.

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6. When the relationship between the parties are strained, the tenant should have been cautious to have a record for payment of rents. The tenant has not produced any records to substantiate the same. The receipt that has been produced by the tenant under Ex.R1 also relates to the deposit that was made by him pursuant to the order passed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The fact that the landlord was pushed to file an application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act for the purpose of clearing of the arrears makes me to infer that there was a default. The payment having been made after being coerced by an order of the Court constrains me to conclude the said default is wilful.

7. Now, if I turn to the petition filed in RCOP No.341 of 2014, the said petition came to be dismissed following the judgment of the Supreme Court reported in *E.Palanisamy v Palanisamy* (2003) 1 SCC 123. Both the learned counsel agree that no appeal has been preferred against the said judgment and decretal order dismissing the petition under Section 8(5) of the Act.



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8. The attempt of the tenant to prove that the default is only from October, 2013 onwards having failed by the dismissal of Section 8(5) petition and having attained finality as the same was not appealed against, I am not in a position to accept the argument of the learned counsel for the petitioner that the default period commenced only in October, 2013.

9. In fine, the default being wilful, I am constrained to confirm the order and decreetal order in RCA No.322 of 2017 dated 22.02.2021 in confirming the order and decreetal order in RCOP No.1736 of 2014 dated 16.02.2017.

10. At this stage, learned counsel for the petitioner seeks sufficient time to vacate and handover the possession. Learned counsel for the respondent submits that the landlord will not accede to more than three months.

11. In the interest of justice and considering the fact that the petitioner has been in occupation of the premises from 1998, nine months time is granted for vacating and handing over the



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possession. In order to get the benefit of time, the petitioner will have to file an affidavit of undertaking that he will pay the rents without any default. Both sides agree that there is no default pending this revision and that the rents are being paid on time. The learned counsel for the landlord undertakes to refund the advance of Rs.50,000/- received by Mr.Ranganathan from Mr.Mohanraj at the time Mr.Mohanraj hands over the possession. The said affidavit shall be filed before this Court on or before 27.09.2023.

12. With the above directions, the civil revision petition stands dismissed. No costs. Connected miscellaneous petition is closed.

13. List on 29.09.2023 for 'reporting compliance'.

22.09.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

1. The VIII Judge,
Court of Small Causes, Chennai.



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2. The XVI Judge,
Court of Small Causes, Chennai.

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V. LAKSHMINARAYANAN,J.

ssm

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