



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on 28.03.2023	Orders Pronounced on 01.12.2023
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THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.414 of 2020
and C.M.P.No.2149 of 2020

M/s. Crescent Auto Repairs and Services India Private Ltd.,
Rep. by its Director A.K.Abdullah,
No.9, Cenotaph Road,
Alwarpet,
Chennai – 600 018.

... Petitioner

Vs.

M/s.Chennaivazh Kovilpatti Nadar Uravinmurai Sangam (Reg.No.45/1984),
Rep. by its President Mr.K.Ramasamy Nadar,
No.43, (18/1), Lattice Bridge Road,
Adyar,
Chennai – 600 020.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree made in R.C.A.No.673 of 2014 dated 09.07.2019 on the file of the learned VIII Small Causes Court, Chennai confirming the order and decretal order passed in R.C.O.P.No.1322 of 2012, dated 22.09.2014 on the file of the learned Rent Controller/XVI Small Causes Court, Chennai.

For Petitioner : Mr.R.Sagadevan



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For Respondent

: Mr.S.Packiaraj

ORDER

This Civil Revision Petition had been filed seeking to set aside the judgment and decree dated 09.07.2019 made in R.C.A.No.673 of 2014 on the file of the learned Judge, VIII Small Causes Court, Chennai confirming the order and decretal order passed in R.C.O.P.No.1322 of 2012, dated 22.09.2014 on the file of the learned Rent Controller/XVI Small Causes Court, Chennai.

2.The brief facts, which are necessary to decide this Civil Revision Petition, are as follows:-

2.1.The Petitioner is the tenant under the Respondent. The Respondent/ 'Chennaivazh Kovilpatti Nadar Uravinmurai Sangam' is registered under the Tamil Nadu Co-operative Societies Act, having registration No.45 of 1984. The Petitioner was inducted as a tenant in the demised property in the year 1999 on a monthly rent of Rs.1,31,200/-. The Petitioner had been running authorised Maruti Car Service Station in the leased out premises. He had been regularly paying the rent. While so, the President Thiru.L.M.Krishnasamy offered to sell the property to the tenant and they entered into a sale agreement by which the Petitioner/tenant paid a sum of Rs.1,00,00,000/- (Rupees One



Crore only) as advance as per the sale agreement deed dated 26.09.2007

entered into between the President of the said Sangam and the Petitioner.

Subsequently, there had been some misunderstanding between the Office bearers of the said Sangam. Therefore, they filed a suit in O.S.No.1059 of 2008. Due to the misunderstanding, the President of the Sangam who had entered into sale agreement with the Petitioner was removed from the Presidentship of the Sangam. The successor Office-bearers directed the Petitioner to vacate and hand over the possession since there was a dispute between the Office-bearers. The Petitioner had filed a civil suit in C.S.No.23 of 2012 before the Original Side of this Court for specific performance of contract for sale. As per Clause 3 of the sale agreement, full sale consideration had been paid. The successor Office-bearers had instituted R.C.O.P.No.1322 of 2012 as though the Petitioner as tenant had committed willful default. Since he had entered into sale agreement with the landlord and had paid the substantial amount towards sale consideration, the successor Office-bearers had arrived at a conclusion that the Petitioner had not paid rent. They could have adjusted from the amount of Rs.1,00,00,000/- (Rupees One Crore only) lying in the bank account of the said Sangam. Instead, they had instituted R.C.O.P.No.1322 of 2022. The Petitioner sought permission of this Court to deposit the rent into the credit of C.S.No.23 of 2012. As per Clause 3 of the sale agreement, the



total consideration was deposited on the Original Side of this Court by the Petitioner. Therefore, he need not pay rent to the landlord. Due to the misunderstanding between the President of the Sangam, who had entered into sale agreement with the Petitioner and other Office-bearers the Petitioner insisted for execution of the Sale Deed and therefore, had filed the Civil Suit in C.S.No.23 of 2012. The successor Office-bearers had instituted the Rent Control Original Petition as though the Petitioner had committed willful default. It is not so. The Petitioner was regular in payment of the rent. Only after entering into the sale agreement, the Petitioner could not pay the rent as there was a misunderstanding between the Office-bearers of the said Sangam. The Petitioner had already deposited the entire balance of sale consideration as per Clause 3 of the sale agreement into Original Side of this Court. Expecting that the dispute between the Office-bearers will be resolved and Sale Deed will be executed in favour of the Petitioner, the Petitioner could not pay the rent. Thiru. Krishnasamy, the then President had entered into the sale agreement because the property was purchased by obtaining loan from REPCO Bank and it was mortgaged. They were unable to repay the loan. In order to release the mortgage, the then President of the said Sangam offered to sell the property on condition that the Petitioner clears the mortgage. The Petitioner paid a some of Rs.27,34,529/- on 08.09.2007 to REPCO Bank. The balance sale consideration



was Rs.5,00,50,000/- (Rupees Five Crores and Fifty Thousand only). Only due

to the misunderstanding between the members of the Office-bearers of the Sangam, the Petitioner was unable to perform his part of contract. Therefore, he had filed Civil Suit in C.S.No.23 of 2012 on the Original Side of this Court. This Court was pleased to pass an interim order whereby any alienation or encumbrance of the suit property is subject to the disposal of the suit. After filing the suit, the Petitioner as tenant had paid the rent to the Sangam without any default. On the date of entering into the lease agreement, the Petitioner had paid advance of Rs.10 lakhs. The leased out premises is 2½ grounds. The Sangam purchased the land by availing loan from REPCO Bank. The property of the Sangam was 2½ grounds in Adyar on Latice Bridge Road. The Petitioner had taken on lease the 2½ grounds property belonging to the Respondent Sangam on a monthly rent of Rs.1,31,200/- and paid advance of Rs.10 lakhs. The Petitioner had been regularly paying the rent without any default. The Petitioner had been conducting business of servicing Maruti cars under the Maruti authorised service station.

2.2.While so, for the default committed by the said Sangam, the REPCO Bank attempted to bring the property to sale by public auction. Therefore, the then President Krishnasamy entered into a sale agreement with the Petitioner



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by which the Petitioner offered to clear the mortgage loan and also to pay the entire sale consideration after clearing the loan. At that stage, there was misunderstanding between the Office-bearers of the Sangam. The Petitioner had already paid a sum of Rs.1,00,00,000/- (Rupees One Crore only) towards advance from which the vendor Krishnaswamy had paid a sum of Rs.27,34,529/- towards settling the loan to REPCO bank. At that stage, one Tamizharasan had filed O.S.No.1049 of 2008 before the City Civil Court seeking injunction against Krishnasamy. Due to the filing of the suit in O.S.No.1049 of 2008, the Petitioner was unable to pay the rent. Therefore, he had filed a suit in C.S.No.23 of 2012 before this Court for specific performance of the contract for sale. While filing the suit, he had deposited the entire balance sale consideration on the original side of the High Court. The successor Office-bearer one Tamizharasan, who specifically claims to be the Honorary President of the said Sangam, had instituted the suit in O.S.No.1049 of 2008 on the file of the City Civil Court, Chennai, and had filed the R.C.O.P.No.1322 of 2012 as though the Petitioner had committed willful default. During the pendency of the R.C.O.P.No.1322 of 2012, the Petitioner as Respondent in R.C.O.P.No.1322 of 2012 had deposited the arrears of rent. In the R.C.O.P.No.1322 of 2012 the Petitioner as Respondent filed counter affidavit disputing the claim of default of rent and stating clearly that the civil



suit had been filed before the original side of this Court and the same is pending.

2.3.The learned Rent Controller allowed the R.C.O.P.No.1322 of 2012 and directed the Revision Petitioner herein as tenant to vacate and hand over the possession. Aggrieved by the same, the Petitioner had filed R.C.A.No.673 of 2014 against R.C.O.P.No.1322 of 2012. The learned VIII Judge, Court of Small Causes as Rent Control Appellate Authority dismissed the appeal confirming the order passed by the learned Rent Controller/XVI Judge, Court of Small Causes, Chennai. Aggrieved by the same, the present Civil Revision Petition has been filed seeking to set aside the order of eviction passed by the learned XVI Judge, Court of Small Causes and confirmed in appeal by the learned VIII Judge, Court of Small Causes, Chennai.

3.The learned Counsel for the Respondent vehemently objected to the line of arguments made by the learned Counsel for the Revision Petitioner stating that the order passed by the learned Rent Controller/XVI Judge, Court of Small Causes, Chennai, dated 22.09.2014 is a well reasoned order. The sale agreement alleged to have been executed by the former President of the said Sangam is an unenforceable contract. The Petitioner as tenant colluded with



him to usurp the property of the Sanagam. Therefore, only there was misunderstanding between the members of the Sangam, which culminated in filing of the Civil Suit in O.S.No.1049 of 2008 in favour of Mr.Tamizharasan by the City Civil Court in which injunction was granted against Krishnasamy and the Petitioner. The Revision Petitioner herein had filed R.C.A.No.673 of 2014 during the pendency of the appeal also the tenant committed willful default. Therefore, the same was pointed out to the learned Rent Control Appellate Authority. The Revision Petitioner herein as Appellant in R.C.A filed a memo depositing the arrears of rent. Therefore, in the appeal the learned Appellate Judge, Rent Control Appellate Authority had given a finding that during the pendency of appeal also the tenant committed willful default and only on direction the tenant had paid entire arrears of rent. That will not create circumstances favouring the tenant. Till the R.C.O.P was filed, the Petitioner was in default was available to the learned Rent Controller in the course of the evidence available before the learned Rent Controller. Therefore, the learned Rent Controller had passed orders favouring the landlord. In the appeal, the order passed by the learned Rent Controller was considered and the appeal was rejected confirming the order of the learned Rent Controller. This Civil Revision Petition has no merits and it is to be dismissed. Also the learned Counsel for the Respondent submitted that the concurrent finding cannot be



reversed by exercising powers of revision of this Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Only if there is any technicality of law involved or error due to the technicality of law this Court can exercise discretion. Therefore, the learned Counsel for the Respondent sought to dismiss this Civil Revision Petition as having no merits.

4. Point for consideration:

Whether the order passed by the learned XVI Judge, Court of Small Causes, Chennai in R.C.O.P.No.1322 of 2012 allowing R.C.O.P for eviction directing the tenant to hand over possession and confirmed in appeal in RCA No.673 of 2014, dated 09.07.2019 are perverse and is to be set aside?

5. On consideration of the rival submissions and on perusal of the petition and counter in R.C.O.P.No.1322 of 2012, evidence of the landlord as P.W-1 and documents under Exs.P-1 to P-10, evidence of the tenant as R.W-1 and the documents on the side of the tenant as Exs.R-1 to R-7. On perusal of the order passed in R.C.O.P.No.1322 of 2012, dated 22.09.2014 it is found that there is sufficient evidence on the side of the tenant as Respondent to prove his contention that there had been dispute between the office bearers of the Chennaivazh Kovilpatti Nadar Uravinmurai Sangam and the fact that the tenant/Respondent in R.C.O.P.No.1322 of 2012 having filed suit for specific



performance before the Original Side of the High Court in C.S.No.23 of 2012 and the interim order passed by the Hon'ble High Court in O.A.No.27 of 2017 in C.S.No.23 of 2012 in favour of the Tenant who is the purchaser of the property stating that any alienation or encumbrance or any other agreement or arrangement in respect of the suit property pending the suit either by the Sangam or any other members including the second Respondent Tamizharasan who claimed to be the Honorary President of the Sangam is subject to *lis pendence* and in that event, the applicant succeeding in the main suit, the decree that may be passed is binding not only on both the Respondent but also its other members or any party who claimed any right under any document under the Sangam or its members. As pointed out by the learned Counsel for the Revision Petitioner herein the learned Judge had misdirected himself and in the concluding portion of the order observed as follows:-

“The sale agreement dated 26.09.2007 was marked as Ex.P-1. On perusal of the sale agreement, it is found that in clause (3), the purchaser hereby agrees that the present monthly rent at the rate of Rs.58,553/- (Rupees Fifty eight thousand five hundred and fifty three) shall continue to be permitted for the period of three years after deduction of the applicable TDS (Tax deducted at source) under the rules of the Income Tax. Upon completion of the instalments mentioned above towards the sale consideration, the purchaser shall stop paying the rent and the vendor shall execute and register a Sale Deed in the name of the purchaser or its nominee/s.”

6. The learned Rent Controller/XVI Judge, Court of Small Causes had in his order in R.C.O.P. also observed as follows:

“Admittedly, after the sale agreement a few installments were



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paid. Thereafter, the suit was filed before the Hon'ble High Court for specific performance of sale agreement. While that be so, the sale itself is not concluded. Moreover, as per the agreement the Respondent has not completed the instalment. But the Respondent stated that they have paid the entire Sale Consideration into the Court that is subject to the outcome of the Civil Suit.”

7.The learned Counsel for the Tenant (Respondent before the Rent Controller) relied on the following decisions:

7.1. **1997 (III) CTC 39** wherein the Hon'ble High Court held that Tenant is bound to pay rent even if the landlord enters into agreement of sale unless there is specific recital not to pay rent in sale agreement.

7.2.The case which is reported in **2013 (2) CTC 152 [Muthuramalingam vs. Raju and others]** wherein the Hon'ble High Court held that the landlord cannot retain more than one month the advance – Landlord ought to have adjusted advance amount towards arrears of rent – It is not necessary that the tenant should approach the landlord with request to adjust the arrears towards part of advance amount.

7.3.Similarly a case which is reported in **2012 (5) CTC 283 [Latha and one another vs. L.Thangaraj]** wherein the Hon'ble High Court held that when total amount due to the landlord as arrears of rent is far below advance amount available with him. Landlord cannot complain of “willful default”.

7.4. In **2004 (2) MLJ 107 [Sharbudin and others vs. K.Subramani]** the



Hon'ble High Court held that the landlord is bound to adjust the excess amount lying with the landlord.

7.5. In **2009 (9) SCC 339 [R.Kanthimathi and another vs. Beatrice Xavier]** the Hon'ble Supreme Court held that the landlady alleging breach by appellant and repudiating agreement by returning the Rs.20,000/- by cheque.

8. The facts in the case herein is between the landlord Chennaivazh Kovilpatti Nadar Uravinmurai Sangam and the tenant/Petitioner herein. It is the case where the tenant had not paid subsequent installments as per the sale agreement thereafter the Respondent filed Civil Suit. Therefore, the facts of the reported decisions are not applicable to the facts of the present case is the observation of the learned Judge. Here is a case where there is proof that on the date of entering into the sale agreement the tenant as purchaser had paid advance of Rs.1,00,00,000/- (Rupees One Crore only) and agreed to pay in 36 monthly installments of Rs.2,50,000/- per month. After entering into sale agreement there had been dispute between the office bearers of the Chennaivazh Kovilpatti Nadar Uravinmurai Sangam. The office bearers' rivals directing the tenant not to pay rent to the erstwhile President Thiru.Krishnasamy who had entered into sale agreement with the tenant. Therefore, in the counter in RCOP, the tenant had clearly stated the facts that



till the dispute arose, the Revision Petitioner herein as tenant as Respondent in the Rent Control Court had been paying the rent continuously from the date of inception of the lease. Only after entering into the sale agreement, dispute arose and he had issued a legal notice requesting the parties to amicably settle the dispute between them so that he can purchase the property. Also in the sale agreement it is stated that out of Rs.1,00,00,000/- he had paid, Chennaivazh Kovilpatti Nadar Uravinmurai Sangam had to release the mortgage executed with the REPCO Bank. The person who had entered into sale agreement with the tenant viz., Krishnasamy had filed RCOP for eviction of the tenant as though he had committed willful default. Thiru.Krishnasamy/Petitioner in RCOP No.1322 of 2012 had examined himself as P.W-1. In the cross examination he had admitted that he entered into sale agreement with the tenant, the Respondent in R.C.O.P. regarding the suit instituted by his rival in the Sangam, Thiru.Tamizharasan he claims ignorance.

8.1. He also claimed ignorance regarding the institution of the suit for specific performance by the tenant as per purchaser/agreement holder before the Hon'ble High Court. He had denied the suggestion of the learned Counsel for the tenant that only because of the dispute among office bearers of the



Sangam the tenant was unable to pay the rent. P.W1 in RCOP No.1322 of 2012

President of the Sangam Thiru.Krishnasamy had clearly admitted that the tenant had paid rent already from the inception of the suit till the date of filing of R.C.O.P. After filing of the RCOP, he had paid the arrears of rent into Court. Therefore, the learned Rent Controller failed to appreciate the contention of the tenant that he had already paid advance amount of Rs.1,00,00,000/- (Rupees One Crore only). If at all there had been arrears of rent, he could have adjusted from that. Instead the learned Judge had stated in the order that here is the case where the Respondent had not paid subsequent instalments as per the sale agreement thereafter the Respondent filed suit and the same is pending, the learned Judge had admitted that the Respondent therein/Tenant had filed suit for specific performance and it is pending. While so, the learned Rent Controller had acknowledged that as per the sale agreement Rs.1,00,00,000/- (Rupees One Crore only) had been paid to the office bearers of the Sangam. Therefore, they can very well adjust it from the advance as well as from the advance in the lease agreement Rs.10,00,000/- (Rupees Ten Lakhs only). Whereas the learned Rent Controller had stated that finding the ruling relied by the learned Counsel for the Tenant/Respondent that the landlord is bound to adjust the amount lying with them as per the reported ruling in **2004 (2) MLJ 107 [Sharbudin and others vs. K.Subramani]** also the



ruling reported in **2012 (5) CTC 283 [Latha and one another vs.**

L.Thangaraj] wherein the Hon'ble Supreme Court held that when total amount due to landlord as arrears of rent is far below advance amount available with landlord, the landlord cannot complain of willful default. Whereas he misdirected himself stating that those decisions are not applicable to the facts of the case and allowed the RCOP for eviction. Aggrieved by the order of eviction, the tenant had filed RCA No.673 of 2014. The learned Rent Control Appellate Authority failed to consider the grounds of appeal. The learned Rent Control Appellate Authority had discussed about Section 7(2)(a)(b) of the Tamil Nadu Buildings Lease and Rent Control Act which states that excess amount with the landlord can be adjusted by the landlord for arrears of rent but states that the tenant had not exercised option for refund or to adjust. Also, the learned Judge had in paragraph 33 to 36 observed as follows:

“33.Even in the Narasimha Tao case the Hon'ble Supreme Court had held that the arrears of rent can be adjusted from advance amount at the option of the tenant, but here the tenant has not made any oral request or written request by way of notice to the landlord to adjust the arrears of rent from advance money despite Ex.P-6 notice has been issued by the Counsel for landlord dated 11.06.2012 claiming the arrears of rent for three months.

34. Now this authority come to the sale agreement entered in between the parties, Ex.P-1 is the sale agreement dated 26.09.2007 entered in between the tenant/appellant and respondent, the total sale price was fixed at Rs.6,50,00,000/-, advance amount of Rs.1,00,00,000/- has been paid by the tenant to the respondent, the remaining sale consideration shall be paid by the agreement holder in installments as stated clause II of the sale agreement, property



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was mortgaged by respondent in the REPCO bank for a sum of Rs 27,34,529/-, At this juncture it would be more useful to extract clause 3 of Ex P1 for better appreciation.

"The purchaser hereby agrees that the present month y rent at the rate of Rs.58,553/- shall continue to be remitted for the period of 3 years after deduction of the applicable TDS (Tax deducted at source) under the rules of the Income Tax. Upon completion of the installments mentioned above towards the sale consideration, the purchaser shall stop paying the rent and the vendor shall execute and register a Sale Deed in the name of the Purchaser or its nominee/s."

35. It is seen from the clause 3 of the Ex P1 and it is made clear that the tenant shall pay monthly rent for 3 years from the date of execution of Ex.P-1 after deduction of TDS, if all the instalments of payment have been made by the tenant mentioned in the clause 2 of the Ex.P-1, he can stop the payment of rent, admittedly the tenant has filed civil suit in CS.23/12 on the file of Honorable Madras High Court for the relief of specific performance based on the Ex.P-1 sale agreement, on perusal of Ex P9 and 10 this authority is came to know that the appellant/tenant did not deposit the balance sale consideration before Honorable Madras High Court till 09.01.2014, because he has filed application No.335/14 in CS.23/12 for seeking permission of court to deposit the remaining sale consideration, therefore it is made clear from Ex.P-9 and P10, the tenant did not deposit the entire sale consideration till 09.01.2014, so according to clause 3 of Ex.P-1 the tenant is able to pay monthly rent till he made entire sale consideration to the respondent Sangam.

36. It is pertinent to note that the tenant himself sent a letter to the respondent under Ex P4 agreed to pay enhanced rent from Rs.1,31,200/- to Rs.2,01,000/- with effect from 01.08.2011, when the tenant himself admitted that he agreed to pay monthly rent at Rs.2,01,000/- from 01.08.2011 and then he has not deposited the entire sale consideration before Honorable Madras High Court in CS.2:/12 till 09.01.2014, cannot take such a stand that he need not to pay monthly rent in pursuance of clause 3 of the Ex P1, it is further reveal d from clause 13 of the Ex P1 is that the appellant is in the possession of the property as a tenant, when the mortgage with Repco Bank discharged by the respondent Sangam, the appellant shall also deemed to be in possession in part of



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performance, there is no documentary evidence produced by either party to show that the mortgage has been discharged from Repco Bank, therefore this authority is safely come to conclusion that the appellant is in the possession of property as a tenant not as a purchaser.”

9. In the final portion it is stated that more over the subject matter of Ex.P-1 is pending before the Hon'ble High Court in C.S.No.23 of 2012, therefore, the authority has no power to decide the validity of Ex.P-1 since the possession of the property has not been handed over to the Appellant in pursuance of Ex.P-1 and quantum of rent is very well stated in Ex.P-4, the judgment relied by the Counsel for the Appellant reported in **1999 (1) CTC 339** is not applicable to the facts and circumstances of the present case. The appellant is liable to pay Rs.2,01,000/- from March, 2012 to June 2012. During the pendency of the appeal, the Appellant had paid arrears of rent and had also admitted that during the pendency of the rent proceedings, since the landlord refused to accept cheque the tenant had deposited rent into Court and as per order in RCA No.85 and 86 of 2012 the earlier order of the Rent Controller in MP No.370 of 2012 striking out the defence of the tenant and directing the tenant to hand over possession in RCOP 1322 of 2012. The earlier order was set aside in Appeal in RCA Nos.85 of 2013 and 86 of 2013 was also not considered. When the civil suit is pending and the tenant had as purchaser already paid Rs.1,00,00,000/-, the same was not at all considered.



Therefore, the contention of the landlord that from March to June 2012 there was default in payment of rent cannot at all be accepted considering the fact that while entering into lease agreement Rs.10,00,000/- was paid to the Sangam by the tenant. Subsequently after entering into a sale agreement as per Ex.P-1 marked before the Rent Controller, Rs.1,00,00,000/- (Rupees One Crore only) is available with the Sangam. While so, they could have adjusted it. Instead a false case was instituted in RCOP No.1322 of 2012. Therefore, the order of the learned Rent Controller in RCOP No.1322 of 2012, dated 22.09.2014 is found to be perverse in the light of the reported ruling cited by the learned Counsel for the Tenant in **2013 (2) CTC 152 [Muthuramalingam vs. Raju and others]**, **2012 (5) CTC 283 [Latha and one another vs. L.Thangaraj]**, **2004 (2) MLJ 107 [Sharbudin and others vs. K.Subramani]** and **2009 (9) SCC 339 [R.Kanthimathi and another vs. Beatrice Xavier]**.

10.The learned Counsel for the Respondent had furnished the type set wherein he had furnished the copy of the order dated 27.04.2022 passed by the Hon'ble High Court in the Scheme Suit C.S.[Comm.Div] No.673 of 2012 instituted by R.Jayaveera Pandian and N.Tamizharasan as Plaintiffs, the office bearers have no right to enter into a sale agreement or to mortgage the property with any of the parties. The order dated 22.09.2014 passed by the learned Rent



Controller in RCOP No.1322 of 2012 is against the reported ruling cited by the learned Counsel for the Tenant/Respondent before the learned Rent Controller.

The Rent Control Appellate Authority had confirmed the order of the learned Rent Controller by observing that the Rent Control Appellate Authority cannot go into merits of the suit for specific performance filed by the tenant before the Hon'ble High Court and rejecting the rulings cited by the learned Counsel for the Appellant before the learned Rent Control Appellate Authority/VIII Small Causes Court, Chennai stating that the landlord can adjust the amount in excess of one month rent already paid as advance amount in the hands of the landlord and landlord cannot claim default in payment of rent. Under those circumstances, the order passed by the learned Rent Controller in RCOP No.1322 of 2012 dated 22.09.2014 and the order passed by the learned Rent Control Appellate Authority/ learned VIII Small Causes Court, Chennai in RCA No.673 of 2014, dated 09.07.2019 are found to be perverse in the light of the reported rulings in **2013 (2) CTC 152 [Muthuramalingam vs. Raju and others]**, **2012 (5) CTC 283 [Latha and one another vs. L.Thangaraj]**, **2004 (2) MLJ 107 [Sharbudin and others vs. K.Subramani]** and **2009 (9) SCC 339 [R.Kanthimathi and another vs. Beatrice Xavier]**.

11. The learned Counsel for the Revision Petitioner/Tenant relied on the



following rulings:

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11.1. In **(2003) 3 SCC 282 [Chordia Automobiles vs. S.Moosa and others]** the Hon'ble Supreme Court has observed as follows:

“Civil Appeal No. 14762 of 1996¹, decided on February 29, 2000 A. Rent Control and Eviction Notice Period of, regarding default in payment of rent T.N. Buildings (Lease and Rent Control) Act, 1960 (18 of 1960) - - S. 10(2)(i), Expln. I - Default in payment of rent to be construed to be wilful, if the default continues beyond two months of the issue of notice by the landlord- Held, the statute confers a benefit on the tenant so that default matures into wilful default only where it continues for more than two months from the date of the notice - Thus where the landlord files a petition for eviction under S. 10(2)(i) for default before the expiry of the mandatory notice period, the case cannot be held to be one of wilful default Landlord issuing notice regarding default and also claiming enhanced rent for a certain period - Filing eviction petition under S. 10(2)(i) on ground of wilful default before expiry of two months - Rent Controller fixing and ordering payment of interim rent under S. 11 Appellant-tenant depositing amount due at first opportunity and continuing to do so- Rent Controller decreeing petition for eviction Appellate authority dismissing appeal Held, High Court erred in dismissing the appellant tenant's revision petition T.N. Buildings (Lease and Rent Control) Act, 1960 (18 of 1960), S. 11- Words and Phrases "Wilful default", "Default".

11.2. In **2022 (3) MWN (Civil) 59 [A.shameem Begum and others vs.**

M.Shahul Hameed] this Court has observed as follows:

“TAMIL NADU BUILDINGS (LEASE AND RENT CONTROL) ACT, 1960 (T.N. Act 18 of 1960), Section 10(2)(i)- Wilful Default - Eviction sought on ground of wilful default - No Notice issued to Tenant before instituting proceedings Tenants on other hand on receipt of Notice of instant proceedings, paid entire arrears of Rent - Held, wilful default would be established only when Tenant fails to pay Rent in spite of repeated demands No deliberate evasion in payment of Rent by Tenant in instant case - Wilful default as warranted in provision not made out — Order of Appellate Court setting aside Order of Rent Controller directing eviction of Tenant, upheld Civil Revision Petition



dismissed.”

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12. There is an evidence before this Court that during the pendency of the proceedings when the tenant issued cheque to the landlord, the learned Counsel for the landlord refused. Therefore, he filed memo. The memo was rejected. Subsequently, his counter was struck down and he was directed to hand over possession. While so he had filed RCA No.85 and 86 of 2013 before the learned VIII Judge, Court of Small Causes at Chennai wherein the learned Rent Control Appellate Authority had set aside the order of the Rent Controller in M.P.No.370 of 2012 in R.C.O.P.No.1322 of 2012 and directed to proceed with the disposal of the RCOP No.1322 of 2012. Therefore, during the pendency of the proceedings, the tenant to show his *bona fide* that due to the dispute between the office bearers of the Sangam he was unable to pay rent, had sought permission of the Court to deposit rent. The tenant had deposited the arrears. Even otherwise there is evidence before the Rent Controller that as per Ex.P1 he had paid Rs.1,00,00,000/- and it is with the hands of the landlord Sangam. After institution of the Rent Control proceeding by Krishnasamy, the President of Chennaivazh Kovilpatti Nadar Uravinmurai Sangam, the rival party viz., R.Jayaveera Pandian and N.Tamizharasan had instituted Scheme Suit before the original side of the High Court which was disposed of on 27.04.2022. Also there was rival claim for the same Sangam. The earlier



Sangam was registered as 45/1984 and the subsequent Sangam by the same name registered as 61/2006. Subsequently by the proceedings of the Registrar (South Chennai). Subsequently, the Sangam bearing Registration No.61/2006 was cancelled in pursuance of the order passed in Civil Suit No.673 of 2012. Therefore, the office bearers had taken charge in the light of the order passed in Application No.587 of 2013, 3302, 3303 and 4824 of 2016 and 1728 of 2017 in C.S.No.673 of 2012, dated 09.02.2018. The Commissioner's report regarding conduct of election and the elected Office bearers of the Sangam having resumed office as per the order of the learned Single Judge of this Court in the applications in C.S.No.673 of 2012 dated 09.02.2018. Subsequently, the suit itself was disposed of by judgment dated 27.04.2022 observing that the office bearers shall not encumber the suit properties since the suit filed by the tenant in C.S.No.23 of 2012 is pending on the original side of the High Court for specific performance which is earlier to the judgment in C.S.No.673 of 2012. When there is concurrent finding, the High Court will not interfere with that findings under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Here is the case where the learned Rent Controller had ignored the materials placed before the Trial Court and also ignored the reported rulings of Hon'ble High Court wherein it is stated that when there are sufficient amount available with the landlord, the claim of the arrears or the



default period of rent the landlord cannot complain of willful default.

Therefore, the order passed by the learned Rent Controller in RCOP No.1322 of 2012, dated 22.09.2014 is perverse in the light of the above rulings.

13. Again the same error was committed by the learned Rent Control Appellate Authority by ignoring the very same rulings and arrived at a conclusion that the tenant had committed willful default and rejected the rulings in favour of the tenant. Therefore, the order of the learned Rent Control Appellate Authority are found perverse and the same are set aside in this revision.

14. It is for the Respondent in this Civil Revision Petition and the Revision Petitioner to proceed with the trial in C.S.No.23 of 2012. Till such time, the Revision Petitioner is directed to make payment of rent. The Respondent is directed to issue receipts and produce the said receipts before the original side of the High Court while considering the suit in C.S.No.23 of 2012 by the High Court. Till such time the Petitioner shall not be evicted.

15. In the light of the above discussion, the Point for consideration is answered in favour of the Revision Petitioner/Tenant and against the Respondent/Landlord. The order passed by the learned XVI Judge, Court of



Small Causes, Chennai in R.C.O.P.No.1322 of 2012 allowing R.C.O.P for eviction directing the tenant to hand over possession and confirmed in appeal in RCA No.673 of 2014, dated 09.07.2019 are perverse and is to be set aside.

In the result, **this Civil Revision Petition is allowed.** The order passed by the learned Rent Controller in R.C.O.P.No.1322 of 2012 dated 22.09.20214 and confirmed in R.C.A.No.673 of 2014 dated 09.07.2014 are set aside.

Considering the fact that the Revision Petitioner herein is in possession of the property now holding as tenant and in the light of the Ex.P1 marked before the learned Rent Controller, the Civil Suit having been instituted by the Revision Petitioner which is also available to the Rent Controller through Ex.R-7 the Revision Petitioner is directed to deposit regular rent in continuation of the RCOP proceedings to the newly elected office bearers.

As per the Respondent's type set, the Original Side of the High Court by judgment in C.S.No.673 of 2012 filed by R.Jayaveerapandian and Tamizharasan had decreed the suit for framing the scheme for management of the suit property. In continuation of the said judgment, the Revision Petitioner shall deposit rent to the office bearers of the Chennaivazh Kovilpatti Nadar



Uravinmurai Sangam, Adyar, Registration No.45/1984, the office bearers of the Sangam shall issue receipts for the same. Since the original side of the High Court seized of the suit pending on the file of the Original Side in C.S.No.23 of 2012 it is for the Revision Petitioner and the Respondent herein to proceed with the further proceedings in the suit. While agitating the rights before the original side, the Petitioner is to be given the proof of payment of rent paid by the Revision Petitioner as tenant to the Respondent/Chennaivazh Kovilpatti Nadar Uravinmurai Sangam, Registration No.45/1984 to agitate his valuable right before the original side of the High Court. Till the C.S.No.23 of 2012 is disposed off, the Revision Petitioner shall pay the rent as agreed in RCOP No.1322 of 2012 in the counter by the tenant as Respondent. The Respondent is directed not to evict the Revision Petitioner till the C.S.No.23 of 2012 is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

01.12.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
ata/srm



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To

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

2.The Rent Controller/XVI Small Causes Court,
Chennai.



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SATHI KUMAR SUKUMARA KURUP., J.

ata/srm

Order made in
C.R.P.No.414 of 2020



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01.12.2023