



CRP No.1562 of 2017
and
CRP.No.2814 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.1562 of 2017 & 2814 of 2021
and CMP.No.7255 of 2017

T.Ravi

..Petitioner in both CRPs

Vs.

Bommiammal

..Respondent in both CRPs

Prayer in CRP.No.1562 of 2017: Civil Revision Petition filed under Section 25 of Tamil Nadu Lease and Rent Control Act, 18/1960, and subsequently Amended by Act 23 of 1973, to set aside the order and decretal order passed in I.A.No.12 of 2016 in R.C.A.No.5 of 2014 on the file of the Subordinate Judge, Kancheepuram, dated 03.03.2017 and allow the CRP.

Prayer in CRP.No.2814 of 2021: Civil Revision Petition filed under Section 25 of Tamil Nadu Lease and Rent Control Act, 18/1960, and subsequently Amended by Act 23 of 1973, to set aside the order and decretal order passed in I.A.No.1547 of 2017 in O.S.No.130 of 2007 on the file of the Subordinate Judge, Kanchipuram, (Additional Subordinate Judge), Kanchipuram, dated 03.08.2019 and allow the CRP.



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(In both the petitions)

For Petitioner : Mr.S.Prabhu

For Respondent : Mr.M.V.Seshachari

COMMON ORDER

The CRP.No.1562 of 2017 has been filed as against the decreetal order dated 03.03.2017 passed in I.A.No.12 of 2016 in R.C.A.No.5 of 2014 on the file of the Subordinate Judge, Kanchipuram, thereby allowing the application filed under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act, to pay the arrears of rent.

2. The CRP.No.2814 of 2021 has been filed as against the decreetal order dated 03.08.2019 passed in I.A.No.1547 of 2017 in O.S.No.130 of 2007 on the file of the Subordinate Judge, Kanchipuram (Additional Subordinate Judge) Kanchipuram, thereby dismissing the application filed to condone the delay of 692 days in filing a petition to restore the suit.

3. The respondent in the CRP.No.1562 of 2017 is the landlord and he filed a petition for eviction on the ground of willful default under Section



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10(2)(i) of Tamil Nadu Buildings (Lease and Rent) Control Act, as against the petitioner herein.

4. The case of the respondent is that she is the owner of the petition premises and she purchased the petition premises by a registered Sale Deed dated 02.05.2002 for a valid sale consideration. On the same day, the respondent had executed a Lease Deed in respect of the petition premises for a monthly rent in favour of the petitioner herein. The petitioner is running a welding shop in the petition premises and the monthly rent was fixed at Rs.6000/- per month. The petitioner failed to pay the said monthly rent from the month of May 2002 to till the month of March 2005. The petitioner is a chronic defaulter. The petitioner is also filed a suit in O.S.No.424 of 2004 on the file of the District Munsif Court, Tiruvallur, for bare injunction. In fact, the interim injunction application was filed in I.A.No.953 of 2004 and the same was dismissed by the trial Court and the main suit is pending.

5. Resisting the eviction petition, the petitioner filed a counter affidavit and stating that the husband of the respondent is working as Village Administrative Officer and he is also doing financial business. The petitioner



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borrowed a sum of Rs.20,000/- on 18.02.2002 and executed an agreement thinking that it is a Mortgage Deed. He also signed in a blank papers on the same day. Again, the petitioner borrowed a sum of Rs.1,50,000/- on 02.05.2002 and executed a registered document in favour of the respondent as he thought that it is a Mortgage Deed. Later, he came to understand that it was a Sale Deed and the respondent also fabricated the lease agreement from the signed blank papers. Therefore, the petitioner is not a tenant of the respondent and he is not liable to pay any rent for the petition premises. Further, he never executed any Sale Deed in favour of the respondent herein.

6. On the side of the respondent, he had examined PWs1 to 4 and marked EXs.P1 to 13 and on the side of the petitioner, he had examined RWs1 to 4 and marked EXs.R1 to 6.

7. On perusal of oral and documentary evidence, the learned Rent Controller allowed the petition and ordered for eviction from the petition premises. Aggrieved by the same, the petitioner preferred an appeal before the learned Rent Control Appellate Authority in R.C.A.No.5 of 2014. Pending appeal, the respondent filed an application under Section 11(4) of Tamil Nadu



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Buildings (Lease and Rent) Control Act, claiming arrears of rent. The same was allowed. Aggrieved by the same, the present civil revision petition.

8. The petitioner in CRP.No.2814 of 2021 is the plaintiff and the respondent is the defendant. The petitioner filed a suit for declaration declaring that the Sale Deed dated 02.05.2002 executed in favour of the respondent as null and void before the Sub-Court, Tiruvallur. Due to territorial jurisdiction and bifurcation of District, the said suit was transferred to the file of Additional Sub-Court, Kanchipuram. Therefore, the petitioner had no knowledge about the transfer of said suit and he failed to appear before the trial Court. Hence the suit was dismissed for default. The petitioner filed a petition to restore the suit with a condone delay petition and the said petition was dismissed for default. Again, the petitioner filed a petition to restore the restoration petition with a delay of 692 days. It was also dismissed and aggrieved by the same the present civil revision petition.

9. The learned counsel for the petitioner in both the petitions submitted that the petitioner never executed any Sale Deed in favour of the respondent on 02.05.2002. He had borrowed a sum of Rs.1,70,000/- in which he had executed



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only a Mortgage Deed. Utilizing the illiteracy of the petitioner, the respondent prepared a Sale Deed and registered the same in his favour. On the same day, that too in the blank paper, he also fabricated an agreement for lease in respect of the very same petition premises as if it has been given for lease for a monthly rent of Rs.6000/-. There is absolutely no relationship between the petitioner and the respondent since the petitioner never entered into any agreement for lease. He is the absolute owner of the petition premises. Therefore, he filed a suit for declaration declaring that the Sale Deed dated 02.05.2002 as null and void and it is pending.

10. Unfortunately, it was transferred to the file of the Additional Sub-Court, Kanchipuram and as such, it was not noticed by the petitioner and he could not appear before the trial and as such, it was dismissed for default. In so far as, the agreement for lease dated 02.05.2002 is concerned, it was fabricated by the respondent in a blank papers and it was also executed on the same day by an alleged Sale Deed dated 02.05.2002. however, the learned Rent Control Appellate Authority, without considering the above facts and circumstances, allowed the petition for eviction and aggrieved by the same, the petitioner preferred an appeal. Pending appeal, the respondent filed an application under



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Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act, claiming arrears of rent.

11. In fact, the respondent did not file any application claiming arrears of rent in the eviction petition filed on the ground of willful default. Further, the respondent claimed rent from the date of Sale Deed namely on 02.05.2002 that too filed after a period of three years. It shows that the petitioner had never executed any Sale Deed and he was never inducted as a tenant by the alleged agreement for lease dated 02.05.2002.

12. The learned counsel for the petitioner in both the petitions further submitted that at the time of granting an order of interim stay, this Court imposed a condition that the petitioner shall deposit 50% of the arrears of rent. The said condition was duly complied with by the petitioner and he may be given one more opportunity to pursue the suit on merits. The petitioner is also ready and willing to deposit the entire arrears of rent. The delay was caused due to the transfer of suit.

13. In support of his contention, he relied upon the judgment of this Court in the case of *V.T.A.Noor Mohammed Vs. N.Samiappan* passed in



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C.R.P(NPD).Nos.1954 & 1955 of 2012 dated 20.06.2014, wherein this Court,

held as follows:-

“12. Another Division Bench of this Court in M/s.A.Rafeeq Ahmed & Co. rep. By its Partner K.Muktar Ahamed v. M/s. Montari Leather Ltd., rep. By its Chairman and Managing Director reported in 2001-1-L.W.133 approved the view of Justice R. Balasubramnian in K.P.Janaki Ammal and 8 others V. K.Badrinarayanaiah. The following are the observations made by the Division Bench in the said case:

!!74. A reading of Section 11(3) and (4) with Section 11(1) would show that there is a purpose behind the said provision. The view that the deposit should be made as a condition precedent for preferring an appeal would mean restricting the appeal or denying the remedy of appeal, which the statute has provided for. Such a denial of appeal remedy could be, if at all, only in terms of the statutory provision, which is not the case here. In a given case where substantial amount is claimed as arrears which is disputed by the respondent and the dispute being bonafide, if the deposit is to be considered as a condition



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precedent, then it would result in deprivation of an appeal remedy. That is not the intendment or object of the Legislative provision. Even in a case where a direction is issued under Section 11(4) and when such a direction is challenged by invoking the remedy of appeal under Section 23, the contention that as a condition precedent the direction should be complied with by the tenant by depositing the amount as arrived at by the Rent Controller and if the tenant is required to deposit, then it would mean deprivation of a remedy of appeal, which again is not the V.T.A.Noor Mohammed vs N.Samiappan on 20 June, 2014 Indian Kanoon - <http://indiankanoon.org/doc/116447931/> 5 intendment of the Legislature. Neither Section 11(3) or (4), nor Section 23 would justify such a construction viz., that rents claimed by the landlord or as adjudicated by the orders of the Rent Controller should be deposited as a condition precedent for preferring an appeal, or else the appeal cannot be entertained at all.

75. The statutory provision namely Section 11(3) and (4) read with S.23 should be given a plain meaning in juxtaposition to Section 11(1) read with



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Section 23. On a plain reading, we are not able to persuade ourselves to accept the plea that arrears of rent as adjudicated by the Rent Controller under Section 11 (3) and (4) should be deposited as a condition precedent. Such a condition precedent is not provided for, not it could be read into it. If such a condition precedent is to be construed it should have been provided specifically in Section 11(3) or (4) or in Section 23 or by a Rule. This is not so. The right of appeal has been recognised by the judicial decisions as a right which vests in a suit or at the time of institution of the original proceeding itself.”

14. In so far as, the condone delay petition is concerned, the learned counsel for the petitioner relied upon the judgment of this Court in the case of ***Brahmand Farm Lands Ltd., Vs. K.Venkatesan*** passed in ***C.R.P.(NPD).No.3361 o 2017*** wherein this Court cited the judgment reported in ***2018 (15) SCC 127*** in the case of ***Ummer Vs. Pottengal Subida and Ors,*** wherein the Hon'ble Supreme Court of India held that the Court should have taken liberal view in the matter of condone delay and held the cause shown by the appellant as “sufficient cause” within the meaning of Section 5 of the



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Limitation Act and accordingly, the Court should have condoned the delay in filing the appeal. Further, one cannot now dispute the legal proposition that the earlier law the appellant was required to explain the delay of each day till the date of filing the petition since been diluted by the later decisions of the Hon'ble Supreme Court of India and as such, held as no longer good law.

15. Per contra, the learned counsel for the respondent would submit that there is no bar in filing the petition under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act, in the appeal. The petitioner executed an agreement for lease and thereafter, he failed to pay any rent for the petition premises. Though, the petitioner filed a suit for declaration, challenging the Sale Deed executed in favour of the respondent, the said suit was dismissed. As of now, no suit is pending.

16. He would further submit that the petitioner cannot dispute the Sale Deed that too after filing the suit for bare injunction in O.S.No.424 of 2004. In fact, the respondent also filed another suit in O.S.No.14 of 2009 for permanent injunction in respect of the suit property and the same was decreed by a judgment dated 02.11.2015.



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17. Admittedly, the petitioner failed to pay any rent to the petition premises so far. Therefore, the learned Rent Control Appellate Authority rightly allowed the application filed under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act. In so far as, the condone delay petition is concerned, the suit filed by the petitioner was dismissed for default on 01.07.2008 thereafter, it was restored by the condone delay of 354 days. Once again, the said suit was dismissed for default on 14.12.2015. The petitioner filed a petition to restore the said suit with delay of 692 days in filing the restoration petition. The petitioner is the tenant in the suit property without paying any rent. Therefore, the respondent filed an eviction petition on the ground of willful default in R.C.O.P.No.8 of 2005 and the same was allowed. Aggrieved by the same, the petitioner preferred an appeal. Pending appeal, the respondent filed an application under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act, and the same was allowed. Therefore, the petitioner failed to state any sufficient cause for the huge delay of 692 days in filing the the petitioner to restore the suit.

18. In support of his contention, he relied upon the judgment reported in **1999 (II) CTC 46** in the case of **K.P.Janaki Ammal and Others Vs.**



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K.Badrinarayanaiah.

The relevant portion of the above said judgment is extracted hereunder;-

“Accordingly, I have no hesitation to hold that the need or the requirement to deposit the amount as found due and ordered on an application under Section 11 of the Act will not be attracted to an appeal filed by the tenant against an order passed under Section 11 of the Rent Act. Such a requirement is called for to be complied with only, either when the tenant is contesting the proceedings filed for eviction against him before the Rent Controller or when he files an appeal against an order of eviction passed under Section 10 of the Act and not in any other contingencies. Accordingly, Civil Revision Petition is allowed. No costs. The judgment dated 28.6.1994 in R.C.A.No.405 of 1993 on the file of the VII Judge, Court of Small Causes, Madras, is set aside. The said R.C.A will stand remitted back to the Appellate Authority for fresh disposal in accordance with law. Consequently, C.M.P.No.5482 of 1995 is dismissed.”

Therefore, the application filed under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act, is very much maintainable in the



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appeal filed by the tenant and the prayed for dismissal of both the civil revision petitions.

19. Heard, the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

20. The petitioner disputed the very sale itself executed in favour of the respondent dated 02.05.2002. He also disputed the execution of lease agreement dated 02.05.2002. Though the petitioner initially filed a suit for permanent injunction, he subsequently filed a suit for declaration declaring that the Sale Deed executed by the respondent as null and void in O.S.No.130 of 2007.

21. A perusal of lease agreement dated 02.05.2002 shows that it was executed in a paper and not in any stamp paper. That apart, it was executed only by the petitioner and there is no signature of the respondent in it and it is a hand written one. The specific case of the petitioner is that, he never executed any Sale Deed and on borrowal of loan from the respondent, he executed only a Mortgage Deed. The respondent also obtained signature in the blank papers. It is pertinent to note that lease agreement was executed in favour of the



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respondent herein. However, the learned Rent Control Appellate Authority accepted the reason for the execution of Lease Deed in the green sheet for the reason that on the day there was shortage of stamp papers. Therefore, he could not have executed in the stamp paper. Further it was held that thought it was an unregistered one, it can be looked into for proving landlord tenant relationship. It was challenged by the petitioner by way of appeal and it is pending in R.C.A.No.5 of 2014. Pending the appeal the respondent filed an application for rental arrears under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act.

22. The observation made by this Court on the judgment cited by the learned counsel for the petitioner that a reading of Section 11(3) and (4) with Section 11(1) of CPC would show that there is a purpose behind the said provision. The deposit be made as a condition precedent for preferring an appeal would mean restricting the appeal by denying the remedy of appeal, which the statute has provided for. Such a denial of appeal remedy can if at all be only in terms of the statutory provision, which is not the case here.

23. In the case on hand, the substantial amount is claimed as arrears



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which is disputed by the respondent and the dispute being bonafide, if the deposit is to be considered as a condition precedent, then it would result in deprivation of an appeal remedy. It is not the intendment of object of the Legislative provision. Even in a case where a direction is issued under Section 11(4), when such a direction is challenged by invoking the remedy of appeal under Section 23, the contention that as a condition precedent the direction should be complied with by the tenant by depositing the amount as arrived at by the Rent Controller and if the tenant is required to deposit, then it would mean deprivation of a remedy of appeal, which again is not the intendment of the Legislature.

24. Further, the respondent failed to file any application claiming rental arrears before the learned Rent Control Appellate Authority. The petitioner filed an eviction petition on the ground of willful default after a period of three years, from the date of default in payment of rent. In fact, even according to the respondent, the petitioner did not pay a single paise as rent from the date of alleged inductment as tenant. The petitioner also challenged the very execution of Sale Deed.

25. In so far as, the condone delay petition in filing the petition to restore



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the suit is concerned, the delay explained by the petitioner is bonafide one and as such, he need not to explain each and every days of delay. That apart, the petitioner may be given one more opportunity to pursue his suit since the Sale Deed is the basis for the eviction petition filed by the respondent herein. If the petitioner succeeds in his suit then the eviction petition filed on the ground of willful default become infructuous. The petitioner has also already deposited 50% of the arrear amount of Rs.5,34,000/- to the learned Rent Control Appellate Authority as directed by this Court. Now, the petitioner is also ready and willing to deposit the balance amount of Rs.5,34,000/-.

26. Considering the above facts and circumstances, this Court is inclined to set aside the order passed in I.A.No.12 of 2016 in R.C.A.No.5 of 2014 on condition that the petitioner shall deposit the balance amount of Rs.5,34,000/-, within a period of six weeks from the date of receipt of a copy of this order.

27. In view of the above facts and circumstances, the order passed in I.A.No.1547 of 2017 in O.S.No.130 of 2007 is set aside and the civil revision petition is allowed on condition that the petitioner shall pay a sum of Rs.5000/- as cost to the respondent, within a period of four weeks from the date of receipt



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of a copy of this order. On such payment, the trial Court is directed to restore the suit and dispose of the same, within a period of six months thereafter. In both the cases, the Rent Control Appellate Authority, the parties are one and the same and the property is also one and the same. Therefore, in order to avoid the conflict of judgments, it would be appropriate to order simultaneous disposal of RCA.No.5 of 2014 and O.S.No.130 of 2007.

28. Now, the suit in O.S.No.130 of 2007 is pending on the file of the Additional Sub-Court, Kanchipuram and R.C.A.No.5 of 2014 is pending on the file of the Sub-Court, Kanchipuram. Therefore, the R.C.A.No.5 of 2014 on the file of the Principal Sub-Court, Kanchipuram, is hereby withdrawn and transferred to the file of the Additional Sub-Court, Kanchipuram. On receipt of the entire Court bundle, the Trial Court namely the Additional Sub-Court, Kanchipuram, is directed to dispose of the R.C.A as well as the suit simultaneously. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order



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ata

G.K.ILANTHIRAIYAN.J,

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