



C.R.P.(PD) No.4097 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P. (PD) No.4097 of 2022
and C.M.P. No.21273 of 2022

R.Kalaivani .. Petitioner

vs

S.Krushnan .. Respondent

Petition filed under Article 227 of The Constitution of India against the order dated 20.10.2022 passed in M.P.No.2 of 2022 in RLTOP No.139 of 2021 by the learned Judge, XIV Small Causes Court, Chennai.

For Petitioner : Mr.M.Vijayan
for Mr.K.Kulandaivelu

For Respondent : Mr.S.Vijayakumar

ORDER

1. The Civil Revision Petition has been instituted under Article 227 of the Constitution of India challenging the order dated 20.10.2022 passed in M.P.No.2 of 2022 in RLTOP No.139 of 2021. The revision petitioner is the land lord, who instituted the petition in RLTOP No.139 of 2021 to evict the respondent / tenant from the said premises on the ground that the revision petitioner has not



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entered into an agreement with the respondent / tenant. The petition was filed under Section 21(2)(a) of the TN Act 42 of 2017.

2. The grievance of the revision petitioner is that during the pendency of rent control proceedings, the respondent / tenant has not paid the admitted monthly rent of Rs.70,000/-.

3. The learned counsel for the petitioner contended that the petitioner is a divorced woman and depending on the rental income for leading her livelihood. Since the respondent / tenant has not paid the rent for the past about fourteen months from the month of December 2021 to till date, she has not been able to lead her livelihood and, therefore, filed the miscellaneous petition in M.P.No.2 of 2022 for a direction to pay the monthly rent punctually to the revision petitioner. The Rent Court adjudicated the issues and made the finding that the miscellaneous petition for claiming arrears of rent under Section 25 of the RLTOP Act is not maintainable since the eviction petition was filed under Section 21(2)(a) of the Act. The learned counsel for the petitioner reiterated that the land lord is entitled for monthly rent which is admitted by the respondent / tenant. Thus, the trial Court committed an error in rejecting the application.



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4. The learned counsel for the respondent / Tenant objected the said contentions by stating that Section 25 of the new Act prohibits entertaining any miscellaneous application if the eviction petition is filed under Section 21(2)(a) and 21(2)(b) of the Act. The learned counsel for the respondent / tenant further states that the RLTOP itself is not maintainable and in this regard he had referred to certain judgments of this Court.

5. The learned counsel for the revision petitioner states that the Miscellaneous Petition filed for recovery of rent is maintainable even during the pendency of the application for eviction filed under Section 21(2)(a) of the Act.

6. Section 25 of the New Act denotes payment of rent during eviction proceedings as under:

"In any proceedings for recovery of possession on any ground other than that referred to in clause (a) or clause (b) of subsection (2) of Section 21, the tenant contests the claim for eviction, the landlord may, at any stage of proceedings, apply to the Rent



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Court to direct the tenant to pay to the landlord rent payable as under Section 8 and the Rent Court may order the tenant to make such payment as agreed regularly to the landlord by the tenth of the month and all other charges due from the tenant along with penal charges, if any, due to delay in the same manner as provided in sub-section (1) of Section 13."

7. The above provision is unambiguous that if any application for eviction is filed on the ground under Section 21(2)(a) or 21(2)(b) of the Act, then the Miscellaneous Application for payment of rent during the eviction proceedings are not entertainable. Thus, the Rent Court is right in dismissing the Miscellaneous Petition filed by the revision petitioner for payment of rent by the respondent / tenant. However, this Court is of an opinion that in such circumstances, the application filed by the landlord for eviction under Section 21(2)(a) or 21(2)(b) of the Act is to be disposed of within the time limit as contemplated under Section 36(6) of the New Act.

8. On the one hand, the Rent Court cannot keep the



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proceedings beyond the time limit prescribed under the new Act and on the other hand deprive the landlord from recovering the monthly rent as per the agreement between the parties. In the present case, the petitioner / landlord claims that rent being her livelihood and she being a divorced women is unable to lead her life. Thus, the Courts are empowered to protect the livelihood in the interest of justice.

9. Therefore, whenever, the ground for eviction is made under Section 21(2)(a) or 21(2)(b) of the Act and the landlord pleads that the rent is livelihood and the tenant refuses to pay rent, since eviction proceedings are instituted, then the rent Court and Rent Tribunal shall ensure that the main application is disposed of by adhering the time limit prescribed under Section 36(6) of the New Act, so as to avoid any undue hardship to the landlord.

10. In the present case, the learned counsel for the respondent states that there is a dispute regarding the ownership. The husband of the revision petitioner also claims ownership and therefore, the respondent / tenant is unable to pay the rent to the revision petitioner. In this context, it is relevant to look into the



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renewal lease agreement entered into between the revision petitioner R.Kalaivani and the respondent Mr.S.Krushnan. The tenant is liable to pay the rent to the person with whom he entered into an agreement for tenancyship as per the terms and conditions. Any title dispute unconnected with the tenant cannot be a ground for the tenant to deny rent to the landlord with whom he entered into an agreement. In other words, no tenant can be permitted to take undue advantage of the title dispute between the family members or between the other parties. Contract between the parties are binding on them. Thus, the tenancy agreement between the parties are binding on the parties and therefore, the tenant cannot say that there is title dispute and therefore he is unable to know to whom the rent is to be paid.

11. In the present case, admittedly the respondent entered into an agreement with the revision petitioner. While so, he cannot take a stand that there is a dispute between the petitioner and her husband and therefore, he is not in a position to pay the rent to the petitioner. Such a ground is not available to the tenant. The tenant is bound by the agreement and no way connected with the title disputes or rent to be paid to the landlord with whom he entered into an agreement for tenancy.



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12. The learned counsel for the petitioner reiterated that monthly rent of Rs.70,000/- was agreed and admitted and therefore, the respondent is bound to pay the monthly rent as per the agreement till such time the premises are vacated. The R.L.T.O.P filed for eviction is pending for about one year beyond the time limit contemplated under the provisions of the New Act.

13. That being the case, the landlord need not be deprived of her right of monthly rent during the pendency and the bar contemplated under Section 25 of the New Act affecting the livelihood would result in miscarriage of justice in the present case. In such circumstances, the High Court is within its powers to invoke Article 227 of the Constitution of India for the purpose of providing complete justice to the parties.

14. To remove the difficulties in view of certain specific provisions of law, if any party is deprived of his/her livelihood or the provision of the Act operates against the basic rights, then the High Court is empowered to invoke Article 227 of the Constitution of India and grant the relief accordingly.



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15. Undoubtedly, an application for payment of rent during the eviction proceedings under Section 25 of the New Act is not maintainable, if the grounds for eviction is under Section 21(2)(a) or 21(2)(b).

16. Claiming monthly rent by the landlord is just and lawful claim. Payment of rent is the duty of the tenant as per the agreement. Denial of monthly rent to the landlord provides a cause. No doubt, there is a prohibition for entertaining a Miscellaneous Petition under Section 25 of the Act in the present case. But the petitioner claims that she is the divorced women and leading her life only with the support of the monthly rent being collected from the tenant. Thus, the High Court has to protect the livelihood and the right of the landlord to recover rent from the tenant till such time the respondent vacate the premises and handover the possession.

17. Thus, in the present case, the Rent Court has rightly rejected the Miscellaneous Petition filed by the revision petitioner / landlord for payment of rent. However, the Rent Court failed to dispose of the application for eviction filed under Section 21(2)(a)



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or 21(2)(b) of the Act. When the R.L.T.O.P has not been disposed of within the time limit as contemplated under the New Act, then it will give a raise to the landlord to claim payment of rent as agreed between the parties, before this Court.

18. Considering the facts and circumstances, this Court is inclined to invoke the powers under Article 227 of the Constitution of India in order to mitigate the hardship being caused to the revision petitioner / landlord and accordingly, passed the following orders:

- (a) The respondent / tenant is directed to pay the agreed monthly rent of Rs.70,000/- (Rupees Seventy Thousand Only) to the revision petitioner / landlord on or before the 10th day of every English Calendar month, till such time he vacate the premises and hand over vacant possession to the revision petitioner / landlord.
- (b) The arrears of rent to be paid for the past about 14 months to the revision petitioner / landlord is to be settled by deducting the advance amount of Rs.5,00,000/- (Rupees Five Lakhs Only) within a period of four (4) weeks from the date of receipt of copy of this order.
- (c) The Rent Court and the Rent Tribunal are



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directed to ensure in case of bar for payment of rent under Section 25 in respect of the applications filed for eviction under Section 21(2)(a) or 21(2)(b) of the New Act, then such applications are disposed of within the time limit prescribed under Section 36(6) of the Act to avoid unnecessary hardship to the parties.

19. With the above directions, this Civil Revision Petition stands disposed of. No costs. Connected, miscellaneous petition is closed.

03.01.2023

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

To

The XIV Judge,
Court of Small Causes, Chennai.



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S.M. SUBRAMANIAM,J.

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