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C.R.P.(NPD)Nos.4297 to 4300 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)Nos.4297 to 4300 of 2017
and C.M.P.Nos.20206 of 2017 & 22866 of 2018

Hasmukhlal Popatlal Kothari
Petitioner in

..

all the CRPs.

Vs.

Bhawarlal Jain

.. Respondent in
all the CRPs.

Prayer in C.R.P.No.4297 of 2017: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decretal order dated 07.10.2017 in M.P.No.231 of 2017 in R.C.A.No.400 of 2017 on the file of the learned IX Judge, Small Causes Court, Chennai.



C.R.P.(NPD)Nos.4297 to 4300 of 2017

WEB COPY

Common Prayer in C.R.P.Nos.4298 to 4300 of 2017: Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decretal order dated 07.10.2017 in M.P.Nos.321 to 323 of 2017 in M.P.No.231 of 2017 in R.C.A.No.400 of 2017 on the file of the learned IX Judge, Small Causes Court, Chennai.

In all the CRPs.

For Petitioner : Mr.T.M.Hariharan
for Mr.Samir Sha for M/s.Shah and Shah

For Respondent : Mr.Bijay Sundar

COMMON ORDER

Heard the learned counsel for the petitioner as well as the learned counsel for the respondent. I have carefully gone through the records.

2. The civil revision petitioner is the tenant and the respondent is the landlord. R.C.O.P.No.1625 of 2015 is a petition filed by the landlord



C.R.P.(NPD)Nos.4297 to 4300 of 2017

under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act'). In the said proceeding, M.P.No.142 of 2016 was filed by the landlord under Section 11(3) of the Act stating that the tenant had not paid the rent from March 2015 to December 2016. The tenant was directed to pay the monthly rentals being Rs.75,000/- and arrears being Rs.9,00,000/-.

3. Aggrieved by the said order, the petitioner filed an appeal in R.C.A.No.400 of 2017 on the file of the learned XVI Judge, Small Causes Court, Chennai. The said R.C.A. is still pending. In the mean time, since the interim order passed in M.P.No.142 of 2016 was not complied with, eviction was ordered on 06.02.2017. Pending the R.C.A., an application was moved by the petitioner in M.P.No.231 of 2017. This application is for stay of an order of eviction, passed in R.C.O.P.No.1625 of 2015, pending disposal of the appeal. In the said petition, the following order was passed.

“Heard the counsel for the petitioner. The learned counsel for the petitioner/appellant submit



C.R.P.(NPD)Nos.4297 to 4300 of 2017

*that the learned Rent Controller has not adverted to the facts of the case and has ordered eviction. It is further submitted that the petitioner has paid the rent without any arrears. According to the orders of the Rent Controller, the petitioner/appellant is liable to pay the arrears from March 2015 to December 2016 at the rate of Rs.75,000/-. On the other hand, the R.C.O.P. being filed for the covering period from March 2015 to February 2016 amounting to Rs.9,00,000/-. Though, there was a dispute with relates to jural relationship, it would be decided in later point of time i.e., To pass the final order of RCA. **In the instant Appeal on hand, the appellant stating that he is ready and willing to comply with any condition could be imposed.** However, the petitioner admitted to deposit the sum of part amount without prejudice to his case. It is further submitted the petitioner has every chance of success in the appeal. If an order of interim stay is not granted the petitioner will be put to irreparable loss. In the above said circumstances, this Court inclined to grant interim stay till 3.8.2017 on condition that the*



C.R.P.(NPD)Nos.4297 to 4300 of 2017

petitioner has to deposit a sum of Rs.9 lakhs to the credit of this RCA.399/2017 & 400/2017 on or before 3.8.2017, call on 03.08.2017. Notice to respondent by then. If the appellant is to be failed to comply with the order, the stay will be automatically ousted. ”

4. It is pertinent to point out that the tenant filed M.P.No.321 of 2017 seeking for extension of time for a condition that has been imposed by the Court on 01.06.2017. Apart from that, M.P.No.322 of 2017 was filed by the tenant to permit him to deposit Rs.2,00,000/- to the credit of RCA. He also filed an application in M.P.No.323 of 2017 seeking for extension of stay granted in M.P.No.231 of 2017 from 03.08.2017 to 19.09.2017.

5. After issuing notice to the landlord, the Rent Control Appellate Authority found no merits in the applications and therefore, dismissed the same. Against the said order, the tenant has filed four revisions:

(i) C.R.P.(NPD)No.4297 of 2017 has been filed against the dismissal of a stay petition in M.P.No.231 of 2017;

(ii) C.R.P.(NPD) No.4298 of 2017 has been filed challenging the



C.R.P.(NPD)Nos.4297 to 4300 of 2017

order in M.P.No.321 of 2017, which was filed for the purpose of extension of time;

(iii) C.R.P.(NPD)No.4299 of 2017 has been filed against the order in M.P.No.322 of 2017, which sought for modification of the order to pay Rs.2,00,000/-;

(iv) Finally, C.R.P.(NPD)No.4300 of 2017 has been filed against the order passed in M.P.No.323 of 2017 seeking for extension of stay.

6. Pending the Civil Revision Petitions, the tenant had deposited a sum of Rs.15,00,000/-, which had been imposed as a condition on 01.06.2017.

7. The learned counsel for the petitioner submitted that the learned Rent Control Appellate Authority does not have the power under the Act to impose a condition for the purpose of hearing the appeal. He would want me to construe the order passed in M.P.No.231 of 2017 as a precondition that had been imposed by the Appellate Authority for the



C.R.P.(NPD)Nos.4297 to 4300 of 2017

purpose of hearing the appeal.

8. Mr.Bijay Sundar, learned counsel for the respondent would stoutly oppose the same and would state that a condition is only for the purpose of grant of stay and not a condition for the purpose of hearing the appeal.

9. The issue whether the Court can impose a condition for the purpose of hearing the appeal has already been settled by the Division Bench of this Court in *M/s.A.Rafeeq Ahmed and Co. represented by its Partner K.Muktar Ahamed vs. M/s.Montari Leather Ltd., represented by its Chairman and Managing Director 2002-1-L.W.133.*

10. A Division Bench of this Court had held that a right to file an appeal is a right, which is vested in a litigant, even at the time of institution of the original proceedings itself. Therefore, the Court held that the Appellate Authority cannot insist on a payment of arrears of rent for



C.R.P.(NPD)Nos.4297 to 4300 of 2017

the purpose of hearing the appeal. This was an interpretation of Section 23(1) of the Act.

11. It is pertinent to point out that though the Court had laid down this proposition, it went on to hold that the Rent Control Appellate Authority has the power to impose a condition at the time of granting stay. The relevant paragraph No.76, is extracted hereunder:

“76.The phraseology viz., “to contest or prefer”. The said expression does not mean that as a condition precedent the tenant has to deposit the entire arrears for preferring an appeal. However, we hasten to add that as and when an appeal is preferred and taken on file, subject to the tenant satisfying the requirement of the statutory provision of the Act and the Rules, it is for the Appellate Authority while granting interim stay or vacating the same to pass such order including orders directing the tenant to deposit either the admitted arrears or such portion of arrears, which it deems just or proper in his view.”

This makes it clear that the Rent Control Appellate Authority had the power to impose a condition for the deposit of entire arrears as on that



C.R.P.(NPD)Nos.4297 to 4300 of 2017

date as a condition for grant of stay. I am bound by the judgment of the Division Bench and therefore, I respectfully follow the same.

12. Apart from that, it is pertinent to point out that the petitioner himself had approached the Appellate Authority and had stated that he is ready and willing to comply with any conditions that may be imposed for the purpose of grant of stay. Having gone before the Appellate Authority and having stated that he is willing to comply with the condition, it does not lie in the mouth of the petitioner to state today that the imposition of a condition to deposit the entire arrears for grant of stay is onerous and beyond the jurisdiction of the Appellate Authority.

13. Furthermore, accepting the condition, the petitioner himself had moved two applications, one seeking for an extension of time and the other for modification. This shows that the petitioner was well aware that the Appellate Authority can impose any conditions for the purpose of grant of stay and he sought for the benevolence of the appellate authority for the variation of the conditions, which were rightly rejected.



C.R.P.(NPD)Nos.4297 to 4300 of 2017

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14. It is made clear that in case, the appeal filed by the alleged tenant succeeds, the landlord would have to put the money back that he has received, pursuant to the interim order of the Court into the deposit of the RCA.

15. In fine, I am of the clear view that the Division Bench has clearly pointed out the difference between the deposit as a precondition for hearing the appeal and deposit as a condition for grant of stay. The present case falls under the latter category. Therefore, there is no merits in the Civil Revision Petitions. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

01.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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10/11



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C.R.P.(NPD)Nos.4297 to 4300 of 2017

V.LAKSHMINARAYANAN,J.

Kj

To

IX Judge, Small Causes Court, Chennai.

C.R.P.(NPD)Nos.4297 to 4300 of 2017
and C.M.P.Nos.20206 of 2017 & 22866 of 2018

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11/11