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C.R.P.Nos. 3662 & 3663 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos. 3662 & 3663 of 2018

and

C.M.P. Nos. 20383 & 20387 of 2018

A.Ranganathan ... Petitioner in both CRPs

Vs

T.D.Sarasabooshani Ammal
W/o.T.R.Govindarajan Respondent in CRP No.3662/2018

1. T.D.Sarasabooshani Ammal
W/o.T.R.Govindarajan

2. T.G.Chandrasekar
S/o.T.R.Govindarajan Respondents in CRP No.3663/2018

Common Prayer : Civil Revision Petitions filed under Section 25(1) of the Tamil Nadu Buildings Lease & Rent Control Act, 1960, to set aside the fair and decreetal order dated 05.09.2018 in R.C.A.Nos.4 & 5 of 2015 on the file of the Rent Control Appellate Authority / Sub Court, Tirupattur reversing the fair and decreetal order, dated 29.04.2015 in R.C.O.P.Nos.18 & 17 of 2014 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

In both C.R.Ps

For Petitioner : Mr.PA.Sudesh Kumar
For Respondents : Mr.N.E.A.Dinesh Kumar



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COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decreetal order dated 05.09.2018 in R.C.A.Nos.4 & 5 of 2015 on the file of the Rent Control Appellate Authority / Sub Court, Tirupattur reversing the fair and decreetal order, dated 29.04.2015 in R.C.O.P.Nos.18 & 17 of 2014 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

2. In both Civil Revision Petitions, the petitioner is the tenant and the respondents are the landlords. The petitioner filed a petition seeking permission to deposit the monthly rent in respect of the petition premises. Pending the said petition, the respondents (herein after called as “landlord”) filed a petition for eviction on the ground of wilful default. The learned Rent Controller allowed the petition seeking permission to deposit the monthly rent filed by the tenant and dismissed the petition seeking for eviction on the ground of wilful default filed by the landlord. Aggrieved by the same, the landlord preferred an appeal before the learned Rent Control Appellate Authority and both the appeals were allowed, thereby dismissing the petition seeking permission to deposit the rent and allowed the petition seeking for eviction on the ground of wilful default. Aggrieved by the same, the present Civil Revision Petitions.



3. The learned counsel appearing for the petitioner would submit that the Appellate Authority assuming that loss of 10% increase of rent found that the tenant committed wilful default and ordered for eviction. The deposit of rent for the period of genuineness would amount to wilful default. As directed by the Court below, the petitioner deposited the rent for 11 months on 30.04.2015, after the order was passed by the learned Rent Controller dated 29.04.2015. Therefore, it would not amount to wilful default. Even today, the petitioner is depositing the rent amount to the credit of RCOP. The landlord did not even state in the petition what is the monthly rent and on what period the tenant committed default. In the petition, the tenant stated that there was a recital in the agreement entered between the tenant and the original landlord, viz., the father of the respondents herein and agreed to enhance the rent at 20% per annum. However, subsequently, it was reduced to 10% by oral agreement between them. Therefore, the said agreement cannot be taken into account in order to decide the issue of wilful default. In fact, in the year 2019, the landlord filed a petition for fixing of fair rent of Rs.5,000/- as monthly rent. Therefore, the tenant cannot commit any wilful default at any point of time. After the demise of the original landlord, his wife/landlady refused to receive the fair rent amount as contemplated under the Act. The tenant has sent the rent by money order and



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the same was also refused by the landlady. Therefore, the tenant was constrained to file a petition seeking permission to deposit the rent in Court.

The learned Rent Controller rightly allowed the petition seeking permission to deposit the rent in Court and dismissed the petition seeking for order of eviction on the ground of wilful default. However, the learned Rent Control Appellate Authority, without considering those aspects, mechanically allowed the petition for eviction on the ground of wilful default and dismissed the petition seeking permission to deposit the rent to the Court.

4. In support of his contention, he relied upon the following Judgments :

(i) The Judgment reported in **2007 (2) CTC 127** in the case of ***V.Kannadasan and Others Vs. K.Swaminatha Pathar (Died) and others.***

(ii) The Judgment reported in **(2000) 1 SCC 451** in the case of ***C.Chandramohan Vs. Sengottaiyan (dead) by LR's and others.***

(iii) The Judgment reported in **(2000) 3 SCC 282** in the case of ***Chordia Automobiles Vs. S.Moossa and others.***

(iv) The Judgment reported in **1989 (1) LW 155** in the case of ***Durgai Ammal Vs. R.T.Mani.***



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(v) The Judgment reported in **2002 (2) LW 559** in the case of ***Loganathan.S Vs. V.S.Rangasamy***.

(vi) The Judgment reported in **1990 (1) LW 591** in the case of ***K.Avinasilingam Vs. Hamsa and others***.

5. Per contra, the learned counsel appearing for the landlord submitted that the tenant himself categorically averred in his petition that the monthly rent was fixed by the landlady's husband as Rs.750/- with enhancement at the rate of 20% per annum by the written agreement. Admittedly, the tenant failed to pay the enhanced rent. Therefore, the learned Rent Control Appellate Authority rightly calculated the rent and found that the tenant committed wilful default and ordered for eviction on the ground of wilful default. He further submitted that even according to the tenant, he paid rent of Rs.2,000/- in the year 2014. Even today, he is depositing only a sum of Rs.2,000/- as monthly rent for the petition premises. It would amount to wilful default and as such, the tenant is liable to be evicted on the ground of wilful default.

6. Heard, Mr.PA.Sudesh Kumar, learned counsel appearing for the petitioner, Mr.N.E.A.Dinesh Kumar, learned counsel appearing for the respondents and perused the materials available on record.



7. The petitioner, in both Civil Revision Petitions, is the tenant under one T.R.Govindarajan in respect of the shop admeasuring 10 X 12 ft, totally 120 sq.ft. The tenant is running pawn broking business. The tenancy had commenced on 01.03.1994. At that time, the rent was fixed as Rs.750/- per month. Subsequently, it was periodically enhanced. The tenant finally enhanced the rent at Rs.2,000/- per month in the year 2010. The said T.R.Govindarajan died and thereafter, his wife, viz., the landlady, was receiving the rent. In the month of February, 2014, the landlady refused to receive the said rent. Therefore, the tenant issued legal notice on 13.03.2014, thereby called upon the landlady to furnish the particulars of bank account in order to deposit the same. After receipt of the said notice, the landlady issued eviction notice to the tenant, thereby called upon the tenant to vacate the premises. Subsequently, the tenant had sent the monthly rent by way of money order, it was also returned and as such, the tenant was constrained to file a petition under Section 8(5) of Tamil Nadu Buildings (Lease and Rent Control) Act, seeking permission to deposit the monthly rent before the Court. Pending the said petition, the landlady also filed a petition for eviction on the ground of wilful default. In the said petition, the landlady averred that she did not receive a sum of Rs.5,000/- towards monthly rent from the month of December, 2010 and it was not paid by the tenant.



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8. A perusal of the petition reveals that nowhere she averred that what was the rent paid by the tenant so far. She also claims the petition premises would fetch a monthly rent of Rs.750/-. However, she demanded to pay a sum of Rs.5,000/- as monthly rent. Though the tenant averred in the petition that when the husband of the landlady was alive, there was a recital in the agreement that 20% of monthly rent has to be enhanced every year, subsequently, it was reduced to 10%. Both the landlord and landlady as well as the tenant did not produce agreement for lease. Further the landlady owned three shops, in which she is collecting rent of Rs.5,000/- per month. Now, the only point for consideration is whether the tenant committed wilful default or not ?

9. The learned Rent Control Appellate Authority relied upon the Judgment reported in **2007 (2) CTC 127** in the case of ***V.Kannadasan and others Vs. K.Swaminatha Pathat (Died) and others***, in which this Court held that where pending eviction petition, the tenant has not taken any steps under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act to deposit the rent in the Court. In the case on hand, the petitioner had initiated the proceedings to deposit the rent even prior to the eviction



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proceedings. Further, in the absence of any agreement for lease before the Court or any evidence to that effect. The learned Rent Control Appellate Authority cannot be presume the 10% enhanced rent every year. In fact, the landlady also failed to state what was the original rent she claims and what was the rent so far as paid by the tenant for the petition premises. If at all she demanded more rent she could have very well filed a petition for fixation of fair rent. It seems that the landlady filed a petition for fixing of fair rent for petition premises and it is pending. Admittedly, the landlady was received rent for the petition premises at Rs.2,000/-. However, from the year 2014 she demanded Rs.5,000/- as monthly rent for the petition premises. As per her demand, the tenant did not pay the rent.

10. In this regard, the learned counsel for the petitioner relied upon the Judgement reported in **(2000) 1 SCC 451** in the case of **C.Chandramohan Vs. Sengottaiyan (dead) by LRs and others**, in which, the Hon'ble Supreme Court of India held that the application under Section 8(5) of the Tamil Nadu Buildings Lease and Rent Control Act, when the petition for eviction on the ground of wilful default filed, already the tenant filed a petition for depositing the rent. Therefore, no cause of action arose for



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filing the petition for eviction on the ground of wilful default in payment of rent. No wilful default was committed by the tenant in payment of monthly rent for the petition premises.

11. Further, the landlady filed eviction petition on the ground of wilful default before expiry of two months from the date of receipt of notice. In the case on hand, admittedly, the landlady filed a petition even before the expiry of two months for eviction by way of wilful default. The wilful default means an act consciously or deliberately done with open defiance and intent not to pay the rent. The landlady issued notice on 23.04.2014 and the eviction petition was filed on the ground of wilful default on 11.06.2015. However, the landlady initiated the eviction within a period of two months from the date of notice for eviction petition.

12. In this regard, the learned counsel appearing for the petitioner relied upon the Judgement reported in **(2000) 3 SCC 282** in the case of **Chordia Automobiles Vs. S.Moossa and others**, in which the Hon'ble Supreme Court of India held that the proviso of Section 10(2)(i) as two months did not expire from the date of notice when the suit was filed it could



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not be a case of wilful default. Wilful default means an at consciously or deliberately done with open defiance and intent not to pay the rent. In the case on hand, already the tenant filed petition seeking permission to deposit the monthly rent to the Court, since the landlady refused to receive the rent. Pending the said petition, the landlady filed a petition on the ground of wilful default, thereby dispute of the rent.

13. A perusal of the records reveals that the contact of the tenant is not being a defaulter in regular in payment of rent. Therefore, the learned Rent Control Appellate Authority ought not to have filed that the tenant is a wilful defaulter.

14. In view of the above, this Court finds infirmity in the orders passed by the learned Rent Control Appellate Authority and it requires interference by this Court. Accordingly, the fair and decreetal order dated 05.09.2018 in R.C.A.Nos.4 & 5 of 2015 on the file of the Rent Control Appellate Authority / Sub Court, Tirupattur, is hereby set aside and confirming the fair and decreetal order dated 29.04.2015 in R.C.O.P.Nos.18 & 17 of 2014 passed by the learned Rent Controller.



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15. Considering the facts and circumstances of the case, from the year 2014 itself, the tenant is depositing the rent only at Rs.2,000/- per month to the petition premises and this Court deems it fit to direct the tenant to pay the monthly rent at Rs.5,000/- to the landlady from the month of March 20023 onwards, till the disposal of the petition for fixing of fair rent by the learned Rent Controller, which is filed by the landlady.

16. In the result, these Civil Revision Petitions stand allowed.
Consequently, connected miscellaneous petitions are closed. No costs.

23.02.2023

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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To
The Rent Control Appellate Authority / Sub Court, Tirupattur
The Principal District Munsif, Tirupattur, Vellore District.



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G.K.ILANTHIRAIYAN.J,

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