



WEB COPY



C.R.P.(MD)No.731 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.731 of 2006
and
M.P.(MD)No.1 of 2007

V.Alamelu Achi

... Petitioner

-VS-

1.Amutha
2.R.Manian (died)
3.Subbulakshmi
4.Muthukumar
5.Shanthi Subramanian

... Respondents

[Respondents 3 to 5 are brought on records as legal heirs of the deceased second respondent vide Court order dated 09.12.2022]

PRAYER: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 to set aside the judgment and decree dated 27.02.2006 passed by the Sub Court, Devakottai in R.C.A.No. 9 of 2005 by setting aside the fair and decreetal order dated 06.04.2005 made in R.C.O.P.No.19 of 2002 passed by the District Munsif cum Judicial Magistrate, Karaikudi.

For Petitioner : Ms.AL.Gandhimathi
Senior Counsel
for Mr.C.Mahadevan
For R1 & R3 to R5: No Appearance



C.R.P.(MD)No.731 of 2006

WEB COPY

ORDER

The present revision petition has been filed by the landlord challenging the order passed by the Rent Control Appellate Authority reversing the order of eviction passed by the Rent Controller on the ground of willful default.

2.The revision petitioner herein had filed R.C.O.P.No.19 of 2002 before the District Munsif cum Rent Controller, Karaikudi for evicting the respondents herein on the ground of willful default, owner's occupation and subletting. According to the landlord, the first respondent in RCOP is the original tenant. He had sublet the premises to the second respondent therein. The tenant had committed willful default from November 2001 to July 2002. The landlord has further contended that she requires the premises for her own occupation. The tribunal after considering the submissions of either side arrived at a finding that the landlord has not established the plea of own occupation and subletting. However, the Rent Controller was pleased to order eviction on the ground of willful default.



C.R.P.(MD)No.731 of 2006

WEB COPY

3.The original tenant, namely the first respondent has not chosen to file any appeal. The second respondent/sub tenant had filed R.C.A.No.9 of 2005 before the Rent Control Appellate Authority, Thoothukudi. The appellate authority relied upon the proceedings in R.C.O.P.No.19 of 2002 and proceeded to hold that the second respondent /appellant had been depositing the rent in R.C.O.P.No.19 of 2002 and therefore, the landlord has not established the plea of willful default. Challenging the said order, the present revision petition has been filed by the landlord.

4.Pending revision petition, the original tenant had passed away and his legal heirs have been impleaded. Though the legal heirs have been served, they have not chosen to appear either in person or through counsel.

5.The learned senior counsel appearing for the landlord brought to the notice of the Court that the appellant in R.C.A.No.9 of 2005 had filed R.C.O.P.No.19 of 2002 before the Rent Controller, Karaikudi under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act praying for depositing the rent before the Court on the ground that the landlord is



C.R.P.(MD)No.731 of 2006

refusing to receive the rent. The said petition was dismissed for default on 21.08.2003.

6. According to the learned senior counsel, the second respondent in R.C.O.P., had not deposited the rent either to the credit of R.C.O.P.No.19 of 2002 or directly to the landlord. Even during the pendency of the rent control proceedings, the sub tenant namely, Amutha had not chosen to pay the rent to the landlord. The learned senior counsel further contended that merely due to the pendency of rent control proceedings, the First Appellate Authority ought not to have reversed the findings of the Rent Controller. Even before the appeal was filed by the sub tenant, her petition for depositing the rent has been dismissed. Due to inadvertence, this was not brought to the notice of the Appellate Authority.

7. In view of the above said facts, it is clear that the second respondent in R.C.O.P.No.19 of 2002, namely Amutha had not paid the rent amount from November 2001 onwards either before initiation of the rent control proceedings or during the pendency of the rent control proceedings. Therefore, this Court is of the view that the second respondent in the rent



C.R.P.(MD)No.731 of 2006

control proceedings and the first respondent in this revision, namely Amutha has committed willful default in payment of rent and therefore, the order of the appellate Authority is set aside and the order of eviction passed by the Rent Controller in R.C.O.P.No.19 of 2002 dated 06.04.2005 is hereby restored.

8.This Civil Revision Petition is allowed on the above terms. No costs.

22.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
ta

To

- 1.Sub Court, Devakottai.
- 2.The District Munsif cum Rent Controller,
Karaikudi



WEB COPY



C.R.P.(MD)No.731 of 2006

R.VIJAYAKUMAR,J.

ta

C.R.P.(NPD)(MD)No.731 of 2006

22.09.2023