



C.R.P.(MD)No.624 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
14.03.2023	06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.624 of 2023

and

C.M.P.(MD)No.2895 of 2023

T.Periannan

... Petitioner

vs.

R.Ganeshbabu

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 24.01.2023, passed in I.A.No.7 of 2023 in I.A.No.2 of 2022 in R.C.O.P.No.13 of 2022, on the file of the District Munsif Court, Karaikudi.

For Petitioner

: Mr.S.Selva Aditya

ORDER

This Civil Revision Petition is directed against the impugned fair and decreetal order dated 24.01.2023, passed by the learned District Munsif, Karaikudi, in I.A.No.7 of 2023 in I.A.No.2 of 2022 in R.C.O.P.No.13 of 2022. Relevant portion of the impugned order reads as under:-



"This Court is of the considered opinion that Section 11(2) and Section 11(4) of TNBLRCA petition is not pending before this Court. Meanwhile the Petitioner in I.A.No.02/2022 has filed 3 petitions under Section 151 of CPC for break open of outer door, Police help and VAO help. This Court is inclined to return all the 3 separate applications and direct the petitioner in I.A.No.02/2022 to file a separate execution petition to comply the order of this Court dated 01/12/2022. Further, the Court directs the registry to return the delivery batta and connected application if any."

2. The petitioner a landlord had filed R.C.O.P.No.13 of 2022 [formerly R.C.O.P.No.2 of 2018] before the District Munsif Court, Karaikudi, against the respondent for wilful default of the rent and for delivery of possession of the leased property as the respondent failed to pay the rent after 2011.

3. The respondent was set *ex parte* on 28.04.2018. Since the respondent failed to pay the rent, the Rent Controller, therefore, directed the respondent to vacate the suit property and hand over vacant possession to the petitioner directly within a period of 2 months from the date of the *ex parte* order on 28.04.2018. The said *ex parte* order dated 28.04.2018 was later recalled.

4. Later, a fresh order dated 01.12.2022 was passed in R.C.O.P.No.13 of 2022. Relevant portion of the order dated 01.12.2022 of the Rent Controller reads as under:-

"In the result, this petition is allowed as prayed for. Eviction is hereby ordered. The respondents/tenants are hereby directed to vacate and handover the vacant possession of the schedule premises to the petitioner



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within one month from the date of this order. This Court also directs the respondents/tenants to pay the remaining arrears of monthly rent to the Landlord within one month from the date of this Order."

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5. Under these circumstances, the petitioner filed I.A.No.2 of 2022 under Section 11(2) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960, before the District Munsif Court, Karaikudi and prayed for a direction to direct the respondent to deposit the arrear rent of Rs. 22,500/- and incase of failure to pay the aforesaid arrears of rent, to hand over the possession of the property to the petitioner.

6. Therefore, an order came to be passed on 12.07.2022 in I.A.No.2 of 2022. The Rent Controller directed the respondent to pay the arrears of rent from September 2019 to June 2022 at the rate of 1500/- per month by way of demand draft to the petitioner on or before 28.07.2022.

7. The Rent Controller also directed the respondent to pay all the future rent to the petitioner or to his counsel on or before 10th of every succeeding English Calendar month till the disposal of R.C.O.P. The order further stated that failure to pay the rent will result in eviction order being passed against the respondent. Relevant portion of the order dated 12.07.2022 reads as under:-



"7. Considering the entire facts and circumstances of the case, this Court direct the tenant to pay all the arrears of rent from September 2019 to June 2022 at the rate of Rs.1500/- per month by way of demand draft to the landlord on or before 28.07.2022. The tenant is directed to pay all the future rent to the landlord or his counsel on or before the 10th of every succeeding English Calendar month till the disposal of RCOP. The landlord or his counsel are directed to give due Acknowledgment for the receipt of said monthly rent amount. In the case of failure to pay the arrears of rent or the future rent, as mentioned above, all further proceedings into the main RCOP is ordered to be stopped and an order of eviction will be passed against the tenant. IA allowed accordingly. No costs."

8. The respondent appears to have failed to pay the arrears of rent as was ordered on 12.07.2022. The petitioner therefore paid Batta for delivery of property on 05.01.2023. It is informed that the delivery was scheduled on 24.01.2023.

9. The respondent therefore filed I.A.No.7 of 2023 before the District Munsif Court, Karaikudi, under Section 11(2) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 read with Section 151 of C.P.C. to cancel the Delivery Batta paid by the petitioner.

10. The Rent Controller, vide impugned order dated 24.01.2023 returned I.A.No.7 of 2023, I.A.No.2 of 2022 and I.A.No.36 of 2020 and directed the petitioner to file a separate Execution Petition and directed return of the Delivery Batta paid by the petitioner. Relevant portion of the impugned order has been reproduced in the beginning of this order.



11. It is the case of the petitioner that the petitioner need not be driven to file a separate execution proceedings, particularly when the tenant has failed to deposit the rent during the pendency of the proceedings under Section 11(2) and 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

12. It is submitted that if the tenant fails to deposit the rent, the Arbitrator or the Appellate Authority or the Rent Controller as the case may be, shall stop all further proceedings in the main R.C.O.P. and direct the tenant to vacate the suit property and deliver the possession of the building to the landlord.

13. In this connection, the learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in **Maragathammal Vs. Kamalammal** [(2006) 8 SCC 152], which deals with an identical situation.

14. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the impugned order of the Rent Controller.

15. Section 18 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 contains a separate provision for execution of orders. It is confined to execution of orders passed under Sections 10, 14, 15, 16, 17, 23 and 25 of the Tamil Nadu



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Buildings (Lease and Rent Control) Act,1960. Execution of Section 11 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not contemplated in Section 18. It is different from execution proceeding contemplated under Order 21 of CPC.

16. Section 11 and Section 18 of the Tamil Nadu Buildings (Lease and Rent Control) Act,1960 Act reads as under:-

Section 11	Section 18
<i>Payment or deposit of rent during the pendency of proceedings for eviction. -</i>	<i>Execution of Orders-</i>



(1) No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 23 against any order made by the Controller on the application unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building,

(1) Every order made under sections 10, 14, 15, 16 and 17 and every order passed on appeal under section 23 or on revision under section 25 shall be executed by the Controller, as if, such order is an order of a Civil Court and for this purpose, the Controller shall have all the powers of a Civil Court.

(2) An order passed in execution under sub-section (1) shall not be subject to any appeal or revision”.



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17. In **Maragathammal Vs. Kamalammal**, the Hon'ble Supreme Court extracted the order of this Court, dated 30.04.2014, in C.R.P.(MD)Nos.1981 and 1982 of 2000 in Paragraph No.8. It reads as under:-

"8. The High Court in the impugned judgment has observed:

"A perusal of the order of the Appellate Authority dated 4-7-2000 discloses that the Appellate Authority was under the impression that the respondent failed to deposit the past arrears covering the period June 1992 onwards in spite of the orders passed in IA No. 523 of 1993 and also the subsequent order passed by the Appellate Authority. Apparently, the said conclusion seems to have been made without really appreciating the correct facts relating to the deposit of rent. In fact, the learned counsel for the respondent has placed before this Court the memo filed by the respondent pursuant to the order passed in IA No. 22 of 1996, which memo was filed on 17-7-1997 confirming the deposit of the sum of Rs 39,650 vide Challan No. 4044, dated 14-7-1997. Therefore, by the time the Appellate Authority was seized of the matter, the respondent is stated to have deposited the past arrears from the month of June 1992 onwards up to July 1997 within the time granted by the Appellate Authority. The further fact remains that the respondent has been meticulously depositing the rents for the period subsequent to July 1997 onwards regularly to the credit of the RCOP and that the appellant is also withdrawing the rents so deposited by the respondent.

In such circumstances, in all fairness, the respondent should be given an opportunity to contest the main RCOP on merits, as I am of the view that the respondent has displayed her bona fide insofar as the payment of rent during the pendency of the appeal proceedings is concerned. Viewed in that respect, the order of the Appellate Authority holding that the respondent was not showing her due diligence to discharge her liability in the payment of rents, cannot be affirmed." "

18. The Hon'ble Supreme Court, however, reversed the order of this Court and held as under:-



"14. We see no reason why the respondent lodged the schedule as late as on 21-11-1995 i.e. just the previous day prior to 22-11-1995 by which date when she was directed to deposit the entire admitted arrears in court under Section 11. The respondent could have lodged this schedule on the very next day after the order dated 9-11-1995 i.e. on 10-11-1995 or within a day or two thereafter. We see no reason why she waited till the eve of 22-11-1995, which was the last date of depositing the entire rent in court. It is admitted that the respondent tenant has been deliberately avoiding the payment of the rent as and when it fell due. Thus, we respectfully disagree with the view taken by the Madras High Court and we uphold the orders of the Rent Controller dated 9-11-1995 and 22-3-1996. The impugned judgment of the High Court is set aside and the respondent tenant is granted two months' time to vacate the premises in question, failing which she will be evicted by police force. The appeal is allowed. No costs."

19. Point for consideration in the present Civil Revision Petition is as to whether the petitioner was required to file a separate Execution Petition to implement the order passed by the District Munsif Court, Karaikudi, on 01.12.2022? or whether the order passed earlier under Section 11(2) and 11(4) of the Act on 12.07.2022 was sufficient for the Rent Controller to direct the tenant to deliver possession of the subject building to the petitioner without filing a separate Execution Petition?

20. An Interlocutory Application cannot be filed in the original proceedings, which, in any event, stands disposed. Execution of an order passed under Section 11(4) read with Section 10 of the Act has to be by way of separate execution proceedings under Section 18 of the said Act. When the law mandates a particular thing to be done in a particular manner, then, it has to be done in that particular



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manner. Therefore, there is no merit in the present Civil Revision Petition.

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21. The order that is passed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is to be construed to be an order passed under Section 10 of the said Act. Therefore, the only option available to the petitioner/ landlord is to invoke the provisions of Section 18 of the said Act. An execution proceedings contemplated under Section 18 of the Act cannot be circumvented.

22. In my view, though eviction was ordered on 01.12.2022, it was not open to the petitioner to seek execution of the aforesaid order directly in the Rent Control Proceeding. Eviction of a tenant by a successful landlord can be only under Section 18 of the said Act. Therefore, the petitioner has to necessarily file Execution Petition under Order 21 Rule 10 of C.P.C.

23. Therefore, the impugned order of the Rent Controller does not call for any interference. Hence, the present Civil Revision Petition is dismissed with liberty to the petitioner to file an appropriate petition for executing the order passed under Section 11(4) read with Section 18 of the said Act. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No

Index : Yes / No

06.04.2023

<https://www.mhc.tn.gov.in/judis>



Internet : Yes / No
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The District Munsif,
Karaikudi.



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C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(MD)No.624 of 2023

DATED : 06.04.2023