



C.R.P(MD)Nos.308 and 309 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On:02.11.2023 Pronounced on:10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)Nos.308 & 309 of 2019 (NPD)

and

C.M.P(MD)No.1477 of 2019

G.Packia Nadar

...Petitioner in both CRPs

vs.

1.T.Vijayalakshmi

2.T.Dinesh Kumar

3.T.Deepalakshmi

... Respondents in both CRPs

PRAYER in C.R.P(MD)No.308 fo 2019: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 23/1973, to set aside the fair and decretal order, dated 04.11.2017 passed in R.C.A.No.05 of 2015, on the file of Principal Sub-Judge, Thanjavur confirming the fair and decretal order, dated 03.06.2015 passed in R.C.O.P.No.05 of 2006, on the file of the learned Rent Controller -cum-District Munsif, Thiruvaiyaru.

PRAYER in C.R.P(MD)No.309 fo 2019: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 23/1973, to set aside the fair and decretal order, dated 04.11.2017 passed in R.C.A.No.04 of 2015, on the file of Principal Sub-Judge, Thanjavur



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confirming the fair and decretal order, dated 03.06.2015 passed in R.C.O.P.No.04 of 2014, on the file of the learned Rent Controller Authority-cum-District Munsif, Thiruvaiyaru.

For Petitioner	:Mr.M.P.Senthil
For R1 & R2	:Mr.S.Vijayakumar
in both CRPs'	Senior Counsel for Mr.P.Velmurugan
For R3	:No appearance
in both CRPs'	

COMMON ORDER

The un-successful tenant is the revision petitioner.

2. Originally, the respondents' father, R.K.Sambandam Chettiar filed R.C.O.P.No.5 of 2006 for eviction on the ground of wilful default. Pending the application, the said R.K.Sambandam Chettiar died and his legal heirs were impleaded as petitioners 2 to 4. The Rent Controller allowed the said application and ordered eviction. The tenant, aggrieved by the said order of eviction, preferred an appeal in R.C.A.No.5 of 2015 before the Principal Sub-Court, Thanjavur. The said appeal was



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dismissed confirming the order of eviction passed by the Rent Controller.

As against the concurrent findings, C.R.P(MD)No.308 of 2019 has been preferred by the tenant.

3. The tenant filed R.C.O.P.No.4 of 2014 seeking permission to deposit the monthly rents into the Court, invoking the provisions of Section 8(5) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. The said application came to be dismissed. As against the same, the tenant preferred an appeal in R.C.A.No.4 of 2015. The said Rent Control Appeal was also dismissed, confirming the findings of the Rent Controller and as against these concurrent findings, the tenant has preferred the revision in C.R.P(MD)No.309 of 2019.

4. Both the revisions being interconnected, they are heard together.

5.The grounds raised by the petitioner / tenant are that admittedly, when the petitioner came as a tenant under one R.K.Sambandam Chettiar, the respondents have not substantiated their very entitlement to maintain the RCOP. After the demise of R.K.Sambandam Chettiar, the petitioner filed R.C.O.P.No.1 of 2002 seeking permission to deposit rents into



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Court and the same was allowed and thereafter, when the petitioner has been depositing the rents into Court, the question of any default, much less, wilful default will not arise; the Courts below have discarded the vital admission of P.W.1 that he refused to receive the rent; The Courts below have failed to see that the petitioner took all bonafide steps to pay the monthly rent and therefore, the authorities ought to have held that there was no wilful default committed by the petitioner.

6. Urging these grounds, the counsel for the petitioner would take me through various proceedings which were initiated in respect of the very same premises, earlier to the present RCOP proceedings. He would also invite my attention to the evidence of P.W.1, who has clearly stated that he has refused to receive the rents. Therefore, placing reliance on the admission of P.W.1 and also in view of the fact that the RCOP itself came to be filed without even issuing a notice regarding the respondents' entitlement, to file an eviction petition, after the demise of the R.K.Sambandam Chettiar, the learned counsel for the petitioner would contend that the question of alleging default or wilful default, does not arise.



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7. Per contra, Mr.S.Vijayakumar, learned Senior counsel appearing for the respondents / landlords would submit that under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the scope of the interference is very limited and when the Courts below have concurrently found that the petitioner has committed wilful default and given justifiable reasons for the same, this Court sitting in revision, should not interfere with the concurrent findings rendered by the Courts below. That apart, he also took me through the findings of the Rent Controller as well as the Appellate Authority regarding the aspect of wilful default committed by the revision petitioner. The learned Senior Counsel would therefore, prayed for dismissal of the revisions.

8. I have heard Mr.M.P.Senthil, learned counsel appearing for the petitioner and Mr.S.Vijayakumar, learned Senior Counsel appearing for the respondents 1 & 2. I have also perused the records including the deposition of the parties before the Rent Controller.

9. Admittedly, the petitioner was a tenant under one R.K.Sambandam Chettiar, in the petition premises, right from 13.09.1996, where, he has been running a grocery shop, paying a



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monthly rent of Rs.500/-. It is also an admitted fact that the petitioner filed an application in R.C.O.P.No.1 of 2002 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 seeking permission to deposit the monthly rent at the rate of Rs.500/- into the Court. The said RCOP was allowed by the Rent Controller in and by an order dated 03.09.2003, thereby, permitting the revision petitioner to deposit the rent at the rate of Rs.500/- from the month of November, 2003 and with a further direction that the said deposit has to be made on or before 5th day of every English Calender month. The certified copy of the order made in the RCOP has been exhibited before the Rent Controller.

10. It is the specific case of the respondents that despite the order of the Rent Controller to deposit the monthly rent into the Court, the petitioner did not comply with the same and he stopped deposit of rents right from the month of March 2005. It is the further case of the respondents that not only the petitioner failed to deposit the rent from the month of March 2005 till today, he has also not taken any steps to pay the same to the respondents / landlords. The petitioner, as a respondent in RCOP No.5 of 2006 proceedings, did not dispute the fact that there was



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an order passed by the Rent Controller, but what he would contend is that the respondent not being a party in the R.C.O.P.No.1 of 2002, cannot refer to the order and approach the Court complaining that the petitioner has not deposited the rent in compliance with the said order of the Rent Controller. The petitioner would further state that the respondents never issued any notice to him, calling upon him to attorn the tenancy. Therefore, it is a clear case where the petitioner cannot be made as a victim and categorised as a wilful defaulter.

11. Before the Rent Controller, the second respondent herein examined himself as P.W.1 and marked Ex.P1 and Ex.P2. On the side of the revision petitioner, he examined himself as R.W.1 and exhibited documents, namely, Ex.R1 to Ex.R11.

12. The Rent Controller has rightly discussed the earlier proceedings between the parties and found that having obtained an order from the Rent Controller, the petitioner could not escape from the consequence of non-complying with the order of the Court. This Court also find that the application seeking deposit of rent was filed only pursuant to receipt of notice in the RCOP proceedings filed for eviction



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at the instance of the respondents herein and therefore, arrived at a categorical finding that the defence set out by the revision petitioner was not bonafide and the default committed by him was clearly wilful.

13. The petition filed by the petitioner seeking deposit of rent also came to be dismissed on assigning similar reasons. The Appellate Authority has independently come to a finding that despite the order in R.C.O.P.No.1 of 2002, the petitioner has not deposited the rent every month and has made a part payment of Rs.35,000/- in the year 2010 and another Rs.14,500/- in the year 2013 and that the petitioner has not adduced any evidence to show that right from the date of the order in RCOP No.1 of 2002, he has deposited the rents on or before 5th of every English Calender month. Thus, I do not find any illegality or perversity in the findings rendered by the Rent Controller and confirmed by the Appellate Authority.

14. With regard to the next contention that the petitioner ought to have been put on notice and that there was no attornment of tenancy, I am unable to accept the said contention. The fact that the petitioner himself has filed an application against the respondents herein under Section 8(5)



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of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 seeking deposit of rent in R.C.O.P.No.1 of 2002, where under, he does not dispute the entitlement of the respondents to receive the rent. In paragraph No.3 of the said petition in R.C.O.P.No.4 of 2014 filed by the petitioner under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, he has stated that the petitioner is the tenant of the petition mentioned property under one R.K.Sambandam Chettiar, since 13.09.1986 and the last agreed monthly rent is Rs.500/- per month and further that the said R.K.Sambandam Chettiar instituted a petition for eviction against the petitioner to vacate the petition mentioned property in R.C.O.P.No.5 of 2006, on the file of this Court, which is pending disposal. He has also specifically pleaded that “Since R.K.Sambandam Chettiar died, his son Thiruselvam was brought on record and he too, died leaving behind the respondents as his legal heirs, who are now prosecuting the said eviction petition.”

15. Therefore, having acknowledged the entitlement of the respondents to receive the rent, which clearly brings them within the definition of 'landlord' under Section 2(6) of the 'Act', it is not open to the revision petitioner to canvass an argument that without attornment of



tenancy, the RCOP could not have been filed or maintained.

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16. Regarding the admission of P.W.1 that he refused to receive the rent tendered by the revision petitioner, though the said argument appellant to be attractive as first blush, I see no merit in the contention advanced for the simple reason that, once there is refusal to receive the rents, the tenant is bound to approach the Rent Controller under Section 8 of the Act 1960. Here, unfortunately and admittedly, the revision petitioner was in deep slumber and only after the respondents initiated the eviction proceedings against him, he chose to wake up and filed R.C.O.P.No.4 of 2014 and it is clearly an after thought and only in order to set up a defence for himself in the eviction petition filed by the landlords. Even assuming that the admission of P.W.1 may have to be put against the respondents in the light of the order obtained by the revision petitioner in R.C.O.P.No.1 of 2002 seeking to deposit the monthly rent into the Court and admittedly, having failed to comply with the said order, the admission of P.W.1 and also the conduct of the revision petitioner in not approaching the Court immediately or within a reasonable time seeking to deposit the rents clearly militates against the revision petitioner. Once an eviction petition is filed for eviction on the



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ground of wilful default, any application filed thereafter seeking to deposit rents into Court is without cause of action and can never be a valid defence to the eviction action.

17. It is a clear case where the revision petitioner/tenant has not been diligent and on the contrary, I find that he has been callous and indifferent in payment of rents and also in depositing the same, having obtained orders from the Court to deposit the rents. It is unfortunate that even after filing of the RCOP for eviction and the petition seeking deposit of rents, the petitioner has not taken any steps to pay the rent. According to the learned Senior Counsel appearing for the respondent, the rent at the rate of Rs.500/- remain un-paid from March, 2003 till date and such a tenant does not deserve any indulgence from the Court. In any event, sitting under Revisional jurisdiction under Section 25 of Act, I do not see any ground warranting interference with the concurrent findings rendered by the Courts below, which are definitely not illegal, improper or perverse.

18. For all the above reasons, the revision petitions are dismissed. The revision petitioner shall vacate the petition mentioned premises and



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hand over vacant possession to the respondent on or before 31.01.2024, subject to filing of an undertaking affidavit that he would vacate the premises on or before 31.01.2024 without driving the respondents to initiate execution proceedings and also subject to payment of the entire arrears of rent right from March 2005 till 31.10.2023, within a period of four weeks. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
AM

10.11.2023

To

1. The Principal Sub-Judge,
Thanjavur.
2. Rent Controller Authority-cum-District Munsif,
Thiruvaiyaru.



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P.B.BALAJI,J.

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