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C.R.P.(NPD).No.2024 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2024 of 2021

Yasmin Najumuddin

... Petitioner

vs

K.E.P.Mohammed Ali (Died)

2.Thameemul Ansari

3.Packeer Mohaideen

... Respondents

(Sole Respondent died. Respondents 2 and 3 are brought on record as LR's of the deceased Sole Respondent viz., K.E.P.Mohammed Ali vide Court order dated 21.12.2023 made in C.M.P.Nos.21198, 21201 and 21203/2023 in CRP.No.2024/2021 by JSNPJ)

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, (as amended by Act 23 of 1973 and by Act 1 of 1980, praying to allow the above Civil Revision Petition and set aside the Judgement and Decree dated 22.03.2021 passed in R.C.A.No.184 of 2016 by the learned VIII Judge, Court of Small Causes at Chennai, (Rent Controller Appellate Authority) confirming the fair and decretal order passed



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in R.C.O.P.No.144 of 2015 by the learned XI Judge, Court of Small Causes at Chennai, (Rent Controller) dated 09.12.2015.

For Petitioner : Mr.Ashok Menon

For R1 : Died

For R2 : Mr.S.Parthasarathy

For R3 : Mr.C.Russel Raj

ORDER

The Civil Revision Petition is filed challenging the order of eviction passed in rent control proceedings.

2. The deceased 1st respondent/landlord filed rent control eviction petition on the ground of wilful default. The Rent Controller ordered eviction and aggrieved by the same, the petitioner preferred an appeal before the Rent Control Appellate Authority. The same was also dismissed and hence, aggrieved by the concurrent findings against her, the tenant is before this Court. Pending civil revision petition, the 1st respondent died and his legal representatives were brought on record as respondents 2 and 3.



3. It is the case of the deceased 1st respondent/landlord that petitioner was a tenant under him on a monthly rent of Rs.45,000/- for a period of 11 months with effect from 01.04.2013. The deceased respondent filed a petition for fixation of fair rent in R.C.O.P.No.1243 of 2010 on the file of XIV Judge, Court of Small Causes, Chennai and the said petition was disposed of based on joint compromise memo filed by both the parties on 29.04.2013. As per the terms of joint compromise memo, both the parties had agreed to pay a rent of Rs.45,000/- per month with effect from 01.04.2013 with an option to renew the lease deed on such other conditions including the increase of 10% rental amount after every 11 months till the continuance of the tenancy. It was specifically averred by the deceased respondent that as per the joint compromise memo, the petitioner did not renew the lease agreement and also did not pay 10% increase of fair rent from February, 2014. It was also stated that inspite of repeated reminders by deceased respondent, the petitioner failed to pay the increased rent of Rs.49,500/- from February, 2014. Thus, claiming that failure to pay rent with 10% increase, as per the terms of joint compromise memo, would amount to wilful default in payment of rent the deceased respondent laid the petition for eviction.



4. The petitioner herein filed a counter statement and contended that she had been paying the agreed fair rent at the rate of Rs.45,000/- per month with effect from 01.04.2013 to till the date of application without any default. It was also stated that petitioner paid Rs.6,00,000/- as advance to the respondent/landlord and the same was also recorded in the compromise memo. It was specifically averred by the petitioner that she did not agree for 10% increase of fair rent and continuance of tenancy after 11 months period. Since there was no mutuality in enhancement of rent, there was no further renewal of lease period after expiry of 11 months. In such circumstances, failure to pay enhanced rent cannot be treated as wilful default. The petitioner also raised a plea that excess advance of Rs.5,55,000/- in the hands of respondent/landlord would wipe out arrears, if any, on the date of eviction petition.

5. The learned Rent Controller came to the conclusion that failure of the petitioner to pay 10% enhanced rent after expiry of every 11 months would amount to wilful default and ordered eviction. Aggrieved by the same, the petitioner preferred an appeal in R.C.A.No.184 of 2016 and the same was



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dismissed by Appellate Authority. Hence, the petitioner/tenant is before this Court.

6. The learned counsel for the petitioner raised the following two points:-

(a) As per the terms of agreement, after expiry of initial lease period of 11 months, if both the parties agree, lease period can be renewed for further period of 11 months with 10% increase in the fair rent. In the absence of mutual agreement between the parties, the petitioner/tenant is entitled to continue her occupation as a statutory tenant on the original terms of lease. Hence, the petitioner is liable to pay only the agreed rent of Rs.45,000/- per month.

(b) As recorded in compromise memo, the petitioner paid an advance of Rs.6,00,000/- to the deceased respondent and hence, the excess amount of Rs.5,55,000/- (after deducting one month advance payable as per law) shall be adjusted towards arrears, if any, on the date of eviction petition. In support



of his contention, the learned counsel for the petitioner relied on following judgements,

- (i) ***K.Narasimha Rao vs. T.M.Nasimuddin Ahmed*** reported in **1996 (2) MLJ SC Page 49.**
- (ii) ***M.K.Selvaraj and others vs. Hameed Fathima Ghani*** reported in **2013 (4) CTC 574.**
- (iii) ***Mahalingam vs. Pichaiammal*** reported in **2000 (2) MLJ Page 202.**

7. The learned counsel appearing for the 2nd respondent vehemently contended that petitioner/tenant agreed for 10% enhancement in the rent every 11 months and hence, her failure to pay enhanced rent as agreed would amount to wilful default. He further submitted that even if advance amount in excess of one month rent is available in the hands of landlord, in the absence of specific request by the petitioner for adjustment of the excess advance amount with the arrears of rent, there is no automatic adjustment. In support of his contention, the learned counsel relied on following judgements:-

- (i) ***SHIVSHANKAR GURGAR vs. DILIP*** reported in **(2014) 2 SCC 465.**
- (ii) ***K.Ugrapandian vs. K.E.Ramalingam*** reported in **(2013) 8 MLJ 465.**



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(iii) ***K.Karuppiyah vs. B.Kubendran*** reported in **2009 (2) CTC 595.**

(iv) ***Vikesh Kumar O. Jain vs. Hemalatha Ben S. Thakker*** reported in **MANU/TN/7410/2021.**

8. The main issue to be decided in this revision is whether failure of the petitioner/tenant to pay 10% enhanced rent once in 11 months, as per the compromise memo, would amount to wilful default. The fair rent petition filed by the deceased respondent in R.C.O.P.No.1243 of 2010 was disposed of by recording joint compromise memo filed by both the parties. Clause Nos.4 and 5 of joint compromise memo reads as follows:-

“4. The Respondent agrees to forfeit the earlier advance given to the petitioner in terms of the tenancy arrangement between them. The Petitioner and the Respondent have agreed upon Rs.45,000/- (Rupees Forty Five Thousand only) per month as rent w.e.f. 01.04.13 and pay Rs.6,00,000/- (six lakhs only) as advance to the petitioner paid through Cheque No:493235 on 29.4.13.

5. The Petitioner and the Respondent will be entering into a fresh Lease arrangement in respect of the petition



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premises measuring 2865 sq.ft. fixing the sum of Rs.45,000/- as monthly rent for a period of 11 months w.e.f. 01.04.2013 with an option to renew the lease deed on such other conditions including the increase of 10% rental amount after every 11 months till the continuance of the tenancy.”

9. After recording the said compromise memo, the learned Rent Controller disposed of R.C.O.P.No.1243 of 2010 by fixing fair rent at Rs.45,000/- per month. The operative portion of the order passed in R.C.O.P.No.1243 of 2010 reads as follows:-

“9. In the result, the fair rent for the petition premises is fixed at Rs.45,000/- per month w.e.f. 01.04.2013 (Rupees Forty Five Thousand only). The Compromise Memo shall form the part of the decree.”

10. Therefore, it is clear on the basis of the compromise memo filed by both the parties, the fair rent petition was disposed of by fixing the fair rent at Rs.45,000/- per month from 01.04.2013. A reading of Clause 5 of compromise memo would suggest that both the parties would enter into fresh



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Lease Arrangement in respect of the demised premises for 11 months from 01.04.2013 fixing the rent at Rs.45,000/- per month with an option to renew the lease deed on such other conditions including the increase of 10% rental amount after every 11 months.

11. Admittedly, as per Clause-5 of joint compromise memo, there was no renewal of lease subsequent to expiry of 11 months. Hence, the contractual lease period came to an end on expiry of 11 months from 01.04.2013. The rent control eviction petition was filed on 08.01.2015. It is settled law merely because, contractual lease period came to an end, the tenant is not liable for eviction in respect of buildings to which Rent Control Act is applicable. The right available to the lessor under Common Law to seek ejectment of the tenant after expiry of the lease period is taken away by Special Enactment namely Rent Control Act by creating a legal fiction of statutory tenancy. Therefore, after expiry of 11 months, the petitioner is entitled to occupy the demised premises as a statutory tenant on the original terms and conditions. As per the original terms of lease arrangement, the agreed rent was Rs.45,000/- per month as clearly mentioned in Clause-4 of the agreement.



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12. In the absence of any renewal of the lease period, as per Clause - 5 of the agreement, the petitioner's liability to pay rent is restricted to Rs.45,000/- as per Clause-4 of the agreement. It is also seen from the order passed by the Rent Controller in R.C.O.P.No.1243 of 2010, the fair rent was fixed at Rs.45,000/- per month. There is no provision in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for revision or enhancement of the fair rent. Therefore, this Court is of the opinion by virtue of legal fiction of statutory tenancy created by Rent Control Act, petitioner continuous as a statutory tenant with obligation to pay agreed rent of Rs.45,000/- per month.

13. When there is no fresh agreement between the parties on terms of Clause-5 of compromise memo, failure of the petitioner to pay enhanced rent, would not amount to wilful default. The joint compromise memo, does not impose obligation on the part of the petitioner/tenant to pay enhanced rent once in 11 months. Clause-5 only talks about an option to renew the lease deed with enhanced rent once in 11 months. Once it is mentioned as an



option, it is open to the parties either to exercise the option or not to exercise the option. In the case on hand, the petitioner/tenant never exercised the option of renewing the lease, therefore, the question of payment of enhanced rent after expiry of 11 months does not arise.

14. As mentioned earlier, the petitioner is continuing as statutory tenant on original terms with liability to pay rent at the rate of Rs.45,000/- per month. It is not in dispute, the petitioner has been paying the agreed rent of Rs.45,000/- till date. Hence, the respondents have not made out a case for eviction on the ground of wilful default. Both the Courts below committed an error in interpreting Clause Nos.4 and 5 of the joint compromise memo and as a consequence, the order of eviction passed by the Courts below is liable to be set aside.

15. In view of the conclusion reached by this Court, the petitioner is continuing as a statutory tenant on original terms with obligation to pay rent at the rate of Rs.45,000/- per month and also the fact she has been paying rent at the rate of Rs.45,000/- per month till date without default, I have not



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venture into consider the other point argued by the learned counsel for the petitioner with regard to the automatic adjustment of the excess advance amount in the hands of the respondent/landlord.

16. In view of the discussions made earlier, the Civil Revision Petition stands allowed by setting aside the order of eviction passed by the Courts below. In the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm



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To

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- 1.The VIII Judge, Court of Small Causes,
(Rent Controller Appellate Authority), Chennai.
- 2.The XI Judge, Court of Small Causes,
(Rent Controller), Chennai.



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WEB C **S.SOUNTHAR,J.**

After disposal of the civil revision petition, the learned counsel appearing for the petitioner made a request that petitioner may be permitted to withdraw the sum of Rs.6,00,000/- deposited by her by virtue of interim order passed by this Court on 28.09.2021.

2. The learned counsel appearing for the respondents 2 and 3 have no objection for permitting the petitioner to withdraw the said sum.

3. Since the civil revision petition is allowed and the respondents 2 and 3 are also not having any objection for permitting the petitioner to withdraw the amount deposited, the petitioner is permitted to withdraw the amount of Rs.6,00,000/- deposited by her in pursuance of the interim directions issued by this Court on 28.09.2021.

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