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C.R.P.No.1863 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1863 of 2019

and

C.M.P. No.12285 of 2019

T. Kumar S/o. Thirumalai Pillai

... Petitioner

Vs.

1. A. Raja S/o. Abraham James

2. A. Mangala Raja S/o. Abraham James

...Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India praying to set aside the fair and decreetal order dated 06.02.2019 passed by the learned VII Small Causes Judge, Chennai made in R.C.A. No.377 of 2006 confirming the fair and decreetal order in R.C.O.P. No.1016 of 2009 on the file of learned XII Judge, Small Causes Court, Chennai.

For Petitioner

: Mr. T. R. Rajagopalan,
Senior Advocate,
for Mr. P.N. George Graham
for M/s. Devadasan and Sagar

For Respondents

: Mr. P. Vennitharan
for M/s. M. Balasubramanian



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C.R.P.No.1863 of 2019

for Caveator

ORDER

The Civil Revision Petition is filed challenging the order dated 06.02.2019 passed by the learned VII Judge, VII Court of Small Causes, Chennai in R.C.A. No.377 of 2006 confirming the order of Rent Controller in RCOP No.1016 of 2009.

2. The respondents / landlords filed a Rent Control Eviction petition against the petitioner on the grounds of willful default and act of nuisance. The Rent Controller passed an eviction order against the petitioner on the ground of willful default in payment of money. The eviction petition was dismissed in respect of act of nuisance. Aggrieved by the same, the petitioner preferred an appeal before the Rent Control Appellate Authority and the same was dismissed. Against the concurrent findings against him, the petitioner is before this Court.

3. According to the respondents / landlords, the petitioner is a tenant of their non-residential building. According to them, as per the rental



arrangement, the petitioner agreed to pay a sum of Rs.11,500/- as rent under the Rental Agreement dated 27.10.2006. The agreement was initially for a period of 11 months and both the parties agreed that after the expiry of lease period, lease might be renewed for further period of 11 months at the enhanced rental rate of Rs.14,950/-. It was the case of the respondents that after expiry of 11 months period, the petitioner failed to sign a fresh rental agreement and continued to pay old rent at Rs.11,500/- per month instead of Rs.14,950/-. It was further claimed by the respondents that from 01.09.2008 to 30.04.2009, the petitioner failed to pay the rent and hence the respondents were constrained to file an eviction petition on 02.06.2009.

4. The petitioner herein filed a counter affidavit and denied various allegations made by the respondents. It was the specific case of the petitioner that the respondents let out their respective share in the petition mentioned premises to the petitioner under two different tenancy agreements dated 26.11.2005 which were subsequently renewed by deeds dated 27.10.2006. The petitioner claimed that both the tenancies were different and distinct, and hence the respondents could not file a single petition for eviction in respect of



two different tenancies. It was the further case of the petitioner that he entered into two different tenancies on 27.10.2006 with respondents 1 and 2 agreeing to pay Rs.5,175/- per month to each of the respondents. The allegations made in the respondents' petition as if the petitioner failed and neglected to pay rent from September 2008 was specifically denied. It was the case of the petitioner that the rent was paid by them by cash.

5. When the eviction petition was pending, the respondents filed an application for deposit of alleged arrears under Section 11(4) of Tamil Nadu Buildings (Lease and Rent) Control Act. The said petition was dismissed by the Rent Controller by holding that the petitioner, by producing document, established regular payment of rent during the default period alleged by the respondents and consequently dismissed the application with direction to the petitioner to continue to pay future rent regularly.

6. The learned Senior Counsel appearing for the petitioner submitted that the single eviction petition filed by the respondents in respect of the tenancy based on two distinct tenancy agreements, is not maintainable. The



learned Senior Counsel further submitted that in the application filed by the respondents for deposit of rent under Section 11(4) of Rent Control Act, it was found that the petitioner had not committed any default and the same was dismissed. The respondents have not filed any appeal challenging the dismissal of Section 11(4) application. The Rent Controller, without considering the receipts produced by the petitioner to prove the payment of rent to the Power Agent of the respondents, on an erroneous view, held that the vouchers produced by the petitioner cannot be relied on.

7. As far as the first contention of the learned Senior Counsel that the single eviction petition is not maintainable based on two tenancy arrangements is concerned, neither the Rent Controller nor the Appellate Authority considered the said legal question raised by the petitioner. The said point was specifically raised by the petitioner in his counter to the main eviction petition, and in the grounds of Appeal before the Appellate Authority. The Appellate Authority observed that though there were two agreements, the schedule property was one and the same was let out to single individual and hence single petition was maintainable. A perusal of documents would suggest that



the respondents 1 and 2 by two separate rental agreements dated 27.10.2006, let out their respective half share (900 sq. ft.) to the petitioner on monthly rent of Rs.5,175/- . Hence separate individuals (two landlords) let out two adjacent portions to the petitioner under two separate rental agreements. The same has not been properly considered by the Courts below.

8. The respondents claimed that the petitioner has committed default in payment of rent from 01.09.2008 to 30.04.2009. The petitioner by producing various vouchers which were marked as Ex.R17 to Ex.R.23, claimed that rent for the relevant period was paid. The respondents disputed the signature found in Ex.R.17 voucher on the ground that at the relevant point of time, the Power Agent of respondents was out of India. The Rent Controller in his order observed that in respect of different portion in the very same building in R.C.O.P. 1015 of 2009, an Advocate Commissioner was appointed for getting expert opinion with regard to the disputed vouchers. The Rent Controller further observed that the respondents herein challenging the order sending the disputed vouchers for expert opinion, filed a revision before the High Court and obtained stay order and hence inferred that the Ex.R.16 to Ex.R.23



vouchers are not genuine documents. In other words, the Rent Controller observed that if the vouchers are genuine documents, the respondents would not have objected for sending them to expert opinion in the another Rent Control Eviction petition pending in R.C.O.P. No.1015 of 2009. Such an observation is based on mere assumption. In order to establish the proof of payment of rent, the petitioner produced the rental vouchers issued by the respondents. It is the case of the respondents that the vouchers are forged. In order to prove that the vouchers are forged, the respondents could have taken steps for getting expert opinion. Admittedly, in the case on hand, the respondents have not taken any steps for getting expert opinion with regard to the vouchers produced by the petitioner. Without considering the plea of forgery pleaded by the respondents independently, both the Courts below were carried away by the order passed in collateral proceedings sending disputed vouchers for expert opinion.

9. It is also pertinent to mention that in Section 11(4) petition filed by the respondents, the vouchers relied on by the petitioner were produced and marked without any objection. Based on the said vouchers, the Rent



Controller found that there was no arrears of rent payable by the petitioner.

The said order was not challenged by the respondents in the manner known to law. In such circumstances, the conclusion reached by the Courts below that vouchers produced by the petitioner under Ex.R.17 to Ex.R.23 cannot be relied on, is not acceptable to this Court.

10. In view of the discussion made earlier, the orders passed by the Rent Controller as well as the Rent Control Appellate Authority are set aside and the matter is remitted back to the file of Rent Controller to decide the question of maintainability of single petition and the plea of forgery raised by the respondents independently and take a decision on the genuineness of rental vouchers produced by the petitioner afresh. Both the parties are entitled to lead further evidence before the Rent Controller in respect of the genuineness or otherwise of the disputed vouchers and Rent Controller is directed to dispose of the O.P. afresh as expeditiously as possible.

11. With these directions, the Civil Revision Petition stands allowed.
No costs. Consequently, connected miscellaneous petition is closed.



C.R.P.No.1863 of 2013

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Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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S.SOUNTHAR, J.

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To

1. The VII Judge,
VII Court of Small Causes,
Chennai.

2. The XII Judge,
XII Court of Small Causes,
Chennai.

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