



C.R.P.(PD).No.1766 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.02.2024

PRONOUNCED ON : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1766 of 2021
and CMP.No.13654 of 2021

Devan

... Petitioner

vs.

S.Ebinezar Robert

... Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act No.18 of 1960 and Act, No.23 of 1973 and Act No.1 of 1980, praying to set aside the fair and decreetal order dated 15.11.2019 passed in R.C.A.No.4 of 2017 on the file of the Subordinate Judge (Appellate Authority), Vaniyambadi, confirming the fair and decreetal order of eviction dated 16.02.2017 passed in RCOP.No.1 of 2008, on the file of the District Munsif (Rent Controller) Vaniyambadi by allowing this Civil Revision Petition.



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For Petitioner : Mr.S.Subbiah
Senior Advocate
for M/s.Elizabeth Ravi

For Respondent : Mr.V.Raghavachari
Senior Advocate
for M/s.V.Srimathi
for sole respondent

ORDER

The Civil Revision Petition is filed by the tenant, challenging the order of eviction passed by the Rent Controller on the ground of wilful default as confirmed by the Rent Control Appellate Authority.

2. The respondent landlord filed an eviction petition against the petitioner on the ground of wilful default and owner's occupation. The Rent Controller ordered eviction only on the ground of wilful default. Aggrieved by the same, the petitioner preferred an appeal before the Rent Control Appellate Authority and the same was also dismissed. Hence, the petitioner is before this Court.



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3. According to the respondent landlord, the petition mentioned property, a non residential building was let out to the petitioner in the year 1994 for monthly rent of Rs.450/-. Later on, as per the new rental agreement dated 02.09.2002, the rent was enhanced to Rs.700/- per month. Subsequently, on 01.01.2005 another new rental agreement was entered between the parties and the monthly rent was enhanced Rs.1,000/-. It is the case of the respondent that the petitioner committed default from 01.01.2005 onwards. Hence, a notice was issued to the petitioner on 28.05.2005 informing him that the rental arrangement was cancelled due to the non payment of rent and the requirement of the respondent for own occupation. The said notice was returned by the petitioner. Even, thereafter, the petitioner failed to pay the rent and hence the instant application for eviction was filed on 19.11.2007.

4. The petitioner herein filed a counter affidavit admitting the rent was enhanced to Rs.1000/- from January 2005. It was the case of the petitioner that one Moses Anbalagan let out the premises to him and he has



been paying rent to said Moses Anbalagan and the same was entered in the note book maintained by him. It was further case of the petitioner that after death of Moses Anbalagan, the power agent of respondent Valdor Dansingh had been receiving rent from the petitioner then and there. It was specifically pleaded by the petitioner that power agent of respondent received the rent of December 2007 on 04.01.2008 and thereafter, he has not received the rent. It was also pleaded by the petitioner that he has been waiting on the belief that power agent of respondent would come and collect the rent as usual and as he failed to collect the rent, he deposited the rent into his own account.

5. Before the Rent Controller, the power agent of the respondent was examined as PW.1 and six documents were marked on behalf of the respondent landlord. The petitioner was examined as RW.1 and marked note book maintained by him on his behalf as only document.

6. The learned senior counsel appearing for the petitioner assailing the order of eviction passed by the Court below on the ground of wilful default, submitted that the petitioner has been paying rent to the power



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agent of the respondent and the respondent is not in the habit of issuing receipts for rent paid by the petitioner. The learned Senior Counsel by taking this Court to Section 8(1) r/w Section 33 of Tamil Nadu Buildings (Lease and Rent Control) Act and Rule 9 r/w Rule 27 of Rules framed thereafter submitted that failure to issue receipt is a punishable offence under the Act and hence, the respondent landlord who failed to issue receipt after having received the rent and thereby violated provisions of law is not entitled to seek eviction.

7. The learned counsel further submitted that even according to the case of the respondent, the notice was issued by respondent on 28.05.2005 mentioning the default by the petitioner from January 2005, but, however, the Rent Control eviction petition was filed three years later only during January 2008. The delay of three years in filing the Rent Control eviction petition probablize the case of the petitioner that he paid the rent without any default up to December 2007.



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8. In support of his contention, the learned senior counsel appearing for the petitioner relied on following judgments:

(i) *S.Manimudi Vs. State of Tamil Nadu and two others* reported in 1993(1) LW 95;

(ii) *M/s.A.Rafeeq Ahmed and Co. rep by its partner K.Muktar Ahamed Vs. M/s.Montari Leather Ltd., rep by its Chairman and Managing Director* reported in 2002-1 LW 133;

(iii) *A.Marappan Vs. Nagarathinam* reported in 1999 (1) MLJ 418;

(iv) *Durairaj @ Paramasivam and another Vs.P.M.S.Rathana Bai* reported in 1967 (1) MLJ 324.

9. The learned senior counsel appearing for the respondent submitted that the petitioner failed to establish that he paid the rent from January 2005 to December 2007 prior to the filing of the eviction petition. It is also submitted on behalf of the respondent that the petitioner failed to pay the rent even after filing of the rent control eviction petition from January



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2008 onwards. The learned counsel also submitted that in view of the continuous non payment of rent by the petitioner, the respondent filed petition under Section 11(4) of Rent Control Act, seeking direction to the petitioner to deposit the rent and the same was allowed by quantifying the rental arrears at Rs.86,000/- for the period from May 2005 to June 2012 and the said amount was paid by the petitioner only pending appeal filed by him against the order passed in Section 11(4) application. The learned senior counsel submitted that the appeal filed by the petitioner, challenging the order passed by the Rent Controller directing him to deposit the arrears was also dismissed recording the payment of arrears pending appeal with direction to Rent Controller to dispose of the eviction petition on merits. Hence, the learned senior counsel submitted that in such circumstances, the petitioner who failed to pay rent both prior and after filing of the Rent Control eviction petition is guilty of wilful default and consequently both the Courts rightly ordered eviction.

10. As per the averments found in the Rent Control eviction petition, the petitioner failed to pay the rent from 01.01.2005. The petitioner



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in his counter to the eviction petition claimed he paid rent up to December 2007. It was his specific case that the power agent of the respondent would come to demised premises and collect the rent and after December 2007, he failed to come and collect the rent and hence the petitioner did not pay the rent to the respondent. It was further claimed by the petitioner that he deposited the rent in his own account. Therefore, it is admitted case of the petitioner that from January 2008 onwards he has not paid the rent. It appears the arrears of rent was paid by the petitioner only pending appeal filed by him in CMA.No.3 of 2012 challenging the order passed by the Rent Controller directing the petitioner to pay the rental arrears in an application filed under Section 11(4). The petitioner has no plausible explanation for his failure to pay the rent from January 2008 to 2012.

11. It is settled law, the conduct of the tenant subsequent to filing of eviction petition can also be taken into consideration, while considering the application for eviction on the ground of wilful default. In this regard, useful reference can be made to decision of this Court in ***B.Anraj Pipada Vs. V.Umayal*** reported in ***1998 (2) MLJ 524***. The relevant



observation therein reads as follows:

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6. When the eviction proceedings have been initiated on the ground of wilful default, one would expect the tenant to pay the rent regularly every month at least after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to wilful default.

12. The landlord in the eviction petition specifically claimed that the petitioner failed to pay rent from 01.01.2005. He issued a notice under Ex.P5, dated 28.05.2005 intimating the arrears of rent. The said notice was not received by the petitioner and returned to the landlord. The petitioner in his counter claimed that he had been paying rent to the power agent of respondent till December 2007. In order to prove the same, he produced Ex.R1 note book maintained by him. However, the Courts below noted that in the note book maintained by him, there is no signature either by the respondent landlord or his power agent. In such circumstances, Ex.R1 note book maintained by the petitioner can only be treated as a self serving



document and the same will not advance the case of the petitioner. When petitioner failed to prove that he paid the rent for the default period he cannot escape by saying landlord was not in habit of issuing receipts. The petitioner could have insisted receipt after payment of rent by issuing notice. When there is no evidence to prove payment of rent during default period, question of issuance of receipt will not arise. Further, even according to the counter affidavit of petitioner, he admitted non payment of rent from January 2008 due to failure of the respondent/landlord to come and collect the rent. It is the duty of the tenant to pay the rent and he cannot escape from his liability of paying the rent by saying that the respondent landlord failed to collect rent.

13. It is not the case of the petitioner that the respondent refused to receive the rent. Even assuming the respondent failed to collect rent or refused to receive rent, the petitioner could have filed an application for deposit of rent under Section 8 of Rent Control Act before the Court. His failure to take steps to deposit the rent itself would amount to wilful default. In such circumstances, the evidence available on record clearly established that the petitioner was in default both before and after filing of eviction



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petition and rent for the period from May 2005 to June 2012 (86 months) was paid by the petitioner only pending appeal filed by him, challenging the deposit order made by the Rent Controller under Section 11(4) application. Therefore, the arrears of Rs.86,000/- for the period from May 2005 to June 2012 also wipes out the advance amount of Rs.70,000/- claimed by the petitioner.

14. In such circumstances, there is supine in difference on the part of the petitioner in payment of the rent even after filing of the eviction petition.

15. I do not find any perversity in the finding reached by the Courts below, with regard to the wilful default committed by the petitioner and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2024

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 Subordinate Judge (Appellate Authority), Vaniambadi.
- 2.The District Munsif (Rent Controller), Vaniymbadi.

Pre-delivery order made in
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06.03.2024