



C.R.P. No. 2783 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P. No. 2783 of 2021

and

C.M.P. No. 20212 of 2021

Blue Star Hotel, rep., by its Partner,
R. Sairaj

... Petitioner

Vs.

Saroja (Died) Rep., by Legal Representatives

1.Dharmalingam
2.Gothanayagi
3.Ilangovan
4.Amujam @ Sabitha

... Respondents

Civil Revision Petition is filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, to set aside fair and decreetal order passed by the learned Rent Controller – Appellate Judge, III Additional District Judge, Pondicherry in R.C.A. No. 17 of 2019 dated 24.09.2021 and to allow the same and consequently set aside the order of the fair and decreetal of the learned Rent Controller-I, passed in HRCOP. No. 6 of 2012 dated 20.02.2019 and permit the revision petitioner / tenant to deposit the rent.



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For Petitioner : Mr. R. Ganesan

For Respondents : Mr. M. Naveen

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the Rent Controller – Appellate Judge, III Additional District Judge, Pondicherry, dated 24.09.2021 in R.C.A. No. 17 of 2019 passed by the Rent Controller, confirming the order of fair and decreetal order dated 20.02.2019 in H.R.C.O.P. No.6 of 2012 on the file of the Rent Controller-I, Pondicherry.

2. The petitioner is the tenant and the respondents are the landlords. The petitioner filed H.R.C.O.P. No. 6 of 2012 on the file of the Rent Controller, Pondicherry under Section 8(5) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 to deposit the monthly rent in respect of the subject building as against the sole respondent, Mrs. Saroja and pending disposal of the said petition, the sole respondent died on 19.12.2015 leaving behind the respondents 1 to 4 as her legal heirs and accordingly, they are brought on record as respondents 1 to 4.



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3. The building and the adjoining vacant site was originally belongs to the husband of Saroja. The father of the petitioner has taken the building and the vacant site situated just adjoining on the Southern and Western side of the building under two registered lease deeds dated 24.01.1980 for an initial period of 30 years subject to an extension of further 10 years and another lease deed dated 09.05.1981 for running a hotel in the name and style of Blue Star Hotel which is registered under the Pondicherry Society Registration Act, 1979. The petitioner's father R.K. Ramakrishnan died intestate on 13.03.2003 leaving the petitioner and his two brothers as legal representatives. As such, after the death of R.K. Ramakrishnan, the registered firm has been reconstituted on 21.12.2010 and thus, the petitioner and his two brothers were continuously paying the rents as a matter of routine in accordance with the agreed terms to the original landlord R. Ganesan and after his death, the rent has been duly paid to the widow of the original landlord Saroja and the said Saroja, the deceased sole petitioner has attorned the tenancy in favour of the revision petitioner as per the terms agreed by her late husband R. Ganesan and as such, the petitioner was



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paying the rent to Saroja, by cash, cheque, demand draft. The rent was paid till January 2010 and the same was received by her without any demur. The deceased widow of the original landlord, Saroja has started indifferent attitude in receiving the rent. Thus, the petitioner was made to send the monthly rent byway of demand draft on 24.09.2010, 29.05.2010 and 22.12.2010 after deducting the TDS amount.

4. While the petitioner was under the impression that the rent duly sent by the usual mode would be encashed, the widow of the original landlord, Saroja has with an ulterior motive of synthetically manufacturing a case / cause of willful default of payment of rent has caused to issue lawyers notice dated 05.03.2021 and returned the demand draft sent by the revision petitioner, under the said notice which was duly replied by the petitioner by the reply notice dated 03.06.2011. The petitioner smelled the rat in the attitude and activities of the landlady Saroja, the petitioner has requested her to specify the bank and its account number to deposit the monthly rent. But she did not mentioned and specified the name of the bank and account particulars. The petitioner left with no option except to file the petition in



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H.R.C.O.P. No. 6 of 2012, under Section 8(5) of the Act and the learned Rent Controller was pleased to dismiss the said petition by its decree and order dated 20.02.2019. Aggrieved by the same, the petitioner was constrained to file an appeal in R.C.A. No. 17 of 2019 on the file of the learned Appellate Authority Pondicherry and the said R.C.A. No. 17 of 2019 was transferred to the III Additional District Judge cum Rent Controller Appellate Judge and the same also was dismissed by the learned Appellate Authority vide its fair and final order dated 24.09.2021. Aggrieved by the orders of both the Rent Controller and the Rent Control Appellate Authority, the petitioner filed the present Civil Revision Petition.

5. Learned counsel for the petitioner submits that the orders passed by the Rent Controller and the Rent Control Appellate Authority are contrary to law, weight of evidence and probabilities of the case. The learned counsel contends that the Rent Controller and the Appellate Authority ought to have held that the respondents have returned the demand draft sent by the petitioner which was marked under Ex.P13 under the cover of Ex.P4 legal notice sent by the counsel for the respondents is the valid tender of rent and



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returning of the same after a lapse of several years without encashing the same is ill conceived by the respondents and both the Courts ought to have held that there was a motivated refusal of rent by the respondents. Learned counsel contends that both the Courts below ought to have considered the provision under Section 8 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 was only directory in nature and not mandatory and concluded that the Section 8 is only an enabling provision to the tenants to deposit the rent in the event there is concerted refusal of the rent validly tendered and paid by the tenants without going into the hyper technicalities that the deposit sought for by the petitioner without recourse to Section 8(4) of the Act is not in any way an irregular exercise.

6. Learned counsel for the petitioner further contends that both the Courts erroneously dismissed the petition filed by the petitioner only on the reasons that Section 8(4) of the Act is mandatory. The said findings of the Courts below is unjustifiable and unwarranted in view of the decision of this Court in *V.Sulaiman Vs. Azeezur Rahman* in *C.R.P. (NPD) No.886 of 2004*.



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7. Relying on the said judgment, the learned counsel for the petitioner submits that both the Courts below ought to have permitted the petitioner to deposit the rent into the Court under Section 8(5) of the Act, as he is seeking of such deposit is not rigidly preconditioned with following Section 8(4) of the Act as none of the condition under Section 8 of the Act is mandatory and sought to set aside the orders passed by the Rent Controller and Rent Control Appellate Authority and to allow the civil revision petition.

8. Learned counsel for the respondents submit that the deceased first respondent did not refuse to receive the rent payable. The alleged demand made by the petitioner to furnish particulars of the bank account is untenable. The provision of Section 8 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 were not complied with. He intends that the petitioner already committed willful default in payment of rent and he is liable to be evicted. To avert such proceedings, he filed H.R.C.O.P. No. 6 of 2012 seeking to permit him to deposit the arrears of rent from January 2010 to till the month of January 2012.



9. Considering the fact that the petitioner failed to follow the mandatory procedure prescribed in Section 8 of the Act, as such, the finding of the Court that the petition under Section 8(5) of the Act filed by the petitioner is not maintainable is in accordance with law. Both the Courts rightly rejected the contentions of the petitioners and as such, no interference is required in the present civil revision petition and sought to dismiss the civil revision petition.

10. To substantiate his contention that the provisions of Section 8 of the Act are mandatory, he relied on the judgment of the Apex Court in ***E. Palanisamy v. Palanisamy (D) by Lrs & Others*** reported in ***(2003) 1 SCC 123***.

11. Having heard the learned counsel for the petitioner and on careful perusal of the material available on record, there is no dispute with regard to the status of the petitioner and respondents as tenant and landlord. As per the contentions of the petitioner, he is regularly paying the rent but the deceased first respondent with ill motive returned the demand draft sent by him



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towards the rent and accordingly, he filed an application under Section 8(5) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 before the Rent controller, Pondicherry seeking permission to deposit the arrears of rent and future rents in the name of the respondents before the Court. The petitioner was resisted by respondents by filing their counter.

12. On behalf of the petitioner, he examined as P.W.1 and through him Exs.P1 to P15 were marked. On behalf of the respondents, the first respondent was examined as R.W.1 and through him Exs.R1 to R6 were marked. After hearing both side and on appreciation of the oral and documentary evidence available on record, the Rent Controller dismissed the petition filed by the petitioner holding that the petition is not maintainable, in view of the fact that the petitioner did not follow the procedure as contemplated under Section 8 of the Act. The same was confirmed by the Rent Control Appellate Authority by its judgment dated 24.09.2021 in R.C.A. No. 17 of 2019.



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13. In this civil revision petition, the main contention of the learned counsel for the petitioner is that the procedure prescribed under Section 8 of the Act is not mandatory and it is only discretionary and as such, the orders of both Courts below dismissing the petition filed by the petitioner under Section 8(5) of the Act is illegal and against to the order of this Court in *V.Sulaiman's* case.

14. On the other hand, the contentions of the learned counsel for the respondents is that the procedure provided under Section 8 of the Act is mandatory and the petitioner has to follow every step before filing the petition under Section 8(5) of the Act, as held by the Apex Court in *E.Palanisamy's* case.

15. At this juncture, for proper adjudication of the issues involved in this case, it is relevant to look into the Section 8 of the Act, as extracted herein under: -



*"Section 8 : [Landlord liable to give receipt for rent or advance.-(1) * * **

(2) Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant, to the credit of the landlord.

Provided that such bank shall be one situated in the city, town or village in which the building is situated of if there is no such bank in such city, town or village, within (five kilometers) of the limits thereof.

Explanation It shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the money order commission.

(5) If the landlord refuses to receive the rent remitted



by Money Order under sub-section (4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building."

16. As seen from the above provision, it is clear that on refusal by the landlord to accept rent, the tenant is required to call upon the landlord by issuing notice. To specify the name of a bank in which rent could be deposited by the tenant if the landlord furnish the name of the bank and account number, then the tenant has to deposit the rental amount in that bank account of the landlord. If the landlord failed to furnish the particulars of bank account inspite of the notice of the tenant, then the tenant is required to send the amount of rent through money order to the landlord. Even after that the landlord refused to accept the rent, then the tenant is entitled to file an application before the Rent Controller under Section 8(5) of the Act seeking permission to deposit the arrears of the rent.

17. But in the present case, though notice was issued by the petitioner under Section 8(2) of the Act to the respondents asking particulars of bank



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account from the month of April 2010 itself, admittedly no money order was sent as required under Section 8(4) of the Act. After asking particulars of bank from the respondents, also he sent the rental amount through demand draft. As such, it is clear that the petitioner did not follow the procedure as contemplated under Section 8(4) of the Act. As such, the petition filed by the petitioner seeking permission of the Court is not tenable. In the order of this Court in **V.Sulaiman's** case, which is relied on by the petitioner counsel, it is held as under: -

37..... No doubt, she did not adopt the procedure prescribed under Section 8(2) of the Act. As already stated, this is only optional and not mandatory. In these circumstances, I am unable to agree with the appellate authority that this is a case where the tenant should be deemed to have committed wilful default in the payment or tendering of the rents. Far from it, the tenant, in my view, has respected law and her obligation, by depositing monthly rents in a Post Office, thus proving that she was at all times willing to pay the rents to the landlord. As has been already observed on many occasions, in situations like this, unless an element of indifference, which is wanton and deliberate besides being designed, is provable and proved in the attitude of the tenant, it cannot be said that all defaults made in the payment of rent



are to be automatically characterised as wilful defaults. I do not agree with the finding of the appellate Court, in which a material irregularity is patent, that the petitioner tenant has committed wilful default in the payment of rent.”

18. The Apex Court in ***E.Palaniswamy's*** case which was relied by the learned counsel for the respondents held as extracted herein under: -.

“5.....We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the



tenant.”

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19. In the judgment stated supra, the Apex Court categorically held that in Section 8 of the Act, the procedure to be followed by the tenant is given step by step and earlier step is a precondition for the next step. The Apex Court also held that a strict compliance with the procedure is necessary and the tenant cannot straight away jump to the last step.

20. In the light of the judgment of the Apex Court that a strict compliance with the procedure provided under Section 8 of the Act is necessary, in our considered view, there is no substance in the contention of the petitioner that the procedure provided under Section 8 of the Act is discretionary has no substance. By following the judgment of the Apex Court in *E.Palaniswamy's* case, this Court holds that the procedure provided under Section 8 of the Act is mandatory and such procedure prescribed in the Section 8 has to be strictly followed.

21. As it is an admitted fact in the present case that the petitioner did not follow the procedure provided under Section 8(4) of the Act, then, he is



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not entitled to file a petition under Section 8(5) of the Act. The Rent Controller and the Rent Control Appellate Authority has rejected the contentions of the petitioner in proper perspective and the reasoned order passed by both the authorities are well founded and accordingly, interference of the same is not warranted.

22. Accordingly, this Civil Revision Petition is dismissed.

23. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.07.2024

Index : Yes / No

Neutral Citation : Yes / No

AT

To

1.The III Additional District Judge
(Rent Control Appellate Authority) Pondicherry.

2.The Rent Controller-I, Pondicherry.



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BATTU DEVANAND, J.

AT

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