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C.R.P.No.2623 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2623 of 2021

1.P.Viajakumari Samu

2.P.Samu

..Petitioners

Vs.

Sri Pandi Durga Saibaba Seva Maiyam,
Arakattalai rep by its Managing Trustee,
V.Balasubramaniam, s/o.Viswanathan,
No.77 (Old No.131), Appusamy Layour,
Puliyakulam,
Coimbatore – 641 045.

..Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu (Buildings Lease and Rent Control) Act, praying to set aside the fair and decreetal order dated 14.09.2021 made in RCA.No.55 of 2019 on the file of the learned Rent Control Appellate Authority/ Learned Principal Subordinate Judge, Coimbatore reversal of the fair and decreetal order dated 07.12.2018 made in RCOP.No.125 of 2013 on the file of the learned Rent Controller / learned Principal District Munsif Court, Coimbatore by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.S.V.Pravin Rathinam

ORDER



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The landlord is on revision challenging the order of the Appellate Authority made in an appeal filed under Section 23 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (for brevity “the Act”) allowing the same and permitting the tenant to deposit the monthly rents to the credit of the RCOP.No.125 of 2013 on the file of the Rent Controller/ Principal District Munsif, Coimbatore.

2. The respondent tenant invoked the jurisdiction of the rent controller under Section 8(5) of the Act seeking an order for deposit of the monthly rents contending that the landlord had refused to receive the same.

3. The said petition was resisted by the landlord contending that there was a default in payment of rent and the landlord had already initiated proceedings for eviction and the present petition under Section 8(5) is only an attempt by the tenant to cover the default. It was also contended that the tenant had not followed the procedure prescribed under Section 8 of the Act to enable the tenant to invoke sub-Section 5 of Section 8.

4. The learned Rent Controller concluded that the tenant had not



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followed the procedure prescribed under Section 8 of the Act. The pre-conditions required to be satisfied by the tenant in order to enable the tenant to seek an order for deposit were not complied with. Therefore, the tenant is not entitled to an order for deposit. On the above conclusion, the learned Rent Controller dismissed the Original Petition. Aggrieved the tenant preferred an appeal in RCA.No.55 of 2019.

5. The learned Appellate Authority did not disturb the findings of the Rent Controller regarding non-compliance with the provisions of the Section 8 of the Act. The Appellate Authority however concluded that the fact that the landlord had chosen to withdraw the rents that were deposited by the tenant pending proceedings before the Rent Controller would absolve the tenant from complying with the requirement of Section 8(2) of the Act. On the said conclusion, the learned Appellant Authority allowed the appeal as stated supra. The landlord is on revision under Section 25 of the Act.

6. I have heard Mr.N.Manoharan, learned counsel appearing for the petitioners and Mr.S.V.Pravin Rathinam, learned counsel appearing for the respondent.



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7. Mr.N.Manoharan, learned counsel appearing for the petitioners would vehemently contend that in order to enable the tenant to have the benefit of deposit under Sub-Section 5 of Section 8 of the Act, the tenant has to demonstrate that he or she had strictly complied with the requirements of Section 8. If there is a failure on the part of the tenant to comply with any one of the requirements under Section 8, an application under Section 8(5) cannot be entertained.

8. Drawing my attention to the fact that the tenant had not chosen to issue notice as required under Section 8(2) of the Act before attempting to send the rent by money order, Mr.N.Manoharan would contend that since there is a failure on the part of the tenant to comply with the provisions of Section 8(2) of the Act, the Appellate Authority ought not to have allowed the application merely because the landlord has withdrawn the rents that were deposited during the pendency of the RCOP.

9. Contending contra Mr.S.V.Pravin Rathinam, learned counsel appearing for the respondent/ tenant would submit that sub-Section 2 of Section 8 uses the word 'may' and therefore it is not obligatory on the part of the tenant to issue notice as required under Sub-Section 2. He would



also point out that the entire arrears of rent was deposited and the landlord has also withdrawn the same. Therefore, no prejudice would be caused to the petitioners/ landlord by the order of the learned Appellate Authority.

10. I have considered the rival contentions. Section 8 of the Act reads as follows:-

8. Landlord liable to give receipt for rent or advance:

(1) Every landlord who receives any payment towards rent or advance shall issue a receipt, duly signed by him for the actual amount of rent or advance received by him.

(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 or if there is no such bank in such city, town or village, within [five kilometres] of the limits thereof.

Explanation.-It shall be open to the landlord to



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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.

11. While sub-Section 1 of Section 8 mandates the landlord to issue receipt for the rent received, sub-Section 2 enable the tenant to issue a notice in writing to the landlord requiring him or her to specify the bank account within 10 days from the date of receipt of the notice so as to enable the tenant to deposit the rent into the Bank. Sub-Section 3



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provides that if the landlord specifies the bank account the tenant shall deposit the rent into the bank account as specified by the landlord. Sub-Section 4 provides for a contingency where the landlord does not comply with the notice issued under sub-Section 2. It enables the tenant to send the rent through Money Order after deducting the money order commission.

12. The Hon'ble Supreme Court has in *M.Bhaskar Vs. J.Venkatarama Naidu* reported in *1996 (6) SCC 228* held that the provisions of Section 8 of the Andhra Pradesh Act which are *in pari materia* with that of the Tamil Nadu Act are mandatory and unless the conditions mentioned under Section 8 are fulfilled, the tenant cannot claim a right to deposit the rent. In fact the Hon'ble Supreme Court rejected the contention raised on behalf of the tenant that the Courts should take a lenient view in view of the fact that the arrears of rent has been deposited by the tenant.

13. In *E.Palanisamy Vs. Palanisamy (Dead by LRs and others* reported in *(2003) 1 SCC 123* the Hon'ble Supreme Court considered the provisions of Section 8 of the Tamil Nadu Act itself and after referring to



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the judgment in *M.Bhaskar Vs. J.Venkatarama Naidu (supra)* concluded that the compliance with the conditions under Section 8 are mandatory and a mere refusal of the landlord to receive the rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in earlier sub-Sections that is sub-Sections 2, 3 and 4 of Section 8 of the Act.

14. Adverting to the case on hand I find that the tenant had not issued a notice requiring the landlord to furnish the details of the Bank in which the rent can be deposited. He has straight away chosen to send Money Order upon money order having been returned, he had chosen to launch the proceedings under Section 8(5) of the Act. The learned Appellate Judge had not considered the effect of non-compliance with Section 8. The Appellate Authority has taken a lenient view, which has been specifically rejected by the Hon'ble Supreme Court in considering an application under Section 8. If a tenant chooses to deposit the rent into the Court by virtue of interim order made in an application under Section 8(5) that rent fully belongs to the landlord and the landlord is therefore entitled to withdraw the same. Such action of the landlord in withdrawing the rent that was deposited alone will not enable the



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Appellate Authority to permit deposit in the absence of strict compliance with the provisions of Section 8(2) to 8(5) of the Act.

15. In view of the above pronouncement of the Hon'ble Supreme Court, I have no hesitation in concluding that the learned Appellate Authority erred in granting an order for depositing. The Rent Controller was right in concluding that the tenant is not entitled to the benefit of order of deposit under Section 8(5) since the tenant has not complied with the provisions of Section 8(2) of the Act. I therefore have no hesitation in allowing the revision and setting aside the order of the Appellate Authority.

16. Accordingly the revision is **allowed**. The order of the Appellate Authority is set aside and the order of the Rent Controller is restored. RCOP.No.125 of 2013 will stand dismissed. No costs.

19.01.2024

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Index : No
Internet : Yes



Neutral Citation : No
Speaking order

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To

1. The Rent Control Appellate Authority,
Principal Subordinate Judge, Coimbatore.

2. The Rent Controller,
Principal District Munsif, Coimbatore.



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R.SUBRAMANIAN,J.

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