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C.R.P.No.1350 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1350 of 2024 and
C.M.P.No.7253 of 2024

R.Mohanasundaram

... Petitioner

Versus

1.S.R.Sivasubramaniam

2.R.Natarajan

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the Fair and Decretal order dated 21.08.2023 made in I.A.No.02 of 2021 in R.C.A.No.02 of 2021 on the file of Principal Subordinate Judge, Erode and allow the above CRP.

For Petitioner : Mr.V.V.Sathya

For Respondent : Mr.S.Kaithamalai Kumaran

ORDER

The petitioner/tenant has filed this civil revision petition to set aside the Fair and Decretal order, dated 21.08.2023 in I.A.No.2 of 2021 in R.C.A.No.2 of 2021 passed by the learned Principal Subordinate Judge, Erode.

2.The contention of the petitioner is that the respondents/landlord as per amended Rent Control Act have to file a suit for recovery of rent amount as



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per Section 43 of the Tamil Nadu Court Fees Act. Thus, the respondents cannot file application claiming arrears of rent and the same is barred by limitation. He further submitted that the respondents already filed application for very same relief before the Rent Controller/District Munsif Court, Erode in R.C.O.P.No.19 of 2017 and the same was allowed in favour of the respondents on 18.02.2021. Now again the respondents filed I.A.No.2 of 2021 in R.C.A.No.2 of 2021 for the same relief which is barred by *res judicata*. The respondents collecting the rent from the petitioner through their agent not maintaining proper records, has to be considered in the appeal in R.C.A.No.2 of 2021. The respondents showing no interest to get on with the appeal, had purposefully filed the application under Section 11(4) of the Tamil Nadu Building Lease and Rent Control Act with a view to harass the petitioner and to somehow get the order against him. He further contented that totally Rs.8,19,000/- arrears of rent to be paid by the petitioner for the period from 10.05.2016 to 10.08.2021 is not correct. The respondents filed civil suit in O.S.No.952 of 2022 before the learned Subordinate Judge, Erode, which is pending. When the respondents approached the appropriate civil Court for recovery of money towards arrears of rent, the trial Court allowing the application under Section 11(4) of The Tamil Nadu Building Lease and Rent



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Control Act is contrary to law. Hence, the Fair and Decretal order, dated 21.08.2023 in I.A.No.2 of 2021 in R.C.A.No.2 of 2021 is liable to be set aside.

3.The learned counsel for the respondents/landlord submitted that on 10.09.1981, the respondents let out the demise building to the petitioner on monthly rent of Rs.500/- with a rental advance of Rs.5,000/-. As on the year 2017, the monthly rent was Rs.13,000/-. He further submitted that the petitioner was irregular in paying rent and he was keeping arrears for months together. After repeated demand, the petitioner made payment of rent in part. As on 10.08.2017, there was arrears of rent of Rs.2,08,000/- for the period from 10.05.2016 to 09.09.2017. Thereafter, notice was sent to the petitioner on 10.05.2017, for which, reply was sent by the petitioner on 16.05.2017 containing false and untenable allegations. For this, rejoinder sent to the petitioner. Thereafter, R.C.O.P.No.19 of 2017 was filed by the respondents before the Rent Controller/District Munsif Court, Erode seeking relief of eviction of tenants for the arrears of rent and relief of possession of demised building for own use. After ful-fledged trial, R.C.O.P.No.19 of 2017 was allowed in favour of the respondent on 18.08.2021 directing the petitioner to



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evict the demise premises and to handover the possession to the respondents within a period of three months, against which, the petitioner filed R.C.A.No.2 of 2021 in which I.A.No.2 of 2021 under Section 11(4) of the Tamil Nadu Building Lease and Rent Control Act to direct the petitioner to pay arrears rent of Rs.8,19,000/-. The appellate authority vide order, dated 21.08.2023 directed the petitioner to pay or deposit the arrears rent of Rs.8,19,000/- on or before 11.09.2023. The petitioner neither deposited nor paid the said amount before the appellate authority in R.C.A.No.2 of 2021 or any payment made in O.S.No.53 of 2019 or in O.S.No.959 of 2022. On the other hand, he filed the present civil revision petition challenging the Fair and Decreetal order, dated 21.08.2023 in I.A.No.2 of 2021 in R.C.A.No.2 of 2021 which is neither maintainable in law nor on facts. Hence, he prays for dismissal.

4.Considering the submissions and on perusal of the materials, it is seen that the petitioner is a tenant under the respondents is not in dispute. The petitioner had suffered judgment in R.C.O.P.No.19 of 2017 wherein he was directed to pay the arrears of rent and to vacate the premises and handover the possession to the respondents, but he has not done so. On the other hand, he filed appeal in R.C.A.No.2 of 2021 challenging the judgment in



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R.C.O.P.No.19 of 2017. The respondents filed I.A.No.2 of 2021 in R.C.A.No.2 of 2021 under Section 11(4) of the Tamil Nadu Building Lease and Rent Control Act seeking for arrears of rent of Rs.8,19,000/-. The civil suit filed by the respondents for arrears of rent in O.S.No.53 of 2019 and subsequently in O.S.No.959 of 2022 which is under common law and the same would not away affect the proceedings initiated under the Special Act under rent control.

5.Admittedly, the petitioner not deposited or paid the arrears of rent to the respondents/landlord in any of the proceedings so far. Hence, the contention of the petitioner is untenable and the same is rejected.

6.In the result, this civil revision petition stands dismissed confirming the Fair and Decretal order, dated 21.08.2023 in I.A.No.02 of 2021 in R.C.A.No.02 of 2021 passed by the learned Principal Subordinate Judge, Erode. The connected civil miscellaneous petition is closed. No costs.

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M.NIRMAL KUMAR, J.

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Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

To

The Principal Subordinate Judge,
Erode.

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