



C.R.P.(MD)No.1398 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.10.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1398 of 2024

1.E.Rajkumar

2.E.Balachandar @ Balasund ... Petitioners / Respondents / Petitioners

Vs.

T.Sivakumar ... Respondent / Petitioner / Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair order and decreetal order dated 12-04-2024 in R.C.A.No.2 of 2021 on the file of the learned Sub Court Judge, Devakottai, reversing the fair and decreetal order dated 25-01-2021 in R.C.O.P.No.4 of 2015 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi and set aside the same.

For Petitioners : Mr.V.R.Shanmuganathan

For Respondent : Mr.H.Lakshmi Shankar,
For Mr.P.Balasubramanian.

* * *

ORDER

Heard both sides.



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2.The respondent herein namely, T.Selvakumar was inducted as tenant in the petition mentioned premises by the landlady / Sukumari. The monthly rent payable is Rs.1,500/-. Sukumari had taken Rs.1,00,000/- as advance from Selvakumar. Sukumari had also mortgaged the petition mentioned premises in favour of the tenant. Whiles, the property was purchased by the revision petitioners from Sukumari on 28.03.2014 for valuable consideration. Tenancy was attained in favour of the revision petitioners.

3.Earlier Sukumari had filed redemption suit in O.S.No.32 of 2013 on the file of the Sub Court, Devakottai. After purchase of the property, the revision petitioners got themselves impleaded as co-plaintiffs. The redemption suit was eventually decreed by paying the mortgage money with interest to the tenant / Selvakumar.

4.The revision petitioners thereafter filed R.C.O.P.No.4 of 2015 on the file of the Principal District Munsif Cum Judicial Magistrate, Karaikudi for eviction. The petition was premised on two grounds, namely, wilful default and nuisance. The learned Rent Controller rejected the ground of nuisance but allowed R.C.O.P.No.4 of 2015 vide order dated 25.01.2021 on the ground of



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wilful default in the matter of payment. Questioning the same, the tenant filed R.C.A.No.2 of 2021 before Sub Court, Devakottai. The appellate authority vide order 12.04.2024 reversed the decision of the Rent Controller and allowed the appeal. Aggrieved by the same, this civil revision petition has been filed by the landlord.

5. There is no dispute that a sum of Rs.1,00,000/- was received by Sukumari as advance. The learned counsel for the respondent draws my attention to the decision **2011-4-L.W.891 (Alaudin vs A.Sathar)** in which it has been held that a transferee pending eviction proceedings cannot continue the proceeding for eviction on the ground of wilful default for the period prior to the said transfer. I would therefore reckon that wilful default in the matter of payment of rent can be computed only with effect from 28.03.2014. I assume that the tenant is entitled to adjust his monthly rent as against the advance amount that was given to the earlier landlady / Sukumari. Even if such a calculation is adopted, the advance amount would get exhausted by September 2019. The revision petitioner had filed a petition under Section 11(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It was ordered only in December 2020. The default on the part of the tenant was with effect from 17.04.2009 and he was directed to pay Rs.1,86,000/-. The tenant complied



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with the said order and paid the entire amount in December 2020. Compliance with the order passed under Section 11(3) of the Act will avail only against striking off the tenant's defence. Payment of the arrears pursuant to Section 11(3) order will not efface the wilful default, if committed earlier. Even going by the own showing of the tenant, there has been non-payment of monthly rent from October 2019 till December 2020. I, therefore, hold that the element of wilful default has been made out and this aspect of the matter was not taken note of by the appellate authority. The tenant is directed to vacate the petition mentioned premises within a period of four months from the date of receipt of a copy of this order.

6. In this view of the matter, the impugned order is set aside and the civil revision petition is allowed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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- 1.The Sub Court,
Devakottai.
- 2.The Principal District Munsif
cum Judicial Magistrate,
Karaikudi.



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G.R.SWAMINATHAN, J.

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