



C.R.P.(MD)No.2332 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2332 of 2023

and

C.M.P.(MD)No.11954 of 2023

P.Mathiyalagan

... Petitioner

Vs.

T.M.M.T.N.U.Dhanush Rajavel

... Respondent

PRAYER : Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and Decreetal order, dated 28.04.2023, made in R.C.A.No.8 of 2018, on the file of the Rent Control Appellate Authority / Sub Court, Virudhunagar, confirming the judgment and Decreetal order, dated 04.10.2018, made in R.C.O.P.No.12 of 2012, on the file of the Rent Controller (District Munsif), Virudhunagar.

For Petitioners : Mr.P.Athimoolapandian
For Respondent : Mr.S.Parthasarathy



C.R.P.(MD)No.2332 of 2023

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ORDER

The present Civil Revision Petition is filed against the judgement and decreetal, dated 28.04.2023, passed in R.C.A.No.8 of 2018, confirming the judgment and decreetal order, dated 04.10.2018, passed in R.C.O.P.No.12 of 2012, on the file of the Rent Controller (District Munsif), Virudhunagar.

2. The revision petitioner herein is the tenant and the respondent herein is the landlord, who filed R.C.O.P.No.12 of 2012 alleging that there is a default in payment. According to the landlord, the scheduled property was given under oral lease for non-residential purpose for doing business and the rate of rent was fixed as Rs.5,000/- per month and no advance amount was received by the him. The tenant had paid the rent until April 2012, thereafter from May, 2012 onwards until August, 2012 had committed wilful default to the tune of Rs.20,000/-. Based on the same, the R.C.O.P. is filed. The said R.C.O.P. was contested by the tenant stating that there was a written lease agreement and he had paid Rs.50,000/- as advance and the said lease agreement was executed for a period of two years which would end only in July, 2013, hence the contention of the landlord is incorrect.



3. Further, when the landlord denied to receive the rent, the tenant had preferred suit in unnumbered in U.F.O.S. nil of 2014 with a prayer to receive the rent from March, 2014 to October, 2014 and to permit the tenant to deposit the lease amount in the Court. The claim of the tenant in the said suit is that it is a perpetual lease. The Court disbelieved the contention of perpetual lease of the tenant and dismissed the said unnumbered U.F.O.S. Aggrieved over the same, the tenant had preferred A.S.No.11 of 2015 and the same was dismissed. Aggrieved over the same, a second appeal in S.A.(MD)No.157 of 2018 was filed and the same was dismissed on 04.06.2018 stating that the said case is a vexatious suit. The tenant further contended when there is an advance amount of Rs.50,000/-, he called be called as a tenant at default. Further, the notice dated 21.05.2012 was issued for a different reason of own occupation, but the petition was filed as wilful default. For the above said reasons, the tenant prayed before the Lower Court to dismiss the R.C.O.P.

4. The R.C.O.P. Court had considered the rival pleadings and allowed the R.C.O.P., directing the tenant to vacate the premises within a period of three months. Aggrieved over the same, the tenant has preferred an appeal in



C.R.P.(MD)No.2332 of 2023

R.C.A.No.8 of 2018 and the same was dismissed confirming the order passed in R.C.O.P. Aggrieved over the same, the present civil revision petition is preferred.

5. Pending civil revision petition, the tenant was directed to deposit the arrears of rent, vide order, dated 05.08.2024, to the tune of Rs.1,20,000/- and same was paid in two instalments.

6.The contention of the tenant is that after the written lease agreement he had put up construction by spending Rs.8,00,000/-. The further contention of the tenant is when the landlord had refused to receive the amount, he could not pay the same, hence, it cannot be considered as default. If so, the tenant has a right under the provisions of the Rent Control Act to file a petition to deposit the rent amount in the Court, but the tenant has not preferred such a petition. Instead had filed O.S. claiming the lease as perpetual but had filed the written lease agreement, which agreement states it is only for a period of two years. Even as per the tenant the lease agreement would end in July 2013, but had filed the unnumbered suit in the year 2014, hence there is a default from 2013 to 2014. Hence the suit was dismissed, disbelieving the case of the tenant and confirming the tenant is at default.



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7. When the tenant has a right to file an application under Section 11(4) of Rent Control Act, but he has failed to do so. When the R.C.O.P., was filed by the landlord to evict, the tenant had filed a vexatious suit, thereafter, appeal suit and thereafter, second appeal. Further each and every time, the landlord had to file an application under Section 11, thereafter, based on the orders of the Court, the tenant had paid the rent. In such circumstances, the tenant ought to be termed as a wilful defaulter and the Courts below had rightly termed the tenant as wilful defaulter.

8. This Court is of the considered opinion that even though there is an amount of deposit to the tune of Rs.50,000/- as claimed by the tenant, he did not come forward to pay the rent for the subsequent period. He had not even filed a petition to deposit the same before the Court, when the R.C.O.P., was pending. Therefore, the attitude of the tenant ought to be termed as defaulter only. Therefore, this Court is confirming both the orders passed in R.C.O.P., and R.C.A., by the Lower Courts.

9. The tenant claims that he had put construction in the leased site. On perusal of the lease agreement, it is seen that the property was leased out along



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with some construction. The tenant had not stated any details regarding the construction especially had not stated what is the construction, the nature of construction, extent of construction and the amount spent for the construction. The petition is bereft of any details. However, on perusal of the photographs circulated before this Court, it is seen the tenant had put up small office construction with false ceiling. But the contention that the tenant had incurred Rs. 8,00,000/- for the said construction is not believable. However, it has to be taken that some construction has been put up. If it is taken along with depreciation and other factors, the tenant will be entitled to some compensation for construction.

10. Therefore this Court is of the considered opinion that either the tenant is entitled to take the super structure which he is claiming to have been put up or he is entitled to some compensation. And the choice is left open to the tenant. If the tenant is claiming compensation the tenant is directed to work out and quantify the compensation as per law. However the tenant is directed to vacate the premises within a period of six months from the date of receipt of a copy of this order.



C.R.P.(MD)No.2332 of 2023

WEB COPY

11. With the above said observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2024

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

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Note: Issue order copy on 03.09.2024.

To

1. Rent Controller (District Munsif),
Virudhunagar.
2. Rent Control Appellate Authority /
Sub Court, Virudhunagar.
3. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2332 of 2023

S.SRIMATHY, J.

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C.R.P.(MD)No.2332 of 2023

29.08.2024