



C.R.P.(MD)Nos.2997 and 2998 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) Nos.2997 and 2998 of 2023

and

CMP (MD) Nos.15464 and 15465 of 2023

(1)CRP(MD)No.2997 of 2023:-

Arumugam Perumal : Petitioner/Appellant/
Tenant

Vs.

Mallika : Respondent/Respondent/
Landlord

PRAYER:-Civil Revision Petition has been filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to call for the records and set aside the fair and decreetal order, dated 28/07/2023 made in RCA No.37 of 2021 on the file of the Rent Control Appellate Tribunal/Principal Sub Court, Madurai, by confirming the fair and decreetal order passed in RCOP No.137 of 2018 on the file of the Rent Control Appellate Tribunal/Additional District Munsif Court, Madurai, dated 03/09/2021.

(2)CRP(MD)No.2998 of 2023:-

Arumugam Perumal : Petitioner/Appellant/
Tenant

Vs.

Mallika : Respondent/Respondent/
Landlord



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PRAYER:-Civil Revision Petition has been filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to call for the records and set aside the fair and decreetal order, dated 28/07/2023 made in RCA No.57 of 2021 on the file of the Rent Control Appellate Tribunal/Principal Sub Court, Madurai, by confirming the fair and decreetal order passed in RCOP No.137 of 2018 on the file of the Rent Control Appellate Tribunal/Additional District Munsif Court, Madurai, dated 03/09/2021.

For Petitioner : Mr.K.P.Narayanakumar
(in both cases) for M/s.D.Saranya

For Respondent : Mr.C.Godwin
(in both cases)

COMMON ORDER

These civil revision petitions have been filed against the fair and decreetal order passed by the Rent Control Appellate Tribunal, Madurai, confirming the order passed by the Rent Controller, Madurai.

2.The facts in brief:-

The revision petitioner is the Tenant under the respondent. Originally he was in possession by virtue of the agreement, dated 01/04/2011. The monthly rent was Rs.4,000/- for a period of three years. It was also agreed that Rs.500/- will be increased for every three years. Later, from 01/04/2017 the monthly rent was fixed at Rs.5,000/-. Right from the beginning, it is alleged



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that the revision petitioner was not regular in payment of rent. He paid the rent upto the month of November-2017. Thereafter defaulted. On the basis of the wilful default on the part of the revision petitioner, it is alleged, on the date of the petition from December-2017 to July-2018, there was an issue of Rs.40,000/- in respect of payment that was not paid. He refused to pay the increased rent from 01/04/2017. Hence, the petition for eviction.

3.That was resisted by the revision petitioner herein. He entered appearance through Advocate and in the meantime, the respondent herein filed IA No.70 of 2018 under section 11(4) of the Tamil Nadu Buildings (Lease & Rent Control) Act 1960 with the following averments:-

The revision petitioner was liable to pay the rent from December 2017 to October 2018 for 11 months. The present rent is Rs.5,000/-. It is alleged that the revision petitioner created nuisance among the neighbours. A police complaint was also given. Even after the issuance of the notice of reply, the revision petitioner did not pay the arrears amount.



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4.That was resisted by the revision petitioner stating that right from the beginning, he was regular in payment of rent. Because of some issue arose between them, a complaint given against him. So a suit in OS No.440 of 2018 was filed by him and posted to 02/02/2021.

5.He has paid the rent upto April 2018. From May-2018 upto July-2018, he sent the rent amount through Demand Draft. That was refused by the Landlord. After that only, the main petition is filed.

6.Since the Landlord refused to receive the rent, he filed IA No.53 of 2018 seeking permission of the Court to deposit the rent. The monthly rent on the date of the petition is also denied. Even the rent paid by him is excessive in nature and not fair rent.

7.After hearing both sides, IA No.70 of 2019 was taken up for hearing. The Rent Court directed the revision petitioner herein to pay the arrears rent of Rs.1,80,000/- from the month of December-2017 upto March-2021 @ Rs.4,500/- per month. He was also directed to pay the rent upto 08/04/2021, failing which eviction will be ordered. Further directed to revision petitioner to pay the rent during the pendency. Against which, the revision



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petitioner moved the Appellate Authority by way of appeal. That was numbered in RCA No.37 of 2021. It was kept pending. In the meantime on 09/04/2021, the revision petitioner filed a petition seeking extension of time. It was filed on 23/04/2021. Time was extended upto 07/06/2021. The order was not complied even within the extended time. On 07/08/2021, the petitioner filed a memo stating that he filed RCA No.37 of 2021 against the order passed in IA No.70 of 2021. So the time was periodically extended. Since in-spite of the extension of time, further proceedings were stopped, by order, dated 03/09/2021 and eviction was ordered. So, against that order, RCA No.37 of 2021 was taken by the revision petitioner. Since RCA No.37 of 2021 was pending, both were taken together and a common order was passed by the Appellate Authority with the observation that the revision petitioner is not complying the provision under section 8(5) of the Tamil Nadu Buildings (Lease & Rent Control) Act. So, IA No.381 of 2018 filed by the revision petitioner is not proper. The revision petitioner was not even regular in payment of rent during the pendency of the proceedings. No proper reason was also assigned. By observing so, both the appeals were dismissed by the Appellate Court.



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8. Against which, CRP(MD)No.2997 of 2023 is preferred against RCA No.37 of 2021. Similarly against RCA No.57 of 2021, CRP(MD)No.2998 of 2023 is preferred.

9. Heard both sides.

10. Since the common question of law involved in both matters, heard together and this common order is passed.

11. The merits of the matter as to whether the revision petitioner is wilful default in payment of rent on the date of the petition was not taken up, since section 11(4) application was allowed by the Rent Court. So there was no occasion for the Trial Court as well as the Appellate Court to decide this point.

12. On that account, the learned counsel appearing for the revision petitioner would straightaway rely upon section 10(8) of the Act and would submit that without complying the provisions, petition was filed by the respondent for eviction. He would further submit that the default can be construed as willful only when the revision petitioner failed to pay the rent within two months. Here that opportunity was not given to the revision petitioner. So according to him, filing of the



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petition itself is *per se* illegal and without cause of action.

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13.To answer this argument, we have to go to the history of dispute between the parties.

14.Dispute started between them as early as on 11/07/2017. That was the starting point of the issue between them. The respondent herein gave a complaint against the revision petitioner before the South Gate Police Station, Madurai stating that the revision petitioner is not paying the rent. Even after appropriation of the advance amount towards the rent, he refused to vacate the premises. This caused filing of the suit in OS No.440 of 2018 by the Tenant against the Landlord, apparently not to evict him, otherwise under due process of law. That was followed by sending notice, on 07/08/2018 to the respondent herein along with Demand Draft amount for the rent amount for three months namely May, June and July. He also requested the respondent herein to mention the Bank Account details, so that the monthly rent can be deposited by him. That was refused by the respondent, a reply was sent, dated 20/06/2018 stating that when the increased rent of Rs.5,000/- was demanded with effect from 01/04/2019, it was refused by



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the revision petitioner. Because of that only, the complaint, dated 11/07/2017 was given. The lease period is also terminated and demanded vacation of the premises. Along with the Demand Draft amount sent by the revision petitioner was also returned. Thereafter, the present petitions were filed by the respondent herein. So it appears that the problem started in 2017 itself. Not only with regard to the money of increased rent, but also with regard to some sort of the alleged nuisance and eviction was also sought for. So in those circumstances, the non-compliance of section 10(8) of the Act may not assume any importance at all, since already the issue between them started. Landlord says that the revision petitioner is liable to pay the increased rent. The revision petitioner says that it was not so. There was no finding on that specific issue, either by the Trial Court or by the Appellate Court for the reasons stated above.

15. Now coming to the main issue of section 11(4) application, absolutely no reason was assigned by the revision petitioner for non-compliance.

16. A mistake was also committed by the Appellate Court in not taking of the appeal filed by the revision petitioner before the eviction order. Keeping the matter pending would have been avoided by the Trial Court.



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17. So, the question which arises for consideration is whether on that account, the revision petitioner can say that there was no willful default on his part even in the Appellate Court proceedings.

18. Leaving alone the issue before the date of the petition, the specific observation made by the Trial Court is that in-spite of the extension granted, the revision petitioner did not comply the conditional order. Filing of IA No.381 of 2021 seeking an order to deposit the amount was also found to be wrong or illegal, because of the non-compliance of section 8(5) of the Tamil Nadu Building (Lease & Rent Control) Act. So, that cannot be found fault. Citing the pendency of the IA and RCA, the revision petitioner failed to comply the order within the time stipulated. So after a long adjournment only, section 11(4) application was allowed by the Trial Court. So the conduct on the part of the revision petitioner does not inspire confidence at all, when he chose to send the arrears of rent amount by way of Demand Draft for Three months. Why he failed to comply the order is not explained by him, except stating in the grounds that IA No.385 of 2018 is still pending. Apart from that, it is also stated that at the time of filing RCA No.37 of 2021, the entire arrears amount of Rs.2,16,000/- as on



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23/01/2022 was remitted. So the direction was complied.

So the consequential order is not legal.

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19. So the question, which arises for consideration is whether remittance of the arrears amount on 23/09/2022 will save the revision petitioner from the order of eviction.

20. The learned counsel appearing for the revision petitioner would rely upon the judgment of this court in **M. Govindarajan Vs. R.S. Vaideeswaran [2001(2) TLNJ 166]** to impress upon the Court that the factual circumstances of the case does not indicate that the default was wilful. The following observation was made:-

"In view of the compliance of the order of the learned Rent Controller by getting extension before the learned Rent Control Appellate Authority by the revision Petitioner, the Courts below have committed an error in holding that the order of the learned Rent Controller was not complied with and therefore, the petition in M.P.No.303 of 1993 in R.C.O.P No.1413 of 1992 has to be allowed. By allowing the above said petition, the Courts below ought not to have passed an order



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directing the revision petitioner to deliver vacant possession of the demised premises to the respondent herein. In view of the said position, the concurrent finding given by the Courts below cannot be sustained."

21. So this para as cited by the revision petitioner that the present factual circumstances also squarely on the same line. He would further rely upon the following judgments viz., **(i) S. Sundaram Pillai and others Vs. V. R. Pattabiraman and others [(1985) 1 SCC 591]** and **(ii) J. J. Lal Pvt. Ltd., and another Vs. M. R. Murali [(2002) 3 SCC 98]** to impress upon the Court that in view of the above said factual circumstances, at no stretch of imagination it can be said that there was wilful default on the part of the revision petitioner.

22. No doubt that when the time is extended, either by the Rent Court or by the Appellate Court to pay the money within the time stipulated to avoid the order under section 11(4) of the Tamil Nadu Buildings (Lease & Rent Control) Act must be taken into account. But here the factual position is entirely different. Time was extended by the Rent Court to deposit the amount. That was not complied. Whether complied the same in RCA No.37 of 2021



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and whether the time was extended by the Appellate Court or not, it is not clearly stated by the revision petitioner. It appears that without the permission of the Appellate Court, the entire amount was deposited. Had it been the position that at the time of filing RCA No.37 of 2021, the entire amount was deposited or remitted, it would not have been brought to the notice of the Rent Court at the time of passing the order.

23.RCA No.37 of 2021 was filed before the Appellate court on 19/04/2021. The Rent Court passed the order on 12/03/2021. For better appreciation of this issue, dates and events in a chronological manner.

Date of order passed in IA No.70 of 2019 is 12/03/2021.
Posted for compliance on 09/04/2021.
IA No.96 of 2021 was filed under section 148 CPC and that was allowed and time was extended till 07/06/2021.
After that it was adjourned to various dates namely from 08/06/2021 to 30/09/2021.
In the meantime, memo has been filed stating that RCA No.37 of 2021 was filed.
Eviction order was passed on 03/09/2021.



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24.As mentioned above, had it been true that the revision petitioner deposited the entire amount ordered along with RCA No.37 of 2021, the eviction order would not have been passed by the Rent Court. Even before the Appellate Court, it is seen that it was not informed. Even the date of remittance is not mentioned by the revision petitioner. But it has been stated by the respondent that the date of remittance is 23/09/2022. It appears that after a very long time during the pendency of RCA No.57 of 2021, remittance has been made without the order of the Court. So the judgments cited by the petitioner on this aspect does not support his case. He ought to have paid the money, either as ordered by the Rent Court within the time extended or at least at the time of filing RCA No.37 of 2021. So the remittance amount without the permission of the Court, after a long time cannot be taken that the delay is already condoned. He having suffered the eviction, that cannot be restored by making remittance. On that account, the revision filed by the revision petitioner will not lie. So, the explanation offered by the revision petitioner on this aspect also does not support him.

25.Apart from the above said argument, it is also submitted that because of the election issue only the



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respondent herein wants to vacate him; For the several years, he is in occupation without any problem; All of a sudden, problem arose between them due to the election issue. Thereafter the present petition has been filed by the respondent; But these things cannot be taken into account without any evidence.

26.As mentioned above, even though prior to the filing of the RCOP, there was an issue between them over the payment of rent and the enhanced rent. But after the RCOP, the revision petitioner ought to have been vigilant, but he failed to do so. So the statutory order requires no interference.

27.In the result, both civil revisions fail and the same are **dismissed**. No costs. Consequently, connected Miscellaneous Petitions are closed.

19/03/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Principal Sub Court,
Madurai.

2.The Additional District Munsif,
Madurai.

3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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