



CRP NPD.No.1500 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

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Elsi Joshi

... Petitioner

Versus

Sudalai Mani

... Respondent

PRAYER : Petition filed under section 25 of of Tamilnadu Lease and Rent Control Laws to set aside the fair and decreetal Oder dated 08.12.2023 and made in RCA No.397 of 2019 on the file of the IX Judge Small Causes Court at Chennai [Rent Control Appellate Authority] in allowing the appeal and reversing the fair and decreetal Order dated 25.09.2019 made in RCOP.No.564 of 2017 on the file of the XIV Judge, Small Causes Court, Chennai.



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For petitioner : Mr.N.A.Bassir Hussain

For respondent : Mr.M.Nazir Ahmed

ORDER

Challenging the Order of the appellate authority reversing the finding of the rent controller Ordering eviction under section 10 [2] [i] [a] of the Tamilnadu Buildings [Lease and Rent Control] Act, the present revision has been filed.

2. The landlord has filed rent controller proceedings under section 10[2] [i] [a] of the Tamilnadu Buildings [Lease and Rent Control] Act for eviction on the ground of willful default. It is the case of the landlord that the respondent was originally inducted as a tenant on a monthly rent of Rs.100/- and the same has been periodically increased and the present rent payable is Rs.8000/- per month excluding electricity. The respondent is not prompt in paying monthly rents and failed to pay monthly rent for the months of January



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2017 and February 2017 and there is arrears of rent to the tune of Rs.16000/- .

Therefore, a petition has been filed for eviction on the ground of willful default. The tenant took a stand that the monthly rent payable is not Rs.8000/- and it is only Rs.6000/-. According to him, he has not committed willful default and the rents have been tendered continuously. When he tendered rent for 2015, the same has not been received by the landlord. Therefore, he sent the rent through money order, which is also returned. Hence, the respondent sent a legal notice to the petitioner calling for the petitioner to specify the bank details, which was returned as no such address. Therefore, according to him, he has not committed default. The rent controller considering the evidence found that the monthly rent was Rs.6000/- and not Rs.8000/- and held that as the respondent has not paid rent for two months, Ordered eviction. The appellate authority has reversed the finding on the ground that the rents have been paid regularly and there is no willful default. Challenging the same, the present revision has been filed.

3. The learned counsel appearing for the petitioner would submit that



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willful default has to be assessed not only from the date of default but in the context of subsequent conduct of the tenant. The tenant having taken a plea that he has tendered rent, but the same has not been received by the landlord, he has not deposited the rent every month. Whereas, he had deposited the rents at his whims and fancies and that itself construe that there is willful default. The appellate authority has not taken into consideration all the facts and simply allowed the appeal. Hence, submitted that the respondent has to be evicted.

4. Whereas, the learned counsel appearing for the respondent would submit that the rents have been deposited during the pendency of the proceedings in lumpsum for several months and the same has been received by the landlord. When the landlord was hostile in receiving rents in lumpsum, it cannot be said that there is willful default. In this regard he has relied upon the judgment in **S.P.Deshmukh Vs. Shah Nihal Chand Waghajibai** reported in **[1977] 3 Supreme Court Cases 515** and submitted that if the rent tendered by the tenant is accepted by the landlord, it cannot be held that there is willful



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default. Hence, prayed for dismissal of this revision.

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5. Heard both sides and perused entire materials available on record.

6. It is relevant to note that as the tenant committed default in paying rents, rent control proceedings has been initiated by the landlord as early in the year 2017 on the ground of willful default. The rent controller holding that the monthly rent payable was Rs.6000/-, ordered eviction. It is the specific contention of the learned counsel appearing for the petitioner that the tenant is not prompt in paying rent and the conduct adopted by the tenant is nothing but willful default.

7. Whereas, it is the contention of the learned counsel appearing for the tenant that as the landlord refused to receive the rent, he has sent the rent through money Order and the same has not been received by the landlord and therefore, he sought bank details, which has not been furnished by the landlord. Hence, it is his contention that he has not committed any willful default and he was regularly paying rent.



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8. As the relationship is not disputed, now the only question to be seen is whether the tenant is prompt in paying the rent and whether there is willful default. In order to Order eviction on the ground of willful default, default must be deliberate and there must be supine indifference on the part of the tenant. The rent controller has clearly found that two months rent has not been paid. Though a stand has been taken by tenant that immediately he has paid the rent by way of money order and the money order has not been received by the landlord, the tenant has not taken any steps to deposit the rent and the money Order has only been sent after receipt of notice in the rent controller proceedings. In fact, the rent controller has verified the documents and recorded such a finding.

9. It is also relevant to note that when the tenant was aware of the proceeding as per the Tamilnadu Buildings [Lease and Rent Control] Act, in the manner in which the rent has to be paid and he has sent the rent by way of a money Order and the when the money order was refused by the landlord, he



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had sought bank details from the landlord. It is the contention of the tenant that he was paying rents regularly and even for the month of January 2017, as the land lord has refused to receive the rent, he resorted to send the rent through money Order and as the landlord has refused to receive the money order, he sent notice to the landlord requesting bank details.

10. When the very application is filed for eviction on the ground of willful default, the tenant ought to have been prompt in paying the rent every month to show that he is not a defaulter. The very memo filed by the tenant before the first appellate Court proves the fact that even after the dispute arose between the parties, he was not regular in paying the rent and the deposit has been made on his own whims and fancies. It is to be noted that rent for the month of December 2017 has paid only in the month of February 2018. Similarly, May month rent has been paid in the month of June 2018. Similarly, rents for the month of October and November 2018 have been paid in February 2019 and February 2019 rent has been deposited on 15.10.2019. August 2019 has been deposited on 16.07.2020 and rent for the month of July



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2021 has been deposited on 13.09.2022 and rent for October 2021 has been deposited on 20.09.2022. Rent for the month of February 2022 rent has been deposited on 22.11.2022 and July 2022 rent has been deposited on 04.02.2023. These facts clearly indicate that he was not regular in payment of rent.

11. When the dispute already arose between the parties, when the landlord refused to receive the rent which has been sent by money Order, it is the duty of the tenant to deposit the rent then and there. Therefore, non payment of rent every month would constitute willful default. Such conduct is nothing but certainly willful default and the same amounts to supine indifference on the part of the tenant. Though it is submitted that since the landlord has received the rent deposited in the bank and he is in the habit of receiving the amount deposited in lumpsum, the same would not constitute willful default. Such contention has no force at all for the simple reason that it is not agreed by the landlord to receive rent in lumpsum. Whereas, the tenant himself deposited rent at irregular interval. Therefore, it cannot be said that mere depositing rent in the bank account at intervals, the landlord consented to



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receive the rent in lumpsum. Hence, the judgment of this cited by the learned counsel appearing for the petitioner in **Civil Revision Petition Nos.1221 and 1222 of 1997 dated 19.12.1997 [Anraj Pipada Vs. Umayal]** is not applicable to the facts of this case. This Court in **Civil Revision Petition Nos.1221 and 122 of 1997** has held as follows :

“The conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to willful default and such subsequent conduct of the tenant can be taken into consideration in deciding the matter, In the light of the above principles, it is clear that the petitioner has committed willful default not only prior to the filing of the R.C.O.P., but also during the subsistence of the proceedings before the Rent Controller, the Appellate Authority and as well as before this Court. Hence I do not see any valid reason to differ from the orders of the courts below. Accordingly they are confirmed and the C.R.P. is dismissed with a cost of Rs. 2,500. Consequently, C.M.Ps. are also dismissed.”



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Considering the conduct of the parties, this Court holds that the conduct of the tenant not depositing rent every month even during the pendency of the proceedings, is nothing but willful in nature. Hence, the Order of the first appellate Court has to be necessarily set aside.

12. Accordingly, this Civil Revision Petition is allowed and Order of the IX Judge, Court of Small Causes, Chennai in RCA.No.397 of 2019 dated 08.12.2013 is set aside and the Order of the XIV Judge, Court of Small Causes, Chennai in RCOP.No.565 of 2017 dated 25.09.2019 is confirmed .
No costs.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order
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2. The XIV Judge,
Court of Small Causes, Chennai.

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N. SATHISH KUMAR, J.

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