



CRP No.1842 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 15.11.2024

Order pronounced on : 03.01.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.1842 of 2019

Uma

..Petitioner

Vs.

K.Purushothaman

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 29.11.2018 in R.C.A.No.3 of 2015 on the file of Subordinate Judge's Court, Vaniyambadi, reversing the fair and decretal order dated 16.09.2014 in R.C.O.P.No.91 of 1995 on the file of the Court of Principal District Munsif cum Judicial Magistrate, Vaniyambadi.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.R.Sankarasubbu

ORDER

This civil revision petition is filed as against the order dated 29.11.2018 in R.C.A.No.3 of 2015 on the file of Subordinate Court, Vaniyambadi, reversing the fair and decretal order dated 16.09.2014 in R.C.O.P.No.91 of 1995 on the file of the Court of Principal District Munsif cum Judicial Magistrate, Vaniyambadi.

2.The present revision arises under the Tamil Nadu Buildings (Lease and



Rent) Control Act 18 of 1960 as amended by Act 23 of 1973.

3.The petitioner is the landlady, aggrieved by the reversal finding rendered by the Appellate Authority in R.C.A.No. 3 of 2015 on the file of Subordinate Court, Vaniyambadi setting aside the eviction order passed by the learned Rent Controller in R.C.O.P. No.91 of 1995 dated 16.09.2014.

4.I have heard Mr.R.Subramanian, learned counsel for the revision petitioner / landlady and Mr.R.Sankarasubbu, learned counsel for the respondent. I have also perused the records, including the impugned order and judgement of the authorities below.

5.The brief facts leading to the present civil revision petition are as follows;

The landlady filed R.C.O.P.No.91 of 1995 before the learned Rent Controller, Vaniyambadi seeking eviction on the ground of wilful default, denial of title and own use and occupation. The case of the landlady was that originally, the petition premises belongs to one Mohammed Yahia Basha Saheeb under whom the respondent was inducted as a tenant ,on a monthly rent of Rs.400/-. The said Mohammed Yahia Basha Saheeb sold the petition



premises to one Kavitha in and by a registered sale deed dated 12.03.1995. It is the specific case of the petitioner/landlady that the tenant, respondent herein was informed about the said sale and was called upon to pay the agreed rent from 01.03.1995 to the purchaser, Kavitha. The respondent did not heed to the said request which constrained the purchaser, Kavitha to initiate eviction proceedings on the ground of willful default, denial of title and own occupation. Pending the said rent control petition, the said Kavitha sold the petition property to one Devan on 29.10.2001 and subsequent to his purchase, the said Devan executed a settlement deed in favour of the revision petitioner/ landlady herein on 02.02.2005. The petitioner filed I.A.No.08 of 2006 for substituting herself in the place of the petitioner/ landlord and the same was allowed.

6.The respondent filed a counter affidavit stating that he has been a tenant right from 1987 onwards under Mohammed Yahia Basha Saheeb. He also stated that he had filed a suit in O.S.No.1017 of 1995 for injunction which is pending. The respondent also disputed the title of Kavitha and consequently the title of the petitioner herein.

7.The learned Rent Controller, on considering the oral and documentary



evidence available on record, held that there is no necessity for attornment of tenancy and the tenant had committed wilful default in payment of rents and proceeded to order eviction. The respondent herein preferred R.C.A.No. 3 of 2015 before the Appellate Authority. The appellate authority reversed the findings of the rent controller, holding that Kavitha has not authorised the petitioner to receive rents and further the suit filed by the tenant for specific performance had also been allowed and on these grounds, the eviction petition was dismissed.

8. Aggrieved by the reversal findings of the Appellate Authority, denying eviction to the petitioner, the present civil revision has been preferred.

9. The learned counsel for the petitioner/ landlady would submit that even in the evidence, the tenant had clearly admitted that he has not paid rents ever since 1995 and in fact, though a feeble attempt had been made stating that rents were paid to Kavitha, no documents were filed in support of such contention. The learned counsel for the petitioner would place reliance on the decision of the Madras High Court in *K.M.Mohammed vs N.Ethirajan and others* reported in 2006 (3) CTC 405, *M/s Guru Associates vs B.A.Balasubramaniam* reported in



2000 (3) LW 634 and *Bhaiya Punjalal Bhagwandin vs Dave Bhagwatprasad*

Prabhuparasad and others reported in *AIR 1963 SC 120* in support of his contentions.

10. Per contra, Mr.R.Sankarasubbu, learned counsel for the respondent/tenant would submit that the tenant was originally inducted by one Mohammed Yahia Basha Saheeb on a monthly rent of Rs.400/-. Pending the said tenancy, the said Mohammed Yahia Basha Saheeb sold the property to one Kavitha under a registered sale deed dated 12.03.1995 and since the respondent was duly informed about the sale and the respondent, despite being informed about the sale, did not pay rents, the said Kavitha initiated eviction proceedings on the ground of willful default, denial of title and own use and occupation. In fact, in and by a notice dated 17.08.1995, the said Kavitha had also called upon the respondent to pay the rental arrears, besides also terminating the lease by 30.09.1995. The learned counsel would contend that in the said notice, the tenant had addressed the reply stating that Rs.20,000/- was paid as advance and the same was available for adjustment and there is no default committed by the respondent/tenant and thereafter, she filed RCOP. According to Mr.R.Sankarasubbu, pending RCOP, the said Kavitha sold the property to one Devan on 29.10.2001 and in turn the said Devan had executed a settlement deed



in favour of the revision petitioner herein on 02.02.2005 and only thereafter the revision petitioner filed an application to substitute herself which was also allowed by the Court. According to Mr.R.Sankarasubbu, there has been no attornment of tenancy in favour of the revision petitioner and the tenant had disputed even the title of said Kavitha and filed civil suit in O.S.No.1017 of 1995 for permanent injunction to protect his possession.

11.The learned counsel for the respondent would further submit that the said Kavitha never authorized the revision petitioner to receive rents. In any event, he would contend that all rents have been duly paid to Kavitha and without any authorization or permission from the vendor, the purchaser or the purchaser's husband, namely the revision petitioner were not entitled to claim rental arrears from the tenant. It is also lastly contended by the learned counsel for the petitioner, the tenant has deposited Rs.27,500/- on 30.09.2024, pending the Civil Revision Petition and the said deposit itself show that the respondent/tenant has not committed any willful default and that he has paid the rent regularly. He would also place reliance on the following decisions in support of his contentions:

i) Venkatramanaswami Aiyer Vs. Abdul Wahab (1969 (1) MLJ 137).



ii) *Pandian Vs. A.Abitha Begam* (2001 (1) CTC 270).

iii) *J.J.Lal Private Limited and Others Vs. M.R.Murali & Another* ((2002) 3 SCC 98).

iv) *K.A.Ramesh and Others Vs. Susheela Bai and Others* (1998 (3) SCC 58).

v) *K.Chinnathambi Rowther Vs. K.Shanmugam* ((2004) 1 MLJ 16).

vi) *Kesavan Vs. Vincent Pillai* (1973 1 MLJ 406).

vii) *Parasuram Chettiar, represented by his Power Agent K.Bhoopathy Vs. V.Alwar and Another* (1996 TNLJ 166).

12.In *Venkatramanaswami Aiyer's case*, the Hon'ble Supreme Court held that a mere default would not lead to an eviction order and the Court has to examine whether there has been an intentional violation of the obligation to pay rent.

13.In *Pandian's case*, the Hon'ble Supreme Court held that grounds of eviction like denial of title must be specifically pleaded and proved by substantial evidence.

14.In *J.J.Lal Private Limited's case*, the Hon'ble Supreme Court held that unless the ground of denial of title is specifically pleaded, an eviction order cannot be passed.



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15. In *K.A.Ramesh's case*, the Hon'ble Supreme Court held that non-invocation of Section 11(4) of the Act seeking rental arrears, implied a waiver of right to claim arrears under the Act and non-payment cannot be subsequently construed as willful default.

16. In *K.Chinnathambi Rowther's case*, this Court held that where the default was inadvertent and justifiable and was not deliberate, then, the conduct of the tenant cannot be held to be willful in nature.

17. In *Kesavan's case*, this Court held that willful default signifies the deliberate breach of obligation to pay rent and such conduct cannot be cured by subsequent payment of the arrears.

18. In *Parasuram Chettiar, represented by his Power Agent K.Bhoopathy Vs. V.Alwar and Another* reported in 1996 TNLJ 166, this Court held that the when the tenant was not informed about the identity of the new owner, thereby enabling the tenant to pay the rents and where the tenant had also initiated a case to deposit to the Court before the eviction petition came to be filed, the default cannot be held to be willful.



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19.Placing reliance on the above decisions, Mr.R.Sankarasubbu would contend that the conduct of the respondent can never be termed as willful or deliberate and rightly the Rent Control Appellate Authority had set aside the order of eviction passed by the learned Rent Controller. He would therefore pray for the civil revision petition to be confirmed.

20.I have carefully considered the rival submissions advanced by the learned counsel on either side.

21.There is no dispute with regard to the fact that the revision petitioner herein has purchased the petition premises during the subsistence of tenancy of the respondent. The respondent admits that he has been a tenant on a monthly rent of Rs. 400/- even under the earlier owner, one Mr. Muhammad Yahia Basha Saheeb. It is also an admitted fact that the said Muhammad Yahia Basha Saheeb conveyed the property in favour of one Kavitha in 1995, who in turn sold the property to Devan, the husband of the revision petitioner herein on 29.10.2001. Pursuant to the said purchase by the husband of the petitioner, Devan, he settled the petition premises in favour of the revision petitioner, in and by a deed of settlement dated 02.02.2001. The respondent is a tailor by



profession. According to the revision petitioner, the respondent committed willful default in payment of rents even during the subsistence of tenancy with the then owner, Kavitha who had terminated the tenancy of the respondent by issuing a notice and also filed the eviction petition seeking eviction on grounds of willful default and for personal use and occupation. The present revision petitioner has amended the pleadings in the RCOP and substituted herself in the place of the petitioner/ landlady, Kavitha and has been continuing the eviction proceedings.

22.The learned Rent Controller found that the respondent has not paid rents and in fact, has committed willful default in payment of rents and therefore, ordered eviction on the ground of willful default in payment of rents. It was the specific case of the respondent that he has paid an advance of Rs.20,000/- and that he has been promptly paying rents to Kavitha and that he has receipts for such payment of rent in a pocket notebook. The claim of the respondent that he has paid an advance of Rs.20,000/- has been denied even by the erstwhile owner and original petitioner, Kavitha. Therefore, in view of such denial, it was the burden of the respondent to establish that he had in fact paid an advance and that the alleged sum of Rs.20,000/- was available to be adjusted.



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23.The respondent has not filed any documentary evidence to support such contentions and the learned Rent Controller rightly held that the respondent had not substantiated the averments in the counter statement and consequently proceeded to accept the version of the revision petitioner/ landlady and ordered eviction.

24.In fact, one another contention before the learned Rent Controller was that subsequent to the settlement deed executed in favour of the revision petitioner, there was no attornment of tenancy by the respondent and therefore, there was no jural relationship of landlord and tenant between the petitioner and the respondent. The learned Rent Controller rejected the said contention by placing reliance on several decisions of the Honourable High Court including our court in *Natarajan v. Manimegalai and others* reported in (2008) 1 CTC 385.

25.The learned Rent Controller had also elaborately discussed the oral evidence adduced and came to the conclusion that the petitioner was entitled to an order of eviction. With regard to ground of owner's occupation, the rent controller rightly held that the original claim for bona fide own occupation was



made by the erstwhile landlady Kavitha and despite amendment of pleadings, the petitioner had not pleaded the said ground being available to her and rightly dismissed the petition, insofar as the ground of own use and occupation.

26.On appeal by the respondent herein R.C.A.No.3 of 2015, the Sub Court, Vaniyambadi reversed the findings of the Rent Controller and set aside the order of eviction. The Appellate Authority has found that the erstwhile landlady Kavitha had not given any permission to either the petitioner or her purchaser Devan to receive rents from the tenant and in the absence of such written permission, the petitioner cannot be construed as a landlady to entitle her to seek eviction.

27.The Appellate Authority has also discussed a suit in O.S.No. 40 of 2005 which is a suit for specific performance of an agreement of sale filed at the instance of the respondent /tenant herein and relied on findings rendered by the trial court in OS..No. 40 of 2005 that tenant was paying rent regularly and consequently held that the tenant cannot be granted as a willful defaulter.

28.As against the reversal findings rendered by the Appellate Authority, the landlady has preferred the revision. As rightly contended by



Mr.R.Subramanian, learned counsel for the petitioner, if really the case of the respondent/ tenant is that he has been paying rents regularly in the court, then there is no necessity for depositing a sum of Rs.27,500/- pending the civil revision petition, that too as late as on 30.09.24. This conduct on the part of the respondent/ tenant itself establishes the fact that the tenant has not bothered to pay the rents despite the pendency of eviction proceedings against him and only when the revision itself was taken up for a final hearing, a feeble attempt has been made by the respondent/ tenant to pay the entire arrears in one lump sum to get over the default. Such conduct of the respondent/ tenant cannot be appreciated or countenanced. In fact, now it is settled legal position that the conduct of the tenant in not paying rents even after filing of eviction proceedings, that too, invoking the ground of willful default in payment of rents, would be a very relevant circumstance to decide the eviction petition or the Rent Control appeal.

29.Before even going to whether the default in payment of rents is willful or not, I also have to test the findings with regard to the jural relationship of landlord and tenant and as to whether attornment of tenancy is a precondition for creation of a landlord-tenant relationship. The law on this point is fairly well settled by the decisions of the courts. The Honourable Supreme Court in



K.M.Mohammed's case (referred herein supra) has held that there is no requirement for separate attornment of tenancy. The appellate authority has rendered a contrary finding to the settled ratio laid down by the Honourable Supreme Court as well as by this court. The reliance placed on in *Parasuram Chettiar's case* (referred herein supra) by Mr.R.Sankarasubbu, is misplaced. In the said case, the tenant had no occasion to know about the purchase made by the petitioner who sought for eviction and additionally even before the landlord initiated eviction proceedings, the tenant had filed a petition under Section 8 of the Act seeking to deposit of rents. In such circumstances, this Court held that such default in payment of rents cannot be termed as willful. However, in the present case, though the tenant has taken a specific stand that he was promptly paying rents, to the erstwhile owner, Kavitha and that he had also paid an advance, none of these were established during trial. The learned Rent Controller has rightly found that the alleged payment of rents to said Kavitha was not established.

30.Further, even after the revision petitioner was substituted in the eviction proceedings, the 1st respondent has not come forward to tender the rents and only as late as 30.09.2024, he has chosen to deposit a sum of Rs.27,500/- which covers close to seventy months rent. The very fact that the respondent has



paid about seventy months rent in one lump sum, that too, at the fag end of the hearing of the revision petition, clearly indicates that the default committed by the tenant is nothing but callous, deliberate and willful, warranting an order of eviction.

31.The law does not contemplate that, whenever there is a change in title of the owner, a separate attornment has to be made in favor of such a new owner by the tenant. The law itself implies attornment of tenancy once there is a valid conveyance in favor of a subsequent purchaser. Therefore, the learned Rent Controller has rightly applied the law in its true sense and proceeded to hold that attornment of tenancy was not mandatory. Unfortunately, the Appellate Authority has reversed the findings without adhering to the well settled legal position. Therefore, the findings of the Appellate Authority are liable to be set aside.

32.Now coming to the question of willful default in payment of rents, the law is fairly well settled that the landlord cannot keep begging the tenant to pay rents promptly. There is a statutory obligation cast on the tenant to pay rents every month, as and when it falls due, more so, when an application for eviction



is filed, alleging willful default in payment of rents, the tenant has to be extra cautious and diligent in discharging his obligation of payment of rents regularly and promptly. As already discussed herein and above, though the respondent claims that he has paid rents promptly and that there is no default committed by him, the tenant has not been able to produce a shred of evidence to substantiate such claims. Further, the very fact that he has deposited the entire arrears of Rs.27,500/- calculating the monthly rent of Rs.400/- would clearly go to show that the tenant himself admits that there is a default in payment of rents. Therefore, such conduct on the tenant can never be condoned.

33.This Court in *M/s Guru Associates's case* (referred herein supra) held that even the appellate authority has to take into account the subsequent conduct of the tenant, especially in non-payment of rents. The Honourable Supreme Court in *Bhaiya Punjalal Bhagwandin vs Dave Bhagwatprasad Prabhuparasad and others* reported in *AIR 1963 SC 120* held that, when a landlord institutes proceedings for eviction on the tenant, on the ground of arrears of rent, the tenant's paying the arrears after the institution of the suit does not affect his liability to eviction and the courts are still empowered to pass a decree for eviction.



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34.The further aspect which also goes against the tenant is that the tenant set up an agreement of sale as if the husband of the revision petitioner had agreed to sell the property to him and that he had also paid an advance of Rs.80,000/-. The said suit for specific performance was dismissed in O.S.No.40 of 2005. It was dismissed by the trial court holding that the said agreement was not even genuine and that the plaintiff had also not established readiness and willingness. However, on appeal, the first appellate court allowed the appeal and directed refund of the advance amount of Rs.80,000/- together with damages of Rs.15,000/-, thereby Rs.95,000/- in all, together with interest of 6% pa. The S.A.No. 635 of 2019 was also heard by me and I have, by a separate judgment, set aside the judgment of the First Appellate Court on the ground that the plaintiff-tenant herein has not established payment of the alleged advance of Rs.80,000/- and that he is also not entitled to any damages.

35.Therefore, even considering the said conduct of the Respondent/ Tenant in trying to set up an agreement of sale which was disbelieved concurrently and even the claim for refund of the alleged advance amount having been negatived by this court, the respondent/ tenant has absolutely no legs to stand and consequently the findings of the first appellate authority are liable to be set aside and the order of eviction passed by the learned Rent



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Controller is to be restored.

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36. Section 109 confers a right on the lessor's transferee who is the revision petitioner herein. It stipulates that the transferee shall possess all rights of the lessor and it is for the tenant to elect, subject to all liabilities of lessor as to the property transferred. The *proviso* to section 109 only restricts the right of the transferee to claim arrears of rent before the transfer. However, in the present case, even pending the RCOP, the revision petitioner has impleaded herself and her specific case is that even after the purchase, the respondent has not come forward to pay rents to her. Though the revision petitioner may not be entitled to claim rent as default, much less willful default, prior to her acquiring interest in the subject property, at least after she became the owner, the respondent was liable to pay rents to her.

37. This Court, in *Alaudin and Another Vs. A.Sathar* reported in 2011 SCC Online MAD 1483, has considered the aspect of seeking eviction on the ground of willful default in payment of rents, post transfer of title of the tenanted premises and it was held in the said case that the transferee, pending eviction proceedings cannot continue the eviction petition on the ground of



willful default only in respect of the period prior to the said transfer. Here, admittedly, even pending the proceedings, the revision petitioner has been impleaded as the landlady and it is the specific case of the petitioner that no rents have been paid even pursuant to the said impleadment. It is settled law, as already discussed herein above, the tenant is obligated to pay rents pending the eviction proceedings as well and the conduct of the tenant pending the eviction proceedings can also be looked into while deciding the application for eviction on the ground of willful default.

38. For all the foregoing reasons, the decision of the Rent Controller is to be upheld and the judgment of the Appellate Authority, contrary to settled legal position, is liable to be set aside.

39. In fine, the Civil Revision Petition is allowed. The order of the Appellate Authority dismissing R.C.A.No.3 of 2015 dated 29.11.2018 is set aside and consequently, the order dated 16.09.2014 in R.C.O.P.No.91 of 1995 on the file of the Principal District Munsif cum Judicial Magistrate, Vaniyambadi is restored. The order of eviction against the respondent/tenant is confirmed, directing the respondent/tenant to vacate and hand over the possession of the tenanted premises within a period of two months from the date of receipt of a copy of this order. It is made clear that the respondent/tenant shall continue to pay the monthly rents post the payment of Rs.27,500/- in



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September 2024, till such time, he vacates and hands over the vacant possession to the petitioner /landlady. However, there shall be no order as to costs.

03.01.2025

Speaking/Non-speaking order

Index : Yes/No

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To

1.The Subordinate Court, Vaniyambadi.

2.The Principal District Munsif cum Judicial Magistrate, Vaniyambadi.



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