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C.R.P.(NPD) No.4500 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4500 of 2024
and C.M.P.No.25104 of 2024

Mrs.Palkani

... Petitioner/Appellant/Respondent

-VS-

1. Mr.J.Raghu

2. Mr.J.Jaikumar

... Respondents/Respondents/Applicants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the dismissal order dated 28.06.2024 passed in R.L.T.A.No.111 of 2023 on the file of the II Additional City Civil Court at Chennai, confirming the order of Rent Court passed in R.L.T.O.P.No.63 of 2020 on the file of XII Small Causes Court.

For Petitioner : Mr.P.Sunil

For Respondents : Mr.V.Manohar

ORDER

Challenging the concurrent findings of the Rent Court as well as the Appellate Court, the present revision petition has been filed.

Background of the case in nutshell:



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2. The revision petitioner is a Tenant under the respondents,

who are Landlords and an eviction petition was filed by the Landlords under Sections 21(2)(a), 21(2)(b), 21(2)(d) and 21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (in short 'the Act, 2017'). According to the Landlords, they purchased the property on 05.10.2016 and since then, they are the absolute owners of the premises. They issued a legal notice on 07.09.2019, calling upon the tenants to pay the arrears of rent at Rs.1,100/- per month from October, 2016 till date. A reply dated 30.09.2019 was sent by the Tenant, agreeing to pay the arrears of rent and wanted to register the agreement of tenancy, for which a rejoinder dated 14.10.2019 was also sent by the Landlords, followed by yet another reply dated 18.11.2019, enclosing a draft agreement of tenancy, as demanded in the notices issued by the Tenant. However, the Tenant had not come forward to execute the agreement and therefore, eviction was sought under Section 21(2)(a) of the Act, 2017 and also on the ground of additional accommodation.

3. In the counter filed before the Court below, a contention was



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raised by the Tenant that she was originally inducted as a Tenant by one Krishnaiah in respect of the portion in the ground floor of the petition premises for non residential purposes and the rear portion for residential purposes. Ever since the inception of tenancy, the Tenant has been paying monthly rents without fail. According to the Tenant, she had been originally paying the rent to the owner of the premises through Power Agent of the owners and as the owner had refused to receive the monthly rent, the Tenant had filed R.C.O.P.No.613 of 2010 and her husband also filed R.C.O.P.No.614 of 2010 for deposit of monthly rents into Court and the same was allowed by an order dated 05.04.2011 by XI Court of Small Causes. By the said order, the Tenant was directed to deposit monthly rents at the rate of Rs.1,100/- from January, 2010.

4. It was further stated in the counter that on 07.09.2019, the Landlords / present owners of the property called upon the Tenant to enter into an agreement, besides paying the monthly rent from October, 2016 to July, 2019, for which, the Tenant also sent a reply, expressing her willingness to enter into an agreement upon production of the conclusive



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proof of ownership. On receipt of the notice, the Landlords sent a reply on 14.10.2019, from which, the Tenant came to know that the property had been purchased on 05.10.2016 and thereafter, a reply to the rejoinder dated 25.10.2019 was sent by the Tenant, expressing her inclination to enter into a lease agreement duly pointing out that she had deposited monthly rents into Court from October, 2016. However, the Landlords, without taking into consideration the Court deposit, insisted the Landlord to pay rents from October, 2016 and a draft agreement was purported to be enclosed.

5. It is the contention of the Tenant that though she had received notices from the Landlords, there was no copy of the draft agreement enclosed. When the matter stood thus, the Landlords immediately filed the petition for recovery of possession on 19.12.2019 and hence opposed the petition for eviction.

6. The Rent Court had allowed the application on the ground of non execution of agreement after the Act, 2017 came into force and rejected the petition for eviction on other grounds. The Appellate Court has also



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confirmed the order of the Rent Court. Aggrieved by the same, the Tenant is before this Court.

7. Though various grounds have been raised in the present petition, the main ground urged by the Tenant is that the petition filed for eviction is highly premature, as the petition had been filed before the expiry of 575 days to enter into an agreement and therefore, the petition is not maintainable. According to the Tenant / revision petitioner herein, she had all along shown her willingness to enter into an agreement and the Landlords, without giving sufficient time as mandated under law, had filed the petition for eviction, which is against the provisions of law. Much reliance has been placed on the orders of this Court in **Ramesh Salunkhe vs. Pramila Jain (C.R.P.No.1996 of 2021) decided on 25.01.2022.**

8. Learned counsel for the Landlords / respondents herein contended that though the Tenant had stated that she is ready to enter into an agreement, subject to proof of ownership, she had not come forward to execute any agreement and thereafter, once again notices had been served



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on the Tenant on 14.10.2019, requesting her to enter into an agreement, besides paying the arrears of rent from 05.10.2016, for which, a reply was sent by the Tenant on 25.10.2019 accepting to continue the tenancy and was willing to execute the agreement on the existing terms. Though the Landlors send a draft agreement, having received the same, the Tenant had not come to complete the formalities, which necessitated the Landlors to file a petition for eviction.

9. Learned counsel for the respondents further contended that the time period of 575 days provided under Section 4(2) of the Act, 2017 is only to inform the parties to enter into an agreement and the Act, 2017 does not contemplate that the petition cannot be filed before expiry of 575 days. If the Tenant was really interested in continuing the tenancy, she ought to have entered into an agreement, when the legal notice had served on 07.09.2019 and there was no whisper on the side of the Tenant in respect thereof in the reply notices dated 30.09.2019 and 18.11.2019. However, the Tenant was interested to enter into an agreement only on the existing terms, i.e., old rent that cannot be permissible.

10. Learned counsel for the Landlords also contended that the



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rent payable under the New Act, 2017 is only as per the agreement agreed

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upon between the Landlords and the Tenant and in support of his

submission, he has placed reliance on the judgments of this Court in the

cases of ***B.A.Chandrashekara Setty vs. Sucharita Gunasekaran***

(C.R.P.No.1238 of 2022) decided on 10.08.2022.

11. I have perused the material documents available on record.

12. At the first instance, there is no dispute with regard to the landlords and tenant relationship. The revision petitioner was originally inducted as a Tenant even before 1988 and the Landlords purchased the property in 2016. The Tenant had filed R.C.O.P.No.613 of 2010 and her husband also filed R.C.O.P.No.614 of 2010 for deposit of monthly rents into Court as against the erstwhile Landlords and a direction was issued by XI Court of Small Causes on 05.04.2011 to deposit monthly rents at the rate of Rs.1,100/- from January, 2010. After purchase of the property, the Landlords issued notices for payment of rent from 2016. Besides, the Landlords also requested the Tenant to enter into an agreement. A reply had



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been sent by the Tenant on 07.09.2019, stating that she had already deposited the amount and the Landlords can withdraw the amount, apart from stating that she is ready to enter into an agreement, subject to proof of ownership. Thereafter, the Landlords issued notice on 14.10.2019, indicating the purchase of the property by way of Doc.No.4113 of 2016 on the file of SRO, Kodambakkam, Chennai, which has been replied by the Tenant on 25.10.2019, intimating that she is willing to continue the tenancy on the existing terms. For that, the Landlords also sent a reply dated 18.11.2019 along with a draft agreement of tenancy.

13. Though it is stated by the Tenant in the counter that no copy of the draft agreement had been enclosed in the said letter, the fact remains that the Tenant expressed her willingness to execute the agreement only on the existing terms. It is relevant to note that the main object of the Act, 2017 is to regulate the rent as per the terms agreed between the Landlord and Tenant. Therefore, an agreement is mandatory to claim rights under this Act and in order to avail the benefit under the Act, Section 4 makes it clear that even in respect of the existing tenancy when there is no



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agreement entered between the parties, the parties were required to enter an agreement in writing within a period of 575 days from the date of commencement of Act, i.e., 22.02.2019. Proviso to sub-section (2) to Section 4 of the New Act makes it clear that irrespective of the failure on the part of the tenant or the landlord in entering an agreement, the same will give right to either the landlord or the tenant to apply for termination of the tenancy under clause (a) of sub-section (2) of Section 21 of the new Act. In other words, the above proviso makes it clear that non entering of agreement in writing, even on the mistake of both sides, will give rise to cause of action to the landlord for eviction under Section 21 of the New Act.

14. As far as the submission raised by the learned counsel for the Tenant that the petition filed within a period of 575 days from the commencement of the New Act is premature petition, this Court is of the view that originally, when the New Act came into force, 90 days time was given and thereafter, it was enhanced to 210 days and thereafter, on 15.02.2020, it was further enhanced to 575 days with effect from 20.09.2019. Merely because the period has been extended to 575 days, it



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does not mean that the Landlords should wait till expiry of 575 days to enter

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into an agreement. The intention of the legislation can be gathered from the

subsequent provisions introduced under the New Act. Section 8 of the New

Act defines the rent payable, which reads as follows:

“8. Rent payable - The rent payable in relation to a premises shall be,

(a) in case of new tenancies entered into after the commencement of this Act, the rent agreed to between the landlord and the tenant at the commencement of the tenancy;

(b) in case of tenancies entered into before the commencement of this Act, where no agreement was executed between the parties, the rent agreed to between the landlord and the tenant in the agreement executed between them under sub-section (2) of section 4;

(c) in case of tenancies entered into before the commencement of the Act, where an agreement in writing was already entered into, the rent agreed to between the landlord and the tenant in such agreement.”

15. Clause (b) of Section 8 of the Act makes it clear that even



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in respect of the earlier tenancy, where no written agreement was executed between the parties, the rent payable would be the rent that is agreed upon between the landlord and the tenant in such agreement which is to be duly executed as required under sub-section (2) of section 4. The above mandatory provision requires the parties to enter an agreement in writing only in order to regulate the rent as per the terms of the parties and not based on old rent. If at all, the intention of the legislation was only to enter an agreement with regard to the existing rent alone, Section 8 (b) would not have been brought under the statute to define what is the rent payable even in respect of the old tenancy.

16. It is relevant to note that the Hon'ble Supreme Court in the case of *Vithalbhai Pvt. Ltd. Vs. Union Bank of India* reported in (2005) 4 SCC 315 held as follows:

“21. Where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The court may reject the plaint if it does not disclose a cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the



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plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, maybe irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the court shall not necessarily dismiss the suit. The court would examine if any prejudice has been caused to the defendant or any manifest injustice would result to the defendant if the suit is to be decreed. The court would also examine if in the facts and circumstances of the case it is necessary to drive the plaintiff to the need of filing a fresh suit or grant a decree in the same suit inasmuch as it would not make any real difference at that stage if the suit would have to be filed again on its having matured for filing.”

17. The Landlords, immediately after purchase of the property, intimated the Tenant about their purchase and also demanded the arrears of rent as per the Act, 2017. If really the Tenant had the intention to continue the tenancy to enter into an agreement, agreeing to pay the rent as agreed between the parties, it can be said that despite readiness on the part of the Tenant, the Landlords failed to enter into an agreement, whereas the Tenant, though expressed her intention to enter into an agreement with a caveat, was ready to enter into an agreement only on the existing terms and not on new terms. The reply sent by the Tenant on 25.10.2019 that was placed before this Court indicates that the Tenant was ready to enter into an agreement



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only on the existing terms.

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18. As already pointed out, the main object of the Act, 2017 is to regulate the rent as per the terms agreed between the Landlord and Tenant. Merely expressing some intention for entering into an agreement, it cannot be said that the Tenant is really interested to enter into an agreement as per the market value. It is to be noted that even though a draft agreement along with notice dated 18.11.2019 was sent by the Landlords, a plea was taken by the Tenant that no such draft copy was received. Even assuming that there was no such copy attached along with the notice, the Tenant ought to have sent a reply, indicating the acceptance of the draft agreement on her side, which had not been done. Therefore, this Court is of the view that merely because a time period has been stipulated for the parties to enter into an agreement within 575 days, that cannot be construed to mean that the Landlords should wait till 575 days. Tenant cannot expect the Landlords to wait for 575 days to enable the Tenant to express her position in this regard. Therefore, the contention of the learned counsel for the Tenant that the petition for eviction had been filed before expiry of 575 days is premature



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cannot be countenanced. Even assuming that the petition had been filed at the premature level, that cannot be a ground to dismiss the petition.

19. If really the Tenant was interested in executing the agreement, she could have very well made an attempt even during pendency of the petition. Whereas her reply dated 25.10.2019 indicates that she had expressed her willingness to enter into an agreement on the existing terms and not on the rent agreeable between the parties on terms. The case relied upon by the Tenant in the case of **Ramesh Salunkhe vs. Pramila Jain** **(C.R.P.No.1996 of 2021) decided on 25.01.2022** will not be applicable to the facts of the case. In the above case, the Tenant was ready to enter into an agreement, whereas the Landlord did not want to extend the lease agreement and in that situation, this Court held that the petition is not maintainable, which is not the case herein.

20. Insofar as the plea of premature is concerned, as already stated above, no attempt was made by the Tenant during pendency of the petition and the time period stipulated is only for the purpose of entering into an agreement within the said period and it does not mean that the Landlords should compulsorily wait till 575 days to file a petition for



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eviction. In that case, the very object of the legislation will be diluted. The Tenant cannot take advantage of her own fault. The revision petitioner was inducted as a Tenant in the year 1988 and previously, she had also filed R.C.O.P.Nos.613 and 614 of 2010 along with her husband for deposit of the rent as against erstwhile Landlords. The very conduct of the Tenant unravels fact that she somehow wanted to take advantage of the situation. In such view of the matter, the contention raised by the Tenant that the petition was premature, has no legs to stand and is liable to be rejected.

21. For the foregoing reasons, this Civil Revision Petition is dismissed and the concurrent findings of the Rent Controller and the Rent Appellate Tribunal are upheld. No costs. Consequently, connected Miscellaneous Petition is closed.

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N.SATHISH KUMAR,J.,
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1. II Additional City Civil Court,
Chennai.
2. XII Small Causes Court,
Chennai.

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