



C.R.P.(MD)No.2027 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2027 of 2023
and C.M.P.(MD).No.10115 of 2023

Times Educations & Charitable Trust
represented through its Managing Trustee
Mr.T.Kamaraj,
S/o. Late Shri.Thangaraj,
D.No.4/947, Thaikka Colony,
Rahamath Nagar, Tiruchendur Road,
Palayamkottai,
Tirunelveli District. ... Petitioner/Appellant/Respondent/Tenant

Vs.

P.A.M.Jahira ... Respondent/Respondent/Petitioner/Landlord

PRAYER : Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order passed in R.C.A.No.10 of 2017 order dated 01.06.2023, on the file of the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli confirming the fair and decreetal order passed in R.C.O.P.No.2 of 2014 order, dated 02.05.2017 on the file of the I Additional District Rent Controller (I Additional District Munsif Court), Tirunelveli.



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For Petitioner : Mr.H.Arumugam

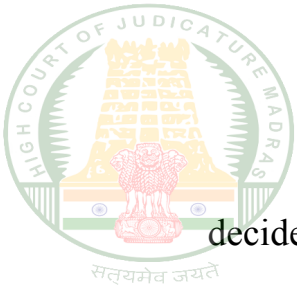
For Respondents : Mr.N.A.Nissal Ahamed,
Senior Counsel for
Mr.I.Abdul Basith

ORDER

This revision petition has been filed to set aside the fair and decreetal order passed in R.C.A.No.10 of 2017 order dated 01.06.2023, on the file of the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli confirming the fair and decreetal order passed in R.C.O.P.No. 2 of 2014 order, dated 02.05.2017 on the file of the I Additional District Rent Controller (I Additional District Munsif Court), Tirunelveli.

2.The facts in brief:

R.C.O.P.No.2 of 2014 was filed by the respondent herein under the provisions of 10(2)(i), 10(2)(ii)(b), 10(2)(iii) and 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the petitioner herein for eviction on the ground that the revision petitioner defaulted in payment of rent in willful manner, caused damages to the demised building and for own use and occupation and different users, than the purpose for which it was leased out. The Rent Controller



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decided the first issue wilful default in favour of the landlord. In respect of the different user, causing damages and for own use and occupation, the grounds were rejected. So delivery was ordered on the ground of wilful default, by the order dated 02.05.2017. Against which, the revision petitioner preferred R.C.A.10 of 2017 before the appellate Authority namely Sub Judge, Tirunelveli. The appellate authority concurred with the finding regarding the wilful default and dismissed the appeal by the order, dated 01.06.2023. Against which this revision petition is preferred.

3.Heard both sides.

4.Among the grounds raised by the respondent herein the eviction was ordered only in respect of wilful default. We need not consider the other grounds raised by the respondent. An attempt was made by the respondent before the appellate authority to raise up those pleas once again. But, it was rightly rejected by the appellate authority. So that portion of the order or finding as the case may be recorded by the Rent Controller attained finality.



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5.Revision is concentrated only upon the issue of wilful default.

Before we go into the main issue, the admitted fact can be kept in mind.

The rent was monthly rent based upon English Calendar month entered between the parties. On 12.12.2009, an advance amount of Rs.60,000/- was paid by the revision petitioner. Now it lies in the custody of the respondent. The original rent was fixed at Rs.10,000/-. Originally the period was fixed for 11 months. After 11 months period is over in the event of renewal, the tenant must pay 6% enhanced rent. This is the admitted fact on both sides.

6.Now coming to the issue. According to the respondent herein, after the expiry of 11 months period, it was orally extended for another 11 months. As per the terms of the lease agreement, the revision petitioner must pay enhanced rent at the rate of Rs.10,600/-. But, the revision petitioner requested the respondent to reconsider the enhancement stating the financial position of the trust. So the original rent of Rs.10,000/- was continued for two times. But, later, from December 2012, the revision petitioner must pay enhanced rent at the rate of Rs.11,800/-. That amount was not paid by the revision petitioner



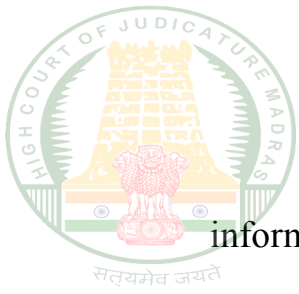
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wilfully. A notice was issued on 13.02.2013, for which revision petitioner sent reply notice on 19.02.2013.

7.Later, the revision petitioner filed R.C.O.P.No.2 of 2014 stating that the agent of the respondent is not coming for collecting the rent. So permission must be granted to him to deposit the monthly rent.

8.So in respect of this averment in the petition, now we will go to the counter affidavit filed by the revision petitioner before the Rent Controller, wherein, it has been stated that the trust is not a tenant under the respondent. But, Kamaraj in the individual capacity, who is also trustee of the trust is the tenant. Now, this point is not raised before me at this stage. So we need not be enter on that point.

9.Coming to the issue of default, it has been stated in the counter that till December 2012 Rent was paid regularly. Thereafter, the agent did not come for the collection and so notice was issued to the respondent herein expressing his readiness and willingness. But, even after that the landlord did not come forward. So notice was given for



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informing about the Bank account number, etc., for deposit. Thereafter,

R.C.O.P.No.26 of 2013 was filed.

10. So reading of the counter affidavit indicates that it did not address an important aspect of payment of enhanced rent. Now, we will go to the petition filed by the revision petitioner in R.C.O.P.No.26 of 2013, wherein, the very same averments is repeated. But, without mentioning the point of demand of enhanced rent, they sought the permission of the Court to deposit the rent arrear from December 2012 to April 2017. It was allowed by the order dated 02.05.2017 directing the revision petitioner to deposit the arrear amount and continue to deposit monthly rent within 5th of every succeeding month. There is a finding to the effect that it was not proved by the respondent that rent was enhanced to Rs.11,800/- through documentary evidence.

11. Now, it is seen that the revision petitioner did not intend to pay the enhanced rent. But, only originally agreed rent of Rs.10,000/-.

12. Now coming back to the argument advanced by the revision

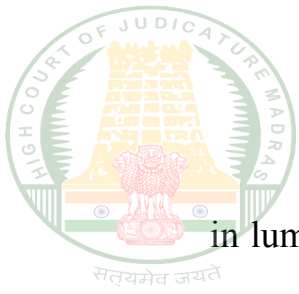


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petitioner, he would submit that since R.C.O.P.No.26 of 2013 was allowed on 02.05.2017, directing the revision petitioner to deposit the entire arrear amount. But, contrary finding is recorded by the Rent Controller stating that there is wilful default of payment of rent. So this according to him, will not go together. Apart from that he would also submit that when advance amount of Rs.60,000/- lies in the hands of respondent, the question of wilful default will not arise in view of the settled position of law.

13.For that purpose, he would rely upon the Judgment of the Honourable Supreme Court in the case of ***K.Narasimha Rao Vs. T.M.Nasimuddin Ahmed, (1996) 3 SCC 45***. It is settled position of law, that when landlord is in excess of the two months rent as advance, then question of wilful default may not arise.

14.The learned counsel for the respondent would submit that even after filing the petition in R.C.O.P.No.26 of 2013 and the order thereon the revision petitioner was not prompt in depositing in the monthly rent. As usual he allowed the Rent arrear pile up and used to deposit the rent



in lumsum, which according to him, will also show the mental condition of the revision petitioner to commit default.

15.For that purpose he would rely upon the following judgments.

1. The Judgment of this Court made in the case of ***B.Anraj Pipada Vs. V.Umayal*** reported in ***MANU/TN/1126/1998***,
2. The Judgment of this Court made in the case of ***Magestice Leatherware Vs. Govinda Chetty*** reported in ***MANU/TN/0203/1999*** and
3. The Judgment of this Court made in the case of ***Devan Vs. S.Ebinezar Rober*** in ***C.R.P.(PD).No.1766 of 2021, dated 06.03.2024.***

16.Against these judgments the learned counsel for the revision petitioner relied upon the Judgment of this Court made in the case of ***Y.R.Prasanna and another Vs. Indira Raveen*** reported in ***2020-5-L.W. 481***, for the purpose of argument that the cause of action, which arises subsequent to the filing of these two petitions was not available on the date of eviction petition. Subsequent conduct of the revision petitioner

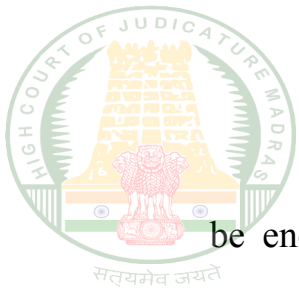


ought not to have taken into account by the appellate Court.

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17. Again in response to this argument, the learned counsel for the respondent draw the attention of this Court to the deposit receipts copy showing the date of deposit by the revision petitioner. So as mentioned by the respondent herein it is true that the revision petitioner was not prompt even in depositing the rent amount even after passing of the order in R.C.O.P.No.26 of 2013. He allowed the Rent to accumulate and used to deposit occasionally.

18. As mentioned above, when there is a clear contract between the parties to pay the enhanced rent, the attempt on the part of the revision petitioner to pay and deposit the original rent itself may not be proper. It shows his mental state. The landlord cannot be driven and wait for several months to claim the rent amount. In spite of the order passed by the Rent Controller in R.C.O.P.No.26 of 2013, the revision petitioner was not prompt in complying the order and used to take advantage of the position that he was already granted a permission by the Court to deposit the amount and that order to his advantage. This sort of attitude cannot



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be encouraged. Order of the Court compels to the parties to perform particular act in particular manner.

19. There is specific direction in R.C.O.P.No.26 of 2013 to deposit the monthly rent on succeeding month on or before 5th. That was violated with impunity. Now the petitioner cannot say that subsequent conduct ought not to have been taken into account by the appellate authority, of course by this Court also.

20. No doubt, that excess of two months rent was in the hands of the respondent as advance amount. But, the arrears exceeds the advance amount. The very fact that he is not interested to pay enhanced rent will amount to clear wilful default.

21. On the sole ground, I am of the considered view that revision petitioner does not reserves any indulgence from this Court. I find no error or illegality in the order passed by the appellate authority confirming the order passed by the Rent Controller.



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22.The revision petitioner fails and accordingly, this civil revision

petition stands dismissed with costs. Consequently, connected miscellaneous petition is closed.

24.02.2025

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

- 1.The Principal Subordinate Judge, Rent Control Appellate Authority,
Tirunelveli.
- 2.The I Additional District Munsif, I Additional District Rent Controller ,
Tirunelveli.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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