

(2007) 08 MAD CK 0074

In the Madras High Court

Case No : CRP. NPD No. 516 of 2007 and MP. No. 1 of 2007

A. Jerome

APPELLANT

Vs

M.J. Noor Mohammed and Others

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Citation : (2007) 08 MAD CK 0074

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : AR.L. Sundaresan for K. Goviganesan, for the Appellant; Srinath Sridevan, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to a judgment of the Rent Control Appellate Authority namely the Subordinate Judge,

Udhagamandalam, made in RCA No. 13 of 2006 affirming an order of eviction made by the Rent Controller of the said place in RCOP No. 15 of

2004.

2. The Court heard the learned Counsel on either side.

3. The respondents-landlords filed the RCOP alleging that the revision petitioner is a tenant in respect of the premises in question on a monthly

rental of Rs. 250/-; that he failed to make the payment of rental arrears from 1.4.2003 to 31.3.2004, which is totalling to Rs. 3,000/-; that apart

from that, the petitioner herein has sublet the major portion of the premises to the second respondent in the RCOP without any permission from the

landlords, and on those grounds, they were to be evicted.

4. The petition was resisted by the respondents in the RCOP stating that as far as

the arrears of rent were concerned, there was no default or willful default; that it is true that originally, the monthly rental was Rs. 250/-; that a petition was filed by the landlords in RCOP No. 55 of 2002 for fixation of fair rent; that pending that proceedings, on appearance, the petitioner-tenant was making payment to his Counsel, who was appearing for him in RCOP No. 55/2002, regularly; but, it was not paid by the Counsel to the landlords; that the accumulated rent was also in the hands of the Counsel; that under the circumstances, the entire payment was made even before the appearance in the instant proceedings, and thus, there was neither default nor willful default; that apart from that, the entire amount has also been received by the Counsel for the petitioner; that the same has also been acknowledged, and thus, the first ground automatically would fall to ground; that as far as the second ground of subletting is concerned, the second respondent is only a cook working under the first respondent; that the second respondent who is actually staying over there, is having a permanent residence in some other place, and thus, the second ground was only an imaginary, and hence, the petition was to be dismissed.

5. After enquiry, the learned Rent Controller agreed with the case of the landlords on the ground of willful default and ordered eviction. On appeal by the tenant, it was also affirmed. Hence, this revision before this Court.

6. In support of the revision petition, the learned Senior Counsel would submit that in the instant case, both the forums below have recorded a finding that there was willful default erroneously; that it is true that the monthly rental was Rs. 250/-; that RCOP No. 55/2002 was actually filed for fixation of fair rent, in which the revision petitioner-tenant appeared through Counsel; that he was making payments to his Counsel, who appeared for him in that proceedings, and in turn, he used to hand over the same to his friend namely the first respondent herein, a Practising Lawyer; that the Rent Controller was not posted; that the said Counsel has been keeping the amounts in his hands on the fond hope that the other Counsel would receive the same from him on the regular hearing date; but, to the surprise of the first respondent in the RCOP, who is the revision petitioner herein, a Court notice was served upon him for the first hearing; that even before the first hearing, the entire rental arrears was paid; that it is true that there

was arrears of rental; but, it would not speak of any supine indifference or recalcitrant attitude on the part of the petitioner, or it cannot be termed

as willful default; that under the circumstances, both the authorities below have erred in holding so, and hence, it has got to be set aside by this

Court.

7. In answer to the above, it is contended by the learned Counsel for the respondents-landlords that there was rental arrears from 1.4.2003 to

31.3.2004; that it is an admitted fact that the entire payment was made only after the service of the notice from the Court, and thus, the contention

put forth by the learned Counsel for the revision petitioner that the payments were actually then and there made to his Counsel, and in turn, he has

not paid, is only a fact which was spoken to by the landlords, and it was not proved; and that even assuming to be so, the same cannot be an

explanation in view of the long pendency of the arrears for a period of 12 months.

8. Added further the learned Counsel that in the instant case, the fact that the Rent Controller was not functioning cannot be a reason since the

Counsel was practising in that Court only; that in such circumstances, there cannot be any impediment for one Counsel handing over the rental

amount to the other Counsel; that pending the appeal before the appellate forum, the entire rental payment has been made in one lump sum

amounting to Rs. 26,000/- and odd; that under the circumstances, the conduct of the tenant in a case of willful default, has got to be taken note of

by the Court, and hence, it is a fit case, where the eviction has got to be ordered; that the lower forums have accordingly ordered so, and hence, it

has got to be sustained.

9. In answer to the above, it is contended by the learned Senior Counsel for the petitioner that it is true that a sum of Rs. 26,000/- and odd was

paid pending the appeal; but, the fair rent was fixed at Rs. 1,000/-; that originally, the monthly rental was Rs. 250/-; that after deducting the regular

payment of Rs. 250/- that was made, the difference came to the tune of Rs. 26,000/- and odd; that the same was paid; that under the

circumstances, the future conduct as put forth by the learned Counsel for the respondents, is actually in favour of the revision petitioner and not in

favour of the respondents, and hence, he reiterated the earlier contentions.

10. After careful consideration of the rival submissions made, this Court is of the

considered opinion that the revision requires an order of dismissal in the hands of this Court.

11. The short question which came up for consideration before the forums below was whether there was willful default committed by the revision petitioner-tenant. Admittedly, the petitioner herein is a tenant under the respondents-landlords on a monthly rental of Rs. 250/-. The period during which there was arrears of rental was from 1.4.2003 to 31.3.2004, which fact is not under dispute. Needless to say that the landlord need not make a demand over the tenant to make the payment, and the law casts a duty upon the tenant to make the payment of rental as agreed between the parties. It is a case, where there was a monthly rental. That apart, further circumstances are noticed by the Court. There was a petition filed in RCOP No. 55/2002 for fixation of fair rent. Thus, both the parties during the relevant period were fighting before the Court. In such circumstances, the revision petitioner-tenant should have exercised more vigil and should have made the payment exercising full care. But, in the instant case, the only plea that was taken by the tenant before the forums below, was that he was going on making payment month by month to his Counsel and in turn, he has not paid to the opposite party. If to be so, the same should have been proved by the tenant by adducing sufficient evidence. What was all available before the forums below was only the self serving evidence of the revision petitioner-tenant. Even assuming that the payments were made by the petitioner to his Counsel and in turn, it has not been paid to the landlords, it cannot, but be called only as willful default. It is a matter between the tenant on the one side and the landlords on the other. Under the circumstances, a duty is cast upon the tenant to verify from his Counsel whether the payments were made to the opposite party regularly. In the case on hand, no payment has been made pending the proceedings. It would clearly indicate the non-payment of rental by the tenant to the landlords during the relevant period and that too, when the proceedings were already pending for fixation of fair rent. In the opinion of this Court, it cannot but be construed only as willful default, and also it would speak of the utter carelessness on the part of the tenant. This Court is of the view that the order of the authorities below have got to be affirmed. Accordingly, the eviction order is sustained.

12. Taking into consideration the facts and circumstances, this Court grants 18 (eighteen) months" time to the petitioner-tenant for vacating and

handing over possession to the landlords. The petitioner-tenant is directed to file an undertaking affidavit within a period of two weeks here from .

13. In the result, this civil revision petition is, accordingly, dismissed. No costs. Consequently, connected MP is also dismissed.