

(2011) 03 MAD CK 0044
In the Madras High Court
Case No : C.R.P. (NPD) No. 4585 of 2010

Syeda Syedunissa

APPELLANT

Vs

S. Umapathy Proprietor Sakthi Motor Cycle Works

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Evidence Act, 1872 — Section 114

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 10(2)(1), 11(3), 11(4), 25

Transfer of Property Act, 1882 — Section 106

Citation : (2011) 03 MAD CK 0044

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : A.V. Munusamy, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This Civil Revision Petition has been filed against the judgment and Decree, dated 23.11.2010 made in R.C.A. No. 121

of 2009 on the file of the Rent Control Appellate Authority/VIII Judge, Court of Small Causes, Chennai, confirming the order and decretal order,

dated 20.02.2009 made in R.C.O.P. No. 991 of 2008 on the file of the Rent Controller/XIV Judge, Court of Small Causes, Chennai.

2. In spite of service of notice, there has been no representation for the Respondent. The Respondent was also called absent. Hence, the order is

passed on merits on the arguments advanced by the learned Counsel appearing for the Petitioner, considering the evidence available on record.

3. It is seen that R.C.O.P. No. 991 of 2008 was filed by the Petitioner/landlord against the Respondent/tenant u/s 10(2)(1) of the Tamil Nadu

Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973, seeking an order of eviction of the Respondent/tenant from

the petition premises. In the counter filed before the Court below, it is seen that the Respondent has not disputed the jural relationship of landlord

and tenant between the Petitioner and the Respondent herein. According to the Petitioner, the Respondent is in occupation of a non-residential

shop portion under the name and works style of Sakthi Motor Cycle Works at the premises No. 27, Old No. 12, Muktha Salai Street, Kellis

Road, Chennai-2 and was paying monthly rent of Rs. 900/-, however, the Respondent/tenant was wilfully failed and neglected to pay rent from

October 2007 to February 2008, a total aggregate sum of Rs. 4,500/-. The Petitioner, as landlord has further averred that the Respondent was a

chronic defaulter in payment of rent.

4. Mr. A.V. Munusamy, learned Counsel appearing for the revision Petitioner submitted that even after filing of the R.C.O.P and the R.C.A, the

Respondent/tenant was not regular in paying the rent. As contended by the learned Counsel appearing for the revision Petitioner, the Court below

has held that the notice sent under the original of Ex.P.4, dated 12.04.2008, calling upon the Respondent/tenant to pay the rental arrears within 3

days and filing the R.C.O.P on 28.04.2008 within 15 days was premature and the Court below held that the Rent Control Original Petition was

filed before the expiry period of 2 months. However, as pointed out by the learned Counsel appearing for the revision Petitioner, the learned Rent

Controller held that according to the Petitioner/landlord, there was wilful default in payment of rent for the period between October 2007 to

February 2008.

5. learned Counsel appearing for the Petitioner, in support of his contention relied on the following decisions:

1. B. Anraj Pipada v. V. Umayal 1998 3 LW 159,

2. Vasantha Leela Vs. N. Vadivelu Chettiar, ,

3. M. Meenakshisundaram Vs. S. Venkatesan, ,

6. In B. Anraj Pipada v. V. Umayal, reported in 1998 3 LW 159, this Court has held that under Sections 10(2)(i), 11(4) and 25 of the Tamil

Nadu Buildings (Lease and Rent Control) Act, when the petition is filed to evict the tenant on the ground of wilful default as per law the tenant shall

pay the rent regularly every month at least after the institution of the proceeding. When the tenant has failed to pay the rent regularly even during the pendency of the RCOP proceeding, then there is no doubt that the conduct of the tenant in paying the rent as he likes will amount to wilful default.

7. This Court has further held in the aforesaid judgment as follows:

The contention of the landlord was that R.C.O.P has been filed on the ground of wilful default and as such the tenant ought to have shown some

bonafide not only in paying the arrears of rent, but also in paying the rent regularly during the subsistence of the proceedings. During the pendency

of the R.C.O.P as well as the R.C.A., petitions have been filed u/s 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act and the

Petitioner was compelled to pay the arrears. Hence, by the conduct of the Petitioner, it is clearly established that he has committed wilful default,

especially when this Court is entitled to take note of the conduct of the Petitioner during the pendency of the proceedings.

8. In *M. Meenakshisundaram v. S. Venkatesan*, reported in AIR 1981 Mad 277, it was held that letters being sent under certificate of posting its

service on the landlord could be presumed u/s 114(f) of Evidence Act and consequently, the tenant could not be said to have committed any wilful

default as the agreement between the landlord and tenant and his wife was subsisting during the disputed period.

9. Mr. A. Munuswamy, learned Counsel appearing for the Petitioner submitted that no notice is mandatory prior to filing the rent control original

petition and relied on the decision of the Constitution Bench of seven Judges in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, , in which, the Hon''ble

Apex Court has held that under the Rent Control Act, it becomes an unnecessary technicality to insist that the landlord must determine the

contractual tenancy. It is of no practical use after so many restrictions have been put on his right to evict the tenant and further held that being so,

making out a case under the Rent Control Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the

basis of the determination of the lease by issuance of notice in accordance with Section 106 of the Transfer Property Act.

10. In the said judgment, the Hon''ble Apex Court has held at Page No. 229, Para 19 that for the reasons stated above held that no notice to quit

was necessary u/s 106 of the Transfer of Property Act in order to enable the landlady-Respondent to get an order of eviction against the tenant-

Appellant. Further, it is categorically held that a notice to quit u/s 106 of the Transfer of Property Act, 1882 is not a necessary prerequisite for an

eviction petition under any of the State Rent Acts and differences in phraseology of various State Rent Acts do not justify difference in views

regarding necessity of such notice and need emphasized for uniform law applicable all over the country. The provisions of various State Rent Acts

including Tamil Nadu Building (Lease and Rent Control) Act, 1960, Section 10(3), Transfer of Property Act, 1882 Section 106 were also

considered by the Hon"ble Apex Court and held that notice is not required for initiating proceeding against the tenant for eviction.

11. In the instant case, admittedly the Respondent/tenant has committed willful default. As contended by the learned Counsel for the Petitioner, the

Rent Control Appellate Authority in the judgment dated 23.11.2010 in Para 3 has specifically stated that according to the Petitioner/landlord, the

willful default in payment of rent was committed by the Respondent/tenant from October 2007 to February 2008. The Petitioner has also filed

miscellaneous petition, u/s 11(3) and subsequently 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act and direction was given by the

learned Rent Controller. Though the arrears of rent was paid as directed by the learned Rent Controller, subsequently there was irregular in

payment of rent by the Respondent/tenant. It is seen from the impugned judgment that the claim of the Petitioner/landlord was not negatived, since

sufficient time was given. As per Ex.P4 notice sent on 12.04.2008, it is seen that the Petitioner/landlord had asked the Respondent/tenant to pay

the arrears of rent within a period of three days and the rent control original petition was filed on 28.04.2008. The Court below has held that the

petition was filed within 15 days and therefore, the rent control original petition itself was prematured and it could have been filed before the

learned Rent Controller after two months.

12. The aforesaid finding is against the verdict of the Hon"ble Supreme Court, when notice is not mandatory as held by the Apex Court,

establishing that fact that there was arrears of rent as required, to be construed as willful default is sufficient. In the instant case, it is not in dispute

that there was arrears of rent from October 2007 to Feb 2008 and the compliance of the subsequent orders passed u/s 11(3) and 11(4) of the

Tamil Nadu Buildings (Lease and Rent Control) Act would not wipe out the defect of willful default. Even in this revision, there was no

representation for the Respondent/tenant. The evidence recorded would clearly show that the Respondent/tenant was not regular in paying the rent

and therefore it would be construed only as willful default committed by the Respondent/tenant in paying the rents. Accordingly, the

Petitioner/landlady is entitled to an order of eviction as contemplated u/s 10(2) (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of

1960 as amended by Act 23 of 1973.

13. learned Counsel appearing for the revision Petitioner also drew the attention of this Court to the counter filed by the Respondent/tenant before

the learned Rent Controller, wherein in Paragraph No. 4, the Respondent/tenant has stated as follows:

During the month of April 2008, Hussain came to the shop of the Respondent and asked him to vacate it. The Respondent refused to do so,

offering to pay more rent. The said Hussain did not come in the first week of May, 2008 to collect the rent due for the month of April 2008.

During the second week of May, the Respondent went to the house of the Petitioner and tendered the rent of Rs. 900/-due for the month of April,

2008 to Mr. Hussain. But, the said Hussain refused to receive it telling the Respondent to vacate the shop.

In Paragraph No. 8, the Respondent/tenant has stated that he had taken out a pay order for a sum of Rs. 1,800/-towards the rent for the months

of April and May 2008 and therefore even as per the counter it is made clear that the Respondent/tenant has claimed payment of rent only till the

end of March 2008. Subsequently, the rent was not paid and he assigned various reasons stating that the landlady or her son did not come to

collect the rent and that was the reason for the rent could not be paid. Subsequently, as per the order passed by the learned Rent Controller,

arrears of rent was paid during September, 2008. Even as per the admission available in the counter, from April 2008 till the date of the counter

dated 14.07.2008, no amount was paid by the Respondent/tenant towards rent, which amounts to willful default. However, the same was not

considered by the learned Rent Controller as well as the learned Rent Control Appellate Authority. When the finding is against evidence, it has to be construed only as perverse finding and it warrants interference u/s XXV of the Tamil Nadu Buildings (Lease and Rent Control) Act, since it has been established that there is a willful default committed by the Petitioner. Therefore, I am of the view that the revision Petitioner is entitled to get eviction of the Respondent/tenant as contemplated u/s 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973.

14. In the result, the civil revision petition is allowed and the impugned order passed by the Court below is set aside and the Respondent/tenant is directed to vacate and hand over the vacant possession of the property within a period of one month from the date of receipt of a copy of this order. However, there is no order as to costs.