

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.4.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P. (NPD) No.513 of 2006

K.M.Mohammed

.. Petitioner/Tenant

vs.

1.N.Ethirajan
2.T.E.Kasthuri
3.E.Nandakumar

.. Respondents/Landlord

Revision Petition filed against the order and decretal order dated 24.11.2005, made in R.C.A.No.223/2005, on the file of the VIII Small Causes Court (Appellate Authority), Chennai, confirming the order and decretal order dated 3.8.2004 in R.C.O.P.No.1688/2003 on the file of XII Small Causes Court (Rent Controller), Chennai.

For Petitioner : Mr.T.V.Krishnamachari
For Respondents : Mr.N.Nagusah

ORDER:

This Revision Petition has been filed against the order dated 24.11.2005 passed in R.C.A.No.223/2005 on the file of the learned VIII Small Causes Court (Appellate Authority), Chennai, confirming the order dated 3.8.2004 in R.C.O.P.No.1688/2003 on the file of XII Small Causes Court (Rent Controller), Chennai.

2. The landlords/respondents filed a petition seeking eviction of the petitioner/tenant from the petition premises on the ground of wilful default under Sec.10(2)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act'). The Rent Controller allowed the petition and directed the petitioner/tenant to be evicted after recording a finding that the tenant did commit wilful default in the payment of rent. The tenant preferred an appeal, which was also dismissed by Rent Control Appellate Authority thereby confirming the order of eviction passed by the Rent Controller. Against the order of the Appellate Authority, the above Revision Petition has been filed by the tenant under Sec.25 of the Act.

3. The facts in brief are as stated under:-

The respondents herein are the joint owners of the premises under the occupation of the tenant, having purchased the same from the predecessors-in-title under the sale deed dated 15.9.1994.

4. On the date of purchase, the Revision Petitioner was the tenant in the petition premises holding the same on a monthly rent of Rs.80/-from the predecessors-in-title of the respondents. Thereafter, the petitioner/tenant was informed by the respondents about the sale and required him to attorn the tenancy in favour of the respondents herein and to pay the rent to them regularly. The tenant without attorning the tenancy in favour of the respondents herein, continued to pay the rent to the predecessor-in-title, who refused to receive the same. The tenant filed RCOP No.2293/1995 under Sec.8(5) of the Act against the predecessors-in-title to deposit the rent into court and obtained an exparte order dated 16.10.1996 and even this order was not fully followed by the petitioner herein. Hence the respondents herein filed RCOP No.432/2000 seeking eviction on several grounds including wilful default. Pending RCOP No.432/2000, the respondents herein filed M.P.No.120/2001 seeking a direction to the petitioner herein to pay the rental arrears. Pursuant to the orders passed in M.P.No.120/2001, the petitioner herein deposited 28 months arrears amounting to Rs.2,240/-. Even thereafter the petitioner/tenant did not pay the rent regularly necessitating the respondents herein to file RCOP No.1688/2003. Immediately after filing RCOP No.1688/2003, the petitioner tendered the rental arrears as claimed in the petition. On the basis of the above facts, both the authorities below held that wilful default by the tenant is proved and passed orders of eviction.

5. Heard the learned counsel appearing on either side and I have also perused the documents filed in support of their submissions.

6. Learned counsel for the petitioner/tenant submitted that it is a case of default by the tenant but the same cannot be termed as wilful default. Learned counsel submitted that earlier RCOP filed in RCOP No.432/2000, he deposited the entire arrears of 22 months from March 2002 to January 2004 and thereafter RCOP No.432/2000 was dismissed for default on 26.6.2002 and it was restored in July 2003 and during that period, January 2002 to July 2003, the tenant could not pay the rents because RCOP No.432/2000 was not pending.

7. Learned counsel for the petitioner further submitted that the tenant was always ready and willing to attorn the tenancy but he only requested to give a copy of the sale deed and to come forward to execute the lease agreement. Therefore he submitted that the default is with reasons and it is not intentional, deliberate nor wilful.

8. I am unable to accept the above submissions made by the learned counsel for the petitioner/tenant.

9. It is true that RCOP No.432/2000 was dismissed for default and the same was restored in July 2003 only. But that does not mean that during that period, namely, January 2002 to July 2003, the tenant could keep quiet without paying the rent to the landlords. Even in the RCOP No.432/2000 an M.P.No.120/2001 was filed by the respondents herein and only thereafter the tenant deposited 28 months arrears amounting to Rs.2,240/-. Still he chose not to make subsequent payments resulting in RCOP No.1688/2003 being filed by the respondents herein and only on the first date of hearing in the RCOP, the petitioner/tenant attempted to pay rental arrears for 22 months from March 2002 to January 2004. Thus the conduct of the petitioner proves that unless the respondents file any court proceedings, he is not at all in the habit of paying the rent regularly to the respondents.

10. It is not for the petitioner/tenant to demand that unless the copy of the sale deed is provided to him by the respondents and a fresh lease deed is entered into between the parties, he need not pay the rent to the respondents. This itself would prove the intention of the petitioner/tenant not to pay the rent that too after admitting that the respondents purchased the property from the predecessors-in-title and they have become the owners of the petition property.

11. Even after the property was purchased by the respondents herein from the predecessors-in-title, the petitioner/tenant continued to pay the rent to the predecessors-in-title, but they refused to receive the same. The petitioner/tenant filed a petition under Sec.8(5) of the Act against the predecessors-in-title and obtained an exparte order dated 16.10.1996 directing the tenant to deposit the rental arrears on or before 30.10.1996 and the future rent within 10th of every succeeding month. This order dated 16.10.1996 was not obeyed by the tenant by depositing the rent into court in time.

12. Under such circumstances, I am of the opinion that the authorities below have rightly concluded that the petitioner/tenant has committed wilful default and I find no

infirmity nor irregularity in the orders passed by the courts below.

13. Hence the Civil Revision Petition is dismissed as devoid of merits. No costs. C.M.P.No.3826/2006 is also dismissed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, Small Causes Court, Chennai.104
 2. The VIII Judge, Small Causes Court, Chennai 104.
 3. The XII Judge, Small Causes Court, Chennai.104
- + 2 ccs to Mr.T.V.Krishnamachari, Advocate SR No.22513, 22514
+ 1 cc to Mr.N. Nagusah, Advocate SR No.23131

NTK(CO)
SR/19.5.2006

order,
C.R.P. (NPD) 513/06.

सत्यमेव जयते

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