

C.Boopathi Vs. A.Chellammal

C.Boopathi Vs. A.Chellammal

SooperKanoon Citation : sooperkanoon.com/1167179

Court : Chennai

Decided On : Oct-14-2014

Judge : The Honourable Ms.Justice V.M.Velumani

Appellant : C.Boopathi

Respondent : A.Chellammal

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 14.10.2014 CORAM THE HONOURABLE MS.JUSTICE V.M.VELUMANI C.R.P.(MD)No.793 of 2014 & M.P.(Md.No.1 of 2014 C.Boopathi .Petitioner versus A.Chellammal .Respondent Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, to set aside the order dated 20.01.2014, made in R.C.A.No.18 of 2013 on the file of Rent Control Appellate Authority-cum-Principal Sub-Court, Madurai, filed against the fair and decretal order, dated 30.03.2012, passed in R.C.O.P.No.136 of 2011 on the file of Principal Rent Controller-cum-Principal District Munsif Court, Madurai.

!For Petitioner : Mr.V.Chandrasekar ^For Respondent : Mr.P.Subbiah Date of reserving the Judgment : 06.08.2014 Date of pronouncing the Judgment: 14.10.2014 :

ORDER

This civil revision petition has been filed to to set aside the order dated 20.01.2014, made in R.C.A.No.18 of 2013 on the file of Rent Control Appellate Authority-cum-Principal Sub-Court, Madurai, filed against the fair and decretal order, dated 30.03.2012, passed in R.C.O.P.No.136 of 2011 on the file of Principal Rent Controller-cum-Principal District Munsif Court, Madurai.

2.The petitioner is the tenant/respondent in R.C.O.P.No.136 of 2011, whereas the respondent is the landlord/petitioner in R.C.O.P.No.136 of 2011 on the file of Principal Rent Controller-cum-Principal District Munsif Court, Madurai.

3.The respondent filed R.C.O.P.No.136 of 2011 on the file of Principal Rent Controller-cum-Principal District Munsif Court, Madurai, against the petitioner under Sections 10(2)(i) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, [hereinafter referred to as ".the Act"].on the ground of wilful default in payment of rent and for owners occupation.

4.The petitioner, in his counter statement, filed in the R.C.O.P.denied all the allegations of the respondent.

5.The respondent filed I.A.No.242 of 2011 under Section 11 of the Act.

The petitioner filed counter affidavit denying that there is no default in paying the rent.

On the other hand, he has paid a sum of Rs.70,000/- excess to the respondent as advance amount.

6.After enquiry, the learned Rent Controller, by the order, dated 02.03.2012, directed the petitioner to pay arrears of rent of Rs.51,000/- for the period from 01.04.2008 to 01.11.2011 for 43 months at the rate of Rs.1,200/- per month.

The petitioner was directed to pay the said amount on or before 29.03.2012 and the R.C.O.P.was adjourned to 30.03.2012 for reporting compliance.

7.The petitioner did not pay the said sum of Rs.51,000/- before 29.03.2012.

Due to non-compliance of conditional order, dated 02.03.2012, the learned Rent Controller by the order, dated 30.03.2012, ordered eviction of the petitioner.

The petitioner has filed R.C.A.No.18 of 2013 against the order, dated 30.03.2012, made in R.C.O.P.No.136 of 2011 and R.C.A.No.21 of 2013, against the order, dated 02.03.2012 made in I.A.No.242 of 2011 in R.C.O.P.No.136 of 2011, directing the petitioner to pay a sum of Rs.51,000/-.

The respondent filed I.A.No.97 of 2013 in R.C.A.No.18 of 2013, for payment of arrears of rent.

The petitioner paid the arrears of rent pending R.C.A.The petitioner paid rent upto 01.04.2013 and did not pay the rent for subsequent months.

8.The learned Appellate Authority, by the order dated 20.01.2014, dismissed R.C.A.No.21 of 2013 as infructuous, as the petitioner had complied with order, dated 02.03.2012, by paying Rs.51,000/- and also paying the rent payable upto 01.04.2013.

9.The learned Appellate Authority on the very same day namely, on 20.01.2014, dismissed R.C.A.No.18 of 2013, filed against the order, dated 30.03.2012, passed an order in R.C.O.P.No.136 of 2011, ordering eviction of the petitioner.

The learned Appellate Authority dismissed R.C.A.No.18 of 2013 on the ground that the order, dated 30.03.2012, is a consequential order and the petitioner failed to pay the rent from 01.04.2013 pending R.C.A.No.18 of 2013.

Aggrieved by the order, dated 20.01.2014, confirming the order of the learned Rent Controller, dated 30.03.2012, the petitioner has filed the present civil revision petition.

10.Heard Mr.V.Chandrasekar, learned counsel for the petitioner and Mr.P.Subbiah, learned counsel for the respondent.

11.The learned counsel for the petitioner argued that the order of the learned Rent Controller, dated 30.03.2012, is only a consequential order, passed for not depositing the arrears of rent, as per order, dated 02.03.2012.

The petitioner filed appeals namely, R.C.A.Nos.21 and 18 of 2013, against the order, dated 02.03.2012, made in I.A.No.242 of 2011 in R.C.O.P.No.136 of 2011 and the order, dated 30.03.2012, made in R.C.O.P.No.136 of 2011.

12.In R.C.A.No.18 of 2013, on the application filed by the respondent, the petitioner has paid Rs.51,000/- within the time limit granted by the learned Appellate Authority and also paid rent upto 01.04.2013.

The Appellate Authority recording the compliance of the order of the learned Rent Controller, dated 02.03.2012, dismissed R.C.A.No.21 of 2013, as infructuous.

13.The learned counsel for the petitioner argued that, in the circumstances, the Appellate Authority ought to have allowed R.C.A.No.18 of 2013, filed against the order, dated 30.03.2012, made in R.C.O.P.No.136 of 2011 and set aside the order, dated 30.03.2012 and given an opportunity to contest the R.C.O.P.on merits.

The petitioner also paid rent from 01.04.2013 to 30.06.2014, pending the civil revision petition.

14.Per contra, the learned counsel for the respondent argued that the petitioner is always very irregular in payment of monthly rent.

Even during the pendency of the R.C.A.and the civil revision petition, he did not pay the rent every month, but paid only in lump-sum.

15.In support of his submission, the learned counsel for the respondent relied on the following Judgments: (i) Shabbir Roshan Zaveri versus Mrs.Sakinabai and Another [2014 (1) LW548 (ii) K.Nagarajan versus V.Subramaniam and Others [2012 (3) TNCJ361(Mad)].(iii) B.Anraj Pipada versus V.Umayal [1998 (2) MLJ524

16.Relying on these Judgments, the learned counsel for the respondent argued that wilful default in payment of rent has been proved and prayed for dismissal of the civil revision petition.

17.I have carefully perused the materials on record, the Judgments referred to by the learned counsel for the respondent and considered the arguments of the

learned counsel for the petitioner and the respondent.

18.From the records, it is seen that the respondent has filed R.C.O.P.No.136 of 2011, seeking an order of eviction against the petitioner on the ground of wilful default and for bona fide requirement of owners occupation.

The petitioner in his counter statement denied the arrears of rent.

According to the petitioner, he has paid excess amount of Rs.70,000/- in addition to the advance amount to the respondent and the said amount has to be adjusted towards rent.

The petitioner also denied the requirement of the petition premises for his sons' occupation.

19.The respondent filed I.A.No.242 of 2011 in R.C.O.P.No.136 of 2011 under Section 11 of the Act for a direction to the petitioner to deposit Rs.51,000/-, being the arrears of rent.

Even though the petitioner denied his liability to pay the said amount, the learned Rent Controller, by the order dated 02.03.2012, directed the petitioner to deposit the amount on or before 29.03.2012 and adjourned R.C.O.P.No.136 of 2011 to 30.03.2012.

As the petitioner did not comply with the conditional order and deposit the amount, the learned Rent Controller, passed an order under Section 11(4) of the Act on 30.03.2012, ordering eviction of the petitioner.

20.The petitioner filed R.C.A.Nos.21 and 18 of 2013, challenging both the orders.21.Pending appeal, the petitioner has paid Rs.51,000/- and also the rent upto 01.04.2013, within the time limit granted by the learned Appellate Authority on the application filed by the respondent.

22.Recording the payment made by the petitioner, the learned Appellate Authority dismissed, R.C.A.No.21 of 2013 as infructuous, as the petitioner complied with the conditional order, dated 02.03.2012.

The Appellate Authority took note of the compliance of the order, dated 02.03.2012 and also held that the order, dated 30.03.2012, is only a consequential order.

In view of the said finding, the learned Appellate Authority ought to have allowed R.C.A.No.18 of 2013, setting aside the order of eviction.

Once the order directing to pay arrears of rent has been complied with, consequential order of eviction passed under Section 11(4) of the Act automatically becomes infructuous.

23.The learned Appellate Authority failed to exercise his power properly and committed material irregularity in dismissing R.C.A.No.18 of 2013 and therefore, the erroneous order, dated 20.01.2014, is liable to be set aside.

The Judgments relied on by the learned counsel for the respondent is not applicable to the facts of the present case, as the eviction was ordered under Section 11(4) of the Act.

Further, the petitioner has paid rent upto 30.06.2014.

24.For the above reasons, the orders of the Court below, dated 30.03.2012 and 20.01.2014 are set aside.

The learned Rent Controller-cum- Principal District Munsif, Madurai, is directed to take up R.C.O.P.No.136 of 2011, on file.

It is open to the petitioner and the respondent to substantiate their case as stated in the counter statement and in the petition filed in R.C.O.P.No.136 of 2011 including the ground of wilful default.

25.In the result, this civil revision petition is allowed.

The R.C.O.P.is of the year 2011, the learned Rent Controller-cum-Principal District Munsif, Madurai, is directed to hear the R.C.O.P.and pass final orders on merits and in accordance with law, as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

To 1.The Rent Control Appellate Authority-cum-Principal Sub-Court, Madurai.

2.The Principal Rent Controller-cum-Principal District Munsif Court, Madurai.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com