

P.Lingappan Vs. Subbulakshmi

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Court : Chennai

Decided On : Feb-24-2012

Judge : V.Periya Karuppiah, J.

Appeal No. : C.R.P.No.1169 of 2006

Appellant : P.Lingappan

Respondent : Subbulakshmi

Advocate for Def. : Mr.N.Manoharan, Adv

Advocate for Pet/Ap. : Mr.S.Subbiah, Adv

Judgement :

Civil Revision petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the order dated 12.6.2006 passed in R.C.A.No.19 of 2003 on the file of the III Additional Subordinate Judge (Appellate Authority) Coimbatore, confirming the order of eviction dated 7.1.2003 passed in R.C.O.P.No.177 of 2002 on the file of the Principal District Munsif (Rent Controller),Coimbatore.

ORDER

1. This revision is filed against the fair and decretal order passed by the learned Rent Control Appellate Authority in R.C.A.No.19 of 2003 dated 12.6.2006 in

confirming the fair and decretal order passed by the learned Rent Controller in R.C.O.P.No.177 of 2002 dated 7.1.2003.

2. The revision petitioner is the tenant and the respondent herein is the landlord before the learned Rent Controller.

3. The landlord filed the petition against the tenant for eviction of the tenant from the premises described in the petition under Section 10(2)(1) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. The landlord has explained about the chronic default in payment of rent payable by the tenant from 01.12.2001 to 4.8.2002 for a sum of Rs.24,800/-. Apart from that, the landlord has given a reason that the building was constructed in the year 1980 and it is only a temporary shed constructed for lorry booking office and the said shed is in a dilapidated condition and at any time, it is likely to get collapsed and therefore, the landlord requires the building for demolition and reconstruction. The landlord had, during the pendency of the said petition, filed an application in I.A.No.285 of 2002 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, seeking for a direction against the tenant to pay the admitted arrears of rent as on date at Rs.29,400/- within a time to be stipulated by the Court and in default to pay the same to struck off the defence and to pass orders in the main Rent Control Petition.

4. The said petition was resisted by the tenant by filing a counter. The tenant would state that the rent fixed at Rs.100/- per day from 1.12.2001 was false and the said application was filed by the landlord only to coerce the tenant since the tenant had filed a suit in O.S.No.659 of 2002 before the learned District Munsif, Coimbatore and obtained an order of temporary injunction in I.A.No.1023 of 2002. The further case of the respondent was that the rent was fixed at Rs.1000/- per month between the original owner, Sakthivel and the tenant. The said Sakthivel was also paid the rent upto May 2002 and the subsequent monthly rent was sent on two occasions to the landlord but they were returned by the landlord. The shop building is made of asbestos roof and the tenant had spent to the tune of Rs.3 lakhs to conduct the bakery business. If the fair rent is fixed, it would not fetch more than Rs.1000/- per month. There was no contract to pay a sum of Rs.100/-

per day towards rent. There is no necessity to deposit the rent as sought for by the landlady.

5. The learned Rent Controller had enquired the application in I.A.No.285 of 2002 in R.C.O.P.No.177 of 2002 and directed the tenant to deposit the said sum of Rs.29,400/- before the Court or to pay the same to the landlord in its order dated 12.12.2002. However, the said order was not complied with and therefore, the learned Rent Controller had passed an order allowing the application in I.A.No.285 of 2002 on 7.1.2003 to struck of the defence of the tenant and ordered to stop the proceedings and the tenant was directed to vacate and hand over vacant possession of the property. The learned Rent Controller had passed an order of eviction, in consequent to the order passed in I.A.No.285 of 2002, in the main R.C.O.P.No.177 of 2002 dated 7.1.2003 by allowing the said petition and granting two months time for vacating the premises.

6. Aggrieved by the said order of eviction passed by the learned Rent Controller, the tenant preferred the appeal before the Rent Control Appellate Authority in R.C.A.No.19 of 2003 against the eviction order dated 7.1.2003. During the pendency of the appeal in R.C.A.No.19 of 2003, the landlord has filed an application in I.A.No.411 of 2003 under Section 11 (4) of the said Act for payment of arrears of rent and in default to vacate the premises within one month and the same was also ordered by the Rent Control Appellate Authority, against which a revision was filed in C.R.P.(NPD)No.431 of 2004 and the said revision was allowed by granting two months' time for payment of such arrears of rent from the date of receipt of the copy of the order dated 9.3.2006. A direction was also given in the said order to dispose of the appeal within a period of two months from the date of receipt of the copy of the said order by the Rent Control Appellate Authority.

7. The learned Rent Control Appellate Authority had accordingly taken the appeal for hearing, in obedience to the said order, and heard the arguments of both sides and had come to the conclusion of dismissing the appeal with costs. Thereby the eviction order passed by the learned Rent Controller was confirmed.

8. Aggrieved by the said order of dismissal of the appeal, the present revision has been filed by the tenant.
9. Heard Mr.S.Subbiah, learned counsel for the revision petitioner/tenant and Mr.N.Manoharan, learned counsel for the respondent/landlord.
10. Learned counsel for the petitioner/tenant would submit in his argument that the lower Appellate Court relied upon the judgment reported in 2000(3)LW 394 (M.S.Murugan v. Santhakumari and 3 others), which judgment was specifically over-ruled by the judgment of the Division Bench reported in 2002(1) LW 133 (A.Rafeeq Ahmed & Co. etc. vs. M/s. Montari Leather Ltd. Etc.). He would further submit in his argument that the learned Control Appellate Authority did not follow the judgment cited in 1999(1) CTC 560 (Schwartz Dasan vs. K.S.Devadoss) which was upheld by the Division Bench in its judgment reported in 2002(1) LW 133 ((A.Rafeeq Ahmed & Co. etc. vs. M/s. Montari Leather Ltd. etc.) and had committed a legal error. He would also submit that the principles laid down in the said Division Bench Judgment ought to have been followed by the Appellate Court. He would also submit that, the non-payment of the rent, as per the conditional order passed by this Court in C.R.P.No.431/2004, which also directed the Rent Control Appellate Authority to dispose of the appeal on merits within two months, cannot be taken as default for its non-payment of the said arrears of rent in view of the order in which further time was given by this Court in C.R.P.No.431 of 2004 on 20.06.2006, and therefore, it cannot be a ground for passing an order of dismissal of the Rent Control Appeal. He would further submit in his argument that the claim of the petitioner/ tenant was not considered by the Appellate Court on merits but it had dismissed the appeal without any reason. He would further submit in his argument that the deposit of a sum of Rs.47,000/- was made on 10.7.2006 in pursuance of the order passed by this Court in C.M.P.No.8319 of 2006 in C.R.P.(NPD)No.431 of 2004 dated 20.6.2006 and the pendency of C.R.P. being a continuous proceedings and there would be no question of any violation of condition as found by the Appellate Authority. He would further submit in his argument that the Appellate Authority, should have given an opportunity to pay the arrears of rent and thereby to give a chance to contest the main R.C.O.P. Therefore, he would request the Court that the fair and

decretal order passed by the learned Rent Control Appellate Authority in R.C.A.No.19 of 2003 may be interfered and set aside and thus the revision may be ordered.

11. Learned counsel for the respondent/landlord would submit in his argument that the eviction order was passed on the basis of non-payment of arrears of rent as directed by the Rent Controller within the time under Section 11(4) of the Act. He would further submit that even during the pendency of R.C.A.No.19 of 2003, the tenant committed chronic default in payment of rent and therefore, he has filed an application under Section 11 (4) of the Act in I.A.No.411 of 2003 and since the admitted amount was not paid, the Rent Control Appellate Authority has passed an order of eviction on 12.11.2003 and in the said order, a period of one month time was granted to deposit the arrears of rent before the learned Rent Control Appellate Authority and the same was not deposited till the final order was passed by the Rent Control Appellate Authority in the appeal on 12.6.2006. He would submit that the tenant filed a revision against the order passed in I.A.No.411 of 2003 by the Rent Control Appellate Authority in C.R.P.(NPD) No.431 of 2004 and the order granted time to pay the admitted arrears was not complied. However, the tenant had approached this Court seeking for extension of time, after disposal of the appeal, in C.M.P.No.8319 of 2006 in C.R.P.(NPD) No.431 of 2004 on 20.06.2006 and got extension for three weeks to deposit the said amount from the date of receipt of the order. He would further submit that when the final order passed by the Rent Control Appellate Authority, on 12.06.2006 no extension of time was ordered by this Court in C.R.P as aforesaid and therefore, the impugned order could not be held as an illegal order. He would further submit that it would show that the revision has been filed just to gain time and there is no merit in it. He would further submit that the attitude of the tenant was so chronic in defaulting the payment of rent and the said payment has been made only after the disposal of the appeal and there is no bonafide in the said act of the tenant. He would further submit that the Honourable Supreme Court has heavily come down upon such inability of the tenant to arrange the payment of money in the judgment reported in 1997 (3) LW 583 (N.S.M.Ahmed Jamalia Beevi v. D.N.Shah). He would also submit that the tenant who is not bonafide in payment of rent payable to the building cannot seek any further opportunity for agitating his right. He would also

cite a judgment of this Court reported in 1989 (1) LW 518 (Seetharaman, T.K., v. The IX Rent Controller) for the principle that no considered order on merits has to be passed in the main R.C.O.P., when the application under section 11(4) of the Act has been allowed. He would therefore, request the Court that the order passed by the Rent Controller as well as the Rent control Appellate Authority are quite right in considering the chronic default committed by the tenant and such default were also committed even during the appellate and revisional stages and therefore, the revision may be dismissed.

12. I have given anxious consideration to the arguments advanced on either side.

13. In the judgment of this Court cited by the learned counsel for the landlord reported in 1989 (1) LW 518 (Seetharaman, T.K., v. The IX Rent Controller) it has been held as follows:-

As per the said provision, if a tenant fails to deposit the amount as directed by the Controller, there is no option left to the Controller except to stop all further proceedings and make an order of eviction. At that stage, it is unnecessary for the Rent Controller to consider any other aspect of the case, and, therefore, there is no scope for passing any other considered order. Therefore, the said contention of the learned counsel should fail on this ground.

14. As per the aforesaid judgment of this court, the learned Rent Controller need not go into the merits of the main O.P. but could only confine to the non-payment of arrears as ordered by him.

15. Nextly, when we go into the merits in the appeal, the learned Rent Control Appellate Authority had come to the conclusion that the tenant had not only deposited the said amount before preferring the appeal in R.C.A.No.19 of 2003 as condition precedent but had filed the Rent Control Appeal and even during the pendency of the appeal, he did not pay the admitted arrears as directed in the application filed before the Rent Control Appellate Authority and accordingly ordered eviction in S.A.No.411 of 2003 and therefore, he preferred a revision in C.R.P.(NPD)No.431 of 2004 and the orders were passed by this Court dated 9.3.2006. As per the orders passed by this Court in C.R.P.(NPD)No.431 of 2004

dated 9.3.2006, it has been categorically laid down as follows:- (i) The petitioner herein is directed to deposit the arrears of rent before the learned Principal District Munsif, Coimbatore within one month from the date of receipt of a copy of this order.

(ii) The III Additional Subordinate Judge, Coimbatore is directed to dispose of the R.C.A. within a period of two months from the date of receipt of a copy of this order.

(iii) Learned counsel appearing for the respondent undertakes not to proceed with the E.P. Proceedings pending before the Principal District Munsif Court, Coimbatore, till the disposal of the R.C.A., now pending before the III Additional Subordinate Judge, Coimbatore. The said undertaking is recorded and the revision petition is disposed of accordingly. Consequently, connected CMP is closed.

16. After passing of the said order, the learned Rent Control Appellate Authority had taken the appeal inobedience to the direction of this Court and had come to the conclusion of confirming the order passed by the learned Rent Controller in its order dated 12.6.2006. The tenant who filed the appeal has argued the matter before the learned Rent Control Appellate Authority and invited an order of dismissal. But he had filed a petition in C.M.P.No.8319 of 2006 before this Court in C.R.P. No.431 of 2004, a disposed revision and obtained an order of extension for payment even after the disposal of the appeal in R.C.A.No.19 of 2003 on merits. The said factum of disposal of R.C.A.No.19 of 2003 was not brought to the notice of this Court when the order was passed in C.M.P.No.8319 of 2006 on 20.6.2006. If really the disposal of R.C.A.No.19 of 2003 on 12.6.2006 was brought to the notice of this Court, no such extension order would have been passed by this Court on 20.6.2006. The arguments advanced on the basis that this Court had extended the time for payment of the arrears of rent as stipulated in C.R.P.(NPD).No.431 of 2004 dated 9.3.2006, cannot hold water since the Rent Control Appeal was already disposed of.

17. Learned counsel for the tenant would rely upon the judgment of this Court reported in 2002(1)LW 133 (A.Rafeeq Ahmed & Co. etc. vs. M/s. Montari Leather Ltd. etc.) for the principle that there is no condition precedent to deposit

the amount before preferring any appeal before the Rent Control Appellate Authority. There is no dispute regarding the said principle but the point insisted by the learned counsel for the landlord was that even after filing the appeal, the tenant was very lethargic in payment of rent and such a tenant is not entitled to continue the proceedings under Section 11(4) of the Act. In the said circumstances, the non-payment of rent, even after a direction given by this Court was considered by the Appellate Authority on 12.06.2006 and had passed the order. The subsequent order obtained from this Court in the disposed C.R.P.(NPD) No.431 of 2004, after disposal of the appeal itself would go to show that the tenant had suppressed the facts before this Court about the disposal of the appeal and obtained an order without disclosing the correct facts to this Court. Therefore, I do not find any merits in favour of the tenant, in depositing the amount of Rs.47,000/- if any in pursuance of the order passed by this Court on 20.6.2006.

18. The arguments advanced by the learned counsel for the tenant/revision petitioner that the tenant is willing to participate in the trial in the main RCOP and therefore, an opportunity must be given to pay the said arrears and if such opportunity is given the tenant would comply with the same and file the statement of objections in the main O.P. and contest the petition. It was further insisted by the learned revision petitioner that the appellate authority ought to have given opportunity to deposit the entire arrears of rent before passing any order in the appeal. Such arguments have been clearly answered by the Honourable Apex Court reported in 1997(3) LW 583 (N.S.M.Ahmed Jamalia Beevi v. D.N.Shah). The relevant passage would run as follows:- 7.The High Court by the impugned order granted further time to the respondent and now gave him liberty to pay a sum of Rs.1,10,100/- towards arrears of rent within two weeks from the date of the order which is July 9, 1996. In the impugned order, the High Court noticed that the counsel for the tenant represented that due to unavoidable circumstances, the tenant could not comply with the conditional order passed by this Court and if time is granted, he would pay the amount, since he is always ready and willing to comply with the order. On considering this representation the High Court granted time to the respondent.

8. No argument would appear to be needed to show that the High Court is directed itself and did not exercise discretion properly. In spite of the fact that the High Court found that there was no merit in the Civil Revision Petition filed by the tenant yet it gave further time to the tenant to deposit the rent even modifying its earlier order dated September 27, 1995 requiring the tenant to pay Rs.1,03,500/- and now requiring him to pay Rs.1,10,100/- when between these two dates ten months had passed. We are unable to comprehend as to what were the relevant considerations which led the High Court to grant further time to the tenant.

Equitable considerations have no place in a case like the present one and that too in face of the express provision of law. While the Act protects the tenant against the eviction and is a departure from the Transfer of Property Act, it is the bounden duty of the tenant to pay rent to the landlady regularly and not to commit default. No sufficient cause was shown by the respondent as to why he failed to pay or to deposit the rent as ordered.

19. In the aforesaid judgment of the Honourable Apex Court, I could see that the non-explanation for default of payment, as ordered by the Rent Controller, is material for passing an order in the application under Section 11(4) of the Act. Even after the filing of the appeal and during the pendency of the appeal, before the Rent Control Appellate Authority, the tenant failed to pay the admitted arrears filed in an application under Section 11(4) of the Act and the direction was not complied with. The revision petitioner/tenant, instead of preferring a revision against the impugned order and obtaining orders thereon, had approached this Court after disposal of the R.C.A. had obtained an order of extension in the previous C.R.P.(NPD) No.431 of 2006 on 20.06.2006 without disclosing the disposal of the R.C.A., on 12.6.2006. In the said circumstances, any deposit made as per the orders passed by this Court on 20.06.2006, after the disposal of the appeal by the Rent Control Appellate Authority, will not render any help to the tenant but would show the attitude of the tenant to prolong the proceedings as far as possible. The aforesaid judgment of the Honourable Apex Court is squarely applicable to the present case and the conduct of the revision petitioner/tenant would show that he is a chronic defaulter and he would not pay the admitted arrears of rent promptly so as to get the benefits under the provisions of the Rent

Control Act. Therefore, I find no reason to interfere with the orders passed by the learned Rent Controller as well as the learned Rent Control Appellate Authority.

20. For the foregoing discussions, I am of the considered opinion that the revision petition filed by the tenant is liable to be dismissed. Accordingly, the revision petition is dismissed with costs. However, the revision petitioner/tenant is given four months time for vacating the premises and to hand over possession to the landlord/respondent.

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