

(2013) 12 MAD CK 0059

Madras High Court

Case No: C.R.P. No. 4458 of 2013

R. Swaminathan

APPELLANT

Vs

Sumana Paul

RESPONDENT

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**Date of Decision:** Dec. 6, 2013**Hon'ble Judges:** P.R. Shivakumar, J**Bench:** Single Bench**Advocate:** G.R.M. Palaniappan, for the Appellant;**Final Decision:** Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

P.R. Shivakumar, J.

Heard. The tenant is the revision petitioner and the landlord is the respondent in the Civil Revision Petition. The revision petitioner suffered an order of eviction passed by the Rent Controller in RCOP. No. 981 of 2010 on the ground of wilful default in payment of rent. The landlord, namely the respondent herein, succeeded in the RCOP, which resulted in an order of eviction dated 16.11.2011. The said order passed in the RCOP was not challenged by preferring an appeal to the Rent Control Appellate Authority. Admittedly, the respondent herein (landlord) filed another petition RCOP. No. 982 of 2010 for fixation of fair rent and the same was also allowed on 16.11.2011 fixing a fair rent of Rs. 7127/- per month to be effective from 29.04.2010. It is also not in dispute that the rent for the period during which the revision petitioner was found to have committed wilful default and also the enhanced rent in accordance with the order of Rent Controller made in RCOP. No. 982 of 2010 fixing fair rent were not paid. It is also an admitted fact that before filing of the summary suit O.S. No. 1027 of 2013 for recovery of arrears of rent and maintenance charges, the revision petitioner/tenant vacated and handed over possession of the premises to the respondent herein. However, the arrears of rent and the maintenance charges were not paid from 29.04.2010 till the date of the petitioner's vacating and handing over vacant possession of the premises to the



respondent. In the suit, after receiving summons for judgment, the revision petitioner herein chose to file I.A. No. 10199 of 2013 praying for the leave of the Court to defend the suit. The learned trial Judge after hearing the parties dismissed the said application holding that no valid defence could be taken by the revision petitioner herein. As against the said order of dismissal of the leave to defend application, the present Civil Revision Petition has been filed.

2. It is the argument advanced by the learned counsel for the revision petitioner that after the passing of eviction order as well as the order fixing fair rent, the revision petitioner, without preferring an appeal, chose to vacate and hand over vacant possession of the petition premises and at the time of handing over the key, it was mutually agreed between the parties that in view of the act of the revision petitioner in voluntarily handing over the petition premises without driving the landlord to file an Execution Petition to execute the eviction order, the landlord, namely the respondent herein, promised to right off his claim for arrears of rent and that by virtue of the said understanding the entire amount, which was outstanding towards arrears of rent, got wiped off and the revision petitioner was discharged of his liability to pay the said amount. The said contention of the revision petitioner was stoutly resisted by the respondent denying the genuineness of the alleged oral understanding between the parties. The learned trial Judge, after considering the rival contentions, came to the conclusion that the claim of the revision petitioner that the entire liability to pay arrears of rent stood discharged by the mutual understanding was not supported by any material and that hence the revision petitioner's prayer for leave to defend has got to be rejected. In a petition for leave to defend, the petitioner/defendant should show that he has got some valid grounds of defence. In the absence of any document evidencing the alleged understanding to right off the arrears of rent, the said contention, not supported by any other material, shall not be a valid ground of defence to make the Court to come to a conclusion that the defendant should be given the leave to defend the suit. The trial Court has not committed any error in holding that the revision petitioner herein was not entitled to the grant of leave to defend the suit. The finding of the Court below cannot be said to be perverse and the same cannot be even projected as a result of patent irregularity leading to miscarriage of justice. The order of dismissal of the leave to defend application in this case cannot be successfully projected as an exercise of power not conferred on the Court below or failure to exercise the power conferred on it. The order cannot even be projected as a result of improper exercise of the power resulting in miscarriage of justice, in which cases alone the power of revision u/s 115 of the CPC can be invoked. Considering all the above said aspects, this Court comes to the conclusion that there is no merit in the Civil Revision Petition and the same does not even merit admission and on the other hand, it deserves to be dismissed at the threshold. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.