

**(2013) 11 MAD CK 0125**

**Madras High Court**

**Case No:** C.R.P. (NPD) No. 1497 of 2013 and M.P. No. 1 of 2013

S. Durai

APPELLANT

Vs

A.B. Dhanasekar

RESPONDENT

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**Date of Decision:** Nov. 5, 2013

**Hon'ble Judges:** B. Rajendran, J

**Bench:** Single Bench

**Advocate:** S.V. Jayaraman for Mr. S. Annamalai, for the Appellant; S. Parthasarathy for Mr. R. Sathyamurthy, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

B. Rajendran, J.

The tenant, who suffered an order of eviction before the learned Rent Controller, which was confirmed by the Appellate Authority in the appeal filed by him, has come forward with this Civil Revision Petition. The landlord/respondent herein has filed RCOP No. 276 of 2003 u/s 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 before the learned Rent Controller for eviction of the tenant/revision petitioner herein for having committed wilful default in payment of rent. According to the landlord/respondent, on 22.01.1981, his father had let out the petition mentioned premises to the tenant/revision petitioner herein for a monthly rent of Rs. 250/- which is excluding electricity charges and the rent was periodically enhanced upto Rs. 750/- per month. According to the landlord/respondent herein, till the death of his father on 22.03.1994 the tenant/revision petitioner paid the rent to his father and thereafter, he paid the rent to him. It was contended by the landlord/respondent that the tenant committed default in payment of rent from April 2001 to February 2003 and inspite of many reminders, the tenant/revision petitioner did not pay the admitted rent. Under those circumstances, the landlord/respondent has filed the Rent Control Original Petition.

2. The Rent Control Original Petition was resisted by the tenant/revision petitioner herein by contending that there is no default in payment of rent and that the rent was periodically paid by him to one Mrs. Kamala. It was further contended that the tenant/revision petitioner never paid the rent to the landlord/respondent herein. Further, neither Mrs. Kamala nor the landlord/respondent herein has attorned the tenancy.

3. Before the learned Rent Controller, the landlord/respondent examined himself as PW1 and marked Exs. P1 to P5. On behalf of the tenant/revision petitioner, the tenant examined himself as RW1 and Exs. R1 to R17 have been marked. The learned Rent Controller, on appreciation of the oral and documentary evidence, held that the landlord/respondent herein proved by Ex. P1, Partition deed dated 15.03.2002 that he is the owner of the petition demised premises and therefore, the rent has to be paid only to him. The learned Rent Controller also held that even if the landlord/tenant herein did not inform the tenant/revision petitioner that he is the owner of the petition mentioned property, he is duty bound to pay the rent month after month. The learned Rent Controller also found that the tenant has not taken any efforts to request the mother of the respondent herein, to whom rents were said to have been paid, to issue receipts for the alleged payment of rent made by him. Therefore, the learned Rent Controller held that the tenant/revision petitioner failed to prove the payment of rent for the period upto February 2003 and consequently, the claim of the landlord/respondent that the tenant/revision petitioner did not pay rent from April 2001 stands proved. The findings rendered by the learned Rent Controller were also accepted by the Appellate Authority and dismissed the Rent Control Appeal filed by the tenant/revision petitioner herein.

4. The learned Senior counsel appearing for the tenant/revision petitioner would contend that that after the death of the father of the respondent herein, the revision petitioner paid rent to one Kamala, but the said Kamala used to give receipts belatedly for several accumulated months. The revision petitioner never paid rent to the respondent herein after the death of his father. The revision petitioner paid rents upto February 2003, in the first week of March 2003 to the said Kamala. Even though the revision petitioner insisted for issuing receipts, the said Kamala did not issue the same. When the revision petitioner questioned the said Kamala about the filing of the R.C.O.P. No. 276 of 2003 by the respondent herein, she gave evasive reply. According to the learned Senior counsel for the revision petitioner, either Mrs. Kamala or the respondent has attorned the tenancy. During the first week of April 2003, when the revision petitioner tendered the rent to the land lady Mrs. Kamala, she refused to receive the same. The revision petitioner therefore filed RCOP No. 1358 of 2003 for deposit of rent into Courts. The revision petitioner also deposited Rs. 6,750/- in M.P. No. 1121 of 2003 for the months of March 2003 to November 2003. Subsequently, a sum of Rs. 73,500/- was deposited to the credit of CRP No. 3762 of 2009 and another sum of Rs. 86,000/- in CRP No. 1138 of 2010. After the disposal of CRP No. 1138 of 2010 fixing the fair rent, the revision petitioner paid the

rent till July 2010. Therefore, there is no default in payment of rent and he prayed for allowing the Civil Revision Petition.

5. On the contrary, the learned counsel for the landlord/respondent would contend that even in the counter filed in Rent Control Original Petition, the tenant himself admitted that he was not regular in payment of rent. The tenant also admitted that he used to pay the rent in lumpsum. Further, lumpsum payments were made as per the directions of this Court. According to the learned counsel for the landlord/respondent, even during the pendency of the case before the Court, the tenant/revision petitioner has not chosen to pay the rent regularly. Therefore, both the courts below have considered the default committed by the tenant/revision petitioner in paying the rent. Even the Petition filed by the tenant/revision petitioner u/s 8(5) of the Act was allowed to be dismissed for default long back and he has not taken any steps to restore the same. In any event, the non-payment of rent before and after filing of the Rent Control Original Petition by the tenant/revision petitioner is wilful and it was rightly considered by both the courts below and therefore, interference of this Court is not warranted.

6. I heard the counsel for both sides. It is seen from the counter affidavit filed by the tenant/revision petitioner in RCOP No. 276 of 2003 that he admitted that he filed RCOP No. 1358 of 2003 for deposit of rent into Courts and deposited Rs. 6,750/- in M.P. No. 1121 of 2003 for the months of March 2003 to November 2003. Subsequently, a sum of Rs. 73,500/- was deposited to the credit of CRP No. 3762 of 2009 and another sum of Rs. 86,000/- in CRP No. 1138 of 2010. After the disposal of CRP No. 1138 of 2010 fixing the fair rent, the revision petitioner paid the rent till July 2010. This averment of the tenant/revision petitioner would indicate that from the beginning, either before filing the Rent Control Original Petition or thereafter, he did not pay the rent month after month but he used to pay the rent in lumpsum. Even certain lumpsum payments were made by the tenant/revision petitioner only as per the directions of this Court.

7. The defence raised by the learned Senior Counsel for the revision petitioner before this Court is that Mrs. Kamala, the landlady has not issued any receipt for the rent paid by the tenant/revision petitioner. Even assuming that rents were paid to Mrs. Kamala by the tenant/revision petitioner, it was not admittedly paid month after month but in lumpsum. The said Kamala is none other than the mother of the landlord/respondent herein. As pointed out by the courts below, Ex. P1, Partition deed was filed on behalf of the landlord/respondent herein to prove that after the death of his father, there was a partition among the family members and the landlord/respondent herein became the owner of the petition mentioned property. Therefore, atleast after filing of the partition deed, the tenant ought to have paid the rent to the landlord/respondent herein, but he has not chosen to do so. In any event, there is no dispute with respect to ownership of the property, but the tenant/revision petitioner did not pay the rent to the respondent/landlord. The

tenant/revision petitioner also did not take any steps to get receipts for the payments said to have been made by him to the mother of the respondent herein namely Kamala. Such default in payment can be construed as wilful.

8. The other defence raised by the learned Senior counsel for the revision petitioner is that this Court passed an order dated 14.07.2010 in CRP (NPD) Nos. 3762 of 2009 and 1137 and 817 of 2010 filed by the tenant/revision petitioners herein. By the order dated 14.07.2010, this Court directed the revision petitioner to pay the total arrears of rent on the basis of the fair rent fixed by the Courts below as a condition precedent for proceeding with the Rent Control Original Petition by the tenant and such arrears shall be paid by the end of the month i.e., July 2010. According to the learned Senior counsel for the revision petitioner, the tenant has complied with the said direction issued by this Court in the order dated 14.07.2010 and thereby the landlord/respondent has waived his right to raise the plea with regard to wilful default in payment of rent. In this connection, the learned senior counsel for the petitioner relied on para-18 of the order dated 14.07.2010 passed in CRP (NPD) No. 3762/2009 and 1137 and 817 of 2010 wherein this Court directed that the total arrears as of now should be calculated on par with the fair rent fixed and the same shall be paid as a condition precedent for proceeding with the RCOP by the tenant and the entire arrears calculated on the basis of the fair rent shall be paid by the tenant by the end of the month. According to the learned senior counsel for the revision petitioner, once such an order was passed by this Court and the tenant/revision petitioner also complied with the same, the question of wilful default in payment of rent will not arise. This argument of the learned senior counsel for the revision petitioner cannot be accepted for the simple reason this Court issued such a direction only as a condition precedent for proceeding with the Rent Control Original Petition. This Court, considering that the revision petitioner has committed wilful default in payment, directed him to make some deposit during the continuance of the Rent Control Original Petition in order to ensure that the tenant makes some deposit to clear the arrears on the basis of the fair rent fixed by the courts below. Therefore, by such order passed by this Court and the consequent compliance by the revision petitioner it cannot be said that the landlord has given up his claim for eviction on the ground of wilful default in payment of rent. This Court also, at the time of passing the order dated 14.07.2010 never intended to waive the plea raised by the landlord relating to wilful default in payment of rent. By the order dated 14.07.2010, time was given to the tenant/revision petitioner to deposit the amount so as to enable him to continue or defend the rent control original petition. It is well settled that it is the duty of the tenant/revision petitioner to pay the rent month after month as and when it becomes due. Such an obligation on the part of the tenant is a statutory duty and failure to fulfil such duty would disentitle him to remain in possession of the petition mentioned premises as a tenant. When both the courts below have concurrently found that the non-payment of statutory rent by the tenant/revision petitioner is wilful and wanton, this Court, in

exercise of revisional jurisdiction u/s 25 of the Act, cannot re-appreciate or substitute its own findings unless it is shown that the order passed by the courts below are perverse. The courts below have categorically given a finding that a duty is cast upon the tenant/revision petitioner to pay the rent and produce the receipts for having made the payment. As rightly pointed out by the courts below, Ex. P2, rent bill produced on behalf of the landlord/respondent herein would indicate that rent was paid for the period from 02.10.1999 to 22.04.2001 for which the receipt was issued during March 2001. Ex. P2 filed by the landlord/respondent would indicate that the tenant is in the habit of paying the rent in lumpsum and not month after month. There is no plausible explanation forthcoming from the tenant/revision petitioner as to why the rent was not tendered every month. The tenant/revision petitioner also failed to pay the rent even during the pendency of the case before the Courts below. In these circumstances, I do not find any reason to interfere with the orders passed by the Courts below. Therefore, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The orders passed by both the courts below are confirmed. Time for eviction is two months from the date of receipt of a copy of this order.