

**(2005) 08 MAD CK 0154**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. No. 1125 of 2003 and C.M.P. No. 7780 of 2003

O. Rajendran

APPELLANT

Vs

V.A.H. Sahul Hameed

RESPONDENT

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**Date of Decision:** Aug. 18, 2005

**Acts Referred:**

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 10(2), 11, 11(1), 8
- Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 - Rule 12(3)

**Hon'ble Judges:** R. Banumathi, J

**Bench:** Single Bench

**Advocate:** Veera Kathiravan, for the Appellant; No Appearance, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

R. Banumathi, J.

This Civil Revision Petition is filed against the order dated 17.04.2003 of the Rent Controller (District Munsif), Batlagundu made in I.A. No. 1 of 2003 in R.C.O.P. No. 1 of 2001, allowing the Petition filed under Rule 12(3) of the Tamil Nadu Buildings (Lease and Rent Control) Rules, setting aside the exparte order on condition of payment of Rs.60,000/- towards Rental Arrears. The Tenant is the Revision Petitioner.

2. The Demised Premises is the Non-residential premises at Door No. 7.1.124 in Main Road, Batlagundu. The Revision Petitioner became the Tenant in the Demised Premises for carrying on the pesticide business. He is said to be in occupation of the premises from May 1994. The monthly rent payable is disputed. According to the Revision Petitioner, the monthly rent is Rs.300/-. Per contra, according to the Respondent/Landlord, the monthly Rent was Rs.1600/- at the inception of Tenancy and thereafter, rent has been increased to Rs.2300/- per month by mutual agreement. The dispute between the parties on the rent payable is a matter for

determination in the final hearing.

3. R.C.O.P. No. 6 of 1998:- The Revision Petitioner/Tenant has filed this Application u/s 8(b) of the Tamil Nadu Buildings Lease and Rent Control Act (hereinafter referred to as "the Act") to deposit the Rent from July 1997 to February 1998 and to continue to deposit the Rent, which may subsequently become due from March 1998. R.C.O.P. No. 6 of 1998 was dismissed for default.

4. R.C.O.P. No. 1 of 2001:- This Petition was filed by the Respondent/Landlord for Eviction of the Tenant/Revision Petitioner u/s 10(2)(i) of the Act - on the ground of Wilful Default. According to the Respondent/Landlord, the Tenant had paid the rent only till the end of May 1997 and thereafter, he did not pay the rent from June 1997, inspite of repeated demands. The Revision Petitioner/Tenant is alleged to be in arrears of rent from July 1997 till the filing of R.C.O.P. No. 1 of 2001 - for 45 months and the arrears is calculated at Rs.1,03,500/-. Alleging that the non-payment of rent is Wilful and Wanton, the Respondent/Landlord has filed the Application for Eviction on the ground of Wilful Default.

5. The Revision Petitioner has filed elaborate Counter Statement stating that he has been regularly depositing the Rent in R.C.O.P. No. 6 of 1998 (at the agreed rate of Rent of Rs.300/- per month). For his non-appearance, in R.C.O.P. No. 1 of 2001, the Revision Petitioner/Tenant has been set exparte on 14.11.2002; exparte evidence was recorded on 13.12.2002 and exparte order of Eviction was passed.

6. I.A. No. 1 of 2003:- This Application was filed under Rule 12(3) praying to set aside the exparte order passed against him. According to the Revision Petitioner, he was suffering from acute jaundice and could not contact his counsel. After he had become well and when he approached his Advocate, he has informed about the exparte order passed against him. Stating that the absence was neither wanton nor wilful, the Revision Petitioner/Tenant has filed this Application to set aside the order of Eviction passed against him. The Application was strongly resisted by the Landlord/Respondent contending that the absence of Revision Petitioner/Tenant on 14.11.2002 and 13.12.2002 was deliberate and wilful and there is no justification for setting aside the exparte order.

7. Upon consideration of the contentions of both parties, learned Rent Controller found that the Revision Petitioner/Tenant has remained absent with a view to delay the proceedings and to evade the payment of arrears of rent. Further pointing out that an opportunity is to be given to the Revision Petitioner/Tenant to strike a balance between the contention of both parties, learned Rent Controller passed a conditional order, directing the Revision Petitioner/Tenant to deposit a sum of Rs.60,000/- towards the arrears of rent. Learned Rent Controller has also pointed out the dismissal of R.C.O.P. No. 6 of 1998.

8. Assailing the Impugned Order, learned counsel for the Revision Petitioner/Tenant has submitted that when the agreed rent is only Rs.300/-which is being regularly

deposited in R.C.O.P. No. 6 of 1998, the Rent Controller erred in passing the conditional order, directing the Revision Petitioner/Tenant to deposit Rs.60,000/- Learned counsel for the Revision Petitioner has further submitted that the Rent Controller has not appreciated the bonafide of the Tenant in paying the Rent. The Impugned Order is assailed on the ground that even without determining the main case, the learned Rent Controller accepted the case of the Landlord/Respondent that the Rent is Rs.2300/- and the conditional order, directing the Revision Petitioner to pay Rs.60,000/- suffers from serious infirmity and the same is liable to be set aside.

9. The only point that arises for consideration is whether the condition imposed on the Revision Petitioner/Tenant directing him to deposit Rs.60,000/- as a condition precedent for allowing the Petition in I.A. No. 1 of 2003 can be said to be penalising in nature warranting interference?

10. R.C.O.P. No. 1 of 2001 has been filed u/s 10(2)(i) of the Act on the ground of Wilful Default. The Revision Petitioner/Tenant is alleged to be in arrears of rent of Rs.1,03,500/-. R.C.O.P. No. 6 of 1998 filed by the Revision Petitioner/Tenant to deposit the Rent in the Court has been dismissed for default. According to the Revision Petitioner/Tenant, he has been paying the rent into the Account of R.C.O.P. No. 6 of 1998 at the rate of Rs.300/- per month. The Rent of Rs.300/- per month cannot be said to be the agreed rate of rent. Whether the Rent payable is Rs.2300/- or otherwise is to be determined only during the final hearing.

11. According to the Revision Petitioner/Tenant, he could not appear on 14.11.2002, since he was suffering from acute Jaundice. The nature of ailment and the nature of treatment which the Revision Petitioner/Tenant was taking is not known. By exercising the discretion, the learned Rent Controller has found that no sufficient cause had been made out for his non-appearance on 14.11.2002. It is relevant to note that though the Revision Petitioner/Tenant was set ex-parte on 14.11.2002; exparte evidence was recorded only on 13.12.2002 on which date, the order of Eviction was passed. Considering the facts and circumstances of the case, it cannot be said that there was improper exercise of discretion in passing the conditional order.

12. The Contention that the Revision Petitioner/Tenant cannot be penalised for not being present on 14.11.2002 has no merits. Setting aside the exparte order of Eviction with a direction to pay Rs.60,000/- as the condition precedent cannot be said to be penal in nature.

13. We may usefully refer to Section 11 of the Act. Section 11(1) of the Act is to the effect that no Tenant against whom an application has been made by a Landlord shall be entitled to contest the Application before the Controller on the Application unless he has paid or pays to the Landlord or deposits with the Controller or Appellate Authorities as the case may be, all arrears of rent due in respect of the

building upto the date of payment of deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller of the Appellate Authority. u/s 11 of the Act, for contesting the Application, the Tenant has to pay the Rent/Arrears of Rent. When he has deposited only Rs.300/- per month, the Tenant cannot claimed to have deposited the Rental Arrears. The relationship of the Landlord and the Tenant being admitted, the deposit of the part of the arrears of Rent has been passed by the Rent Controller. The correctness of that conditional order cannot be assailed on the ground that the Tenant was paying the agreed rate of rent of Rs.300/- per month once exparte order has been set aside, the Revision Petitioner would be contesting the Application/Petition for Eviction. While so, the learned Rent Controller was right in passing the conditional order, directing the Revision Petitioner/Tenant to deposit Rs.60,000/-, which cannot be said to be penal in nature. This Civil Revision Petition has no merits and is liable to be dismissed.

14. For the foregoing reasons, the order dated 17.04.2003 of the Rent Controller (District Munsif), Nilakkottai in I.A. No. 1 of 2003 in R.C.O.P. No. 1 of 2001 is confirmed and this Civil Revision Petition is dismissed. The Revision Petitioner/Tenant is directed to deposit a sum of Rs.60,000/- (Rupees Sixty Thousand only) within a period of Eight Weeks from the date of this order. In the circumstances of the case, there is no order as to costs. Consequently, the connected C.M.P. No. 7780 of 2003 is also dismissed.