

**Bench: R.Karuppiah**

4. The case of the respondent before the Rent Controller is that the petition mentioned non-residential building belongs to the respondent and the revision petitioner became a tenant in the year 1998 to run Hotel business and the tenancy is in according to English Calendar month. The further contention of the respondent is that the revision petitioner lastly executed a lease deed on 16.06.2002, in which it is agreed the tenancy to continue from 01.06.2002 for a monthly rent of Rs.1,000/-. The revision petitioner had also paid advance amount of Rs.15,000/-. In the above said lease agreement, the revision petitioner under took to pay the monthly rent on or before the 5th of every succeeding month and also agreed to do hotel business under the name and style of Eswari Bhavan. Further, it is stated in the averment that for payment of rent, the revision petitioner used to get acknowledgement in a pocket note book maintained by him. According to the respondent, the revision petitioner has not paid the rent from July 2002 and thereby committed wilful default in payment of rent. Further, the revision petitioner had put the tenement to a different user in as much as he has running a cycle and motor cycle service centre instead of the original purpose of running the hotel business and hence, the revision petitioner is liable to be evicted on the ground of different user. The further contention of the respondent is that the revision petitioner had pulled down the partition wall and thereby increased the burden over the other wall it resulted in Act of waste and on that ground also the revision petitioner is liable to be evicted. The further case of the respondent is that the respondent did not own any other non-residential building of his own within the Municipality limits of Nagapattinam and being a diploma holder in Civil Engineering, he required the tenement for the purpose of carrying on business in supply of construction materials. For the above said four grounds, the respondent filed the eviction petition.

5. The revision petitioner filed a detailed counter and contended that the revision petitioner had not committed any wilful default in payment of rent. It is further contended that the respondent purposefully evaded from receiving the rent due to which, the revision petitioner filed a petition in RCOP No.16 of 2003 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 for depositing the rent in Court. Further, the revision petitioner paid a sum of Rs.15000/- towards advance and therefore, there is no question of any wilful default in payment of rent. Further, the tenancy is only oral and the respondent had permitted the revision petitioner to use the tenement for commercial purposes and as such, there is no different user and also the revision petitioner is still running a hotel and hence, the revision petitioner is not liable to evict on the ground of different user. The revision petitioner has also contended that he had not damaged any portion or pull down any wall of the tenement at the same time, he maintained it in a good condition and therefore, on that ground also the respondent is not entitled to evict the revision petitioner. The further case of the revision petitioner is that the respondent owns several buildings both residential and non-residential within the municipality limits of Nagapattinam and thus, the requirement on the ground of own use and occupation is also not a bonafide and on that ground also the respondent is not entitled to evict the revision petitioner. According to the revision petitioner, all the grounds of eviction are invented for the purpose of evicting the revision petitioner and hence, prayed for dismissal of the eviction petition.

6. The Rent Controller had considered the oral and documentary evidence adduced on either side and finally rejected the eviction petition on the ground of own use and occupation, wilful default and Act of waste. But, the Rent Controller ordered eviction of the revision petitioner on the ground of

different user.

7. Aggrieved over the above said eviction order passed by the Rent Controller, the revision petitioner preferred Rent Control Appeal in RCA No.6 of 2005 challenging the eviction order passed by the Rent Controller on the ground of different user. The respondent herein also preferred cross-objection against the dismissal of eviction petition on the grounds of own use and occupation, wilful default and Act of waste.

8. The Rent Control Appellate Authority considered both sides submission in Rent Control Appeal and Cross-Objection and finally held that the revision petitioner is liable to evict from the tenement on all the above said four grounds and allowed the Cross-Objection filed by the respondent and dismissed the Rent Control Appeal filed by the revision petitioner.

9. Being aggrieved the findings of the Rent Control Appellate Authority, this revision petition has been preferred by the revision petitioner.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. The respondent herein seeking eviction of the revision petitioner on four grounds. The first ground for eviction is wilful default committed by the revision petitioner. In the instant case, both sides admitted the facts that the monthly rent is Rs.1000/- and also advance amount of Rs.15000/- received by the respondent. Admittedly, the revision petitioner had not paid the rent for the month of July and August 2002 and only sent two months rent by money order on 30.09.2002 and it was refused by the respondent. The revision petitioner has not taken any steps immediately to file proceedings before the Rent Controller for direction to receive the rent by the respondent or permitted to deposit the rent before the Rent Controller. Long after the above said refusal, the respondent herein sent a legal notice on 31.01.2003. After receipt of the above said notice and also after filing the eviction petition, the revision petitioner had sent Rs.8000/- as Draft for 8 months belatedly on 28.03.2003. But, the respondent refused the above said Draft sent by the revision petitioner. Then only the revision petitioner filed a petition before the Rent Controller for deposit of rent. Absolutely, there is no explanation why the revision petitioner has not paid two months rent prior to refusal of the money order and also not stated any reason for not taking any steps immediately to deposit the rent before the Rent Controller. Even after issuing a legal notice on 31.01.2003, the revision petitioner has sent arrears of rent only on 28.03.2003, during the pendency of the eviction petition. The first appellate court has considered all the above said facts and finally held that the revision petitioner had wilfully defaulted in payment of rent.

12. The main contention of the revision petitioner is that the respondent herein admitted the fact that the revision petitioner had paid the sum of Rs.15,000/- as advance and therefore, the respondent retained more than a month's rent. In the above said circumstances, the respondent is bound to adjust the same as such there is no wilful default. In this connection, the learned counsel appearing for the revision petitioner relied on several decisions reported in 1) AIR 1989 SC 1510 (Modern Hotel v. Kradhakrishnaiah and others), 2) 1996 (II) CTC 78 (K.Narasimharao v.

T.M.Nasimuddin Ahmed), 3) 2005(5) CTC 537 (K.A.M.A.K.NatarajaNadar & Sons v. R.Kannan), 4) 2013(2) CTC 152 (Muthuramalingam v. Raju and others) and 5) 2014 (2) CTC 303 (A.K.Padmanabhan v. Sivasubramanian).

13. The learned counsel appearing for the respondent would submit that the above said decisions relied on by the revision petitioner are not applicable to the facts of the present case since in the instant case, the revision petitioner has not paid the rent even after issuing legal notice and also the revision petitioner has not stated the monthly rent may be deducted from the advance amount. Further, the learned counsel appearing for the respondent submitted that the revision petitioner has falsely pleaded in the counter itself as if the revision petitioner used to pay the rent only in lumpsum, once in few months. The above said contention is false since in Ex.P1 agreement itself clearly stated that the revision petitioner should pay the monthly rent within 5th day of every succeeding English Calendar month and also the revision petitioner has paid the rent accordingly except only one time and the above said facts also correctly discussed by the Rent Control Appellate Authority. Therefore, all the above said decisions relied on by the revision petitioner are not applicable to the facts of the present case.

14. The learned counsel appearing for the respondent relied on a decision of this Court reported in 2009(2) CTC 595 (K.Karuppiah v. B.Kubendran), wherein this Court has considered the various decisions of Hon'ble Supreme Court and this Court and finally held that the subsequent conduct of the tenant is to be taken into consideration while deciding the question whether he had committed default wilfully and he is liable to be evicted under Section 10(2)(i) of the Act. As rightly pointed out by the learned counsel appearing for the respondent, in the instant case, even after issuing legal notice for eviction and also filing eviction petition, the revision petitioner had committed default in payment of rent. Therefore, the above said conduct of the revision petitioner amounts to wilful default as rightly discussed and held by the Rent Control Appellate Authority.

15. The next contention of the revision petitioner is that the revision petitioner has not committed any guilty by way of different use in the tenement. The learned counsel appearing for the revision petitioner submitted that the alleged Ex.P1 rental agreement dated 16.06.2002 produced by the respondent is not at all the rental agreement and it is only in the nature of letter and also it is fabricated by the respondent, but, the Authorities below ordered eviction on the ground of different user only on the basis of Ex.P1 alleged lease agreement and hence, the above said findings of both courts below are perverse findings.

16. From both side submissions, it is revealed that on the side of the respondent marked the above said alleged agreement as Ex.P1. To prove the above said document, the respondent himself deposed as PW1 and also examined another witness PW2 to prove the genuineness of the document. On careful consideration of the above said oral and documentary evidence adduced on the side of the appellant, both the courts below have concurrently held that the above said document is genuine document as contended by the respondent. As rightly pointed out by the learned counsel appearing for the respondent, the revision petitioner has not at all produced any documents prior to filing of the revision petition to compare the admitted signature of the revision petitioner with the signature found in Ex.P1. Further, both courts below have compared the signatures found in Ex.P3 legal notice

issued by the revision petitioner with the disputed signature found in Ex.P1 rental agreement and found that both signatures are one and the same. Further, for the first time, at the time of cross-examination, the revision petitioner had admitted as he had affixed the signatures in blank papers at the time of entering into the lease agreement in the year 1998. The revision petitioner further admitted at the time of cross-examination as in the reply notice given by revision petitioner he had stated as the respondent obtained signatures in every time in blank papers as well as stamp papers. But, the above said fact suppressed in the counter as well as in the chief examination. Therefore, the contention of the revision petitioner is that the above said Ex.P1 is forged document, cannot be accepted.

17. Further, the learned counsel appearing for the revision petitioner pointed out that Ex.P1 is unilateral document and therefore, it cannot be taken as rental agreement between parties. On perusal of Ex.P1 both the courts below held that the revision petitioner agreed all the conditions imposed for taking the premises on lease and signed the above said document and both the parties are liable to obey the condition in terms of Ex.P1 agreement. Therefore, the above said contention of the revision petitioner that Ex.P1 is not proved as genuine document cannot be accepted.

18. Both the courts below have considered the averments in Ex.P1 agreement and held that the revision petitioner has taken the premises to run a Hotel business in the name of Eswari Bhavan. But, contrary to the above said undertaking now, the revision petitioner started a new business in the name and style of Eswari Cycle and Motor Cycle Service and hence, the revision petitioner is to be evicted on the ground of different use also.

19. The learned counsel appearing for the revision petitioner submitted that the revision petitioner is still running a Hotel business in the name of Eswari Bhavan apart from running Eswari Cycle and Motor Cycle Service business. Per contra, the learned counsel appearing for the respondent pointed out that as per rental agreement, the premises was given only to run a hotel business and not to run a Cycle or Motor Cycle Service business in the name of Eswari and therefore, the above said additional business amounts to different use. As rightly pointed out by the learned counsel appearing for the respondent, as per Ex.P1 agreement executed by the revision petitioner and also the admission of the revision petitioner, at the time of evidence, it is revealed that the revision petitioner used the premises as different purpose. Both courts below have correctly considered the above said facts and held that the revision petitioner used the premises against the purpose he took the building on lease and hence, the eviction order passed by both courts below on the ground of different user is also not perverse finding or illegal.

20. The next contention of the revision petitioner is that the revision petitioner is not committed any act of waste as contended by the respondent and the respondent is not entitled to seek any relief of eviction on the ground of act of waste. A perusal of Ex.P1 revealed that the revision petitioner has no right to repair in the rental premises without permission from the respondent. But, the Commissioner's report and also both sides oral evidence revealed that the revision petitioner had modified the rental premises without permission of the respondent. The Rent Control Appellate Authority has discussed in detail about the alteration made by the revision petitioner in the petition premises as pointed out by the Advocate Commissioner in his report Ex.C1 and finally held that the

revision petitioner has committed Act of waste and on that ground also, the Rent Control Appellate Authority has correctly held that the revision petitioner is liable to evict from the premises.

21. The next ground for seeking eviction of revision petitioner is that the petition premises is required for own use for the purpose of carrying on business by the respondent in supply of construction materials. From the evidence adduced on either side, it is revealed that the respondent herein, who is a Civil Engineer and he is now doing agricultural work in his lands. In the above said circumstances, the learned counsel appearing for the respondent has contended that since unable to do his agricultural work, he is proposed to do building material business like Jalli, Cement etc., and therefore, the petition premises is required for his own use. The respondent has not given any details in the counter or in the evidence that any other vacant building available in the place where the petition premises situated to run the above said business. The respondent himself admitted the capacity of the respondent to start the business. The Rent Control Appellate Authority has discussed all the relevant facts from both sides evidence and correctly held that the above said requirement for own use is also proved by the respondent and on that ground also the respondent is entitled to evict the revision petitioner.

22. From the above said discussion, this Court is of the view that the eviction order passed by both courts below are valid in law and the above said findings of the Rent Control Appellate Authority are not perverse findings or illegal and therefore, no need to interfere with the above said findings of the courts below.

In the result, this Civil Revision Petition is dismissed. Three months time is given to vacate the premises. No order as to costs.

23.07.2014 Index:Yes / No Internet:Yes / No ssn To

1. Rent Control Appellate Authority (Principal Subordinate Court) Nagapattinam.
2. The Rent Controller(District Munsif Court) Nagapattinam.

R.KARUPPIAH, J., ssn Pre-delivery Order in 23.07.2014