

Mr. S. Kamalakannan vs Mr. Hari Krishna on 24 March, 2021

Author: V.Bhavani Subbaroyan

Bench: V.Bhavani Subbaroyan

C.R.P. (PD) No.169

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.169 of 2021

1. Mr. S. Kamalakannan,
2. Mr. S. Selvakumar

... Pe

Vs.

Mr. Hari krishna, S/o. Mr. Ilango

... Res

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed by the Principal District Munsiff at Poonamallee, Chennai – 600 056 in R.L.T.O.P. Sr. No.787 of 2020 in Unnumbered-R.L.T.O.P dated 07.11.2020 and consequently, direct the Principal District Munsiff Poonamallee, Chennai – 600 056 to number the R.L.T.O.P. Sr. No.787 2020.

For Petitioners ... Mr.K. Varadhakamaraj

For Respondent ... No Appearance

<https://www.mhc.tn.gov.in/judis/>
1/12

C.R.P. (PD) No

ORDER

The Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to

set aside the order passed by the Principal District Munsiff at Poonamallee, Chennai – 600 056 in R.L.T.O.P. Sr. No.787 of 2020 in Unnumbered-R.L.T.O.P dated 07.11.2020 and consequently, direct the Principal District Munsiff at Poonamallee, Chennai – 600 056 to number the R.L.T.O.P. Sr. No.787 of 2020.

2. The learned counsel for the petitioners would submit that the petitioners have filed unnumbered R.L.T.O.P. under section 21(2)(b), and 21(2)(g) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017 (hereinafter referred to as "Act") before the Principal District Munsiff, Poonamallee, with the prayer (a) to pass order for eviction under the ground of wilful default in monthly rent and owner's occupation and (b) direct the respondent to vacate and hand over the vacant possession of petition schedule mentioned property to the petitioners. The Court below has returned the aforesaid petition by Docket order dated 11.02.2020 stating the reasons that the Court fee has <https://www.mhc.tn.gov.in/judis/> to be complied with under Section 43 of Tamilnadu Court Fee and Suit Valuation Act, 2017 since Rental Agreement will expiry on 31.01.2021. Thereafter, the learned counsel for the petitioner has represented the petition on 17.02.2020 stating as under:

"1. The petitioner humbly submits that, as per the new amendment Section 41 of Tamilnadu Court Fee and Suit Valuation Act, 1955 and amended Act 2002 and 2017 is applicable to the present case and the Section 43 of Tamilnadu Court Fees and suit Valuation Act, 1955 and amended Act 2002 and 2017 is not applicable to the present case.

2. The petitioner humbly submits that as per the Court Fees under the Tamilnadu Regulations of Rights and Responsibilities of Land Lords and Tenants Act 2017, the fixed Court Fees is Rs.15/- per Section, two Section Rs.30/- paid by the petitioner and same is correct.

3. The Petitioner humbly submits that even though the Rental Agreement is expired on 31.01.2021, the Respondent/Tenant have not paid the Rent to Petitioners/Land Lords ever since inception of tenancy and the Respondent/Tenant is liable to pay a sum of Rs.4,67,000/- (Rupees Four Lakhs and Sixty Seven Thousand Only) as on 31.01.2020. Further the legal notice dated 20.10.2019 it clearly mentioned that the Respondent/Tenant is defaulted monthly rent and 30 days time was given to the Respondent/Tenant to vacate and handover the vacant possession of the tenancy premises from the date of receipt of the legal notice.

4. The petitioner humbly submits that as per un- registered vacant site rental agreement dated 01.02.2018 between the petitioners 1 and 2 and the respondent, the <https://www.mhc.tn.gov.in/judis/> conditions in clause 4, if any default in paying monthly rents for 3 consecutive months, the vacant site Rental agreement comes to an end. In present case the respondent/tenant from the inception of tenancy is defaulting monthly rent. Therefore, the present RLTOP case is maintainable in law."

After having represented the aforesaid petition by the learned counsel for the petitioner herein, the same was returned again on 31.08.2020 for not complying the previous directions by granting one month time to comply with the same. Subsequent to the above, the learned counsel once again represented the petition before the Court below on 16.10.2020 seeking for to consider the aforesaid elaborate explanation submitted by him on 17.02.2020. Following to the above representation made by the petitioner, the learned Principal District Munsif passed an Docket order dated 07.11.2020 as under:

"The petition was filed by the petitioner for order of eviction and direct the respondent to vacate and hand over the vacant possession of petition schedule property to the petitioner.

This Court returned the petition to pay the Court fee under Section 43 of Tamilnadu Court fee and Suit Valuation Act. Whereas, the learned counsel for the petitioner represented and stated as per new Amendment Act, 2017, Section 41 of Tamilnadu Court Fees and Suit Valuation Act is applicable to the present case and Section 43 of TNCF Act is not applicable to the present case and paid Rs.15/- each as Court Fee in total Rs.30/- was paid by the petitioner.

<https://www.mhc.tn.gov.in/judis/> Section 43 of TNCF Act.

Suit between landlord and tenant, Section 43(2) of TNCF Act:

In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the next before the date of presenting the plaint.

The learned counsel for the petitioner paid the Court fee under Section 41 of TNCF Act and not under Section 43 of TNCF Act. Earlier defects was not complied. Hence this petition is hereby returned. Representation Time one month".

Being aggrieved the aforesaid order, the petitioner has filed the present Civil Revision petition to set aside the same.

3. The learned counsel for the petitioner would submit that while the RLTOP Sr No.787 of 2020 has been filed under Section 21(2) (b), and 21 (2) (g) of the Tamilnadu Regulations of Rights and Responsibilities of Landlords and Tenants Act, 2017, the Rent controller ought to have considered the new amendment Section 41(3) of the Act. The learned counsel further contended relying on the Section 41(3) of the Act, that as per Section 41(3) of the Act 2017, the court-fees on the application filed before the Rent Authority shall be same as of an interlocutory application presented in a civil court. Hence, the Court Fee of Rs.15 each in total Rs.30/- was paid on the application filed before the <https://www.mhc.tn.gov.in/judis/> Rent Controller treating as of an Interlocutory application in a Civil Court as the present case has been filed to vacate the tenant/respondent from the petition mentioned premises on the ground of wilful default in monthly rent. Hence, there is no need to pay

the Court Fee as per Section 43(2) of Tamilnadu Court Fees and Suit Valuation Act 1955, since the petitioners have not filed a suit and filed a petition to vacate the tenant/respondent for defaulting in paying the monthly rent. Further, the Rent Controller has not considered the new amendment Section 41(1) of Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 according to which the provisions of the Tamil Nadu Court-fees and Suits Valuation Act, 1955 (Central Act 9 of 1955) shall apply in respect of applications or appeals to be presented before the Rent Court or Rent Tribunal or Rent Authority, as the case may be. Without considering the above new amendment Act, the Rent controller returned the same to pay the Court Fee under Section 43 of Tamilnadu Court Fee and Suit Valuation Act. It has been further contended that if it is considered as a suit according to Section 43(2) of TNCF Act, the value of application would be around Rs.6,62,000/- after being calculated payable rent for 12 months along with Advance amount. While the <https://www.mhc.tn.gov.in/judis/> pecuniary Jurisdiction of the Court below limits upto Rs.1,00,000/-, the aforesaid application cannot be treated as a suit. Without taking into consideration the aforesaid aspect, the Rent controller has returned the application to pay the Court Fee as per Section 43(2) of TNCF Act, 1955. Hence, the Docket order dated 07.11.2020 made in RLTOP Sr.No.787 of 2020 is liable to be set aside.

4. Heard, the learned counsel for the petitioners as well as perused the material available on record.

5. On a perusal of the material available on record, it is seen that the landlords/petitioners herein have filed the RLTOP Sr.No.787 of 2020 on the file of the Principal District Munsif at Poonamallee, praying (a) to order for eviction under the ground of wilful default in monthly rent and owner's occupation (b) to direct the respondent to vacate and handover the vacant possession of petition schedule mentioned property to petitioners.

<https://www.mhc.tn.gov.in/judis/>

6. The main contention of the learned counsel for the petitioners is that as per the new amendment Section 41(3) of the Tamilnadu Regulation of Rights and Responsibilities of landlords and Tenants Act, 2017, the petitioners have paid the Court Fee of Rs.15/- each in total of Rs.30/- as per Schedule III, Rule 29 of Tamilnadu Court Fees and Suit Valuation Act 1955 for the petition filed under Section 21(2)(b), and 21(2)(g) of the Tamilnadu Regulations of Rights and Responsibilities of Landlords and Tenants Act, 2017. However, on the other hand, the Rent Controller has returned the aforesaid application to pay the adequate Court Fee as it is applicable under Section 43(2) of Tamilnadu Court Fees Act, 1955 and not under Section 41(3) of the Act, 2017 by treating the petition as a suit while the rental agreement will expiry on 31.01.2021 and directed the petitioners to pay Court Fee accordingly.

7. For the sake of convenience to come to the conclusion properly, the relevant portions of the respective Sections read as under:

Section 41 of Tamilnadu Court Tamilnadu Regulation of Rights and Responsibilities
of landlords and Tenants Act, 2017

41. Court-fees.- (1) The provisions of the Tamil Nadu Court-fees and Suits Valuation Act, 1955 (Central Act 9 of <https://www.mhc.tn.gov.in/judis/> 1955) shall apply in respect of applications or appeals to be presented before the Rent Court or Rent Tribunal or Rent Authority, as the case may be.

(2) The applications for recovery of possession made to the Rent Court and the memorandum of appeals presented before the Rent Tribunal shall be treated as suits between the landlord and the tenant for the purposes of computation of court-fees.

(3) The court-fees on the application filed before the Rent Authority shall be same as of an interlocutory application presented in a civil court.

Section 43(2) of Tamilnadu Court Fees Act, 1955:

43. Suits between landlord and tenant:

(1) In the following suits between landlord and tenant, namely:--

(a) for the delivery by a tenant of the counterpart of a lease or for acceptance of patta in exchange for a muchilika;

(b) for enhancement of rent;

[(bb) in respect of the transferred territory, for abatement of rent, where it is not coupled with any other relief;]

(c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchilika;

<https://www.mhc.tn.gov.in/judis/>

(d) for recovering occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or disproving a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.

Explanation.—Rent includes also damages for use and occupation payable by a tenant holding over.

8. Under Section 41(2) of the Act, the statute clearly states that the applications for recovery of possession made to the Rent Court and the memorandum of appeals presented before the Rent Tribunal shall be treated as suits between the landlord and the tenant for the purposes of computation of court-fees. As regards the 2nd prayer of the RLTOP, prayer of the petitioners is to direct the respondent to vacate and hand over the vacant possession of petition schedule mentioned property to <https://www.mhc.tn.gov.in/judis/> petitioners. According to which applying under Section 41(2) of the Act 1997, the Rent Controller after treating the aforesaid petition as a suit, rightly directed the petitioners to pay the Court Fee in accordance with Section 43(2) of TNCF Act, 1955 since in a suit for recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint. Further, if the learned counsel for the petitioner would not take into account of the 2nd prayer in the petition and the rental agreement expires on 31.01.2021, he contended relying on the Section 41(3), the petition filed by him to be treated as of an Interlocutory Application, however, as regard the 2nd prayer of petition, the petition would be treated as a suit under section 41(2) of the Act.

9. In view of the aforesaid discussions and observations, this Court do not find any fault in the directions of the Court below to pay the Court Fee under Section 43(2) of the TNCF Act and is not inclined to interfere with the Docket order dated 07.11.2020 of the Court below made in RLTOP Sr.No.787 of 2020.

<https://www.mhc.tn.gov.in/judis/> V.BHAVANI SUBBAROYAN, J., lbm

10. In the result, the Revision petition stands dismissed. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

24.03.2021 lbm Index: Yes/No. Speaking/Non-Speaking order Internet: Yes/No. To:

The Principal District Munsiff Poonamallee, <https://www.mhc.tn.gov.in/judis/>