

Dilip Solanki vs Kiran Kumari

Author: D.Nagarjun

Bench: D.Nagarjun

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20/4/2023
Delivered on 30/6/2023

C O RAM

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition NPD No.941 of 2023
and
C.M.P.No.7083 of 2023

Dilip Solanki ... Petitioner
Vs
Kiran Kumari ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 23/12/2022 passed in R.L.T.A.No.107 of 2022 on the file of the learned III Additional City Civil Court, Chennai, confirming the order of the Rent Court passed in R.L.T.O.P.No.117 of 2022.

For Petitioner ... Mr.P.Sunil
For respondent ... Mr.Sandeep T.Jain

ORDER

<https://www.mhc.tn.gov.in/judis> This Civil Revision Petition is directed against the dismissal of R.L.T.A.No.107 of 2022, dated 23/12/2022, on the file of the learned III Additional City Civil Court, Chennai, confirming the order passed by the Rent Court passed in R.L.T.O.P.No.117 of 2022.

2. The facts in brief as could be gathered from the records are as under:-

Originally, late Mr.Ashish Kumar P.Jain the owner of property bearing Door Nos.3 and 4, New No.7/4, Mulla Sahib Lane, Chennai, has inducted the petitioner as a tenant, into the said property under a rental agreement dated 13/7/2006 for a period of three years which was expired in the year 2009 and was not renewed, however the tenant has been paying the rent continuously. Initially, monthly rent was at Rs.2,500/- and from time to time, the rent was increased to Rs.10,800/-, out of which Rs.6,000/- was being paid by way of cheque and Rs.4,800 was being paid by way of cash. Ashish Kumar P.Jain, the owner of the tenanted property died on 27/4/2021, leaving behind his wife/respondent by name Kiran Kumari/Respondent and a minor son Master Dheer A.Shah.

3. After the death of original owner Ashish Kumar P.Jain, the <https://www.mhc.tn.gov.in/judis> respondent has sent a notice dated 17/5/2021 to the petitioner/tenant informing him about the death of Ashish Kumar P.Jain and asked him to pay the rents to her. But, the petitioner/tenant has stopped paying the rent. When the respondent has contacted the petitioner/tenant, he informed her that he would pay only Rs.6,000/- through cheque and will not pay the balance of Rs.4,800/- in cash.

4. As tenancy was being continued without formal rental agreement, the respondent/landlord has requested the petitioner/tenant to come forward and execute the tenancy agreement, as contemplated under Section 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019, but the petitioner has not obliged. The first respondent has issued a legal notice dated 13/9/2021 to the petitioner to register Tenancy agreement. As the petitioner has given evasive reply that the tenancy was terminated with effect from 28/9/2021 and the petitioner was asked to deliver vacant possession of the schedule premises and to pay Rs.25,000/- towards use and occupation with effect from 1/10/2021 until vacating the said premises.

5. The petitioner has sent a reply notice dated 30/9/2021 demanding <https://www.mhc.tn.gov.in/judis> to provide legal heir certificates of Mr.Ashish Kumar P.Jain. The respondent/landlord has ultimately sent a termination notice dated 15/12/2021 asking the petitioner/tenant to vacate the premises, mentioning that the tenancy was terminated with effect from 28/9/2021, however, said termination notice was returned unserved.

6. As there was no written rent agreement after commencement of new Act, under Section 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019, the respondent/landlord filed R.L.T.O.P.No.117 of 2022, seeking eviction of petitioner/tenant. The petitioner/tenant has filed a detailed counter and after full fledged enquiry, the said petition was allowed, directing the petitioner/tenant to vacate the schedule premises, within one month, from the date of the said order. Aggrieved by the same, the petitioner/tenant has preferred R.L.T.A.No.107 of 2022. On hearing both sides, the said appeal was dismissed. Being aggrieved by the same, present Civil Revision Petition is filed by the petitioner/tenant.

7. Heard Mr.P.Sunil, learned counsel for the petitioner and Mr.Saneep T.Jain, learned counsel for the respondent. Perused the entire <https://www.mhc.tn.gov.in/judis> records including the order of the Rent Control Appellate Tribunal carefully.

8. The main contention of the revision petitioner/tenant who lost in both the Courts below is that Section 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019, is not applicable to the facts of the case, as the petitioner was always ready to execute the lease deed as amended under Section 4 (2) of the Act, and respondent/landlord is responsible for non-execution of tenancy agreement.

9. It is also submitted by the counsel for the petitioner that lease as referred in Section 4 (2) r/w. 21 (2) (a) of the Act is not the fresh lease but refers to the lease agreement which was in force as on the date of coming into force of the new Act and thereby, the terms that were existing between the tenant and landlord in the earlier lease have to be continued in toto and if the landlord is not coming forward to get the lease deed entered into as per the earlier terms, then Section 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019 is not applicable.

10. Per contra, learned counsel appearing for the respondent/landlord <https://www.mhc.tn.gov.in/judis> submitted that for invoking the provision under 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019, it is immaterial the reasons for not entering the lease agreement including that landlord has either demanded huge rent or, not cooperated for fixation of the rent or that the landlord has not come forward to execute, etc. He has further submitted that the lease referred in 4(2) of the Act shall not be read as lease that was existing prior to coming force of the new Act.

11. The short point that arise for consideration in this revision is If landlord not coming forward for execution of rent agreement as required under Section 4 (2) r/w. 21 (2) of the said Act, can it be a ground for the tenant to resist eviction under Section 4 (2) r/w. 21 (2) of the Act.

12. Section 4 (2) of the Act runs as under:-

“Where, in relation to a tenancy created before the commencement of this Act, no agreement in writing was entered into, the <https://www.mhc.tn.gov.in/judis> landlord and the tenant shall enter into an agreement in writing with regard to that tenancy within a period of five hundred and seventy five days from the date of commencement of this Act:

Provided that where the landlord or tenant, fails to enter into an agreement under this sub- Section, the landlord or tenant shall have the right to apply for termination of the tenancy under clause (a) of sub-Section (2) of Section

21.”

13. Section 21 (2) of the said Act runs as under:-

(2) The Rent Court may, on an application made to it in the manner as may be prescribed, make an order for the recovery of possession of the premises on one or more of the following grounds, namely:—

(a) that the landlord and tenant have failed to agree to the rent payable under section 8;

(b) that the tenant has not paid the arrears in full of rent payable and other charges payable as specified in sub-section (1) of section 13 for two months, including interest for delayed payment as <https://www.mhc.tn.gov.in/judis> may be specified for in the tenancy agreement or as prescribed, as the case may be, within one month of notice of demand for the arrears of such rent and all charges payable being served on him by the landlord in the manner provided in sub-

section (4) of section 106 of the Transfer of Property Act, 1882:

Provided that no order for eviction of the tenant on account of default of payment of rent shall be passed, if the tenant makes payment to the landlord or deposits with the Rent Court all arrears of rent including interest within one month of notice being served on him:

Provided further that this relief shall not be available again, if the tenant defaults in payments of rent consecutively for two months in any one year subsequent to getting relief once;

(c) that the tenant has, after the commencement of this Act, parted with the possession of whole or any part of the premises without obtaining the written consent of the landlord;

(d) that the tenant has continued misuse of the premises even after receipt of notice from the landlord to stop such misuse.” <https://www.mhc.tn.gov.in/judis>

14. On cumulative reading of the above two Sections, it is clear that in a case where tenancy has been created prior to the commencement of the Act, if no agreement was in existence, both landlord and tenant shall enter into an agreement in writing in respect of that tenancy, within a period of 575 days, from the date of commencement of the Act and in case if landlord and tenant have failed to enter into an agreement, the Rent Court, on an application, may order for recovery of possession.

15. In the case on hand, admittedly, lease was created prior to the commencement of the Act between the petitioner and respondent, as landlord and tenant, in respect of schedule of property. However, there was no written agreement, thereby, both the parties are required to enter into an agreement in writing, within 575 days, from the date of commencement of the Act. The respondent

being the landlord has addressed a notice, dated 13/9/2021, asking the petitioner to come forward and execute the lease agreement, as required, under Section 4 (2) r/w. Section 21 (2) (a) of the Act, however, according to the respondent, the petitioner has not come forward to execute the lease agreement.

16. There is no dispute that earlier to commencement of the Act, the <https://www.mhc.tn.gov.in/judis> petitioner/tenant used to pay Rs.10,800/- p.m., as a rent, on which Rs.6,000/- was being paid by way of cheque and Rs.4,800/- by way of cash. It is the contention of the petitioner that he was always ready to execute lease agreement, however, it could not be executed as the respondent/landlord has demanded exorbitant rent of Rs.25,000/- p.m. thereby, the petitioner/tenant can be found fault and that he can resist the eviction sought by landlord on the ground that lease agreement could not be extended under Section 4 (2) r/w. 21 (2) (a) of the Act.

17. Section 4 (2) r/w. 21 (2) (a) of the Act also mandates that the landlord and tenant shall enter into an agreement in writing. However, the steps to be followed for such entering into an agreement have not been mentioned in the Act. There could be a situation where landlord could have demanded exorbitant rent which is not acceptable to the tenant. There can also another situation where even though the landlord demands reasonable and fair rent, still the tenant may not be coming forward to execute the agreement demanding less than the fair rent. Whenever the landlord and tenant negotiate for fixation of rent, the landlord quotes the rent of his/her choice and in case, if the rent quoted by the landlord is agreeable to the tenant, he would accept and then <https://www.mhc.tn.gov.in/judis> agreement will be entered into. In case, if the rent quoted by the landlord is not acceptable to the tenant, he would either negotiate with the landlord for reducing the rent quoted or he would decline to continue as a tenant. Therefore, mostly in all the cases of this nature, the choice will be of the landlord to quote the rent. There is no record whether either the petitioner or the respondent have tried to negotiate or negotiated for reaching the consensus in respect of quantum of rent. In case, if the rent to the said premises was enhanced long ago and if the fair rent compared to the properties that are similarly placed also fetches Rs.25,000/- p.m., then demand of the landlord for Rs.25,000/- p.m., as a rent is not exorbitant. The quantum of rent quoted by the landlord depends upon the location of property, extent of property, the purpose for which premises is taken on lease, financial capacity of the parties and understanding between the parties, negotiation skills of the parties etc. Therefore, merely because the landlord has demanded rent of Rs.25,000/- per month, it cannot be concluded that the landlord has demanded exorbitant rent. It all depends upon the facts and circumstances of each and every case. What all required under Section 4 (2) of the Act is the landlord and tenant shall enter into an agreement into writing in respect of the tenancy, failing which landlord can initiate steps for evicting the <https://www.mhc.tn.gov.in/judis> tenant. Therefore, the contention of the pet/tenant that since respondent/landlord allegedly demanded exorbitant rent, the respondent/landlord cannot invoke Section 4(2) r/w. 21(2) of the Act is not convincing.

18. It is further submitted by the learned counsel for the petitioner that since Section 4 (2) of the Act refers to only the tenancy existing between the landlord and tenant, prior to commencement of the Act and thereby the landlord and tenant were expected to execute written agreement in respect of

"that" tenancy whereunder the petitioner was paying Rs.10,800/- p.m., along with the existing terms, if any, and not anything more or anything less.

19. Learned counsel for the petitioner has cited an authority decided between RAMESH SALUNKHE Vs. PRAMILA JAIN (C.R.P.NPD No.1996 of 2021) wherein at paragraph No.20, it has been held as follows:-

“20. The answer to the question is clearly indicated in section 4 (2) of the TNRRRLT Act, 2017. Section 4 (2) of the TNRRRLT Act, 2017 <https://www.mhc.tn.gov.in/judis> requires the landlord and tenant to enter into an agreement in writing i.e., tenancy agreement with regard to that tenancy. "That tenancy"

means the tenancy created before the commencement of the Act. Therefore, the respondent cannot unilaterally fix the monthly rent Rs.15,000/- to the petitioner as the tenancy agreement should only refer the terms that were existing prior to the commencement of this Act. In the case before hand, the rent was paid at Rs.1500/-per month before the commencement of TNRRRLT Act, and therefore, the unilateral demand made by the respondent to execute a tenancy agreement on a monthly rent of Rs.15,000/- per month is contrary to the legal requirement under Section 4(2) of the TNRRRLT Act, 2017. However, both the Courts below on misreading of the provisions, had found that the landlord is entitled to fix the rent unilaterally and the tenant has no option <https://www.mhc.tn.gov.in/judis> except to enter into a tenancy agreement, even it is unreasonable claim. That is not proper and not on the basis of correct reading of the legal provisions and the scope of the act. "The new Law aims to regulate the rent as per the terms and conditions of the agreement to be entered into between the owner of the premises and the tenant. It also aims to balance the rights and responsibilities of the landlord and the tenant and provide regulation of the rent as per the agreement.”

20. On a careful perusal of 4 (2) of the Act, it is clear that if the intention of the legislature is to compel both the parties to reduce the oral lease, existing prior to the commencement of Act into writing within the time limit, the legislature should have clearly mentioned, in unequivocal terms in the Act that landlord and tenant shall enter into lease agreement only in respect of the terms that were existing prior to the commencement of the Act and that either that landlord or tenant shall not be permitted to demand for inclusion of any of the terms other than those were existing <https://www.mhc.tn.gov.in/judis> prior to commencement of the Act.

21. On going through the proviso, Section 4 (2) of the Act, it is crystal clear that legislature has not given any scope to interpret in such a way that if the landlord is responsible for not entering into the lease agreement, then, landlord shall not seek for eviction under Section 20 (2)

(a) of the Act. There should have been some mechanism in respect of fixation of rent, if any dead lock between the tenant and landlord, but the Act does not create any such mechanism. However, the Act is silent as to what to be done, in case, if there is a dead lock between the landlord and tenant

in arriving at a consensus, in respect of quantum of rent.

22. One of the objectives of new Act is that since earlier Act (The Madras Buildings (Lease and Rent Control) Act, 1960 (Madras Act 18 of 1960), has created lot of vested interest against the landlord on account of which, supply and growth of rental housing market has been clearly affected which lead to the growth of slums and that new New Act is aims to regulate the rent, as per the terms and conditions of the agreement to balance the rights and responsibilities of the landlord and tenant.

23. Therefore, main thrust in enacting new law is to eliminate a <https://www.mhc.tn.gov.in/judis> situation where lot of vested interest is created against the landlord. That is the reason for giving a right to landlord under Section 4 (2) r/w. 21 (2)

(a) of the Act to seek for eviction on the ground of non-execution of registered lease deed irrespective of the fact as to who is responsible for not entering into lease deed and that the landlord will take a call as to how much rent that the tenant has to pay. Similarly though there is a mechanism under the Act for fixation of the fair rent, there is no such mechanism prescribed to fix the fair rent prior to entering into the lease agreement, when a dead lock occurs.

24. Learned counsel for the respondent/landlord submitted that the decision rendered by this Court in RAMESH SALUNKHE Vs. PRAMILA JAIN (CRP NPD No.1996 of 2021), cannot be considered, as this Court in B.A.CHANDRASHEKARA SETTY Vs. SUCHARITA GUNASEKARAN (C.R.P.No.1238 of 2022) has ruled that once the landlord takes a decision not to extend the tenancy, the landlord cannot be compelled to execute the lease deed. This interpretation is contrary to the view taken by this Court in RAMESH SALUNKHE Vs. PRAMILA JAIN (CRP NPD No.1996 of 2021).

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

25. In B.A.CHANDRASHEKARA SETTY Vs. SUCHARITA GUNASEKARAN, C.R.P.No.1238 of 2022 dated 10/8/2022, at paragraph Nos.14 and 15, it is observed that:-

14.In the decision in the case of Ramesh Salunkhe (cited supra), the relevant paragraph is extracted hereunder:

“21. The next aspect is that the tenancy agreement stipulated under Section 4 (2) of the TNRRRLT Act, 2017 can be executed within a period of 575 days from the date of commencement of the Act. This Act came into force and commenced from 22.02.2019. In that case, the petitioner still has time to enter into the tenancy agreement with the respondent. But the petition was filed within a period of 575 days on 01.07.2019 and it is a premature petition. Both the Courts below have misconstrued this 575 days and the learned Rent Controller found that this <https://www.mhc.tn.gov.in/judis> period relates only to the period for entering a tenancy agreement and not for approaching the Rent Court for termination, once there is a failure to enter into the agreement.

22. In the case on hand, the petitioner has not refused to enter into the tenancy agreement with the respondent. He is prepared to enter into the tenancy agreement with the respondent as per the existing terms. That is what is required under Section 4 (2) of the TNRRRLT Act, 2017. Without entering into the meaningful discussion with the petitioner, the respondent rushed to the Court, when there is no express refusal on the part of the petitioner to enter into a tenancy agreement, of course with the existing terms. In fact, it is the respondent, who shut the door once for all by categorically <https://www.mhc.tn.gov.in/judis> saying in her letter in Exhibit P3 that she does not want any communication or exchange of letters from the petitioner regarding the rental agreement.”

15. In the said case, the tenant was prepared to execute the tenancy agreement with the landlady.

But, the landlady, without giving reasonable time, rushed to the Court by misusing the provision. But, in the case on hand, the landlady did not want to continue the tenancy with the tenant for certain valid reasons. In fact, the revision petitioner/tenant has taken a stand that he does not accept the title of the respondent/landlady and hence, there is no question of entering into a tenancy agreement with her.”

26. In case, if the interpretation of this Court in the decision rendered by this Court in RAMESH SALUNKHE Vs. PRAMILA JAIN (CRP NPD No.1996 of 2021) is accepted, it will again takes back to the situation prior to commencement of the new Act. In case, if the tenant is allowed to resist the application for eviction under Section 4 (2) r/w. 21 <https://www.mhc.tn.gov.in/judis> (2) (a) of the Act on the ground that landlord has not cooperated for execution of tenancy, then, Section 4 (2) r/w. 20 (2) (a) of the Act will become redundant, thereby, the landlord will not be in a position to demand the tenant to execute the lease agreement.

27. The intention of the legislature is to see that tenants are evicted, if there is no lease agreement to resolve the dead lock between the landlord and tenant in respect of quantum of rent, Section 4(2) shall be interpreted in such a way in its true letter and spirit. When the intention of new legislation is to balance the rights and responsibilities of the landlord and tenant, Section 4(2) of the Act cannot be interpreted to benefit the tenants.

28. Therefore, this Court is of the view that legislature did not consciously create any mechanism to resolve the dispute whenever there arises a dead lock in respect of execution of lease agreement. Legislature is also conscious that in case, if lease agreement is not executed for whatever may be the reason, the landlord can initiate the proceedings for eviction against the tenants. The legislature must have thought that it is ultimately the call of the landlord and that the landlord shall not be under the mercy of the tenants, in deciding the terms of the lease. <https://www.mhc.tn.gov.in/judis>

29. Considering the discussion above, this Court is of the opinion that since registered lease agreement has not been executed between the petitioner and respondent, as required under Section 4 (2) of the Act, irrespective of the reason for non execution of such registered lease deed, the

respondent/landlord has got a right to terminate the tenancy under Section 4 (2) (a) of the Act and consequently, is entitled to seek for eviction under Section 21 (2) (a) of the Act. This Court is therefore in agreement with the conclusion of both Rent Court and also Tribunal in R.L.T.O.P.No.117 of 2022 and R.L.T.A.No.107 of 2022.

30. However, since the decision rendered by the co-equal Bench of this Court in RAMESH SALUNKHE (cited supra) is to the effect that the landlord cannot invoke eviction of tenant under Section 4(2) r/w. 20(2)(a) of the Act in case if the agreement could not be executed on account of demand of exorbitant rent by the landlord and that the other Bench of this Court in B.A.CHANDRASHEKARA SETTY (cited supra) has observed that the landlord cannot be compelled to execute the lease deed after the new Act came into force when the landlord decides not to extend the tenancy and that in the case on hand, this Bench is of the <https://www.mhc.tn.gov.in/judis> opinion that irrespective of who is responsible for non-execution of lease agreement the landlord has got a right to seek for eviction under Section 4(2) r/w. 21 (2) (a) of the Act, the matter requires to be referred to the Division Bench in order to resolve as to whether Section 4(2) r/w. 21 (2)

(a) can be interpreted in such a way that irrespective of the fact as to who is responsible for non-execution of the lease agreement the landlord can invoke Section 4(2) r/w. 21 (2) (a) of the Act, and that the tenant cannot resist the same on any ground including the landlord has demanded exorbitant rent.

31. Considering the discussion made above, this Civil Revision Petition is disposed of, by referring the issue to the Division Bench in respect of interpretation of Section 4 (2) r/w. 21 (2) (a) of the Act to the facts of the case. As per the records, during the pendency of this revision petition, the petitioner/tenant continued to be in the possession of the schedule of property. Since this Court is referring this case to the Division Bench, the petitioner/tenant shall be permitted to continue in the schedule of property until further orders.

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

32. Registry is directed to place these orders before the Hon'ble Chief Justice for referring the same to the Hon'ble Division Bench. No costs.

30/6/2023 mvs.

Dr.D.NAGARJUN,J Today, this matter has come up under the caption “For Being Mentioned” at the instance of this Court.

2. While considering this Civil Revision Petition for disposal, on 30/6/2023, this Court has come to the conclusion to refer the Civil Revision Petition to the Division Bench in respect of interpretation of Section 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019.

3. However, while typing the first sentence of paragraph 31, it has been inadvertently typed as “Civil Revision is disposed of”, and in <https://www.mhc.tn.gov.in/judis> paragraph No.32, as “No costs”. Hence, the first sentence of paragraph 31 and last sentence of paragraph No.32 of the judgment have to be read as under:-

“31. Considering the discussion made above, this Court is inclined to refer this C.R.P to the Division Bench in respect of interpretation of Section 4 (2) r/w. 21 (2) (a) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenant Rules, 2019.

32. Registry is directed to place the order before My Lord The Hon'ble Chief Justice, for referring the same to the Hon'ble Division Bench.” 11/1/2024 mvs.

Note: Registry is directed to issue amended copy to the parties. <https://www.mhc.tn.gov.in/judis> Index: Yes/No Neutral Citation: Yes/No To III Additional City Civil Court, Chennai <https://www.mhc.tn.gov.in/judis> Dr.D.NAGARJUN,J mvs.

Pre-delivery order in 30/6/2023 <https://www.mhc.tn.gov.in/judis>