

IN THE IV ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: J. Chandran,

IV Additional Judge

This Wednesday, the 21st day of February 2024.

I.A.No.4 of 2023

in

Original Suit No.1976 of 2023

CNR No.TNCH01-009054-2023

M/s. Sri Venkata Ramana Travels

...Petitioner/Defendant

Rep. by its Proprietor

Mr.Sri Medikonda Ramakrishna

New Nos.5 & 7 (Old Nos.3&4),

Ground Floor, Raghaviah Road

T.Nagar, Chennai.

/versus/

Mrs. N. Vijayalakshmi

..Respondent/plaintiff

Rep.by her Power of Attorney

Mr.N.Parthasarathy

No.15, Jagadeeswaran Street,

T.Nagar, Chennai.

This petition came up before me for final hearing on 13.12.2023 in the presence of M/s.E.Vinoth Kumar Counsel appearing for the petitioner /defendant and of M/s.N.Premkumar, R.Prasanna Vineeth Durai and

M.Chinnathambi Counsels appearing for the respondent/plaintiff, upon hearing the arguments from the counsels for both side, upon perusing the entire records of this case and having stood over for consideration till this day, this Court passed the following

ORDER

This petition has been filed by the petitioner/defendant to permit the petitioner to deposit the monthly rent of Rs.20,000/- from August 2023 into credit of this Court under Section 151 of CPC.

01. The averments found in the affidavit filed along with the petition are as follows:

The petitioner is a tenant under the respondent in respect of the suit property and the property was taken on rent for his non residential purpose to run a travels under the name and style of Sri Venkata Ramana Travels but there is no written lease agreement between them. It is false to state that the respondent has taken the premises for temporary measure and he intended to vacate as soon as he got the alternative accommodation and by believing such assurance and promise the suit property has been let out to the petitioner. The petitioner do not know the eviction proceedings filed by the respondent against

the other tenants of the suit property and this petitioner is not a party in those proceedings and he never received any notice in the above said petition.

02. The petitioner never fell due of any monthly rent to the respondent and the alleged arrears of rents mentioned in the plaint is nothing but created story for the purpose of the main suit with an intention to show the petitioner as a willful defaulter. The petitioner was very regular in payment of monthly rents and he never committed any willful default except for the period of Corona Pandemic situation. He is very regular in payment of rent and he paid the rents upto July 2023. When the petitioner tried to pay the monthly rent of August 2023, the respondent failed to receive the same and refused to receive the rent and demanded to vacate the suit property. As the respondent had already filed the present suit this petitioner had filed this petition to deposit the monthly rents to the credit of this Court to show his bonafides. As the respondent has not committed any default in payment of monthly rents the question of attachment before the Judgment of the properties either movable or immovable of the petitioner does not arise.

03. The petitioner is doing transport business for a long time and he owned several buses in his business in his firm name the bus claimed by the respondent to be attached in another application has been hypothecated to Kusalava Finance Limited, Vijayawada on 08.04.2022 itself. The petitioner is always ready and willing to file an affidavit of undertaking by stating that he will not transfer the petition schedule bus till the disposal of the main suit as directed by this Court. As the suit is not maintainable the question of furnishing security does not arise as there is no arrears of rent. The respondent has not issued any demand notice for the alleged arrears of rent till 2023. When the respondent has alleged that the petitioner has not paid the rent from April 2022, why she is keeping silence for a long period has not been explained by the respondent. Since the petitioner is paying the rent regularly till July 2023 the respondent has not sent any demand notice for such a long period of time. The respondent has willfully refused to receive the rent. The petitioner is constrained to file this petition prays to permit him to deposit the monthly rent of Rs.20,000/- from August 2023 before this Court. If this petition is not allowed the petitioner will be put into great hardship and hence he prays for allowing the petition.

04. The averments found in the counter affidavit filed by the respondent are as follows:

The petitioner became a tenant under the respondent in respect of the shop portion in the ground floor of the suit property. The tenancy has been let out for non residential use for the purpose of running travels under the name and style of M/s.Sri Venkata Ramana Travels. Due to some reference of plaintiff's husband's friend the tenancy premises had been let out to the petitioner on temporary measure as they intended to vacate as soon as they got the alternative accommodation. Believing such assurance and promise the respondent had let the tenancy premises to the petitioner and no written rental/tenancy agreement has been entered into between them. The monthly rent was fixed at the inception of the tenancy at Rs.15,000/- per month exclusive of electricity consumption charges and the tenancy is reckoned according to English Calender Month and apart from that the petitioner had paid a sum of Rs.1,50,000/- towards advance cum security deposit. From the year 2018, the rent for the suit property has been enhanced to Rs.20,000/- excluding the electricity consumption charges. Eversince the inception of tenancy the petitioner is not regular in payment of monthly rent and he has been paying the rent belatedly and the same was received by the respondent on behalf of the plaintiff under protest.

05. The respondent had initiated eviction proceedings against the other tenants who were occupied their shop portions on the ground of demolition and reconstruction. Some of the tenants have vacated on their own and some of them were vacated through Court of law by other eviction proceedings. The Rent Control cases pertaining to the demolition and reconstruction has consequently reached is finality in CRP.Nos.3407, 3409, 3410, 3411 and 3467 of 2022 by a common order dated 09.12.2022 by which an order of eviction had been confirmed by the Hon'ble High Court, Madras. The petitioner had also given a categorical undertaking deed dated 18.01.2014 in writing by stating that they have agreed and assured to vacate the shop portion under their occupation as and when they require the same portion while the work of demolition and reconstruction which has also been marked as an exhibit in the above said eviction proceedings. The entire building needs immediate demolition and reconstruction and for which the respondent had already started the progress and knowing fully about all such progress the petitioner is now with oblique motive taking undue advantage by deliberately vacating the suit property as promised by him, and such an ill motivated attitude of the petitioner is nothing but to harass the respondent without any justifiable cause.

06. The petitioner has not paid the monthly rent for the huge period from April 2020 onwards at the rate of Rs.20,000/- per month and he had lastly paid the rent for the month of February 2020, on 10.03.2020 and he has paid the rent for the month of March 2020 only in the month of August 2020 that is on 20.08.2020. Prior to which the petitioner had paid the rent by way of cheques deposited through Bank which has reflected in the bank statement of the respondent. From April 2020 the petitioner has not paid the rent for the suit premises and hence the petitioner is due and liable to pay a sum of Rs.6,80,000/- towards the rent accumulated from April 2020 to January 2023 at the rate of Rs.20,000/- per month as on date of filing the suit. The petitioner has simply squatting on the property without complying with his mandatory duty to pay the huge arrears of rent. The petitioner is a chronic willful habitual defaulter in payment of monthly rents. Hence the petitioner is liable to be evicted from the suit property and he is not entitled to contest the proceedings. The respondent has filed two documents namely bank statement issued by the Canara Bank which would clearly establish the fact that rent details whatever paid by the petitioner in respect of the suit property to the respondent. The petitioner has falsely and frivolously stated that they have paid the rents upto July 2023 which is nothing but an utter falsehood and there is no iota of truth in it. No prudent person would pay such monthly rents and the huge sum of

Rs.20,000/- per month without having proper proof or receipts and more particularly after the suit has been filed. As the petitioner has claimed that he has paid the rents upto July 2023, it is for him to prove and substantiate the same with plausible documentary evidence in the manner known to law.

07. Even prior to the filing of the suit the respondent had issued a lawyer notice dated 9.2.2023 which had been duly acknowledged by the petitioner at both the address on 10.02.2023 and 15.02.2023 and inspite of which the petitioner has neither complied with the demand made therein nor sent any reply for the same. This would clearly proves that the petitioner has admitted his liability but willfully failed and neglected to settle the arrears of rent as stated above. It is not within the knowledge of this respondent that the bus mentioned in the accompanying petition in a petition filed for attachment before judgment has been hypothecated to Kusalava Finance Limited, Vijayawada on 08.04.2022 itself. There is no bar or restriction under the law to seek for an order of attachment even the subject property either movable or immovable under hypothecation or mortgage. The action of second charge over the subject property is always open if the alleged contention of hypothecation by the petitioner claimed to be true. It is futile to contend that when the arrears of rent from the petitioner side is for a longer period, the respondent has not issued any

demand notice seeking for the same. It is upto the respondent to make a claim of arrears of rent or filing the suit within the statutory period of 3 years. The allegations made in the affidavit are clearly concocted, self created and also an after thought one for the purpose of filing the frivolous petition.

08. As on date the petitioner/defendant is due and liable to pay the arrears of rent for the period from April 2020 to September 2023 at the rate of Rs.20,000/- per month which nearly comes to Rs.8,40,000/-. Hence this Court may please to direct the petitioner/defendant to pay directly the respondent the total arrears of rent at Rs.8,40,000/-. The petitioner is not entitled to contest the suit without paying the entire arrears of rent as stated above. The respondent is ready to receive the above said arrears of rent at Rs.8,40,000/-without prejudice to their right to pursue with the suit with respect to the relief sought for in the same. This application is wholly devoid of merits and bonafides and the same is liable to be dismissed.

09. Point for consideration:

Whether this petition filed to deposit the monthly rent of Rs.20,000/- from August 2023 into the credit of this Court is to be allowed or not, is the question to be decided in this petition?

10. No document was marked and no oral evidence was adduced by either side for this petition.

11. To the point:-

This petition has been filed by the petitioner/defendant to permit him to deposit the monthly rent of Rs.20,000/- from August 2023 into the credit of the suit. It is an admitted fact that the petitioner is a tenant under the respondent in one portion of the premises of the building. It is the case of the petitioner that he had paid the monthly rent of Rs.20,000/- to the respondent upto July 2023. On the other hand, the respondent has claimed that the petitioner is in arrears of rent from April 2020 onwards. The petitioner has not produced any documentary evidence to prove that he had paid the rent from April 2020 to July 2023 which is the matter can be decided during the course of trial. The suit has been filed for the recovery of portion as well as for the recovery of the said amount which was said to be in due for the period from April 2020 till July 2023. As it is the triable issue in payment of rent or non payment of rent for the said period which is to be adjudicated only at the time of trial which needs oral as well as documentary evidence. Admittedly, the petitioner being the tenant has claimed that he has to pay the rent from the month of August 2023.

12. The learned counsel appearing for the respondent has submitted that previously the petitioner used to deposit the rent into the account of the respondent and without prejudice to their case they are ready to receive the rent either in person or the same may be deposited into the account of the respondent. When the respondent is ready and willing to receive the rent it is the bounden duty of the petitioner either to pay the rent in person to the landlady or he has to deposit the rent into the account of the respondent without any default till the dispute has been finally decided by the Court. Hence this Court finds that without ordering or permitting the petitioner to deposit the rent into the Court, the petitioner may be directed to deposit the rent into the Bank account of the respondent/landlady on or before 5th of every succeeding English Calender Month till the disposal of the suit and the proof for the payment of the same is to be filed into the Court at the appropriate time. That kind of qualified order can be passed to meet the ends of justice, otherwise the respondent will be put into further hardship. Considering the above stated circumstances and in the interest of justice this Court finds that this petition can be allowed with some condition and the point has been decided accordingly.

In the result, this petition is allowed to the extent by directing the petitioner to deposit the every month rent into the bank account of the respondent on or before the 5th of every succeeding English Calender Month,

failing which the respondent is entitled to claim interest for the defaulted amount at the rate of 12% per annum and the arrears of the rent amount for the period from August 2023 till January 2024 shall be deposited by the petitioner into the account of the respondent within a period of 15 days from this date; failing which the respondent is entitled to claim interest for the said amount at the rate of 12% per annum. The parties are directed to bear their own cost.

This Order has been dictated by me to the steno typist, transcribed and computerized by her, corrected and pronounced by me in the open Court on this Wednesday, the 21st day of February 2024.

IV Additional Judge,
IV Additional City Civil Court, Chennai.

List of witness examined and exhibit marked
on the side of the Petitioner:

Nil

List of witness examined and exhibit marked
on the side of the Respondent:

Nil

IV Additional Judge,
IV Additional City Civil Court, Chennai.