

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

**C.R.P.(NPD).Nos.2147 & 2148 of 2014
and M.P.Nos.1 & 1 of 2014**

Indian Bank,
Chennai - 14.

... Petitioner in both C.R.Ps

Vs.

Dewa Properties Ltd.,
(Formerly Spencer Estates Ltd.)
No.769, Anna Salai,
Chennai - 600 002.

... Respondent in both C.R.Ps

Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 against the order dated 30.04.2012 passed by the Appellate Authority, VIII Judge, Small Causes Court, Chennai in M.P.SR.Nos.7924 & 7923 of 2012 in R.C.A.Nos.1490 of 2004 & 607 of 2005 against the order dated 11.10.2011 in R.C.A.No.1490 of 2004 & 607 of 2005 against the order dated 20.08.2004 in R.C.O.P.No.1108 of 2001 on the file of the Rent Controller, XI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.Jayesh B.Dolia
(in both CRPs) for M/s.Aiyar and Dolia

For Respondent : Mr.Roshan Balasubramanian
(in both CRPs)

COMMON ORDER

C.R.P.(NPD).No.2147 of 2014 arises against the order passed in M.P.SR.No.7924 of 2012 in R.C.A.No.1490 of 2004 on the file of the Rent Control Appellate Authority, VIII Judge, Court of Small Causes, Chennai. C.R.P.(NPD).No.2148 of 2014 arises against the order passed in M.P.SR.No.7923 of 2012 in R.C.A.No.607 of 2005 on the file of the Rent Control Appellate Authority, VIII Judge, Court of Small Causes, Chennai. Both the Civil Revision Petitions were filed by the tenant.

2.The respondent/landlord filed R.C.O.P.No.1108 of 2001 for fixation of fair rent claiming Rs.2,06,323/- per month as fair rent.

3.It is not in dispute that the petitioner is in occupation of an extent of 18,434 sq.ft. The Rent Controller fixed the fair rent at Rs.99,729/-.

4.On the side of the petitioner/tenant, though six documents were marked, no oral evidence was let in by them. On the side of the respondent/landlord, three witnesses were examined and 26 documents, Exs.P1 to P26 were marked.

5.The Rent Controller, taking into consideration the oral and documentary evidences of both parties, fixed the fair rent at Rs.99,729/-. Aggrieved over the fixation of fair rent, the landlord preferred an appeal in R.C.A.No.607 of 2005 and the tenant preferred an appeal in R.C.A.No.1490 of 2004 on the file of the VIII Judge, Court of Small Causes, Chennai. The Rent Control Appellate Authority, by its common judgment dated 11.10.2011, allowed the appeal in R.C.A.No.607 of 2005 and directed the tenant to pay fair rent of Rs.3,61,596/- per month from the date of filing of the R.C.O.P. till March 2002 and fair rent of Rs.4,29,662/- per month from April 2002 to March 2003 and fair rent of Rs.4,60,538/- from April 2003 to July 2007 and fair rent of Rs.7,84,206/- per month for the period from August 2007 to till date. The Appellate Authority dismissed the appeal in R.C.A.No.1490 of 2004 filed by the tenant.

6.Mr.Roshan Balasubramanian, learned counsel appearing for the respondent/landlord submitted that the respondent/landlord is agreeable to receive a sum of Rs.3,61,596/- per month as fair rent from the date of filing of R.C.O.P.

7.Mr.Jayesh B.Dolia, learned counsel appearing for the petitioner/tenant also submitted that the fair rent should be fixed only in accordance with law.

8.At the outset itself, it could be seen that the order passed by the Rent Control Appellate Authority is liable to be modified for the reason that different fair rents cannot be fixed for different periods from the date of filing of the R.C.O.P. The fair rent should be fixed from the date of filing of the Original Petition and it cannot be fixed on slab basis. Though a sum of Rs.2,06,323/- was claimed by the respondent/landlord, the Rent Control Appellate Authority had fixed a sum of Rs.3,61,596/- from the date of filing of the R.C.O.P. to March 2002 based on Exs.P14 & P16 Sale Deeds. The Rent Control Appellate Authority fixed the value of land at Rs.4,167/- per sq.ft. and the value of the building as per PWD rate at Rs.57,95,248/-. The value of the land and building comes to Rs.4,60,53,788.18p. The plinth area occupied by the tenant is 18,434 sq.ft. The proportionate share of the land in occupation of the land in occupation of the tenant is 7,044.12 sq.ft. Therefore, the total value of the premises was taken as Rs.4,60,53,788.18p by the Rent Control Appellate Authority. The fixation of fair rent by the Rent Control Appellate Authority is just and proper. However, the Appellate Authority should not have increased the fair rent for the subsequent period.

9.The tenant filed an application in M.P.SR.No.7923 of 2012 in R.C.A.No.607 of 2005 to condone the delay of 125 days in filing the petition to recall the order dated 11.10.2011 passed in R.C.A.No.607 of 2005. The tenant also filed an application in M.P.SR.No.7924 of 2012 in R.C.A.No.1490 of 2004 to condone the delay of 125 days in filing the petition to recall the order dated 11.10.2011 in R.C.A.No.1490 of 2004. The Rent Control Appellate Authority rejected both the applications as not maintainable. Challenging the orders passed by the Rent Control Appellate Authority rejecting the applications as not maintainable, the tenant has filed the above Civil Revision Petitions. Since the judgment and decree passed by the Rent Control Appellate Authority in the Rent Control Appeals cannot be recalled at the instance of a party to the proceedings, the Rent Control Appellate Authority has rightly rejected the applications. I do not find any reason to interfere with the order passed by the Rent Control Appellate Authority in M.P.SR.Nos.7924 & 7923 of 2012.

10.Though the tenant has not challenged the judgment and decree passed in R.C.A.Nos.1490 of 2004 & 607 of 2005, since the respondent/ landlord had fairly agreed to receive the sum of Rs.3,61,596/- per month as fair rent from the date of filing of the R.C.O.P., the following order is

passed:

“Since the Rent Control Appellate Authority has rightly fixed the fair rent at Rs.3,61,596/-, I do not find any reason to interfere with the said finding. However, I set aside the other aspects of the order passed by the Rent Control Appellate Authority. Therefore, the fair rent for the petition premises shall be Rs.3,61,596/- from the date of filing of R.C.O.P. The other portion of the decree passed by the Rent Control Appellate Authority stands set aside.”

11. With this modification, both the Civil Revision Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
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30.11.2016
(1/2)

To

1.The VIII Judge,
Small Causes Court,
Chennai.

2.The XI Judge,
Small Causes Court,
Chennai.

M.DURAIWAMY,J.
va

**C.R.P.(NPD).Nos.2147 & 2148 of 2014
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