

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.4567 of 2014

Anand

...

Petitioner

Vs

Mrs.Syeda Zakia Sultana

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Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 196 against the common judgment and decretal orders dated 13.12.2013 made in RCA No.294 of 2010 passed by the learned Appellate Authority (VII Judge, Small Causes Court), Chennai confirming the fair and decretal common order passed by the learned Rent Controller (XV Small Causes Court), Chennai dated 23.12.2009 made in RCOP No.212 of 2008.

For Petitioner : Mr.K.S.Pandian

For Respondent : Mr.S.Balasubramanian

ORDER

This Civil Revision Petition is filed against the common judgment and decretal orders dated 13.12.2013 made in RCA

No.294 of 2010 passed by the learned Appellate Authority (VII Judge, Small Causes Court), Chennai confirming the fair and decreetal common order passed by the learned Rent Controller XV Small Causes, Chennai dated 23.12.2009 made in RCOP No.212 of 2008.

2. The petitioner is the tenant and the respondent is the landlady in RCOP No.212 of 2008 on the file of XV Small Causes Court, Chennai. The respondent filed the above RCOP against the petitioner for fixation of fair rent at Rs.7,267/- per month in respect of petition premises. According to the respondent, she is the owner of the building bearing Door No.120/304, Triplicane High Road, Chennai – 600 005. The petitioner is a tenant occupying a portion in the ground floor for non-residential purpose for running a tea stall on a monthly rent of Rs.250/-. The portion under the occupation of the petitioner is 129 sq.ft. in the ground floor. The portion is madras terraced and the age of the building is 90 years and it is a Type I building. The value of the land per ground is Rs.1,32,30,000/- and present rent paid by the petitioner is very low. The petition premises is located in a very busy high road cum commercial locality and it is situated in the heart of Triplicane High Road. The petition premises is very near to Bus stops, Post Office,

Hospitals, Schools, Police Station, Markets, Cinema Theatres, Banks, Big Mosque and Shopping Arcades, etc. and hence prayed for fixation of fair rent at Rs.7,267/- per month.

3. The petitioner filed counter and denied all the averments made by the respondent. According to the petitioner, he is running a Tea stall. The petition premises is not in good condition and is in a dilapidated condition. The age of the building is more than 100 years old and it is made up of lime and mud only. There is no basic amenities like water, toilet, etc. and the building is very weak and there is leakage of water during rainy season. It is not in commercial locality. The value of the land is only Rs.40,00,000/- per ground. The petitioner is ready and willing to pay a sum of Rs.1,500/- per month as rent and if the respondent is not acceptable for the said amount, he is agreeable to vacate the petition premises within six months.

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4. The present RCOP was taken up for hearing alongwith other two RCOPs. Before the learned Rent Controller, the respondent examined her Engineer as PW1 and marked thirteen documents as Exs.P1 to P13. On the side of the petitioner and other two tenants, one Anbarasan, Engineer was examined as RW1

and marked two documents as Exs.R1 to R2. The learned Rent Controller, considering the pleadings, oral and documentary evidence, type, age of the building, amenities, cost of construction, plinth area, land value and schedule I amenities, fixed the fair rent at Rs.3,255/- per month.

5. Challenging the said order dated 23.12.2009 made in RCOP No.212 of 2008, the petitioner filed RCA Nos.294 of 2010 with regard to age & type of the building, basic amenities and land value and the respondent filed RCA No.146 of 2010 on the ground of basic amenities, plinth area and apportionment of site area before the VII Judge, Small Causes Court, Chennai. The learned Appellate Authority, independently considering the materials on record and the order of the learned Rent Controller, passed a common judgment dismissing all the RCOPs confirming the order of the Rent Controller by fixing the fair rent at Rs.3,255/- per month.

6. Against the decree and common judgment dated 13.12.2013 made in RCA No.294 of 2010 passed by the learned Appellate Authority confirming the fair and decretal common order passed by the learned Rent Controller, dated 23.12.2009 made in RCOP No.212 of 2008, the present Civil Revision Petition is filed by

the petitioner/tenant.

7. The learned counsel for the petitioner contended that both the courts below erred in fixing the fair rent at Rs.3,255/- per month, without following the formula as contemplated under the law. The courts below failed to appreciate the facts and figures referred to in the counter statement to disprove the exorbitant rent claimed by the landlady. The courts below erred in holding that the age of the building is 90 years and holding the type of building as Type I and ought to have fixed the age of the building as 100 years and type of building as Type II. Both the courts below failed to appreciate properly regarding amenities, out of three basic amenities, only electricity is available for which 5% alone could be granted as per Act but calculating 7.5% for basic amenities is absolutely incorrect. Both the courts ought not to have considered the value of the land at Rs.1,23,84,615/- per ground since the analysis statement taken as per the sample sale deed Ex.P11 is executed in the year 2007.

8. Per contra, the learned counsel appearing for the respondent contended that the courts below, considering the documentary evidence as well as oral evidence, have rightly fixed

the value of the land at Rs.1,23,84,615/- as per Ex.P11. He further contended that the courts below erred in taking only 15% appreciation as against the 20% appreciation based on Ex.P12.

9. Heard the learned counsel appearing for the petitioner as well as respondent and perused the materials available on record.

10. From the materials available on record, order of the learned Rent Controller and the judgment of the learned Appellate Authority, it is seen that both the courts below have rightly fixed the cost of construction of the land at Rs.393/- per sq.ft., following the formula as contemplated under the law. The Courts below have fixed the age of the building as 90 years, considering the report of Engineer in Ex.R2. As far as basic amenities are concerned, it has been stated by the respondent that all the three basic amenities i.e. water supply, drainage and electricity are available whereas the petitioner has stated that only electricity is available, that too installed by the petitioner. There is no acceptable evidence on the side of the petitioner to the effect that he installed the electricity connection. In view of the said circumstances, awarding of 7.5% towards basic amenities is reasonable.

11. In so far as the plinth area is concerned, the respondent's engineer has stated that the plinth area is 129 sq.ft. whereas the respondent's engineer has stated that the plinth area is 120 sq.ft. Being the landlady, it is the duty of the respondent to file the sanctioned plan of the petition premises. In the absence of the said document, the Courts below have fixed the same as 120 sq.ft. which is reasonable. As far as the land value is concerned, the respondent has produced sale deed of the petition premises itself and marked the same as Ex.A11. The learned Rent Controller, considering Ex.A11 and Analysis report marked as Ex.A12, fixed the land value at Rs.1,23,84,615/-. The learned Appellate Authority, considering Exs.A11 and 12, confirmed the same. The Courts below have considered Exs.A11 and 12 in the proper perspective and arrived at the market value. The petitioner has not produced any document contra to the contentions of the respondent. The Courts below have considered all the facts and materials on record in the proper perspective and rightly fixed the fair rent at Rs.3,255/-. There is no perversity in the finding of facts by the courts below warranting interference by this Court.

12. In the result, this Civil Revision Petition is dismissed confirming the judgment and decreetal orders dated 13.12.2013 made in RCA No. 294 of 2010 confirming the fair and decreetal common order dated 23.12.2009 made in RCOP No.212 of 2008. No costs.

11.12.2017

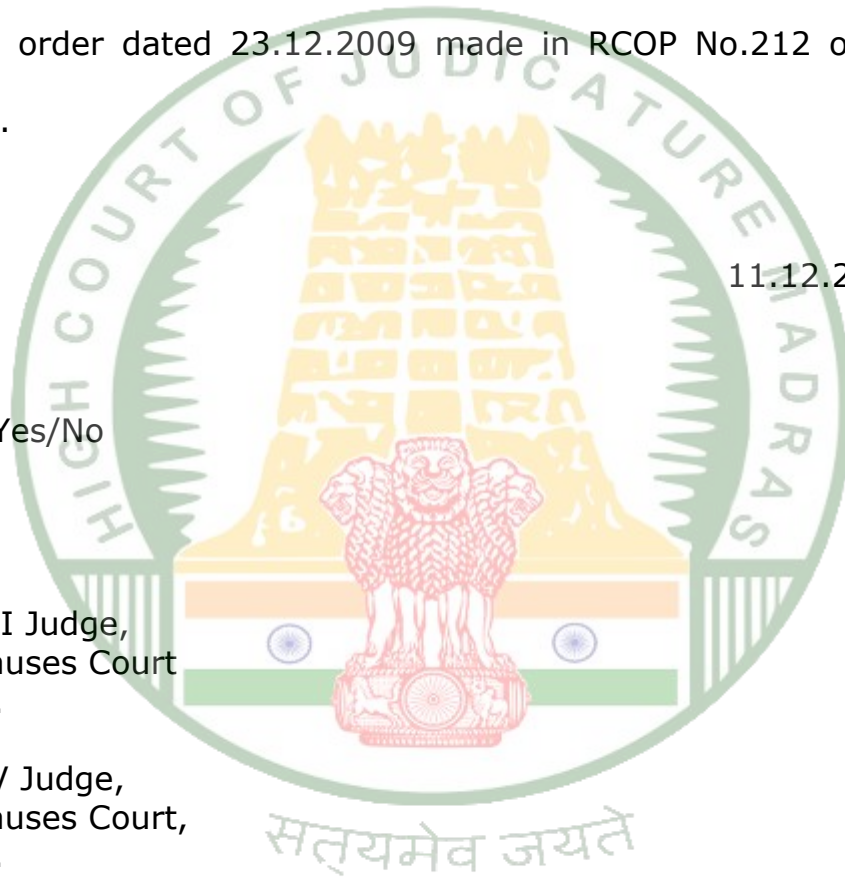
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Index : Yes/No

To

1.The VII Judge,
Small Causes Court
Chennai.

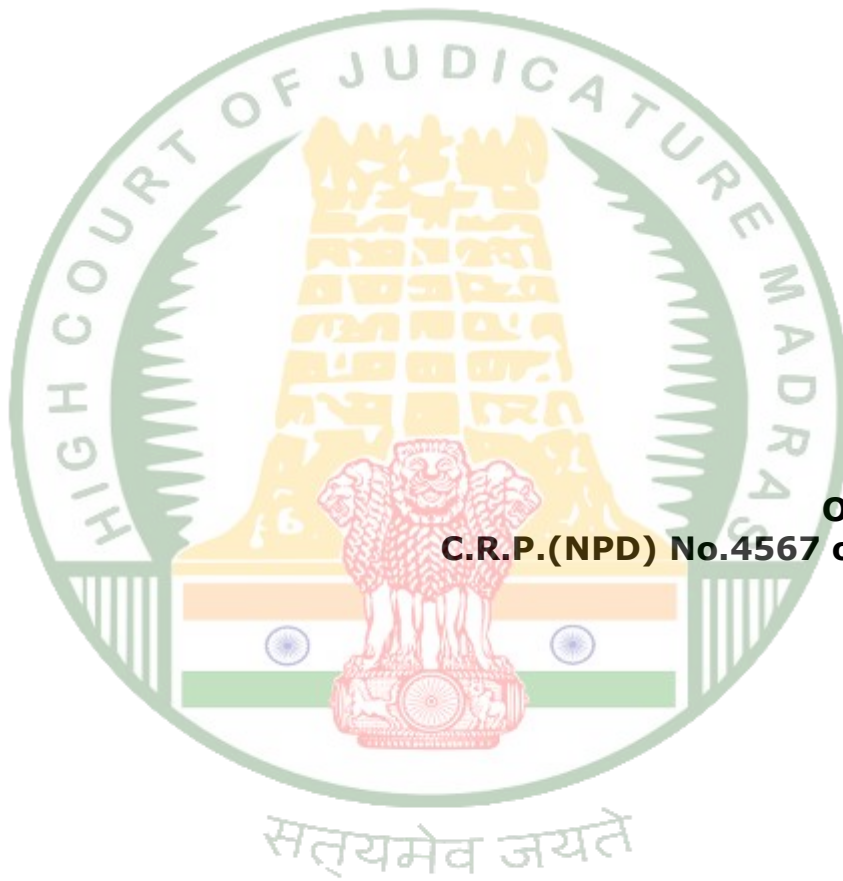
2.The XV Judge,
Small Causes Court,
Chennai.



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V.M.VELUMANI, J.

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**Order in
C.R.P.(NPD) No.4567 of 2014**

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