

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3392 of 2012 and
M.P.No.1 of 2012 and
Caveat No.3683 of 2012**

1.M/s.Fashion 'N' Gems
Rep. by its Partner K.M.Saleem
2.K.M.Saleem
3.Mumtaz Saleem ... Petitioners

Placab and Agencies Parivate Ltd.,
Rep. by its Managing Director
Mr.P.V.John ... Respondent

Vs.

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the order and decreetal order passed on 11.07.2012 in R.C.A.No.186 of 2009 against RCOP.No.976 of 1999 by the learned VII Court of Small Causes Court at Chennai, confirming the order and decreetal order passed in RCOP.No.976 of 1999 dated 03.02.2009 on the file of the learned XIII Small Causes Court at Chennai and dismissed the same.

For Petitioners : Mr.J.R.K.Bhavanantham
for M/s.Adaikala Arockiaraj

For Respondent : Mr.K.Ashok Kumar

ORDER

The tenant is the revision petitioner in this Civil Revision Petition challenging the order of the eviction on the ground of additional accommodation and willful default. It is the case of the respondent /land lord that they are running a hotel in name and style of "Hotel Ranjith" in the petition premise. The revision petitioners' partnership firm namely M/s. Fashion 'N' Gems entered into an agreement of license with the respondent herein, to take on license a portion in the southern corner in ground floor of about 550 Sq.ft in "Hotel Ranjith" building. The said agreement of license was dated 15.07.1975 and the monthly license fee was arrived at Rs.1,000/- and for amenities Rs.250/- per month. The said license was continued till 1985 and it was renewed by another agreement dated 01.08.1985. It was agreed by both parties in the said agreement that the revision petitioners will have to pay a daily license of Rs.51/- per day to the respondent/land lord and the petitioner also agreed to pay 5% of gross sales turnover of all articles as share of profit for Rs.15,000/- invested towards the

furnishing of the portion leased out to the tenant.

2. Thereafter on 17.10.1990 the revision petitioners/tenants entered into lease deed with the landlord wherein it is agreed to pay a sum of Rs.6,000/- per month as monthly rent and amenities charge. But after that the tenant was not regular in payment of rent and he paid rent in installments at his convenience in meager amounts. As on 31.03.1995 the rent of arrears remained Rs.88,390/-. Further he has not paid the rent for the period from April 1995 to March 1996, thereby the balance rental arrears accumulated to Rs.1,67,590/-. After repeated request and demand made by the landlord, the tenant paid Rs.1,00,000/- on 20.03.1997. The balance rental arrears due by the revision petitioner as on 31.01.1999 is Rs.1,34,400/-. Thus the tenant had committed willful default in not paying the rent for 15 months commencing from November 1997 to January 1999.

3. As stated above, in the hotel run by the respondent herein, the revision petitioner was given a portion of 550 Sq. ft on lease as early as 1975. At that time the respondent herein did not required the entire area and therefore he offered some place for the use of the revision petitioners to exhibit the articles for sale. Now the respondent herein

wanted the above said portion which is in occupation of the revision petitioners as additional accommodation for expansion of his hotel business. Hence the respondent herein filed eviction petition against the revision petitioners on the ground of Willful Default and Additional Accommodation.

4. Resisting the same, the revision petitioners have filed a detailed counter wherein it is contended that the present rent payable is Rs.6,000/- per month. The monthly rents were paid to the landlord either weekly, monthly or in lump sum as and when he required. The lease was originally for a period of 11 years with option to renew for further period. It is not correct to state that the tenant was not paying the rent from October 1990 and the arrears of rent up to November 1990 was at Rs.55,440/-. The claim towards arrears of rent made by the land lord from the tenant/revision petitioners in the absence of any materials devoid merits. Further the rents are to be collected in piece meal basis or by credits carried towards from M/s.Opal Inn or by Lump sum payments. Hence, the question of willful default does not arise. Since the land lord wanted further financial assistance, on 01.12.1997 a sum of Rs.50,000/- was paid by Mr.Saleem, partner of M/s.Opal Inn Pvt. Ltd., to Mr.Eaphen John's account. Various part payments have

also been effected as and when required by the respondent herein.

5.The revision petitioners/tenant further stated in the counter affidavit that it was agreed by the land lord that all pending issues including the settlement of dues outstanding and payable to the revision petitioner will be settled. The land lord is bound to account for the various transactions effected from time to time with due references to the amounts outstanding towards the consideration of shares. Regarding the claim for additional accommodation, the tenants stated that there is no need for any additional accommodation for the landlord and they are having more than sufficient space available to them to meet their requirements. Hence the question of eviction on the ground of additional accommodation does not arise. Further the revision petitioners/tenants have been carrying on business for more than 25 years and they established their trade name and good will. Hence the tenants prayed to dismiss the eviction petition.

6.On the side of the landlord one witness was examined and 6 documents were marked. On the side of the tenants one witness was examined and 39 documents were marked. Apart from that 6 documents were marked as Court documents. The Learned Rent

Controller after careful consideration of oral and documentary evidence adduced on either side was pleased to order eviction on both grounds by order and decree dated 03.02.2009. Aggrieved over the same the revision petitioners filed appeal in R.C.A.No.186 of 2009 before the VII Court of Small Causes at Chennai. The Learned Rent Control Appellate Authority was also pleased to confirmed the eviction order passed by the Learned Rent Controller by order dated 11.07.2012. Being aggrieved over the same, the revision petitioners have come up with this Civil Revision Petition.

7.I heard Mr.J.R.K.Bhavanantham for M/s.Adaikala Arockiaraj, learned counsel appearing for the petitioners and Mr.K.Ashok Kumar, learned counsel appearing for the respondent and the entire available material records are perused.

8.It is seen from the records that the revision petitioners took a portion of 550 Sq. ft. as lease from the respondent herein in the year 1975. The said portion is a part of the building attached with "Hotel Ranjith" run by the respondent herein. According to the landlord, the revision petitioners committed default in payment of rent and therefore they sent lawyer notice on 10.03.1999 calling upon the

tenants to pay the rental arrears to the tune of Rs.1,34,000/- from November 1997 to January 1999. The revision petitioners sent a reply on 13.04.1999 and sought time to give a detailed reply as they have to attend an urgent personal work.

9.It is the contention of the respondent/landlord that even after receipt of lawyer notice, the revision petitioners failed to make payment of rent and hence they committed willful default in payment of rent. Hence an eviction was sought for under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The respondent/landlord also sought for eviction on the ground of additional accommodation for expansion of his business and therefore the tenants are liable to be evicted under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after called as 'Act').

10.The Learned Counsel for the respondent/landlord has relied on the following Judgments to support his case:

The Hon'ble Supreme Court in the matter of
K.Nagarajan v. V.Subramanian and others reported in
2012 SCC Online Mad 2322, wherein it is held that:

"As such, it is crystal clear that non-payment of arrears even during the pendency of the proceedings would be fatal to the case of the tenant. But in this case, there is nothing to indicate that after filing of RCOP, any amount of rent was paid by the tenant to the landlord. As such, I could see no perversity or illegality in the orders passed by the Courts below. Accordingly, this Civil Revision Petition is dismissed".

This Court in the matter of **S.Gurumurthy v. N.Raman** in **C.R.P(NPD).No.619 of 2005**, wherein it was held that:

"In 2003-1-L.W.134 (cited supra), the Hon'ble Supreme Court considered the facts that the notice was given claiming rental arrears, the eviction petition was filed within a period of two months, money was not deposited by the tenant within the period of two months and the same was also withdrawn by the landlord within the two months period. But in the case on hand, the respondent/landlord issued notice on 10.02.2001 calling upon the tenant to vacate the premises and also to pay the rental arrears and to file R.C.O.P on 19.03.2001, i.e. within

the period of two months. But the RCOP was not only filed on the ground of willful default but also filed on the ground of requirement of the building bonafidely by the landlord. It is also not the case of the revision petitioner/tenant that he deposited the rental arrears of Rs.34,000/- as claimed in the notice dated 10.02.2001, within the period of two months. In such circumstances, I am not inclined to accept the contentions of the learned counsel for the revision petitioner in this regard."

11.It is seen from the records that pending disposal of the eviction petition the revision petitioners filed a suit against the respondent herein in O.S.No.6482 of 2000 before the Additional District Judge/ FTC V, Chennai for recovery of Rs.6,24,752.50/- due and payable, as against adjustments/deduction of future rents at Rs.6,000/- per month due and payable to the defendants as and from July 2000 till the date of judgment or decree and on settlement of dues of the decretal amount along with 9% per annum on the said sum outstanding. After keen contest the said suit was dismissed by Judgment dated 12.01.2004.

12. In the meantime, the respondent herein filed an application in M.P.No.327 of 2002 under Section 11(3) and 11(4) of the said Act to direct the tenants to pay the arrears of rent, failing which to surrender possession of the petition premises to the landlord. After enquiry an order was passed by the Learned Rent Controller in the above said 11(4) application on 12.09.2002 with a direction to the revision petitioners/tenants to pay a sum of Rs.3,10,000/- towards rental arrears on or before 10.10.2002 failing which eviction will be ordered. The revision petitioners/tenants failed to comply the conditional order made in M.P.No.327 of 2002 and filed appeal as against the same in R.C.A.No.828 of 2002 before the VII Court of Small Causes at Chennai and the same was also dismissed by order dated 06.02.2007 with a direction to the revision petitioners to pay the arrears of rent of Rs.3,18,000/- on or before 05.03.2007 to the landlord, failure to pay the arrears, all further proceedings of the R.C.O.P will be stopped and eviction will be ordered. सत्यमेव जयते

13. The respondents herein/landlord filed revision before this Court in C.R.P.No.1260 of 2007 challenging the order passed in the above R.C.A.No.828 of 2002. This Court by order dated 09.01.2008 passed the following order:

- a) The respondents shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of RCOP.No.976 of 1999 on the file of the Rent controller/XIII Judge, Small Causes Court, Chennai.
- b) The said sum of Rs.50,000/- shall be deposited by the respondents within a period of four weeks this date.
- c) The learned Rent Controller XIII Judge, Small Causes Court, Chennai is directed to dispose of RCOP No.976 of 1999 as expeditiously as possible, preferably on or before 30.04.2008.

14.It is noticed by this Court that the revision petitioners as against the dismissal of their suit filed appeal suit in A.S.No.901 of 2004 before this Court and by order dated 05.11.2009 this Court has dismissed the above appeal filed by the tenants.

15.At this juncture, it is to be borne in mind by this Court to the Judgment of the Hon'ble Apex Court reported in **2016 (2) CTC 292** in the matter of **Kasthuri Radhakrishnan & Others v. M. Chinnian & Another**, wherein it is held that "So far as the issue pertaining

to exercise of Revisional Jurisdiction of the High Court while hearing Revision Petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the constitutional Bench of this Court in *Hindustan Petroleum Corporation Limited v. Dilbahar Sing*, 20014 (3) MWN (Civil) 334 (SC) : 2014 (9) SCC 78. Justice R.M.Lodha, the learned Chief Justice speaking for the Bench held in para 43 thus: We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate Court/first appellate authority because on reappreciation of the evidence, its view is different from the Court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to

correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

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16.As per the above Judgment of the Hon'ble Apex Court, the revisional jurisdiction of the High Court is very limited. This Court is bound to follow the dictum laid down by the Hon'ble Supreme Court

and as per the above judgment a finding of fact recorded by the authorities below is according to law and does not suffer from any error of law and it is not open to this Court to correct, unless if the finding of facts recorded by the authority below, is perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of evidence is crossly erroneous.

17. Now coming to the case on hand, the revision petitioners' main contention is that respondent/landlord has not waited for 2 months after issuing the notice for filing of the case which is mandatory as per explanation Section 10(2)(i) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and therefore contended that the Courts below failed to take judicial note of the above said fact and referred the judgment reported in **2000 (1) CTC 742** in this regard. This Court has considered the above said issue raised by revision petitioner and it is stated in the proviso clause to section 10(2)(i) that the landlord should give a reasonable time to the tenant and a minimum 15 days time to be given to the tenant to pay the rent due. In this case on 10.03.1999 the landlord issued notice to the tenant to pay the rent. since the tenant failed to tender rent, the landlord filed

eviction petition only on 29.03.1999 and therefore, more than one month time was given to the tenant to pay the rent. Therefore the contention of the tenant in this regard is answered against him.

18.The other contention put forth by the revision petitioners is that the Courts below have not applied the test to find out whether the petition premises is bonafidely required for the respondent/landlord and eviction ordered on the ground of additional accommodation is not proper and the same is liable to be set aside.

19.The learned counsel for the revision petitioners has relied on the following Judgments in support of their case:

The Hon'ble Supreme Court in the matter of **B.Kandasamy Reddiar and others v. O. Gomathi Ammal** reported in **1998 (II) CTC 687**, wherein it is held that "Having heard the learned counsel for the appellants and the respondent we are of the view that the factual aspects of the case need not be gone into as these appeals must be allowed for the simple reason that in disposing of the revision petitions the High Court did not at all take into consideration the following proviso, which finds place under clause (e) of Section 10(3) and reads as under :-

“Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.”

Apart from the fact that while dealing with the question of eviction of a tenant on the ground of requirement of additional accommodation the consideration of the above proviso is mandatory, in the instant case it is all the more necessary in view of the admitted facts that the respondent has now taken possession of door No. 143, earlier occupied by Co-optex and that she has also initiated execution proceedings for eviction of the tenant of door No. 147A. As the mandatory requirement of the above quoted proviso has not at all been adverted to by the High Court in the light of the materials already on record and the above subsequent events we set aside the impugned judgment so far as it relates to the three appellants and remand the matter to it for fresh disposal of the three connected revision petitions in accordance with law and in the light of the observations made hereinbefore. Since the matter is long pending the High Court is requested to dispose of the above petitions as expeditiously as possible preferably within a period of six months from

the date of communication of this order. There shall be no order as to costs."

20. The Hon'ble Supreme Court in the matter of **S.Sundaram Pillai v. V.R.Pattabiraman** reported in **1985 1 AIR (SC) 582** held that:

"Thus, a consensus of the meaning of the words wilful default appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above."

"The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an

exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.”

21.The Hon’ble High Court of Madras in the case of ***Sivanraj v. Essakimuthu*** reported in ***1999(II) CTC 215***, wherein it is held that:

“Wilful default. Land lord obtaining rental advance of more than one month rent. Advance amount exceeding one month rent is liable to be adjusted towards further rent due. Realising this, land lord sent excess advance amount to tenant by bank draft. Tenant returned draft. Land lord is bound to adjust amount of advance towards rent due from tenant and in such situation, tenant cannot be held guilty of wilful default. No eviction can be ordered on ground of wilful default in payment of rent.”

22.The Supreme Court further in the matter of ***C.Chandramohan v. Sengottaiyan (Dead) by Lrs. and Others*** reported in ***2000 (I) CTC 239***, wherein it is held that “Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10 (2) (vii)-

Denial of title. Tenant should renounce his character as tenant and set up title or right inconsistent with relationship of land lord and tenant either in himself or in third person. Tenant's assertion that landlord is co-owner does not amount to denial of title unless tenant renounces his relationship as tenant in case of derivative title unless tenant renounces his relationship as tenant in case of derivative title of landlord and there was no notice of transfer of title in favour of landlord or attornment of tenancy.

23. The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10 (2) (vii)- Denial of title, meaning of. Title to premises derived under release deed executed by father. Tenants were inducted prior to execution of release deed. Son not intimating tenants about becoming owner by virtue of release deed. Tenants paying rents to son after demise of father. Tenants raising plea that son is not absolute owner but only as co-owner in eviction proceedings since they were not aware of execution of release deed by father in favour of son. Tenant not persisting plea of co-owner on coming to know of release deed. No denial of title of landlord by tenant. Such denial of absolute ownership cannot be said to be not bona fide.

24.All the above Judgments referred by the revision petitioners will have no application to the facts of the present case on hand.

25.In this regard this Court has carefully considered the judgments of both the Courts and also the evidence adduced on either side. The Learned Rent Controller in its Judgment from paragraph No.20 onwards has discussed the case of the parties after extracting the relevant portion of the evidence of both parties. The relevant portion of the Judgment in R.C.O.P at paragraph Nos. 29 and 30 are extracted here under:

“29. The RW1 during his cross examination has admitted that the suit in O.S.No.6482 of 2000 filed by respondents were dismissed but as against the dismissal an appeal has been preferred but he does not know the appeal number. However in written argument filed by the respondents it is mentioned that as against dismissal of O.S.No.6482 of 2000 an appeal has been filed in A.S.No.901 of 2004 before the Hon’ble High Court and the same is pending for disposal. This Court finds that unless the findings held in O.S.No.6482 of 2000 is set aside by the Hon’ble Appellate Court, till then the findings in O.S.No.6842 of 2000 stands conclusion.

“30. Therefore as per Ex.P4 there is a findings to the effect by the Civil Court that the petitioner herein did not agree for adjustment of rent in balance amount alleged to be due to the respondents by the petitioner towards the purchase of shares. Further more in this case also the respondents to prove alleged adjustments have not filed any document or argument to that effect.” Thereafter after discussing so many judgments regarding willful default his come to the conclusion that the tenants have failed to prove that the default was not willful and not wanton and thereby the tenants have failed to discharge their burden and come to the conclusion that the tenants have willfully defendant in payment of rent”.

26.While considering the case of the landlord on the ground of additional accommodation the Learned Rent Controller has given a finding at paragraph Nos.41, 42 of the judgment by holding that as per the judgment of the Hon’ble Apex Court it is not open to the tenant to dictate the area sought to be required for the business is sufficient or not for the landlords and further the Court cannot go into the sufficiency of existing accommodation and the requirements should be decided considering the nature of the business. The above said well

considered Judgment of the Learned Rent Controller deserves merits and this Court does not find any error or infirmity over the said Judgment.

27.Further the learned Rent Control Appellate Authority also has extensively dealt with the case of the petitioners and the respondents. The learned Rent Control Appellate Authority in its judgment at paragraphs No:11 and 12 has held as follows:

“11. Further, he also taken a stand that first respondent firm demanded for payment the petitioner company was postponing by extension and adjustment of rents and therefore according to respondents the rents were paid weekly or monthly as when required or demanded by the petitioner company or by adjustment of rents towards the amount due for transfer of shares of M/s.Opal Inn Pvt. Ltd. by the partners of the first respondent. Therefore the respondent has not paid the rent for the disputed period and further he has also not proved his contentions that the petitioner company agreed to adjust the sum due. On the contrary, the document marked as Ex.P.7 which is a judgment copy of the A.s.No.901 of 2004 in O.S.No.6482 of 2000 filed by the appellant/respondent/tenant

for the dues from the respondent/petitioner/landlord company has gone against him.”

“12. It is an admitted fact that the petitioner company is running a three star hotel in a prominent area, and with the increasing population and various competition it is just necessary that the portion which has been left on lease before 25 years finds necessary on this date by the respondent/petitioner/landlord company. The hardship of the petitioner company outweighs the respondent hardship. Hence the additional accommodation is just and necessary for the respondent/petitioner company.”

28. In this case, the conduct of the revision petitioners is not good. As discussed above, pending eviction proceedings the landlord has filed 11(4) application and got order. But even thereafter the revision petitioners have not chosen to pay or deposit the rental arrears. Further the suit filed by them also dismissed. Viewing from any angle, the hardship of the revision petitioners outweighs the respondent/landlord hardship.

29. In view of the elaborate discussion made above and in the light of the Judgments referred above, I do not find any merits in this Civil Revision Petition and the order of eviction passed by the authorities below are liable to be confirmed and accordingly confirmed. Two months time is given to vacate the petition premise. Consequently, connected miscellaneous petitions are closed.

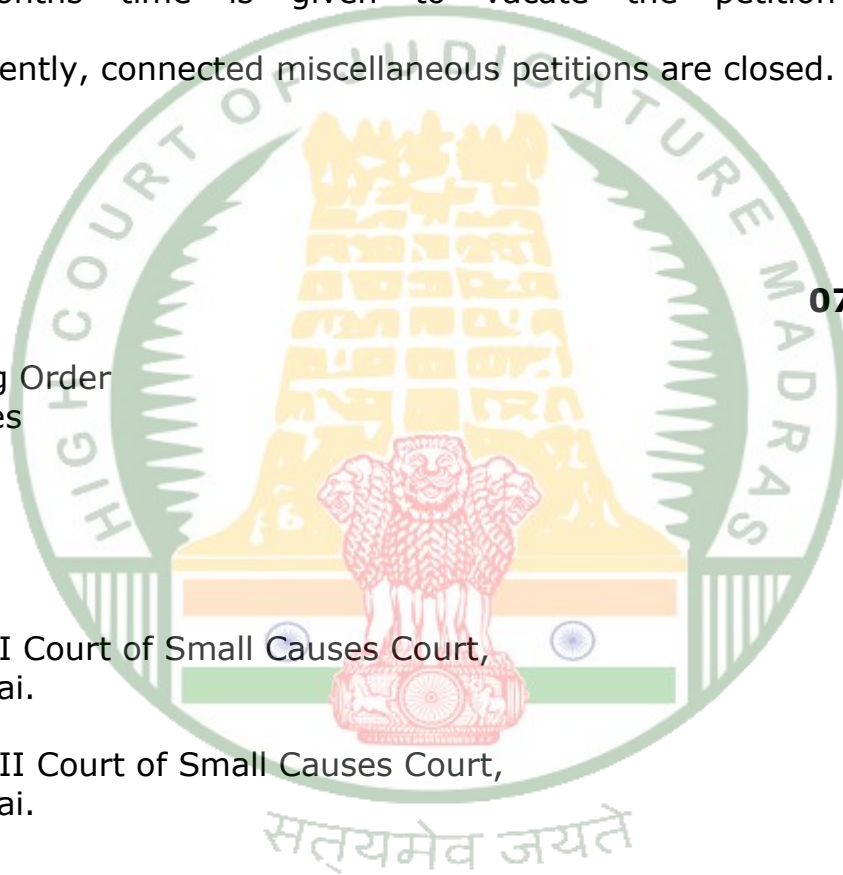
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Speaking Order
Index:Yes

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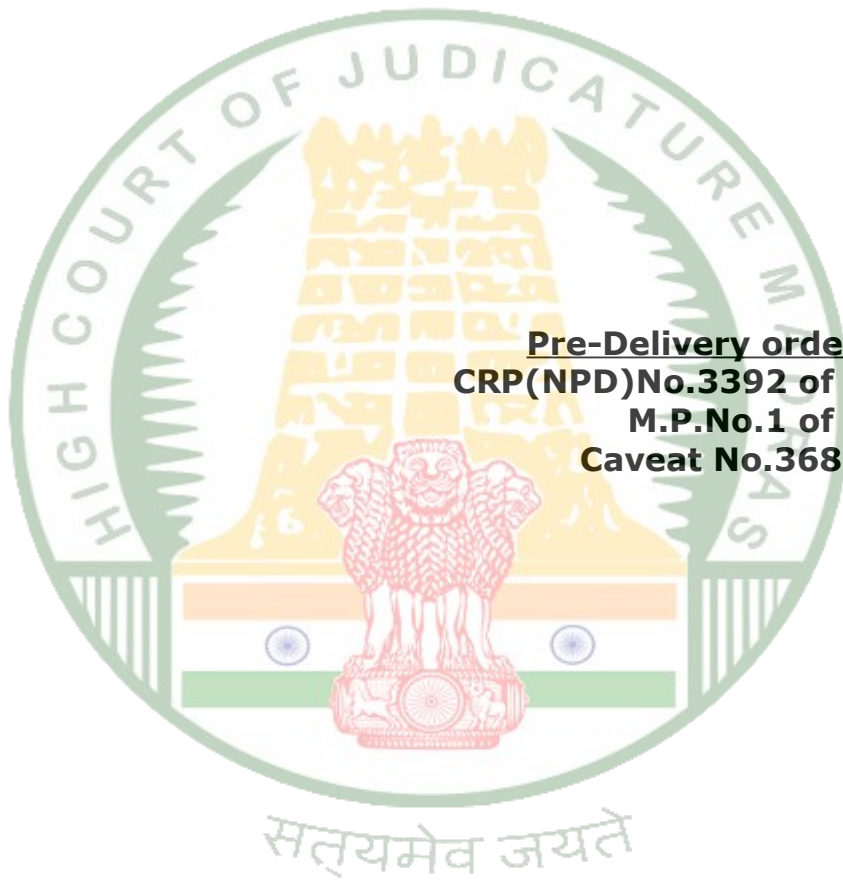
1. The VII Court of Small Causes Court,
Chennai.
2. The XIII Court of Small Causes Court,
Chennai.



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M.V.MURALIDARAN, J.

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**Pre-Delivery order made in
CRP(NPD)No.3392 of 2012 and
M.P.No.1 of 2012 and
Caveat No.3683 of 2012**

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