



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.253 of 2016

WEB COPY

S.Zeenath Pareetha

... Appellant/Respondent/Plaintiff

Vs.

1.Mohammed Hassan,
Partnership Firm),
Rep.by its Partner A.H.Dawood Khan,
Old Door No.175-B,
New Door No.224,
East Veli Street,
Madurai-625 001.

2.A.H.Dawood Khan

3.A.H.Syed Mohamed Khan

..Respondents/Petitioners/Defendants

**(Third Respondent suo motu impleaded vide order
of this Court dated 23.01.2017 made in
C.M.A. (MD)No.253 of 2016)**

PRAYER: Appeal filed under Order 43 Rule 1 of Civil Procedure Code to set aside the fair and decreetal order dated 02.02.2016, in I.A.No.210 of 2015 in O.S.No.81 of 2015 and all consequential and further order thereon passed in O.S.No.81 of 2015 on the file of the First Additional District Court, Madurai and consequently to restore the suit on the file of the above Court.

For Appellant

: Mr.S.Sitharthan

For Respondents

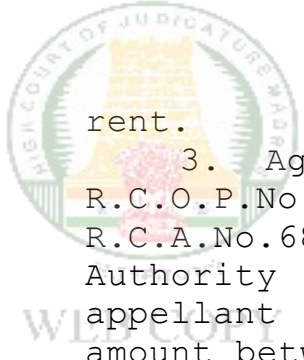
: Mr.S.Subbiah, for R1 & R2.

Mr.Athi Moola Pandian, for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the landlord against the order of rejection of plaint filed under Order 7 Rule 11 of Code of Civil Procedure, to reject O.S.No.81 of 2015 filed by the appellant for recovery of difference of amount between the contractual rent and fair rent, fixed by the Rent Controller.

2. The appellant is the landlord. In respect of the property bearing Old Door No.175-B, New Door No.224, East Veli Street, Madurai, the contractual rent is Rs.9,800/- (Rupees Nine Thousand Eight Hundred only) per month. Not satisfied with the contractual rent, the appellant filed R.C.O.P.No.152 of 2009 and the learned Rent Controller (Principal District Munsif), Madurai, by order dated 23.09.2014, after contest, fixed a sum of Rs.48,000/- (Rupees Forty Eight Thousand only) per month, as fair



rent.

3. Against the said order, dated 23.09.2014, passed in R.C.O.P.No.152 of 2009, the respondent/tenant preferred R.C.A.No.68 of 2014 before the learned Rent Control Appellate Authority (Principal Sub-Judge), Madurai. Meanwhile, the appellant filed O.S.No.81 of 2015, claiming the difference of amount between the contractual rent and the fair rent fixed by the rent controller on 23.09.2014, as the respondent did not pay the fair rent fixed.

4. After service of notice, the respondent entered appearance and filed I.A.No.210 of 2015 to reject the plaint in O.S.No.81 of 2015 filed by the appellant stating that the suit is premature and no cause of action arose as the fair rent fixed has not reached its finality. The trial Court, after contest, allowed the application and rejected the plaint stating that the right to recover difference in rent accrues to the appellant only when the right to recover arrears becomes due and further the order of Rent Controller did not attain finality. The said order is being challenged before this Court in this appeal.

5. Heard Mr.S.Sitharaman, learned Counsel appearing for the appellant and Mr.S.Subbiah, learned Counsel, appearing for the respondents 1 and 2 and Mr.Athimoola Pandian, learned Counsel appearing for the third respondent.

6. Though the respondents vacated the premises, they did not hand over the keys as per the undertaking given by them in C.R.P. (MD)No.642 of 2015 to hand over the possession on or before 26.09.2015 and hence this Court directed both the parties to be present and the respondents handed over the keys to the appellant.

7. Though the contention of Mr.Subbiah, learned Counsel appearing for the respondents 1 and 2 and Mr.Athimoola Pandian, learned Counsel appearing for the third respondent that the fixation of fair rent has not reached finality and therefore the suit for recovery of difference in monthly rent is not maintainable has got force, the appellant has filed the suit in O.S.No.81 of 2015, based on the order passed by the Rent Controller on 23.09.2014, by paying heavy amount of Court fee. There is no dispute that the fair rent has not reached finality. However, it is evident that the fair rent fixed by the Tribunal has already been upheld by the Rent Control Appellate Authority in R.C.A.No.68 of 2014 on 06.04.2015. Against the said order of the appellate authority, the respondents have also preferred C.R.P. (MD)No.31 of 2017 and the same is pending before this Court.

8. Therefore, taking into account the above developments and that the right of both parties have to be balanced, while accepting the contention of the respondents that the right to sue so far has not accrued to the appellant, in view of non reaching the finality of fair rent, the suit in O.S.No.81 of 2015, struck down by the trial Court, has to be restored. However, it should not be provided further, unless the fair rent fixed by the Courts below reaches finality in C.R.P.(MD)No.31 of 2017. Once the finality is reached, there cannot be any impediment for the trial



Court to proceed with the suit. Therefore, the order passed by the trial Court in I.A.No.210 of 2015, dated 02.02.2016, is set aside.

9. With the active assistance of both counsels, parties agreed to settle the matter before the Lok Adalat, scheduled to be held on 11.02.2017 before this Bench, along with other matters namely C.R.P.(MD)No.31 of 2017 pending on the file of this Court and the original suits in O.S.No.1267 of 2015 and O.S.No.724 of 2016 pending on the file of Principal Sub-Judge, Madurai. It is made clear that the suit in O.S.No.81 of 2015 restored by the order of this Court today i.e. on 09.02.2017, is also referred to the Lok Adalat scheduled to be held on 11.02.2017 for settlement.

10. With the above directions, this Civil Miscellaneous Appeal is allowed. No costs.

11. Registry is directed to call for the case bundles in O.S.Nos.1267 of 2015 and 724 of 2016, pending on the file of Principal Sub-Judge, Madurai, and list the same before the Lok Adalat to be held in this Bench on 11.02.2017.

Sd/
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The First Additional District Court,
Madurai.
- 2.The Principal Subordinate Judge, Madurai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Copy To:

- The Section Officer,
Judicial Section,
Madurai Bench Of Madras High Court, Madurai.
+1cc to M/s.S.Subbiah, Advocate, in SR No.7645.
+1cc to M/s.S.Sitharthan, Advocate, in SR No.7466.

[For Posting Case in lokadalat]

C.M.A(MD)No.253 of 2016
09.02.2017

gsr

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