

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.657 of 2019

and

C.M.P.No.4368 of 2019

Canara Bank,
having its head office at
112, J.C. Road,
Bangalore – 560022 and also
having its branch office
at Dewa Towers -1,
Anna Salai, Chennai- 600 002. ...Petitioner

Vs

Dewa Properties Limited,
rep. by its Director & Authorised Signatory,
Mr.Shashi Kumar Nair,
770-A, Dewa Tower-1,
II Floor, Anna Salai,
Chennai. सत्यमेव जयते...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 08.01.2019 passed in M.P.No.390 of 2018 in R.C.O.P.No.880 of 2012, pending on the file of the learned XIV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.K.Bijai Sundar

For Respondent : Mr.Roshan Balasubramanian

ORDER

The tenant is the revision petitioner before this Court. The above Civil Revision Petition has been filed by the tenant challenging the order passed in M.P.No.390 of 2018 in R.C.O.P.No.880 of 2012 by the learned XIV Judge, Small Causes Court, Chennai, appointing an Advocate Commissioner to visit the petition premises along with an Engineer to file report and sketch before this Court.

2.The brief facts which are necessary to dispose of the Civil Revision Petition are as follows:

2.1.The respondent/landlord had filed R.C.O.P.No.880 of 2012 on the file of the learned XIV Judge, Small Causes Court, Chennai, for fixing a fair rent with reference to the property that had been leased out to the revision petitioner in the building

situate at No.770A, Anna Salai, Chennai. In the rent control petition, the landlord has given the details for arriving at the fair rent. It is seen that both the tenant as well as the landlord had appointed Engineers, who have given two different reports on various aspects. Considering the said discrepancies in the two reports, the landlord has come forward with the impugned petition for appointing an Advocate Commissioner as per the provisions of Section 18A of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 (hereinafter referred to as the Act).

2.2.The said application was stoutly opposed by the tenant who *inter alia* contended that the petition is not maintainable and the extent that has been leased out is already described in the schedule and the same has also been exhibited in the proceedings. The main contention was that the appointment of an Advocate Commissioner would be invariance to the terms of the contract and consequently, barred by limitation under Section 92 of the Indian Evidence Act. The tenant has also contended

that the report of the Advocate Commissioner is not admissible on the face of it and that the Advocate Commissioner's report can be filed subject to objection and it is open to put the Commissioner in the witness box.

3. After considering the rival submissions, the learned Rent Controller by his order dated 08.01.2019 was pleased to allow the petition filed by the landlord by appointing an Advocate Commissioner who has directed to inspect the petition premises with an Engineer and file a report. The Commissioner was also given the aspects upon which the report was required. Challenging the said order, the tenant is before this Court.

4. Mr. K. Bijai Sundar, learned counsel appearing for the petitioner/tenant would argue that as per Section 92 of the Indian Evidence Act, there cannot be an evidence against the Leased Deed which is already on record and in which the extent in occupation of the tenant has already been detailed.

5. In support of his arguments, the learned counsel appearing for the petitioner has relied upon the Judgment reported in ***M/s.Raval and Co., v. K.G.Ramachandran and others [(1974) 1 SCC 424]*** wherein at Paragraph 20, the Hon'ble Supreme Court has held as follows:

"Clearly any variation of rent reserved by a registered lease deed must be made by another registered instrument. We are not able to accept the argument of Sri K. S. Ramamurthy on behalf of the tenants that the agreement of 1949 was one by the landlord to give up his right to apply for fixation of fair rent in consideration of the additional rent agreed to be paid by the tenant and is, therefore, not covered by section 92 of the Evidence Act. The correspondence between the parties makes it clear beyond doubt that the agreement was to pay increased rent. If this agreement is left out of

account the rent payable is below Rs. 400/- a month, and, therefore, the decision of the Division Bench is correct."

6.The learned counsel appearing for the petitioner has also relied upon the Judgment reported in ***Smt.Shanti Devi vs. Amal Kumar Banerjee [(1981) 2 Supreme Court Cases 199]*** wherein at Paragraph 4, the Hon'ble Supreme Court held that the parties could not by their pleadings alter the intrinsic character of the lease or bring about a change in the rights and obligations flowing therefrom.

7.The learned counsel would argue that by allowing the Commissioner to inspect the property it would be an alteration in terms of the Lease Deed particularly with reference to the constructions of the property which is the subject matter of the lease.

8.Per contra, Mr.Roshan Balasubramanian, learned counsel appearing on behalf of the landlord would contend that the appointment of an Advocate Commissioner is only in keeping with the provisions of Section 18A of the Act, which empowers the Rent Controller to appoint an Advocate Commissioner in any proceedings pending before him and for which purpose the learned Rent Controller was clothed with all powers under the Code of Civil Procedure.

9.The learned counsel appearing on behalf of the landlord would further rely upon the Judgment of this Court reported in **C.Rajagopal v. Mrs.Mallika Begum [(1995) 1 CTC 211]**, wherein this Court has held as follows:

"The said power was given to the Rent Control Court by virtue of an amendment by incorporating Section 18-A in the Act. The purpose of incorporating the section is very clear. When there are two Reports

by two person claiming themselves to be experts and the Reports are conflicting, it will be difficult for the court to arrive at the correctness of the same. Both the Reports will be filed in Court at the instance of either party, and so it cannot be treated as impartial. It was under such circumstance, the Act was amended incorporating Section 18-A of the Act. By incorporating that Section, the entire procedure under Order 26 Rule 9 of the Code of Civil Procedure is also impliedly incorporated in it. Once that power is given, the Court is given the power to appoint a Commissioner and get a Report, and that will be legal evidence in the case under Order 26 Rule 10 of the Code of Civil Procedure."

10. The learned Judge therein, by relying upon an earlier Judgment of this Court reported in **A.K. Panchatchara Mudaliar v. A.N. Srinivasan, [1991 -2-Law Weekly 268]**,

had proceeded to state that since there was a conflict in the reports filed and if the two reports were not considered, the Court is left with the only option of an Advocate Commissioner to assist the Court subject to certain conditions and finally, the matter was remitted back to the learned Rent Controller for fresh consideration.

11. The other Judgment which is relied upon by the learned counsel is reported in ***P. Sivachandran and another v. M.P.Purushotham [2005 (4) CTC 680]*** once again this Court followed the Judgment cited supra and has taken a view that where divergent views are expressed by the Engineers, who have submitted the reports with reference to the same property, it is not safe to rely upon such reports to arrive at a fair rent and therefore, the matter should be remitted back for seeking the report of an Advocate Commissioner under Section 18A of the Act.

12. Heard the learned counsels appearing on either side and perused the material available on record.

13. From the perusal of the records, particularly, the affidavit filed in support of the impugned petition, it is clear that there has been a sea of difference between the reports that have been filed by the Engineers engaged by either parties and on the basis of the said conflicting reports, it can be presumed that the Rent Controller may not be in a position to arrive at a fair rent that was payable with reference to the demised premises. Further, it would be in the interest of either parties that an Officer of this Court undertakes the exercise of calculating the rent and submitting the report which has been the mode adopted by this Court in the Judgment which has been cited supra on the side of the respondent/tenant, I am therefore of the opinion that the order of the learned Rent Controller does not suffer from any infirmity.

This Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

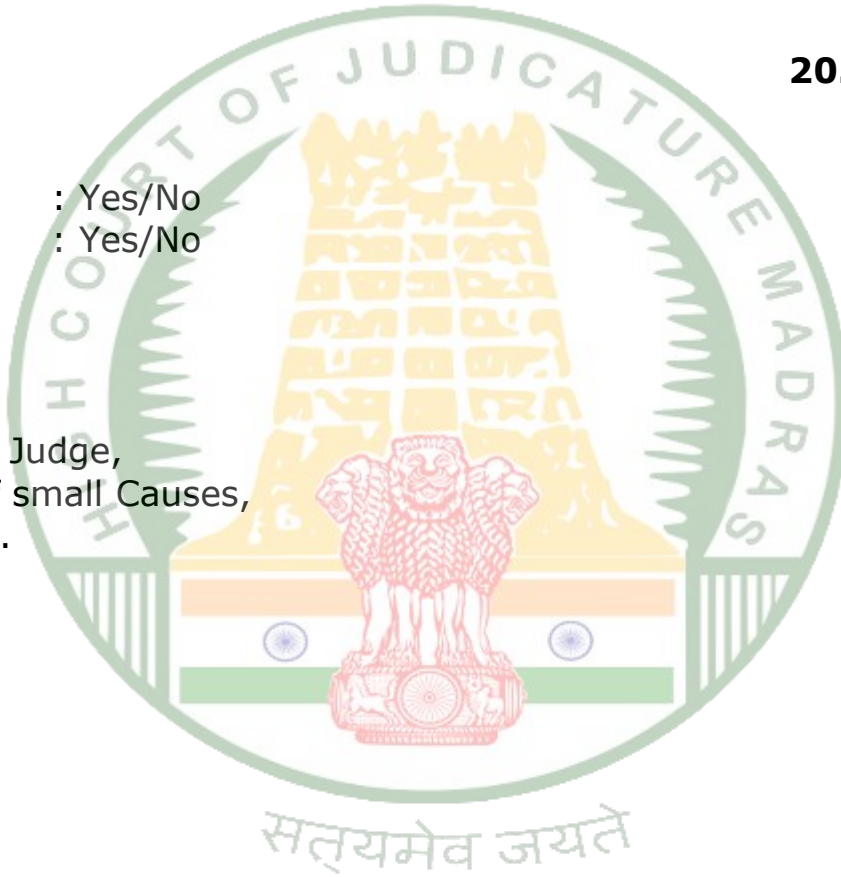
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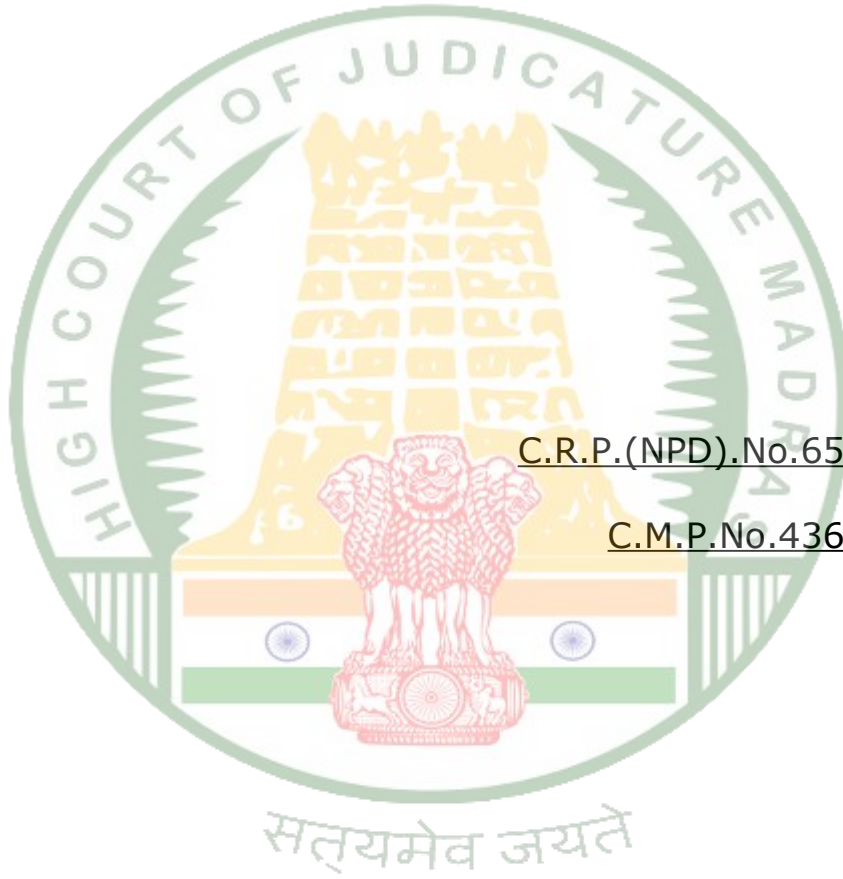
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P.T. ASHA, J,

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