

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.06.2018

Pronounced On : 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.(NPD).No.1407 of 2018

C.M.P.No.7553 of 2018

M/s. Gulf Medical Diagnostic Services (P)Ltd,
Rep.by Dr.T.Sivabakiam,
W/o.Dr.D.Masthan,
No.83, Arihant Ocean Towers,
No.77, Wallaja Road,
Chennai- 600 002. ... Petitioner /Respondent-Tenant

Vs

Mrs.Mahajabeen ... Respondents/Petitioner Landlady

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act No.18 of 1960 as Amended by Act No.23 of 1973 and Act No.1 of 1980, to set aside the order dated 03.01.2018 passed in R.C.A.No.606 of 2016 on the file of the IX Small Causes Court (Appellate Authority) Salem, reversing the order and decretal order dated 30.09.2015 passed in R.C.O.P.No.1316 of 2012 on the file of the XVI Small Caused Court (Rent Controller) Chennai.

For Petitioner : Mr.P.Raja
For Respondent : Mr.Ashok Menon

ORDER

The revision petitioner is the respondent/tenant the respondent is the land lady in R.C.OP.No.1316 of 2012 on the file of the XVI Small Causes Court, (Rent Control, Appellate Authority) Chennai. The land lady is the owner of the premises and she let out one portion of the building to the revision petitioner/tenant for rent and the said building is non residential building. Since, after taking possession the revision petitioner made major structural changes in the first floor of the said premises, without the consent of the respondent/land lady and also extended the beam, as a result of which, there was a leakage of water to the ground floor. The tenants who occupied in the ground floor have complained that there was a water leakage in the ceiling of the ground floor and cause damages to the building and also causing inconvenience to the tenants in carrying on their business. Therefore, the revision petitioner/tenant has committed such an acts of waste.

2 The respondent filed a petition under Section 10(2) (iii) of Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as

amended by Act 23 of 1973 before the Court of Small Causes, Chennai in R.C.O.P.No.1316 of 2012. On the side of the respondent, 4 witnesses have been examined and Exs.P1 to P.11 were marked. On the side of the Revision Petitioner, R.W.1 was examined and Ex.R1 was marked.

3 On a perusal of the entire evidence and the available documents produced on either side the learned Judge of Court of Small Causes, Chennai has dismissed the petition on the ground that the petitioner has not established her case. Further, the learned Judge on combined reading of the affidavit filed by the petitioner, the counter filed by the respondent, the evidences and documents placed on either side, especially based on the engineer report, the learned Judge found that there was a leakage in the ground floor and it was rectified subsequently, due to non allocation of slope in wash/toilet area, the leakage of water arose and not due to the extension of beam. Further, the petitioner failed to prove the building structural stability has got spoiled. Against this dismissal order passed by the learned Judge, the petitioner has preferred an appeal before the IX Court of Small Causes, Chennai, wherein, the learned Judge, after re-appreciating the

evidence and documents set aside the order of the Rent Controller and granted two months time to the Tenant to quit and vacate the premises and handover the vacant possession to the land lord.

4 Challenging the said order, the revision petitioner has come forward with this present Civil Revision Petition.

5 The learned counsel appearing for the revision petitioner would submit that the learned appellate authority has failed to advert to the fact as to whether any act of waste has been committed by the tenant and if noted any act of waste has been committed, such act will affect the value and the utility of the building. They failed to prove that they made an alteration without getting permission of the landlord. Further, he would submit that the land lady has not adduced any credible evidence that there was an act of waste. Further, he would submit that the land lady has not proved her case, the water leakage due to the arisen of the beam. The learned Rent Controller rightly given the conclusion. But the learned Appellate Authority has failed to consider these aspects. Therefore, which warrants interference of this Court.

6 The learned counsel for the respondent would submit that the evidence of P.W.1 to P.W.4 have clearly stated that the tenant has not proved that he made alteration, with permission before being such alteration the revision petitioner obtain the permission from the respondent/land lady. The evidence of P.W.3 one of the tenant who reside in the ground floor clearly shows that after the alteration by the revision petitioner/tenant, there was a water leakage and subsequently the land lady only complained the same. After making the complaint by the tenant the land lady made a complaint about the same. Further, the evidence of P.W.2 expert also has stated that there has been some alteration which cause inconvenience to the tenant and also the building. From the evidence of the revision petitioner there is no evidence to show that before alteration, the revision petitioner/tenant obtained prior permission either orally or in writing from the respondent/land lady. Therefore, the appellate authority is a final Court of fact finding and re appreciate the entire evidence of respondent/land lady and also the petitioner/tenant came to the conclusion that the revision petitioner committed an act of waste therefore, the order of eviction.

7 This Court is a revisional Court has no power to sit in the arm chair of the appellate authority and re-assessing the entire facts and the appellate authority after applying its minds and also appreciating the evidence and came to the conclusion that the tenant has committed an Act of Waste and revisional Court has no reason to find that the order passed by the appellate authority is perverse and on reading of the entire averments made by the land lady in the Rent Control proceedings. Admittedly the premises belong to the respondent/land lady and the revision petitioner is the tenant and after taking the premises for rent the revision petitioner made alteration for which the petitioner did not obtain any permission from the land lady. Further, the evidence of P.W.2, P.W.3 also clearly shows that there was an act of waste.

8 Therefore, under these circumstances, this Court does not find any merit in the revision and there is no reason to interfere with the judgment of the appellate authority. Therefore, there is no merit in the Civil Revision Petition which is liable to be dismissed.

9 In the result the present Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

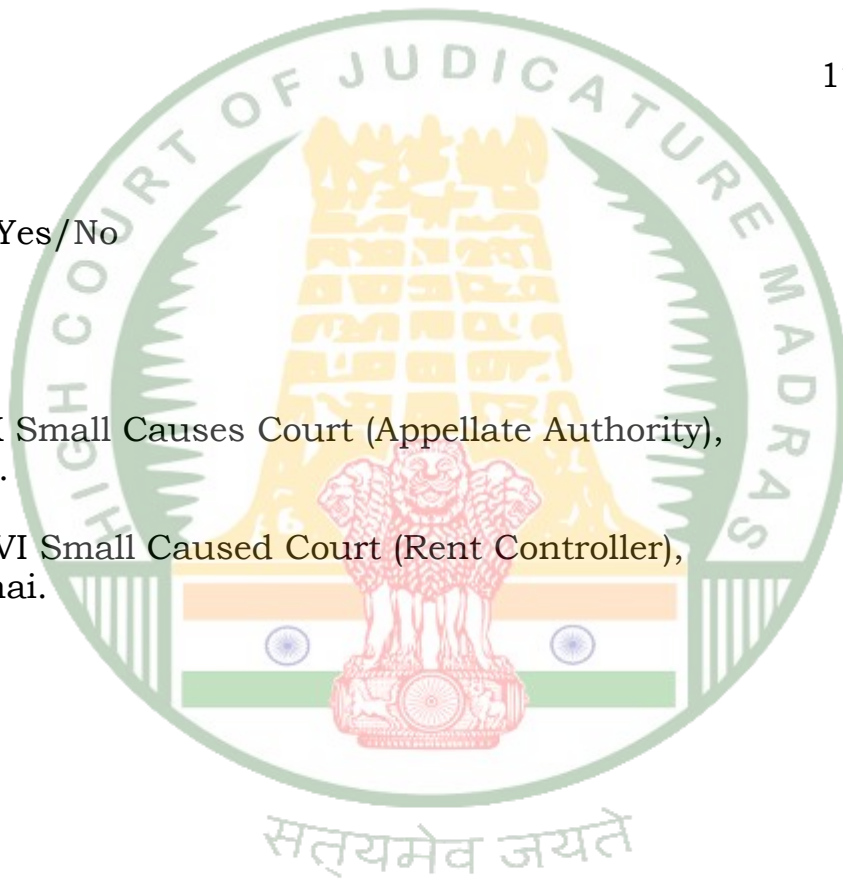
17.06.2019

sbn

Index – Yes/No

To

- 1.The IX Small Causes Court (Appellate Authority), Salem.
- 2.The XVI Small Caused Court (Rent Controller), Chennai.



WEB COPY

P.VELMURUGAN.J
sbn



Pre-Delivery Order in

CRP.(NPD).No.1407 of 2018
and
C.M.P.No.7553 of 2018

WEB COPY

17.06.2019