

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
12~03~2019	01~04~2019

CORAM :THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR****C.R.P.(NPD).No.2562 of 2013**

V.M. Muthukumar ... Revision Petitioners/Appellant/Petitioner
 Versus
 Kailash Chand ... Respondent/Respondent/Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act 18 of 1960, for setting aside the order and judgment of VIII Judge, Court of Small Causes, Madras (Appellate Authority) dated 09.04.2013 and passed in R.C.A.No.815 of 2008 confirmed the order and judgment dated 19.07.2007 of the XIII Judge, Court of Small Causes, Madras (Rent Controller) passed in R.C.O.P.No.2073 of 2006.

For Revision Petitioner .. Mr. K. Bijai Sundar
 For Respondents .. Mr. Rahul K. Jain
 for M/s. Vikram U. Jain

ORDER

Aggrieved over the concurrent findings of the Rent Controller and Rent

Control Appellate Authority fixing a sum of Rs.2,138/- as fair rent, the present Revision came to be filed by the Landlord.

2. The landlord filed application for fixing fair rent. It is the case of the petitioner that the Respondent is the tenant in a non-residential premises for a monthly rent of Rs.1,350/-. The Plinth area of the Petitioner's premises was 180 sq.ft.in the ground floor and the age of the building is 25 years. Property situate in busy locality and the land value is not less than Rs.80 lakhs per ground. Hence pray to fix rent at the rate of Rs.3,602/- per month.

3. It is the contention of the tenant that the plinth area is only 130 sq.ft. The age of the building is between 70 to 80 years. Electricity alone is the only basic amenity provided by the Petitioner. The land value of the petitioner premises is Rs.20 lakhs per ground.

4. On the side of the Petitioner P.W.1 was examined. Exs.P.1 to P.4 marked. On the side of the Respondent R.W.1 was examined and Exs.R.1 to R9 marked. After hearing both sides, the trial Court has fixed the fair rent at the rate of Rs.2,138/- per month. The Rent Control Appellate Authority has also confirmed the orders of the Rent Controller. As against which, the present Revision is filed.

5. The main contention of the Revision Petitioner before this Court is that the trial Court and Appellate Court have not properly arrived the market value. In fact, the documents filed by the petitioner/landlord has not been taken into consideration. On the other hand sale deed after the petition filed by the respondent was taken into consideration by both the courts below. Above sale deed should not have been taken into consideration. Further P.W.1 evidence has clearly spoken that the plinth area is 195 sq.ft. The above evidence was not even denied in the cross examination. Whereas the Rent Controller has fixed the plinth area as 168 sq.ft. on the basis of R.W.1 evidence which is also not correct. Hence submitted that the order of the court below has to be modified.

6. Learned counsel appearing for the Respondent submitted that the sale deed relied upon by the landlord not related to the petition mentioned property. In fact the sale deed is related to some other busy locality. Petition mentioned property is situated in Ponnappa Chetty Street, which is narrow street. Access to the street is also very difficult. The sale deed produced by the respondent is just adjoining property. The trial Court and Appellate Court has rightly accepted the above sale deed to determine the market value of the property. Further, as far as the plinth area of the premises, landlord has stated 180 sq.ft. whereas P.W.1 has stated 195 sq.ft. The above aspect was considered

by the trial court. Hence, the order of the trial Court does not require any interference. In support of his contention he relied upon a Judgment of this Court in ***M/s.Maya Appliances and Control Equipment re.by its Partner Thiru Varadarajan and Another v. A.Sulochana Reddy and another [1996(1) CTC 567 (Mad)]***.

7. The Rent Controller and the Appellate Authority considered the evidence of P.W.1 and R.W.1 and factually come to the conclusion that the age of the premises is 50 years as no plan whatsoever produced by the Petitioner. Further the building was constructed in Bengal Terrace. Both courts below have held that building is aged about 50 years. The age of the building is also not in dispute by the landlord in the Revision Petition. Similarly, the other aspects i.e., basic amenity aspect also not disputed by the Revision Petitioner. The only contention of the Revision Petitioner is that as per the evidence of P.W.1, land value is Rs.80 lakhs per ground. But the court below fixed the land value at Rs.50 lakhs. It is to be noted that Ex.P.3 and Ex.P.4 relate to sale deed of some other street, which is located other side of the street where the premises situated. Admittedly, the premises situated in Ponnappa Chetty Street and the sale deed filed by the petitioner relates to Wall Tax Road and Mint Street which are busy streets and commercial area and those streets though situate very near to Ponnappa Street, Ponnappa Street is not busy area as that of those streets.

Therefore the trial Court and First Appellate Authority rejecting the Ex.P.3 and Ex.P.4 sale deed value in my view does not require any interference. The trial Court and First Appellate Court rightly considered the fact that Ex.R.3 is just an adjacent building of the petition mentioned property. Ex.A.2 Sale Deed relate to Door No.52 of Ponnappa Chetty Street, which is two shops away from the petition premises. Therefore, the Rent Controller and the Rent Control Appellate Authority relied upon Ex.A.6 and fixed the market value at Rs.50 lakhs does not require any interference. This Court is of the view that the court below considered the fact that Ex.A.6 reflect the real market value of other areas and fixed the market value at Rs.50 lakhs, the same does not require any interference.

8. Next contention of the learned counsel for the Revision Petitioner is that the plinth area is 195 sq.ft. As per P.W.1. Though the petitioner has stated in his petition as 180 sq.ft., P.W.1 Engineer has measured the property and found out the plinth area is 195 sq.ft. When the evidence of P.W.1 seen, he has clearly stated in his evidence that the constructed area is 195 sq.ft. R.W.1 has stated in his report, the plinth area is 168 sq.ft. The trial Court has fixed the plinth area as 168.22 sq.ft. based on the evidence of R.W.1. It is to be noted that when specific evidence of P.W.1 that the plinth area of 195 sq.ft. has not even denied in the cross examination and no suggestion whatsoever put to deny the evidence of P.W.1 in this regard, such specific evidence is deemed to be in

admission on the part of the respondent. Therefore, this Court is of the view that the plinth area as spoken by P.W.1 has to be calculated for fixing of fair rent. In other aspects, the order of the trial Court and First Appellate Court do not require any interference.

9. Based on the above, the fair rent is fixed at Rs.2,472/- per month for the petition premises as per the calculation below:

Plinth Area 195 sq.ft. is considered for cost of construction : 195 x 374	= 72,930
Add: Basic amenities 5% or 7% for each amenity	= nil
	72,930
Depreciation 1% for 50 years 72,930 x 0.605	44,123
Land Value: Petitioner's share 195/2 = 97.5 sq.ft.	
$\frac{50,00,000}{2400} \times 97.5$	2,03,125
	2,47,248
Add: Schedule 1 - Amenities	nil
Value of the building	2,47,248
For non-residential purpose $\frac{2,47,248}{100} \times \frac{12}{100} = 2,472.48$ R/o to	Rs.2,472

10. Accordingly the Revision is partly allowed fixing the fair rent at Rs.2,472/- per month. No costs.

01.04.2019

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
ggs.

To

1. The VIII Judge, Court of Small Causes, Madras
2. The XIII Judge, Court of Small Causes, Madras



WEB COPY

N. SATHISH KUMAR, J.
ggs.



order in:
C.R.P.(NPD).No.2562 of 2013

WEB COPY

01.04.2019