

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
13~03~2019	12~04~2019

CORAM :THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR****C.R.P.(NPD).No.2655 of 2013**

South India Vaniar Educational Trust
Rep.by its Secretary
No.16, Vallaba Agraharam
Triplicane, Chennai 600005

... Revision Petitioner/Appellant/
Petitioner/landlord

Versus

Broad Lands, Rep.by its
Proprietor A.P.Kumar (deceased)
1.Atluri Urmila
2.Atluri Dhryti Devi
3.Atluri Krishna Rao

... Respondents/Respondents/
Respondents/tenants

Civil Revision Petition filed under Section 115 of C.P.C.,to set aside the fair and decreetal order made in R.C.A.No.1246 of 2004 dated 15.12.2012 on the file of the VII Rent Control Appellate Authority Chennai confirming the fair and decreetal order made in RCOP No.738 of 2000 dated 17.09.2004 by the XII Judge, Court of Small Causes cum Rent Controller, Chennai and to allow the revision.

For Revision Petitioner .. Mr.A. Palaniappan

For Respondents .. Mr. Om Prakash,
Senior Counsel
for Mr.G. Veerapathiran

ORDER

Aggrieved over the findings of the Rent Control Appellate Authority confirming the order of the Rent Controller who dismissed the petition filed for evicting the respondents from the petition premises for wilful default the present Civil Revision Petition is filed.

2. The brief facts leading to file this Revision Petition is as follows:

2(a) The respondents are the tenants under the Petitioner in respect of a non-residential premises bearing No.16, Vallaba Agaraharam, Triplicane, Chennai for running a lodging house under the name and style of 'Broadlands'. The rent payable by the respondents is fixed at Rs.14,027/-per month by a common order dated 9.1.1998 in C.R.P.Nos.794, 2440 and 2441 of 1993 as modified by the Common order dated 19.4.1999 in CMP.Nos.3250 to 3252 of 1999. The fair rent fixed is payable with effect from 1.11.1982 being the date of presentation of RCOP No.5031 of 1982. It is the contention of the Petitioner that the C.R.Ps against the fair rent were disposed off by the High Court by a Common Order dated 9.1.1988 wherein the decree of the Appellate Authority was modified to the extent that the built up

area in the ground floor was fixed at 7613 sq.ft. as against 6482 sq.ft. and the vacant appurtenant land was fixed at 3408 sq.ft. as against 2217 sq.ft. The depreciation value was fixed at 10% on the value of the construction of the building. On the basis of the findings, a simple arithmetic calculation will show that the fair rent payable is Rs.14,027/- per month. But the respondent claiming that the fair rent fixed by the Appellate Authority was set aside by order dated 9.1.1998 started paying rent at the rate of Rs.792/- from 1.5.1998. Therefore, the default on the part of the respondents in payment of rent at the rate of Rs.14027/- from 1.5.1998 is willful and deliberate.

2(b) Thereafter, in C.M.P.No.3250 to 3252 of 1999 in CRPs for modification, by order dated 19.4.1998 the High Court was pleased to declare that the fair rent at Rs.14027. The above order has become final. Even after the said modified order dated 19.4.1999 the respondents failed to tender fair rent at the rate of Rs.14027/-. The failure to pay rent at the rate of Rs.14,027/- per month for the petition premises from 1.5.1998 is willful and deliberate. Hence, the petitioner issued legal notice on 6.1.2000 demanding payment of arrears of difference rent at the rate of Rs.14027/- from 1.11.1982 to 31.12.1999. But the respondents failed to comply with the same, but

remitted the arrears at the rate of Rs.792/- only from 1.5.1998. Even after the expiry of two months from the date of demand made by notice the default on the part of the Respondents in payment of rent for the period from 1.5.1998 to 31.12.1999 is willful and deliberate. Hence, the application for eviction.

3. It is the contention of the respondent in their counter that in RCOP No.5031 of 1982 fair rent was fixed at Rs.9026/-. The said order was challenged in RCA No.465 of 1985 and the appellate authority after hearing the case re-fixed the fair rent at Rs.9090/-. The order of the appellate authority is not a final order. The respondent filed CRP No.2440 and 2441 of 1993. During the pendency of CRP the order fixing the fair rent has not become final, the petitioner filed C.S.No.106 of 1995 for recovery of Rs.10,62,144/- being the difference in rent even before the final adjudication. Pursuant to the order passed in C.S.No.106 of 1995 the respondent has been regularly depositing a sum of Rs.9090/- per month from 1.1.1996 to the credit of R.C.O.P.No.5031 of 1982. The said payments were made before the final re-fixation of the fair rent. It is the contention of the respondent that in the order dated 9.1.1998 in C.R.P.Nos.794, 2440 and 2441 of 1993 there was no finding with regard to the quantum of fair rent

payable. Therefore, the petitioner filed CMP No.3250 to 3252 of 1999 in CRP.Nos.794,2440 and 2441 of 1993. Thereafter, the fair rent was fixed at Rs.14027/-. The said order having been passed as late as 19.4.1999, the petitioner is not entitled to claim the sum of Rs.14027/-any date earlier to 19.4.1999 and till the date of disposal of the Civil Revision Petition. Hence, there is no willful default in the payment of rent at the rate of Rs.14027/- from 1.5.1998 onwards. Since the above amount was determined by the High Court only on 19.4.1999 modifying the earlier order dated 9.1.1998. Till the final adjudication of the fair rent by the High Court, the petitioner was entitled to receive a sum of Rs.9090/- being the fair rent by the Appellate Authority which was regularly deposited.

4. The Respondent filed SLP.Nos.2949 to 2951 of 2000 and 3426 to 3428 of 2000 before the Supreme Court of India and the above applications were dismissed with liberty to file review petition. In pursuant to the above order, review petition Sr.No.31237 of 2000 in CRP.No.794 of 1993 was filed on 18.4.2000. The same has not been numbered and pending adjudication. By letter dated 10.6.2000 the respondent has informed the petitioner about the order of the Supreme Court and also the review petition and he has also informed

that a total sum of Rs.2,54,520/- was already deposited as difference rent for the period upto 30.4.1998, on the basis of the Appellate Court order fixing the fair rent of Rs.9090/-. The respondent also informed that he will continue to pay the fair rent at Rs.9090/-per month till the review petition is disposed of by the High Court. Therefore, the allegation that no further proceedings were taken after the order dated 19.4.1999 is false. The respondent also paid difference rent upto 31.5.2000 long before the receipt of the notice in the Review Application. There is no default much less willful default in the payment of rents. Agreed rent was far below the fair rent fixed in the previous proceedings and the fair rent fixed in the fair rent proceedings have been regularly paid. Hence prayed for dismissal of the Revision.

5. In the additional counter it is submitted that as against fixation of fair rent, by the High Court at Rs.14027/- in C.R.P.No.794 of 1992, S.L.P.Nos.2949 to 2951 of 2000 was filed before the Supreme Court and the same was dismissed on 27.3.2000 reserving the liberty for filing review petition before the High Court. The High Court has passed final order on 4.8.2003 revising the fair rent from 14027/- to Rs.12918/-. Therefore, the order fixing the fair rent has come final

only on 4.8.2003.

6. Heard the counsels on both sides. Learned counsel appearing for the Revision Petitioner mainly contended that the respondent has failed to deposit the rent fixed by the First Appellate Authority and also High Court. The High Court has not set aside the fair rent fixed by the First Appellate Authority, only modified the plinth area. When the high Court has not set aside the fair rent, the respondent ought to have deposited the fair rent fixed by the First Appellate Authority, which is not done so. The fair rent is crystalised on the date of the order of the Appellate Authority. Having admitted the directions in Civil Suit to pay the fair rent fixed by the First Appellate Authority, the respondent reverted back to old rent at the rate of Rs.792/-. It is the contention of the learned counsel as long as there is no stay granted by the Revisional Court, the payment of fair rent is crystalised on the date of disposal of the appeal by the First appellate Authority. The respondent has failed to pay the fair rent fixed by the First Appellate Authority and Revisional Court, by their own risk. Such conduct nothing but supine indifference and amounts to willful default which is deliberate and the courts below have not considered the same properly. Hence, submitted that the issue involved in the revision is

when the fair rent is crystalised, admittedly there is no stay by the revisional court. Therefore, submitted that the trial Court and First appellate authority have not analysed the entire matter and simply dismissed the application.

7. In support of his argument he relied upon the following judgments:

1. *C. Raghunatha Reddy v. S. Rajasekaran and another* [2011 (5) CTC 837]
2. *P. Janakiraman v. N. Umadevi and Five others* [1996 (1) CTC 196]
3. *Arjunan v. Universal Fertilizer Corporation* [2009 (9) SCC 359]
4. *Girdharilal Chandak and Bros. v. S. Mehdi Ispahani and two others* [2011 (5) CTC 252]

8. The learned senior counsel appearing for the respondent would contend that as against the fair rent fixed by the First Appellate Authority revision was filed. The revisional Court has modified the plinth area and other area. However it has not finalised the rent

payable as a fair rent. Thereafter, the applications have been filed for modification and finally fair rent was fixed, which was also challenged before the Supreme Court and also the review filed and ultimately finality is reached only in the year 2003. In the meanwhile the respondent has also deposited the amount as per the direction of the court in C.S.No.106 of 1995 and similarly the respondent also paid two months rent from 1.1.1996 to 28.2.1996 at the rate of Rs.9090/-. On 15.03.1996 respondent has paid a sum of Rs.16596/- and subsequently, paid the rent at the rate of Rs.9090/- per month. On 9.1.1998 the revisional Court while disposing the Revision fair rent was not indicated in the judgment. Thereafter, in the year 1999 petitioner trust filed an application to quantify the rent. The revisional court has fixed Rs.14027 as rent. Thereafter, the respondent was constrained to challenge the orders of the revisional court before the Supreme Court in SLP. The Honourable Supreme Court has permitted the respondent to file review application. As per the order of the supreme Court review has also filed before the Court. The review petition was dismissed on 12.10.2000, which was challenged before the Supreme Court in SLP No.15422 of 2002. The Supreme Court has remitted back the matter to the High Court for consideration. Thereafter High Court has heard the review petition and fixed the fair rent at Rs.12918/-

from Rs.14027/-. The above order also challenged by the respondent in SLP No.20808 of 2003. The Apex Court dismissed the same on 17.11.2003. on that day only the respondents were directed to pay the fair rent from the date of petition. Hence, it is the contention of the learned counsel that there is no willful default.

9. In support of his submissions he relied upon the judgments reported in

1. *J. Visalakshmi Ammal v. T.B.Sathyanarayana* **[1996 (2) LW 849]**
2. *Chordia Automobiles v. S. Moosa and Others* **[2000 (3) SCC 282]**
3. *Dhakshayani v. V.Suseela and 4 others* **[2010 (3) MWN (Civil) 149]**
4. *Hindustan Petroleum Corporation Ltd., v. Dilbahar Singh* **[2014 (9) SCC 78]**
5. *Nirmala Daga v. C.Subramanian* **[2017 SCC online Madras 6043]**

10. The Application filed for eviction of the tenant only on the ground that the respondent failed to tender rent at the rate of 14027/- per month, a fair rent fixed by the Court. The fair rent was modified

by the High Court on 19.4.1999. According to the petitioner, the respondent has committed willful default on 1.5.1998 till 31.12.1999. Instead of paying balance at the rate of Rs.14027/- the respondent has paid only agreed rate. According to the revision petitioner the above conduct of the respondent is willfull default and liable to be evicted from the petition premises. The entire pleadings and reply statements, it is the contention of the revision petitioner that though in the Civil Revision Petition the order was clarified, same reverted back 9.1.1998.

11. It is also specifically pleaded that in the reply statement that the RCOP filed on the ground of Willful default in payment of fair rent fixed by the High Court. It is not the case of the revision petitioner in a rent control application that the respondent has failed to pay the fair rent fixed by the Appellate Authority during the pendency of the revision petition. Whereas it is the specific contention of the revision petitioner in the rent control proceedings that the respondent has failed to pay the fair rent fixed by the High Court dated 9.1.1998 for the period 1.5.98 till 31.12.1999. When the eviction itself is sought on the ground of willful default on non-payment of fair rent fixed by the High court, now it is canvassed before the court by the Revision

Petitioner that the fair rent payable would be crystalised immediately after Appellate Authority disposed the application. When the eviction petition itself filed alleging that the respondent failed to pay the fair rent fixed by the high Court in its order dated 9.1.1998 and subsequent clarification dated 9.4.99, from 1.5.98 to 31.12.1999, now, the revision petitioner cannot contend that the fair rent fixed by the appellate authority is crystalised and payable as fair rent. No doubt in a judgment of this court reported in **Raghunatha Raddy's case [2011(5)CTC 837]** (supra) held that non-payment difference between fair rent and contract rent is willful default. Mere pendency of the revision by landlord without any order of stay could not enable the tenant to contend that the fair rent has not reached finality. Similarly, in **Girdharilal Chandak's case 2011 (5) CTC 252** (supra), a Single Bench of this Court has also held that provision containing order 41 Rule 5 CPC embodies general principles of law and applicable to proceedings under Rent Control Act too. Appeal by itself shall not operate as stay of proceedings under decree or order appealed from except so far Appellate Authority may order and held in the abasence of such proceedings decree or order appealed from can be executed. The above judgment makes it clear that mere pendency of the revision will not enable the tenant to contend that the fair rent proceedings is

not reached finality. In **(2009) 9 SCC 359** it is held as follows:

"10. In the present appeal, it is not necessary for us to go into the aspect of non-payment of rent at the rate of fair rent as it is clear that matter pertaining thereto is sub-judice before the High Court and has not attained finality. In the absence of any interim order passed by the High Court staying the operation of the order fixing the fair rent at Rs.5,250/- per month, if the tenant is not depositing the fair rent; he must be doing so at his own risk. We leave the matter at that. Suffice, however, to say that in the original petition for eviction, the landlord has averred that the monthly rent of the subject premises is Rs.400/- and that the tenant has committed willful default in paying the rent from March 1, 1997 at the rate of Rs.400/- per month. The quantification of arrears of rent to the tune of Rs.34,400/- from March 1, 1997 to May 31, 2004 is founded on the said averment. Although the conduct of the tenant is contumacious and far from satisfactory in so far as payment/deposit of rent is concerned and the view of High Court cannot be said to be totally unjustified but now since the amount of Rs.34,400/- for the aforesaid period has been deposited by the appellant as per the order dated November 12, 2007, in the interest of justice, we direct that the time granted by the High Court in its order dated April 19, 2007 for deposit of the amount of Rs.34,400/- shall be deemed to have been extended upto the date he deposited the said amount. "

12. The Honourable Supreme court has held that in the absence of any interim order staying the operation of the order fixing fair rent by the appellate authority if the tenant has not deposited the

fair rent he must be doing so at his own risk. Absolutely there is no dispute with regard to the above position of law. The facts in the present case makes it very clear that the rent control application for eviction is filed only for the default of the payment of fair rent said to have been fixed by the High Court in CRP. i.e., from 1.5.98 to 31.12.1999. The eviction petition has not filed on the ground that fair rent fixed by the appellate authority has not been paid. On the other hand, the tenant was sought to be evicted only on the ground that he has not paid difference amount fixed by the High Court in its order dated 19.4.1999. In the above back ground, the following facts also relevant to be mentioned here. Originally rent controller fixed fair rent at Rs.9026/- by his order dated 7.3.1985. The same was challenged before the first Appellate authority by filing RCA 820 1985. The First Appellate authority has fixed the fair rent on 19.4.1991 at Rs.9090/-. However, the tenant has preferred CRP No.2440, 2441 of 1993 and similarly landlord also filed CRP 794 of 1993. During the pendency of the above CRPs, the landlord has filed suit in O.S.No.106 of 1995 for recovery of Rs.10,62,144/-. During the pendency of the above suit as per the direction of the court the tenant continuing to deposit rent at Rs.9090/- from 1.1.1996 to the credit of RCOP No.5031 of 1982. This court has disposed of the CRPs in common order 9.1.1998 wherein this

court has modified the order passed by the rent control authority.

13. In the above CRP this court has fixed the built up area on the ground floor at 7613 sq.ft. against 6482 sq.ft. and the vacant land was arrived at 3408 sq.ft. as against 2217 sq.ft. and depreciation value is fixed at 10% of the value of construction of the building. Having modified built up area and depreciation value while disposing of the CRP this court has not arrived the quantum of fair rent payable by the tenant. As there was no specific fixation of fair rent payable every month by the revision petitions, the tenant has reverted back to his contractual rent of Rs.792/- from 1.5.1998. Thereafter, it appears that the landlord has filed review petition in CMP.No.3250 to 3252 of 1999 review the orders passed in CRP No.794,2440 and 2441 of 1993. Accordingly, fair rent at Rs.14027/- was quantified on 19.04.1999. SLP was preferred against the said order by the respondent/tenant. The SLP was withdrawn with liberty to file Review Application before the High Court. Thereafter, tenant filed petition alongwith condone delay petition in CRP No.794 of 1993 on 18.4.2000 and the condone delay petition was dismissed by this Court consequently review petition was also dismissed. As against which the tenant filed C.A.No.6560 of 2000 before the Honourable Supreme Court. The Supreme Court remanded

the matter once again with direction to hear the review petition by the High Court for fresh decision in accordance with law. Thereafter this Court on 4.8.2003 dismissed the Review Petition on merits, however, high court has fixed fair rent at Rs.12,918/- modifying the earlier fair rent of Rs.14027/-.

14. The above facts makes it clear that though the High Court in CRP filed against the fair rent modified plinth area, it has not quantified the rent payable by the tenant. Thereafter it appears that rent was quantified only on 4.8.2003. Whereas the application for eviction was filed on the ground of willful default of the tenant to pay the fair rent fixed by the High Court vide its order dated 9.1.1998 from 1.5.1998 to 31.12.1999. As already stated though the fair rent is fixed by the Appellate Authority would be crystalised as a rent to be payable in the absence of any stay by the Appellate or revisional authority. Whereas in this case, the landlord themselves filed application for eviction only on the ground of default that the fair rent fixed by the High Court has not been paid from 1.5.98 to 31.12.1999.

15. In para 5 of the reply statement, it is specifically pleaded by the landlord that the RCOP is filed on the ground of willful default in

payment of rent at the rate of fair rent fixed by the High Court. It is to be noted that High Court though not set aside the order of the First Appellate Authority has reduced the plinth area and built up area and not quantified the fair rent vide order dated 9.1.1998. When the amount has not quantified by the High Court that amount has not arrived finally by the High Court on 9.1.1998 it cannot be said that fair rent was fixed finally. Whereas the High Court in its order 19.4.1999 fixed the fair rent at Rs.14027/-. The above order also challenged immediately before the Supreme Court and thereafter review application was filed before the High Court on two occasions. On 18.4.2000 Review Petition in CRP NO.794 of 1993 was dismissed by the High Court. Thereafter, civil appeal filed before the Supreme Court and the Honourable Apex Court remanded the matter back to High Court for fresh decision. Only on 4.8.2003 fair rent proceedings reached finality. Till such time fair rent, in fact, in my view has not reached finality. No doubt tenant ought to have paid rent even at the rate of Rs.9090/- fixed by the First Appellate Court, when the High Court has not quantified the fair rent on 1.9.1998 such conduct of the tenant may also amount to willful but the fact remains that eviction is not sought on the ground of non payment of fair rent fixed by the Appellate Authority. Whereas willful default alleged only at the rate

fixed by the High Court. The High Court has fixed fair rent only on 1.4.1999. Though the High Court disposed the revision petition on 9.1.1998 fair rent has not been fixed. Ultimately after remand high court has finally fixed the fair rent reducing from Rs.14027/- to Rs.12918/-.

16. It is also to be noted that during the pendency of the rent control proceedings an application filed by landlord under Section 11(3) Petition in M.P.No.946 of 2000 tenant has deposited the entire arrears of Rs.21,76,499/- at the rate of Rs.12918/-. The Rent Controller in fact directed the tenant to deposit such amount on 3.2.2004 in M.P.No.946 of 2000. In compliance of the said order the entire amount has been deposited. It is to be noted that Sub-Section (1) of Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, enables the tenant to pay all the arrears of rent due in respect of the building upto the date of payment or deposits and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the controller or the Appellate Authority, as the case may be. Sub-Section (2) of Section 11 also states that the deposit of rent under sub-section(1) shall be made within the time and

in the manner prescribed. It is only in the event of failure on the part of the tenant to pay or deposit the rent as prescribed under sub-sections (1) and (2) of Section 11 of the Act, the Controller or the Appellate Authority as the case may be shall unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. It is also relevant to notice that Proviso to sub-section (2) of Section 10 of the Act relates to a case falling under Section 10(2)(i) of the Act. Even the above provision makes it clear that the Court can direct the tenant to pay or tender arrears of rent within a reasonable time not exceeding to three months upto the date of the payment and in the event the tenant pay the arrears of rent then the application for eviction cannot be ordered.

17. Therefore, when there was much confusion due to non quantifying the fair rent payable by the tenant in the revision which resulted in filing appeal and review and the above proceedings culminated and reached finality only on 4.8.2003, it cannot be said that there was willful default, which was deliberate and it amounts supine indifference on the part of the tenant in non-depositing the difference rent.

18. In ***S. Sundaram Pillai and Ors. v. V.R.Pattabiraman in 1985(1) SCC 591*** the Honourable Supreme Court has held that only the tenant on his own committed default and that is willful default, the willful must be intentional, deliberate, calculative and conscious with true knowledge of legal consequences flowing therefrom. Admittedly, fair rent in this case fixed by the High Court reached finality only on 4.8.2003 and the eviction petition has been filed for willful default for non-payment of difference fair rent as per the orders of the High Court in CRPs. As already stated when the revisions were disposed of amount has not been quantified. Hence, I am of the view that merely because the difference rent has not been deposited at the particular time, it cannot be construed the same was intentional and deliberate. Further, as already stated, the entire amount has been deposited as per the direction of the High Court during the pendency of the case. Further, all the arrears also deposited as per the direction of Rent Controller. Hence, once the entire amount deposited as per the direction of the court, the revision petitioner now cannot contend there is willful default. I do not find any error in the order passed by the Rent Controller and the First Appellate Authority. Accordingly, the Civil Revision Petition is liable to be dismissed.

19. In the result, the Civil Revision Petition is dismissed. No costs.

12.04.2019

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

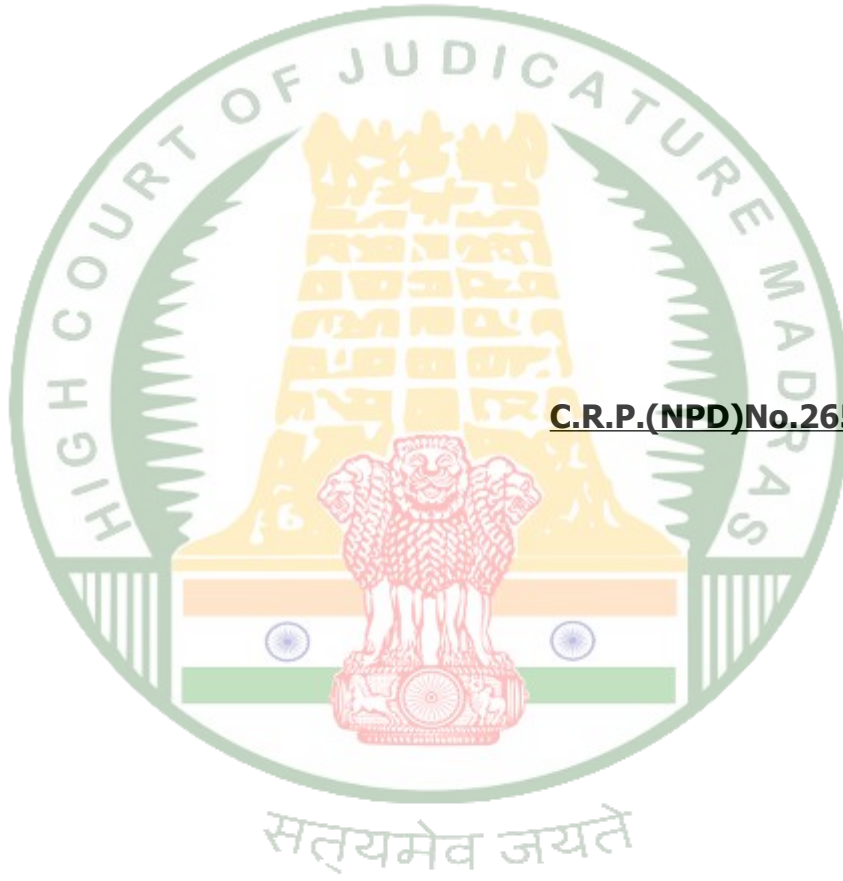
To

1. The VII Rent Control Appellate Authority Chennai
2. The XII Judge, Court of Small Causes cum Rent Controller, Chennai.



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N. SATHISH KUMAR, J.
ggs.



order in:
C.R.P.(NPD)No.2655 of 2013

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