

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2019

Pronounced on : 22.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)Nos.4000 to 4002 of 2014
and M.P.Nos.1 to 1 of 2014

B.Suresh Kumar
Prop: B.C.Jewellery

..

Petitioner /
Appellant
[in C.R.P.[NPD]No.4000 of 2014]

V.Rajendra Kumar
Prop: Utham Jewellery

..

Petitioner /
Appellant
[in C.R.P.[NPD]No.4001 of 2014]

1.Azeezha Bee (decd)
2.M.A.Kamaludeen
3.M.A.Gani
Partners Bharat Thread Stores
[Cause title accepted vide order
dated 14.07.2014 made in
M.P.No.1 of 2014 in
C.R.P.SR.No.39778 of 2014]

..

Petitioners /
Appellants
[in C.R.P.[NPD]No.4002 of 2014]

versus

1.Hotel Sudhara
A Partnership Firm
by its Managing Partner K.Prabu
and other partners.
2.A.Kuberan
3.K.Neelavathy

4.K.Selvam

.. Respondents /
Respondents
[in all CRPs]

COMMON PRAYER: Civil Revision Petitions have been filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amended by Act 23 of 1973, to set aside the common judgment and decree dated 05.09.2012 made in R.C.A.Nos.238 of 2006, 241 of 2006 and 242 of 2006 on the file of the learned VII Judge (Rent Control Appellate Authority), Small Causes Court, Chennai, confirming the common order dated 12.09.2005 made in R.C.O.P.Nos.2305 of 2004, 2309/2004 and 2311/2004 on the file of the learned XIII Judge (Rent Controller), Small Causes Court, Chennai, respectively.

For Petitioners : Mr.Inamdar Ameenur Rahman
[in all CRPs]
For Respondent No.1 : Mr.M.Devendran
[in all CRPs]
For Respondent Nos.2 to 4 : No Appearance
[in all CRPs]

COMMON ORDER

These Civil Revision Petitions have been preferred by the petitioners/appellants, challenging the common judgment and decree dated 05.09.2012 made in R.C.A.Nos.238 of 2006, 241 of 2006 and 242 of 2006 on the file of the learned VII Judge (Rent Control Appellate Authority), Small Causes Court, Chennai, confirming the common order dated 12.09.2005 made in R.C.O.P.Nos.2305 of 2004, 2309 of 2004 and 2311 of 2004 on the file of the learned XIII Judge (Rent Controller), Small Causes Court, Chennai, respectively.

2. Brief facts leading to the filing of these Petitions;

2.1. The petitioners in C.R.P.[NPD] Nos.4000 to 4002 of 2014 are the respondents in R.C.O.P.Nos.2305 of 2004, 2309 of 2004 and 2311 of 2004 respectively. Further, they are the appellants in R.C.A.Nos.238 of 2006, 241 of 2006 and 242 of 2006 respectively. The above said R.C.O.Ps. have been filed by the respondents herein for fixing the fair rent. Aggrieved over the common order passed by the learned XIII Judge (Rent Controller), Small Causes Court, Chennai, the petitioners in these Civil Revision Petitions had preferred Appeals in R.C.A.Nos.238 of 2006, 241 of 2006 and 242 of 2006 before the learned VII Judge (Rent Control Appellate Authority), Small Causes Court, Chennai, in which, the common order passed by the Rent Controller was confirmed and ultimately, the appeals are dismissed. Feeling aggrieved over the same, the petitioners are before this Court with the present Civil Revision Petitions.

3. Today, when these petitions are taken up for hearing, the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent are present and there is no appearance on behalf of the respondents 2 to 4.

4. The learned counsel appearing for the petitioners / tenants made a submission that, the property in respect to C.R.P.[NPD]Nos.4000 of 2014 and 4001 of 2014 measuring an extent of 211.50 sq.ft., but the property pertains to C.R.P.[NPD]No.4002 of 2014 is only with the measurement of 184 sq.ft. He would further contend that the Courts below, after hearing the submissions made on either side fixed the same rent to the property measuring an extent of 211.50 sq.ft. as well as to the property measuring an extent of 184 sq.ft. In otherwise, the learned counsel appearing for the petitioners fairly conceded in respect to findings arrived at by the Courts below in C.R.P.[NPD]Nos.4000 and 4001 of 2014, the petitioners are not having any grievance, but the petitioners in C.R.P.[NPD]No.4002 of 2014 are alone having grievance over the said findings as the same rent has been fixed to the property, which is having lesser measurement.

5. On the other hand, the learned counsel appearing for the first respondent / landlord would contend that the property now indicated by the learned counsel for the petitioners in C.R.P.[NPD]No.4002 of 2014 is having the measurement of 184 sq.ft., which is situated in a corner place of North Usman Road facing Burkit Road. Therefore, only by considering the said situation, the learned VII Judge (Rent Control Appellate Authority), Small Causes Court,

Chennai, has fixed the same rent i.e. Rs.4,079/- per month as that of the property pertains to C.R.P.[NPD]Nos.4000 and 4001 of 2014.

6. Now on going through the common judgment dated 05.09.2012 passed by the learned VII Judge (Rent Control Appellate Authority), Small Causes Court, Chennai, in which, the learned VII Judge has commonly fixed the fair rent, which is as follows;

“Calculation for R.C.A. Nos.238, 241 and 242 of 2006

	Rs.
Ground floor RCC roof 217 sq.ft.	= 80,507.00
@ Rs.371/-per sq.ft.	
Basic amenities 5%	= 4,025.00
Total	= 84,532.00
Depreciation @ 1% per year for 60 years	
0.537 x Rs.84,532/-	= 45,394.00

Land Value

Land Value = 1,50,00,000/-

$169.5/4 = 42.37 + 47.5/3 = 15.83$

= 58 sq.ft.

$1,50,00,000 \times 58$

2,400

Fair rent @ 12% for non-residential use

3,62,500.00

4,07,894.00

= 4,079/- ”

7. Now on going through the calculation made out by the learned Rent Control Appellate Authority, he has mentioned that the extent of property leased out to the petitioners as 217 sq.ft. but in the petition filed by

the respondents before the Appellate Authority, they have specifically mentioned in paragraph no.9 as the portion exclusively let out to the petitioner was 184 sq.ft. Therefore, it is apparent that the learned Rent Control Appellate Authority has wrongly calculated the extent of property as 217 sq.ft. instead of 184 sq.ft. In otherwise, the land value fixed as Rs.1,50,00,000/- is not disputed on either side. In the said circumstances, since the extent of leased out property is wrongly calculated by the learned Rent Control Appellate Authority, it is necessary to rectify the same by way of fresh calculation.

8. Further, before the trial Court, the learned counsel for the petitioners fairly conceded that there is no noticeable difference with regard to the age of the building, type of the building, the availability of basic amenities, plinth area under the occupation of the petitioners, the proportionate land area, the cost of construction and market value of the land. In otherwise, the contention raised by the learned counsel for the petitioners that the property is situated in the corner side of North Usman Road has not been substantiated with relevant documents.

9. Now on going through the common order passed by the learned XIII Judge, Small Causes Court, Chennai, the measurement of the leased out portion pertains to C.R.P.[NPD]No.4002 of 2014 was calculated as per the evidence given by an Engineer as 217 sq.ft. but on going through the petition filed by the respondents in R.C.O.P.No.2311 of 2004, they themselves admitted that the leased out portion to the petitioners was 184 sq.ft. Therefore, for calculating the fair rent, the extent of property, which was leased out to the petitioners was fixed as 184 sq.ft. So, it is appropriate to modify the rent fixed by the learned VII Judge (Rent Control Appellate Authority), Small Causes Court, Chennai, in respect to the leased out property pertains to C.R.P.[NPD]No.4002 of 2014, which is as follows;

$$\frac{\text{Rs.4,079/-}}{217 \text{ sq.ft.}} \times 184 \text{ sq.ft.} = \text{Rs.3,459/-}$$

10. From the above calculation, Rs.3,459/- is fixed as fair rent pertains to C.R.P.((NPD)No.4002 of 2014. The petitioners / tenants are directed to calculate the said fair rent as stated above and pay the same to the respondents / landlords from the date of filing of R.C.O.P. No.2311 of 2004.

11. In the light of the above discussions, C.R.P.(NPD)Nos.4000 and 4001 of 2014 are dismissed. C.R.P.(NPD)No.4002 of 2014 is partly allowed, fair rent is fixed as Rs.3,459/-, which is payable by the petitioners / tenants to the respondents / landlords from the date of filing of R.C.O.P. No.2311 of 2014. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

22.10.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

sri

To

1.The VII Judge (Rent Control Appellate Authority),
Small Causes Court, Chennai.

2.The XIII Judge (Rent Controller),
Small Causes Court, Chennai.

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R.PONGIAPPAN, J.,
sri



Pre-delivery Common Order made in
C.R.P.(NPD)Nos.4000 to 4002 of 2014
and M.P.Nos.1 to 1 of 2014

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22.10.2019