

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).Nos.3540 of 2018 & 511 of 2019

&

C.M.P.Nos.19814 of 2018 & 3344 of 2019

Mrs.Rabiya Basheer Ali

...Petitioner

Vs

Mr.C.Devendra Prasad

... Respondent

Prayer in C.R.P.No.3540 of 2018: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 against the Judgement and Decree dated 18.07.2018, passed in R.C.A.No.476 of 2017, on the file of the VIII Judge, Court of Small Causes, Chennai, confirming the fair and decretal order passed on 04.07.2017 in M.P.No.244 of 2016 in R.C.O.P.No.1533 of 2014, on the file of the XIV Judge, Court of Small Causes, Chennai.

Prayer in C.R.P.No.511 of 2019: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act

18 of 160 against the order and decree dated 27.09.2018, passed in M.P.No.321 of 2018 in R.C.A.No.683 of 2018 on the file of the VIII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.P.B.Balaji

For Respondent : M/s.Inamdar Ameenur Rahman

ORDER

The tenant is the revision petitioner before this Court in both the revisions. C.R.P.No.3540 of 2018 is filed challenging the order passed by the VIII Judge, Small Causes Court, Chennai in R.C.A.No.476 of 2014 confirming the order passed by the XIV Judge, Small Causes Court, Chennai in M.P.No.244 of 2016 in R.C.O.P.No.1533 of 2014. C.R.P.No.511 of 2019 is filed challenging the order passed in M.P.No.321 of 2018 in R.C.A.No.683 of 2018. The facts in a nutshell required to dispose of the Civil Revision Petitions are as follows:

2.The demised premises is the property bearing Door No.518, Old No. 157, T.T.K Road, Alwarpet, Chennai-600 018. It consists of the residence and shop in the ground floor and the entire 1st and 2nd floor of the suit premises. The parties are referred to in the same status as in the rent control Petition.

3.The tenant had entered into lease agreement with the landlord on 12.01.2004. Under the terms of the lease deed the lessee had paid a sum of Rs.1,00,000/- towards security deposit and the rent payable was sum of Rs.100/- per month. The rental agreement was for a period of 5 years. Thereafter a supplemental lease agreement came to be executed on 12.01.2004 wherein the lessee had paid a sum of Rs.7,15,000/- towards rental advance, Clause III of the supplemental lease agreement describes the said payments as the lease rental advance. The terms of the lease was that the lessee was not required to pay any rents for the period of 5 years and on the lessor returning the sum Rs.7,15,000/- the lessee was required to vacate the premises.

4.The lease was however fixed for the period of five years. It transpires that after the expiry of the lease rental agreement the land lord had filed R.C.O.P.No.508 of 2009 against the tenant on the grounds of willful default and subletting. He had also filed R.C.O.P.No.509 of 2009 for fixation of fair rent. R.C.O.P.No.508 of 2009 was dismissed on the grounds of willful default and subletting. Challenging the said order the landlord had filed R.C.A.No.700 of 2013

and the R.C.A was dismissed against which the landlord did not prefer any revision and therefore the dismissal order in R.C.O.P.No.508 of 2009 became final.

5.As regards R.C.O.P.509 of 2009, which was filed by the landlord for fixing the fair rent the same was allowed and fair rent of Rs.25,842/- was fixed. The tenant did not challenge the said order and therefore the fair rent had become final. Since tenant had refused to pay the fair rent the land lord had filed R.C.O.P.1533 of 2004, from which the present proceedings emanate, for eviction on the ground of willful default. Pending the said R.C.O.P. the landlord taken out an application in M.P.No.244 of 2016 under Section 11 (3) of the Tamil Naud Buildings (Lease and Rent Control Act) 18 of 1960, directing the tenant to discharge all the arrears.

6.On 04.07.2018 a conditional order was passed directing the tenant to pay arrears of the differential Fair Rent after adjusting a sum of Rs.7,15,000/- which was paid as advance. The tenant without complying with the conditional order preferred R.C.A.No.476 of 2017. This appeal was dismissed against which C.R.P.No.3540 of 2018 is

filed by the tenant before this Court. Since the conditional order was not complied with eviction was ordered.

7. Since the orders in M.P.No.244 of 2016 was not complied with R.C.O.P.No.1533 of 2014 was dismissed. Challenging the order and decreetal order in R.C.O.P.No.1533 of 2014 the tenant had preferred R.C.A.No.683 of 2018 on the file of the VIII Small Causes Court, Chennai. Pending R.C.A. the tenant had taken out M.P.No.321 of 2018 for stay of further proceedings in R.C.O.P. The learned Rent Control Appellate Authority passed a conditional order of stay stating that the entire arrears of Rs.11,28,415/- had to be paid on or before 25.10.2018, failing which the stay shall stand vacated and the matter was directed to post on 26.10.2018 for reporting compliance.

8. Challenging the said conditional order of stay the tenant has filed the C.R.P.No.511 of 2019. The proceedings which are challenged in C.R.P.No.3540 of 2018 and C.R.P.No.511 of 2019 both emanate from the same Rent Control Proceedings. Heard Mr.P.B.Balaji, learned counsel for the petitioner and Mr.Inamdar Ameenur Rahman for the respondent. It is seen that the tenant had not challenged the fair rent

that has been fixed by the learned Rent Controller in R.C.O.P.No.509 of 2009. Therefore the same has attained the finality. Subsequently since the tenant had not complied with the order passed in R.C.O.P.No.509 of 2009 it had resulted in a default. The only ground of challenge in both the revisions is that the Courts have not considered the lump sum advance that was paid to the landlord.

9.It has to be noted that the tenant herself described the amount as rental advance. In R.C.O.P.No.1533 of 2014, it is seen that total outstanding which is due from the tenant is a sum of Rs.9,96,572/-. As on November 2018 the said sum has increased to a sum of Rs.30,49,356/- and after deducting the rental advance Rs.7,15,000/- a sum of Rs.23,34,356/- was due.

10.It is further seen from the records that the tenant had taken a plea of maintainability of the rent control proceedings however, the same has been found against her. Both the Rent Controller as well as the Appellate Authority had considered the lease agreement, its terms and has held the said sum has been termed as a rental advance. The rent control proceedings is maintainable as the lease is of the building

therefore the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, would apply.

11.Having failed to comply with the conditional order of the Court and taking note of the default of huge arrears this Court find no infirmity in the orders passed by the Appellate Authority in both R.C.A.No.476 of 2017 and M.P.No.321 of 2018 in R.C.A.No.683 of 2018.

In the result, the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

13.02.2019

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Index : Yes/No
Speaking order/non-speaking order

To,
1.The VIII Judge,
Court of Small Causes,
Chennai

2.The XIV Judge,
Court of Small Causes,
Chennai.

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P.T.ASHA, J.,

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**C.R.P(NPD).Nos.3540 of 2018 &
511 of 2019 &
C.M.P.Nos.19814 of 2018 &
3344 of 2019**

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