

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(NPD).Nos.2951 & 3387 of 2018

and

C.M.P.Nos. 17281, 18973 & 19142 of 2018

CRP.No.2951 of 2018:

M/s.Oriental Enterprises
Represented by its Partners
Mr.S.M.A.J.Habeeb Mohamed Sadakathulla,
Mr.S.M.A.J.Abdul Haleem,
144/1, Nungambakkam High Road,
Nungambakkam, Chennai – 600 034. ..Petitioner/Respondent

Vs.

M/s.Lathangi Cycle and Carriage Private Limited.,
Represented by its Director, Mr.M.P.Vikram,
Having Business at 144 and 144/1,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034. ..Respondent/Appellant

CRP.No.3387 of 2018:

M/s Lathangi Cycle & Carriage Pvt.Ltd.
Rep. by its Director M.P.Vikaram
No. 688, 100 Feet Ring Road,
15th Cross, J.P.Nager,
Second Phase,
Bangalore – 560 078. ..Revision Petitioner/ Tenant

Vs.

M/s.Oriental Enterprises,
Rep.by its Partners
1.S.M.A.J.Habeen Mohamed Sadakathullah
2.S.M.A.J.Abdul Haleem
having office at No. 144/1,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034. ..Respondent/Landlord

Prayer in CRP.No.2951 of 2018: This Civil Revision Petition filed under Section 25 of the Tamil Nadu Building(Lease and Rent Control) Act to set aside the fair order and decreetal order dated 28.08.2018 in M.P.No. 454 of 2018 in RCA No.493 of 2018, passed by the learned VII Judge, Small Cause Court, Chennai and consequently dismiss M.P.No. 454 of 2018 in RCA.No. 493 of 2018.

Prayer in CRP.No.3387 of 2018: This Civil Revision Petition is filed under Section 227 of the Constitution of India to set aside the order of eviction passed by the Executing Court dated 06.07.2018 in E.P.No. 282 of 2018 in RCOP.No.1266 of 2017, on the file of the Hon'ble XIV Small Causes Judge at Chennai.

In CRP.No.2951 of 2018:

For Petitioner : Mr.K.M.Asim Shehzad
For Respondent : No appearance

In CRP.No.3387 of 2018:

For Petitioner : Mr.Suresh
For Respondent : Mr.K.M.Aasim Shehzad

COMMON ORDER

CRP.No.2951 of 2018 arise against the order in M.P.No. 454 of 20178 in RCA.No.493 of 2018, on the file of the learned VII Small Causes Judge, Chennai, which was a petition filed by the tenant for the following reliefs:

"to grant an order of interim stay of all further proceedings in pursuance in main R.C.O.P.No. 1266 of 2017, on the file of the Hon'ble XIV Small Causes Court Judge at Chennai pending the disposal of the above appeal"

CRP.No.3387 of 2018 is a revision petition filed challenging the order passed in E.P.No. 282 of 2018 in RCOP.No.1266 of 2017, on the file of the learned XIV Small Causes Judge at Chennai.

2 It is necessary to briefly allude to the facts and circumstances of the above case, in order to appreciate the issue on hand. This Court is passing a common order since both the revisions emanates from a single RCOP viz., RCOP.No. 1266 of 2017 filed by the landlord, on the file of the XIV small causes Judge, Chennai, on the ground of willful default. The Rent Control petition was filed by the landlord on the following facts:

The landlord who is the owner of the demised premises had at the request of the tenant let out the demised premises for the purpose of running a franchise showroom and workshop for 'Harley Davidson' luxury bikes and accessories. The landlord believed that the tenants were experts in the field and they were looking for a long term lease and that they wanted a lease for a period of fifteen years. Convinced with the representation of the tenant, the landlord had entered into Lease Agreement dated 11.06.2015, with the respondent in respect of the demised premises. As per the Lease Agreement, the tenant was to use and occupy the demised premises consisting of 4650 sq.ft in the ground floor in the front building of Door No. 144 for their show room and First Floor, measuring 4200

sq.ft., in the rear of the building bearing Door No. 144/1 for their work shop. The tenancy was understood to be one for commercial purpose and the agreed rent was a sum of Rs.5,50,000/-in total (Rs.4,18,000/-, for the ground floor front portion and Rs.1,31,500/-, for the first floor rear side). The respondent had also agreed to pay service tax at 15% and maintenance charges at Rs. 15,000/-. They had mutually agreed for an enhancement of rent at the rate of 20% escalation at the end of every three years and the duration of the lease was for a period of fifteen years. The respondent had paid a sum of Rs.33,00,000/-, towards refundable interest free security deposit. The tenant had requested the landlord to permit them to be in rent free occupation of the demise premises for the first three months so as to enable them to set up show room and the work shop. The said agreement was also incorporated in the lease agreement. From and when the lease rentals became due the landlord realized that there was a delay in the payment of monthly rents and irregular payments of rents were being made and from November 2016 the payments of rents came to a full stop. The landlord issued legal notice on 03.03.2017 informing the tenant that they have not paid the monthly rents consecutively from November 2016 till February 2017 amounting a sum of Rs. 23,10,000/-, and calling upon tenants to vacate and hand over vacant possession of the demised premises. After receiving of the said notice, the

tenant/respondent requested petitioner not to move legally and promised to clear the rental arrears. However, the assurance was observed in a breach. The tenant, who was a defaulter for the months of November 2016, December 2016 and January 2017, paid a sum of Rs. 17,40,000/- in four installments, the last of which was on 05.06.2017. The tenant, who had been deducted TDS at the rate of 10% on the agreed rent of Rs.5,50,000/-, from April 2016 to till January 2017, however failed to pay the deducted TDS amount to the Government and they have also not filed their Income Tax returns in this regard, for the previous financial year being April, 2016 to March, 2017. The respondent had also failed to pay electricity charges. As a result of which, electricity connection had been disconnected. The landlord realized that the tenant was in huge financial crises and therefore, requested the tenant to hand over vacant possession of the premises, this request was also not adhered to. The default was from the February 2017 till August 2017 when the petition came to be filed by the landlord.

3 Thereafter, the landlord had also moved an application under Section 11(4) of the Tamil Nadu Building (Lease and Rent Controll) Act, 1960, demanding the payment of Rs. 51,90,000/- towards monthly arrears for the period of February 2017 to October 2017 and for a direction to the tenant to deposit the

subsequent rentals failing which to pass an order of eviction, directing the respondent to hand over vacant possession of the schedule mentioned property. On being served with the notice in the above application, the tenant entered appearance and took time to file counter. However they had failed to appear on 17.01.2010, the date fixed for filing a counter, as a result, they were set ex-parte and an order was passed in the Section 11(4) application directing the tenant to make the said payment. The application under Section 11(4) is numbered as M.P.No. 551 of 2017. Thereafter, the tenant had moved an application seeking leave of the Court to deposit a sum of Rs. 24,67,500/- and continue to pay the monthly rents of Rs.5,77,500/-, towards the arrears after deducting the advance of Rs. 33,00,000/- lying with the landlord. The landlord opposed the said application since the tenant had failed to comply with the conditional order in M.P.No. 551 of 2018, dated 01.03.2018, the learned XIV Small Causes Judge, Chennai, was pleased to allow M.P.No. 551 of 2017.

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4 From a reading of this order in M.P.No. 551 of 2017, it appears that though time was granted till late evening for the tenant to clear the arrears, the same was not done. Hence, the petition has been allowed and as a sequel to the order passed in M.P.No. 551 of 2017, R.C.O.P.No.1266 of 2017 also stood allowed

and the tenant was directed to hand over the vacant possession of the petitioner premise within a period of two months.

5 It appears that the tenant had filed an appeal only against the order passed in M.P.No. 551 of 2017 and no appeal has been preferred against the consequential order in R.C.O.P.No.1260 of 2017. However, the application in M.P.No. 454 of 2018 was filed in RCA.No.493 of 2018, seeking interim stay of all further proceedings in R.C.O.P.No.1266 of 2017, pending on the file of the XIV Small Causes Judge, Chennai, till the disposal of the appeal. Meanwhile, the landlord had sought to execute the order in RCOP.No. 1266 of 2017 by filing E.P.No. 282 of 2018.

6 In the M.P.No.454 of 2018 in R.C.A.No. 493 of 2018, a conditional order was passed on 19.07.2018 directing the tenant to pay a sum of Rs. 23,00,000/-, directly to the landlord on or before 02.08.2018 and the stay was granted, this order was made absolute by order dated 28.08.2018. This order of stay has been challenged by the landlord in CRP.No.2951 of 2018.

7 On 26.10.2018, this Court in C.M.P.No.19142 of 2018 on CRP.No.3387 of 2018 was pleased to direct the tenant to deposit the sum of Rs. 92,50,000/-, on or before 30.10.2018 and the

stay was granted. It appears pursuant to the order dated 28.10.2018, the tenant had cleared the rents only till the month of September 2018. Thereafter, there has been no payments despite orders of this Court dated 26.10.2018, directing the tenant to continue to pay the rents.

8 From October 2017, the tenant is in arrears. On 08.04.2019, when the matter came up, the learned counsel for the tenant had sought time stating that they would vacate the premises within two days. This Court had thrice asked the learned counsel, whether he was undertaking to vacate the premise today, the counsel had said yes. Thereafter, when the matter was listed on 11.04.2019, the counsel for the tenant represented that they have no arguments and that the Court can proceed to pass orders and accordingly made an endorsement to that effect in the petition concerned. Therefore, this Court has taken up application and passing the order. From the conduct of the tenant right through the proceedings to date, it is clearly evident that the default is continuing throughout the proceedings and this Court taking note of the subsequent events, allows CRP.No.2951 of 2018 vacating the stay granted in M.P.No.454 of 2018 and dismisses the revision filed in CRP.No. 3287 of 2018.

9 In the result, C.R.P.No.2951 of 2018 is allowed and C.R.P.No.3387 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

11.04.2019

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

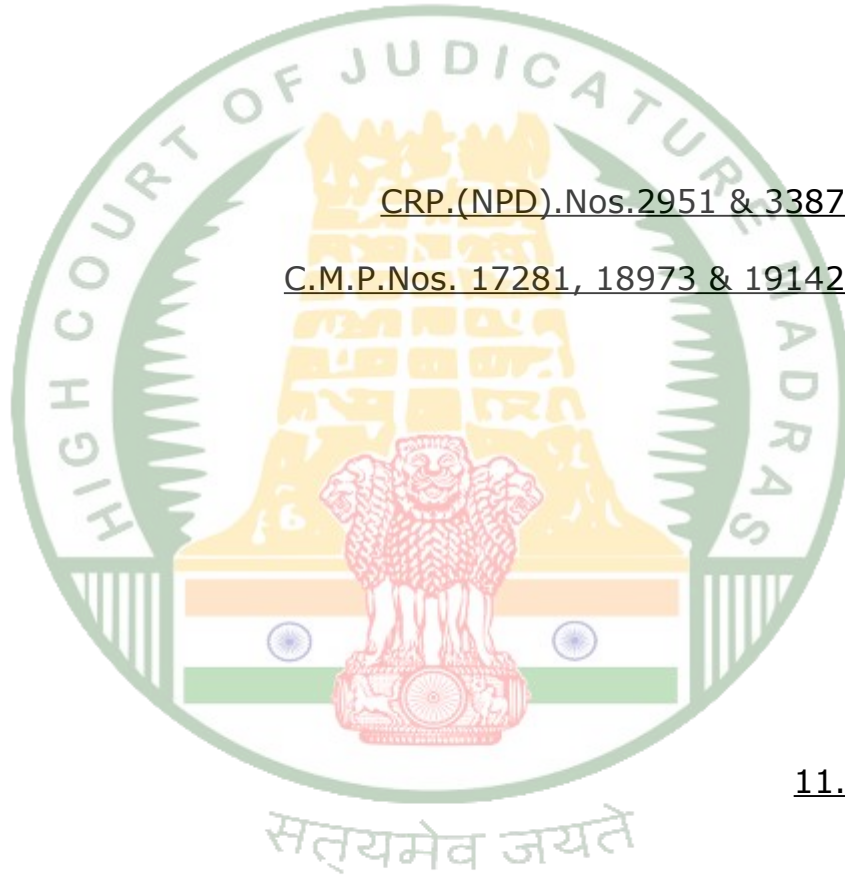
To

- 1.The learned VII Judge,
Small Cause Court,
Chennai.
- 2.The XIV Small Causes Judge,
Chennai.



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P.T.ASHA, J.
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