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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.616 of 2018

and

C.M.P. (MD) No.2718 of 2018

and

C.M.P. (MD) Nos.1730 & 1731 of 2019

D.Dhanushkodi

... Petitioner/Petitioner/Tenant

vs.

1.S.M.Vasanthal Aachi

2.M.Sivakumar

3.M.Subramanian

... Respondents/Respondents/Landlords

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.01.2018 made in I.A.No.150 of 2017 in R.C.O.P.No.71 of 2011 on the file of the Additional Rent Controller (Additional District Munsif), Madurai.

For Petitioner : Mr.P.Thiyagarajan

For Respondents : Mr.V.K.Vijayaraghavan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 18.01.2018 made in I.A.No.150 of 2017 in R.C.O.P.No.71 of 2011 on the file of the Additional Rent Controller (Additional District Munsif), Madurai.

2.Before the Rent Controller, the petitioner herein is the tenant and the respondents herein are the landlords. For the sake of convenience, the parties will be referred to as per their rank before the Rent Controller.

3.I.A.No.150 of 2017 has been filed by the tenant to scrap the Commissioner's report, which was filed in I.A.No.32 of 2011, to appoint a new Commissioner to visit the property along with a generalising Engineer and to file a report.

<https://hcc.madras.gov.in/home>

4.In I.A.No.150 of 2017, the tenant contended that the



landlords filed R.C.O.P.No.71 of 2011 for fixation of fair rent and they have filed an application in I.A.No.32 of 2011 for the appointment of an Advocate Commissioner to visit the property with a qualified Engineer to file a report and after appointing the Advocate Commissioner by the Rent Control Authority, he has inspected the premises and filed a report. Thereafter, the tenant filed a memo of objection on 18.12.2013. In the said objection, the tenant has stated that the Engineer has not assessed the age of the building and cannot fix the undivided share of the building. Further, the tenant contended that the Engineer has given the report for 931 sq.ft., by stating that the tenant is occupation of 609 sq.ft., which is not sustainable and further, the market value fixed by the Engineer is also not sustainable. Hence, the petitioner filed the above said I.A., for the relief as prayed for.

5.In the counter statement, the landlords contended that the learned counsel for the tenant and the landlords were present during inspection. In the presence of the learned counsel and their parties, the inspection was done and thereafter, the Commissioner has filed a detailed report. Hence, the purpose of filing the application to appoint a new Advocate Commissioner is not tenable. So, these aspects seeking for new Advocate Commissioner will not serve any purpose and the landlords very much objected to the petition filed by the tenant.

6.After considering the facts and circumstances of the case and on hearing the arguments advanced on either side, the Rent Control Authority has given a finding that the tenant can cross-examine the Engineer and the Advocate Commissioner for valuation fixed by the Engineer and it can be argued in the main proceedings and he has every right to question and if he needs any clarification, it can be done by way of cross-examination regarding the assessment, measurement and enjoyment of the tenant as well as the landlords with regard to the undivided share, which is very much disputed by the tenant. The Rent Control Authority dismissed the said application, against which, the tenant has filed the present Civil Revision Petition.

7.In the grounds, the tenant contended that since there are so many discrepancies in the valuation report, he has filed his objection as early as on 23.11.2016. On enquiry, the learned counsel for the tenant represented that the Engineer has not assessed the exact age of the demised premises and he has not taken any steps to assess the age of the building, but only given evasive opinion without any basis.

8.The Rent Control Authority has also observed that R.C.O.P.No.71 of 2011 has been filed to fix the fair rent and the connected R.C.O.P.No.63 of 2011 has been filed for eviction on the ground of wilful default and personal occupation and in the report filed by the Engineer, it is seen that the Engineer has stated how to assess the value and the age of the building.



9. The Rent Control Authority has very well found the fact that these aspects, which are very much relied by the tenant disputing the assessment of the Engineer by way of measurement fixing the value, can be clarified and the tenant has every opportunity to cross-examine the witnesses at the time of enquiry and hence, the application filed to appoint the new Advocate Commissioner will not serve any purpose. Further, the report was given only by a qualified Engineer and therefore, the tenant cannot have any grievance in the order of the Rent Control Authority.

10. On perusal of the objections filed by the tenant as well as the report of the Engineer, this Court finds that the order of the Rent Control Authority does not warrant any interference of this Court.

11. On hearing the landlords, it is observed that since the said R.C.O.P., is of the year 2011, the matter was prolonging all these years. P.W1 was examined in chief and the case is also pending for number of years and further, the landlords are put into lot of mental agony and hence, the tenant is unable to seek any relief at the earliest.

12. On perusal of records, it is seen that the purpose of filing the present Civil Revision Petition is only to drag on the proceedings and to delay and cause mental agony to the landlords since the tenant has very much got every opportunity before the trial Court.

13. In view of the above, this Civil Revision Petition is dismissed with cost of Rs.2,000/-. The petitioner herein/tenant is directed to pay a sum of Rs.2,000/- to the credit of Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of three weeks from the date of receipt of a copy of this order. The Additional Rent Controller (Additional District Munsif), Madurai, is directed to dispose of the case in R.C.O.P.No.71 of 2011 within a period of three months from the date of receipt of a copy of this order and both parties are directed to co-operate for the early disposal of the said case. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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To

The Additional Rent Controller,
(Additional District Munsif),
Madurai.

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Copy to:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.THIYAGARAJAN, Advocate, SR.No. 60890

+1cc to Mr.V.K.Vijayaraghavan, Advocate, SR.No.60803

CRP(MD) No.616 of 2018
12.04.2019

MM

KK/SAR/07.05.2019/ 4P-5C