

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

C.R.P. (PD) No.2540 of 2018  
and CMP No.15431 of 2018

P.Vijayalakshmi

.. Petitioner

Vs.

K.Annamalai

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.06.2018 passed by the XI Small Causes Court at Chennai in M.P.No.860 of 2015 in M.P.No.261 of 2015 in R.C.O.P.No.1628 of 2014 and by modifying the order dated 18.08.2015 passed in MP No.261 of 2015.

For Petitioner : Mr.Krishna Bhagawat  
for M/s.P.Subba Reddy

For Respondent : Ms.R.V.Gayatri  
for M/s.P.B.Rananujam

ORDER

This matter is taken up for hearing through Video-Conferencing.

I have heard Mr.Krishna Bhagawat, learned counsel appearing for Mr.P.Subba Reddy for the petitioner and Ms.R.V.Gayatri, learned counsel appearing for Mr.P.B.Rananujam for the respondent.

2. The landlord has come up on revision against an order dismissing an application for review of an order made in an application under Section 11(1) of the Tamilnadu Buildings (Lease & Rent Control) Act 1961.

3. The main RCOP was filed seeking eviction on the grounds of willful default and owner's occupation contending that the tenant, who had agreed to pay 5% increase year on year, has failed to pay the enhanced rent.

4. Pending RCOP, an Application under Section 11(4) was filed, wherein the tenant took a plea that though he had agreed to pay 5% increase year on year, because of the fact that his business was not doing well, the landlord's husband has agreed to waive the 5% increase and continued to receive the original rent at the rate of 78,750/- per month. This contention was rejected by the Rent Controller and the Rent Controller held that the

tenant had committed default in payment of rent and quantified the arrears of rent at Rs.11,55,310/-. It is not in dispute that the tenant did not pay this amount also, but vacated the tenanted premises.

4. In the Review Application, it is the contention of the landlord that there is a mistake in the calculation made by the Trial Court and the actual arrears is nearly Rs.76,57,967.36. The landlord sought for a review of the order in the Section 11 Application saying that there is an arithmetical error in the calculation. The Review Petition came to be dismissed by the Trial Court on 04.06.2018. In the interregnum, the tenant had raised the issue of admissibility of the Lease Agreement of the year 1998, on the ground that it is unstamped and unregistered and hence the same cannot be enforced. This Court by an order dated 23.11.2016 made in CRP 3127 of 2016 held that Ex.P1, the Lease Agreement is not admissible in evidence and directed the same to be eschewed from the evidence. There was a further direction to the Trial Court to consider the case on the basis of available materials without reference to Ex.P1.

5. In view of the said development, it is clear that the very basis of the claim of the landlord regarding the arrears stands eschewed. Therefore, I do

not think there can be a review of the order of the learned Rent Controller at this stage, based on the agreement of the year 1998. Now that the tenant has also vacated, the landlord can only resort to a civil suit for recovery. It is open to the landlord to raise all the contentions before the Civil Court and the fact that there was a determination of the quantum of arrears in the order of the Rent controller made in MP No.261 of 2015 which was the subject matter of review, cannot be put as defence by the tenant. It is open to the parties to raise all contentions based on the agreement between them in the Civil Suit, if any filed by the landlord for recovery of arrears of rent.

6. With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

20.08.2020

jv  
Index: Yes/No  
Speaking order/ Non speaking order

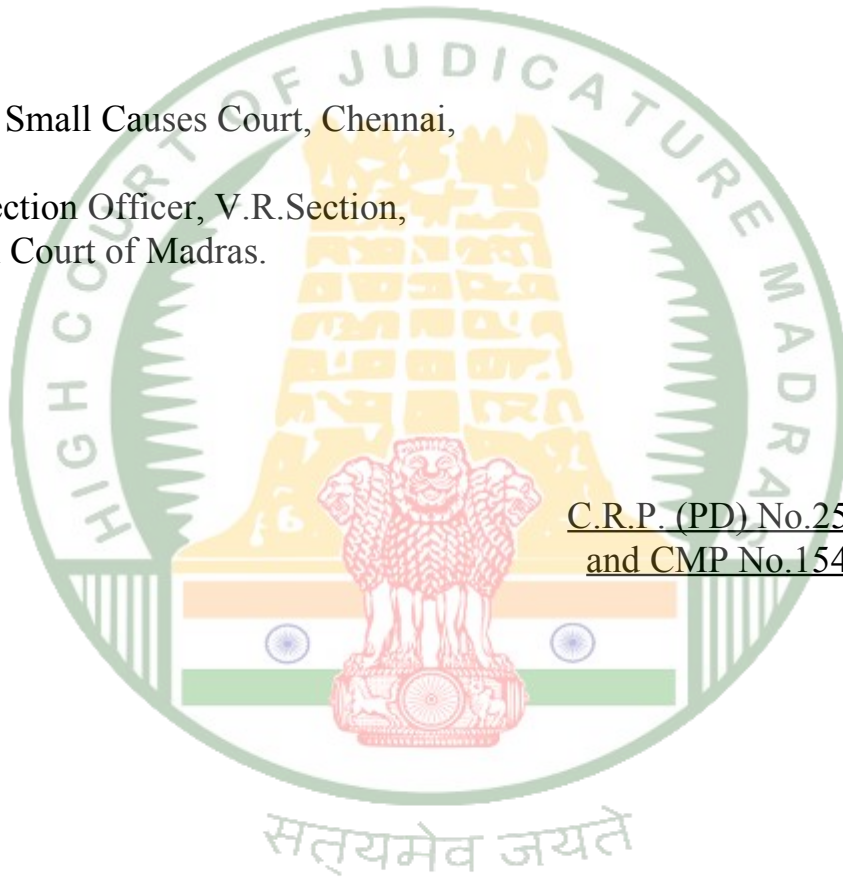
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**R.SUBRAMANIAN, J.**

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To

- 1 The XI Small Causes Court, Chennai,
2. The Section Officer, V.R.Section,  
High Court of Madras.



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