

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD) No.437 of 2021

A. Meenatchi ... Petitioner

Vs.

J. Thomas ... Respondent

Prayer: This Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 as amended by Act 1 of 1980) praying for to set aside the fair and decreetal order passed in R.C.A. No.10 of 2018 dated 06.10.2020 on the file of the Rent Control Appellate Authority (Sub-Judge, Chidambaram) in confirming the fair decreetal order passed in R.C.O.P. No.10 of 2012 dated 28.02.2018 on the file of the Rent Controller (Principal District Munsif, Chidambaram) and fix the fair rent as per law and written arguments submitted by the Landlady before the Rent Control Appellate Authority.

For Petitioner ... Mr.A. Muthukumar

For Respondent ... No Appearance

ORDER

The Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 as amended by Act 1 of 1980) praying for to set aside the fair and decreetal order passed in R.C.A. No.10 of 2018 dated 06.10.2020 on the file of the Rent Control Appellate Authority (Sub-Judge, Chidambaram) in confirming the fair and decreetal order passed in R.C.O.P. No.10 of 2012 dated 28.02.2018 on the file of the Rent Controller (Principal District Munsif, Chidambaram) and fix the fair rent as per law and written arguments submitted by the Landlady before the Rent Control Appellate Authority.

2. The petitioner/landlady originally filed R.C.O.P.No.10 of 2012 to fix the fair rent to the petition mentioned building as per the provisions of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 and direct the respondent to pay fair rent as fixed. It has been stated that the petition mentioned property belonged to petitioner's husband Apparajan and he leased out the property to the tenant/respondent herein in the year 1989 on monthly rent of Rs.450/-. After the death of Apparajan, the

tenant/respondent herein became a tenant under the petitioner who is in possession and managing the said petition mentioned property and executed a rent deed dated 01.08.1994 for a monthly rent of Rs.700/-. The rent has been periodically increased and lastly on 1.9.1998 the rent was fixed as Rs.1,000/- and this rent continues till the filing of this petition. The tenant/respondent herein even though took the property for his residential purpose and for conducting prayer in the garden portion, after sometimes he has converted the entire building for his religious activities and conducting prayers. Thus, the suit property is used as a non residential building. The suit property is a terraced building with garden and site. It has electrical service connection and municipal water supply. It situates in an important locality. The market value of the site is Rs.1,800/- per sq.ft. The existing rent was fixed several years back. The suit building will fetch a monthly rent of Rs.15,000/- per month. Hence, the petitioner/landlady has filed RCOP No.10 of 2012 against the tenant/respondent herein for fixation of fair rent. The respondent case is that he was a tenant under Apparajan and after him he is a tenant under the petitioner and paying the monthly rent of Rs.1,000/-. No church is functioning in the petition mentioned property. The fair rent claimed by

the landlady/petitioner herein is high. The site area is to be treated only as amenity. The respondent put up shed and it cannot be included in the building area and that he put up cement slabs. The market value of the site is not more than Rs.300 to Rs.400 sq.ft. The petitioner has not stated the value of the building. There is no municipal water supply and it was illegally disconnected by the petitioner/landlady. The respondent has constructed the bathroom and lavatory on his own costs. The petitioner has no basis to claim fair rent in the petition mentioned property. After considering the entire oral and documentary evidence, the learned Rent Control Appellate Authority (Sub-Judge, Chidambaram) by its fair decreetal order dated 28.02.2018 made in R.C.O.P. No.10 of 2012 has allowed the R.C.O.P.No.10 of 2012 fixing the monthly fair rent as Rs.3,300/- and the petitioner is entitled to receive the above said rent from the respondent/tenant from the date of filing of the RCOP. Being aggrieved by the said fixation of Rs.3,300/-, the RCA No.10 of 2018 was filed by the respondent/tenant raising various grounds. The petitioner/landlady has also filed written arguments as well as the additional written arguments urging the first appellate Court to re-fix the fair rent from Rs.3,300/- to Rs.7,820/- per month. When the matter was

taken up for hearing on 6.10.2020, the learned counsel for the appellant/tenant made an endorsement on the bundle that he is not pressing the RCA and based on the said endorsement, the first appellate Court by its order and decree dated 6.10.2020, has dismissed the RCA as not pressed. Aggrieved by the said order of the first appellate Court, the present Civil Revision Petition has been filed by the petitioner/landlady before this Court.

3. The learned counsel appearing for the petitioner submitted that the First Appellate Court has not taken into consideration that the landlady/petitioner herein could canvass the correctness of the order of the rent controller in the tenant's appeal. Further, when the petitioner/landlady had filed written arguments on 22.9.2020 and additional written arguments on 30.9.2020, the First Appellate Court ought to have considered the case and fixed the fair rent in accordance with law.

4. He submitted that the appellate authority failed to follow the ratio laid down by this Court reported in **1981 (1) MLJ 516, 1989 (1)**

LW 155 (DB) and 1993 (1) LW 663 raised in the written arguments submitted by the petitioner/landlady. It has been further submitted that the Rent Controller had not followed the rent control rules to be followed in a petition for fixing of fair rent. Further, the Appellate Authority has not considered the vast extent of the property fixing monthly rent at Rs.3,300/- is too low and the tenant/petitioner herein has been using the entire premises for non-residential purposes. Hence, the first appellate authority ought to have determined the fair rent for the said premises.

5. The learned counsel further submitted that the First Appellate Authority has not taken into consideration the fact that the tenant had the benefit of not paying the fair rent for more than 2 years and he withdrew the appeal sensing that the fair rent would be enhanced taking by advantage of Covid 19 Pandemic situation. Hence, the order of the Appellate Court is liable to be interfered with and dismissed.

6. Heard the learned counsel for the petitioner and perused the typed set of papers.

7. On going through the said averments, it is seen that against the fair and decreetal order of the rent controller fixing the fair rent as Rs.3,300/- per month, the landlady/petitioner herein has not chosen to file a separate RCA against the fixation of Rent of Rs.3,300/- in the said petition mentioned premises and she has kept quiet after fixation of Rent by the Rent Controller and After filing RCA No.10 of 2018 by the tenant/respondent herein, she filed a written arguments as well as the additional written arguments urging the first appellate Court to re-fix the fair rent from Rs.3,300/- to Rs.7,820/- per month. Further, tenant/respondent herein who has filed the RCA No.10 of 2012, has chosen to withdraw the said RCA on his own before the first appellate Court since he could not proceed further for hearing during the pandemic situation. Further, the Court cannot prevent anybody from withdrawing any petition filed before it , as it is the option to the parties concerned to proceed the matter further or not. The Court cannot keep the matter pending to contest the same on merits, when the appeal itself sought for to be withdrawn. Further, if the matter is taken up on merits, the Court would have considered the rights of the petitioner to canvass the findings rendered against her by way of written argument as well as additional

V.BHAVANI SUBBAROYAN, J.,

lbm
written arguments. However, in the present case, when the first appeal itself was withdrawn, there is no possibility for the first appellate Court to go into merits of the case. Hence, the present Civil Revision Petition stands dismissed. However, it is open to the parties concerned to agitate the RCOP No.10 of 2012 filed by the petitioner/landlady against the fixation of fair rent and proceed further in this regard to seek remedy.

8. In the result, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed if any. No costs.

03.03.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

To:

1. The Rent Control Appellate Authority (Sub-Judge, Chidambaram)
2. The Rent Controller (Principal District Munsif, Chidambaram)