

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2021

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.3663 of 2013

and

M.P.No.1 of 2013

M.Suresh Kumar Petitioner

Vs.

K.R.Radhakrishnan ... Respondent

Prayer :- The Civil Revision Petition filed under Article 227 of the Constitution of India praying that the order passed in N.T.A.No.31 of 2002, dated 07.02.2013 is *exfacie* illegal and the findings rendered are perverse vitiated by flouting the direction of the High Court in C.R.P.No.24 and 959 of 2004, confirming the Decree in Suit. Therefore, the judgment rendered by the 4th Judge Small Causes Court Chennai, in Suit No.17/1999, dated 04.10.2002, may be set aside and allowing the CRP dismissing the suit.

For Petitioner : Mr.M.Suresh Kumar
(Party-in-person)

For Respondent : Notice served – No appearance

ORDER

This Civil Revision Petition is arising out of the fair and decreetal order passed in New Trial Application (N.T.A.) No.31 of 2002, dated

07.02.2013 on the file of the IV Small Causes Court, Chennai, thereby modified the order passed in Suit No.17 of 1999 dated 04.10.2002, thereby decreed the suit filed by the respondent herein.

2. The respondent is the plaintiff. He filed a suit for recovery of money to the tune of Rs.18,360/- together with the interest @ 18% per annum. The case of the petitioner is that he is the owner of the building bearing Door No.39, Venkaiyar Street, Kondithoppu, Chennai – 79 and the petitioner was inducted as a tenant for the monthly rent of Rs.600/- in the second floor of the said premises in the year 1985. He paid a sum of Rs.6,000/- as an advance. Besides monthly rent, the petitioner has to pay electricity consumption charges as per the sub-meter reading once in two months and Rs.60/- towards water consumption charges for every month. Thereafter, the rent has been increased from time to time and rent was fixed at Rs.850/- in the month of October 1994. The petitioner paid rent up to November 1994 and thereafter, failed to pay any rent from the month of December 1994 onwards.

3. The petitioner paid a sum of Rs.600/- only instead of Rs.850/-. In fact the petitioner has also filed R.C.O.P.No.191/1995 seeking permission

to deposit the rents. The respondents also filed R.C.O.P.No.454 of 1996 to restore the amenity of electricity which was already provided by the respondents herein. Subsequently, the petitioner filed R.C.O.P.No.191 of 1995, which was dismissed on 12.09.1997. Thereafter, the respondent filed R.C.O.P.No.2848 of 1997 for eviction under Section 10 (2) (i) of the Tamil Nadu Buildings (lease and Rent Control) Act and the same was ordered and accordingly, the respondent had taken possession of the petition premises on 03.12.1999. Though the petitioner vacated the premises, he is liable to pay the rental arrears from 01.11.1995 to 03.12.1998 after deducting the advance amount paid by the petitioner and for the remaining amount the respondent filed a suit. The said suit was decreed by the judgment and decree dated 04.10.2002.

4. Aggrieved by the same, the petitioner filed an appeal in New Trial Application (N.T.A.) on 03.01.2002, the same was partly allowed and the petitioner is directed to pay a sum of Rs.16,254/- with interest at the rate of 18% per annum from the date of the decree and at the rate of 6% per annum from the date of decree to realization. Aggrieved by the same, the present Civil Revision Petition has been filed.

5. The petitioner appeared in Party-in-person and submitted that he filed a petition to restore the amenities in R.C.O.P.No.494 of 1996 and filed R.C.O.P No.191 of 1995 for deposit rental arrears. The learned Rent Controller allowed the petition for restoration of amenities and dismissed the petition for depositing the rent arrears. Aggrieved by the same, the petitioner preferred an appeal before the Rent Control Appellate Authority in R.C.A.No.906 of 1997. Simultaneously, the respondent also filed an appeal in R.C.A.No.1053 of 1996 against the restoration of amenities. The learned Rent Control Appellate Authority allowed the appeal filed by the respondent and dismissed the appeal filed by the petitioner herein. Aggrieved by the same, the petitioner preferred Civil Revision Petitions in C.R.P.Nos.24 & 959 of 2004 before this court, and by an order dated 31.07.2007 directed the Appellate Court in N.T.A.No.31 of 2003 to look into the evidence and also look into the matter and pass necessary orders on merits in the NTA.

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6. Even then, the Appellate Court did not consider the evidence on record and without even looking into the observation made by this court, fixed the rent at the rate of Rs. 850/- per month and reduced the amount insofar as the water charges alone and decreed the suit for the sum of Rs.16,254/-.

7. Further submitted that the respondent categorically admitted that there is no agreement for the monthly rent of Rs.850/-. Admittedly, he disconnected the electricity connection and cut down the water connection. As such, the petitioner constrained to file a petition to restore the amenities. In fact, the learned Rent Controller allowed the petition and directed the respondent to restore the amenities. The Appellate Court, without considering those aspects mechanically dismissed the appeal in part. Therefore, he prayed for setting aside the order passed by the Court below.

8. Though notice served to the respondent and the name printed in the cause list, none appeared for the respondent in person or through pleader.

9. Respondent is the plaintiff, he filed a suit for recovery of money of Rs.18,360/- together with 18% interest. Admittedly the petitioner was inducted as tenant in the petition premises owned by the respondent company at the rate of monthly rent of Rs.600/-. Subsequently, the rent was fixed at the rate of Rs.850/- per month for the petition premises. Thereafter, the respondent refused to receive the rent at the rate of Rs.600/- and as such

the petitioner filed a petition in R.C.O.P.No.191 of 1995 for depositing of rents. He also filed R.C.O.P. No. 455 of 1996 for restoration of amenities such as electricity and water. Though the restoration of amenities was reduced by the Rent Controller, it was negated by the learned Rent Control Appellate Authority. Aggrieved by the same, the petitioner preferred Civil Revision Petition before this Court in C.R.P.No.26 of 2004. The respondent also filed a petition for eviction on the ground of wilful default in R.C.O.P No.2848 of 1997 and eviction was ordered by an order dated 16.04.1988. Thereafter, the respondent filed execution petition in E.P.No.291 of 1988 and had taken delivery of possession of the petition premises. Thereafter the respondent filed the present suit for recovery of arrears of rent. This Court while disposing the Civil Revision Petition filed by the petitioner observed as follows:

“At this juncture, the learned counsel for the revision petitioner would submit that without any basis whatsoever, the Rent Controller has fixed the rental at the rate of Rs.850/- and it has been simply accepted by the Court of Small Causes for fixing the rental arrears and the decree has been passed. It is an admitted position that there was a specific issue in this regard as to the quantum of rental payable by the revision petitioner as tenant to the respondent / landlord. The Court is of the considered opinion that it would be fit and proper that

both the parties should be given a liberty to raise their respective contentions on the issues before the appellate forum, since the matter is pending before the appellate forum. A direction is also issued to the appellate forum to look into the evidence and also look into the matter and pass necessary orders on merits in the NTA, what is pending on its file. With the above observations, these civil revision petitions are disposed of. No costs.”

10. Accordingly, the Appellate Court considered the direction issued by this Court and partly allowed the appeal. It is seen that the rent was fixed from Rs.600/- to Rs.850/-. Thereafter, the petitioner continued to pay a sum of Rs.600/- per month as if the respondent refused to receive the same. Only for the said reason, the petitioner filed petition in R.C.O.P. No.191 of 1995 for depositing rent, which was negated by the learned Rent Controller and it was also confirmed by this Court. Therefore, the monthly rent of a sum of Rs.850/- is correct and confirmed by this Court. In respect of the current consumption charges, the petitioner ought to have paid the same in accordance with the sub meter charges. Admittedly, the petitioner failed to pay the same and the same was dismissed. Insofar as the water consumption charges are concerned, the respondent has failed to prove the same. As such, the trial Court rightly deducted the same and decreed the suit for

Rs.16,254/- together with interest at the rate of 18% per annum.

11. Therefore, this Court finds no merits to interfere with the order passed by the Courts below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2021

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

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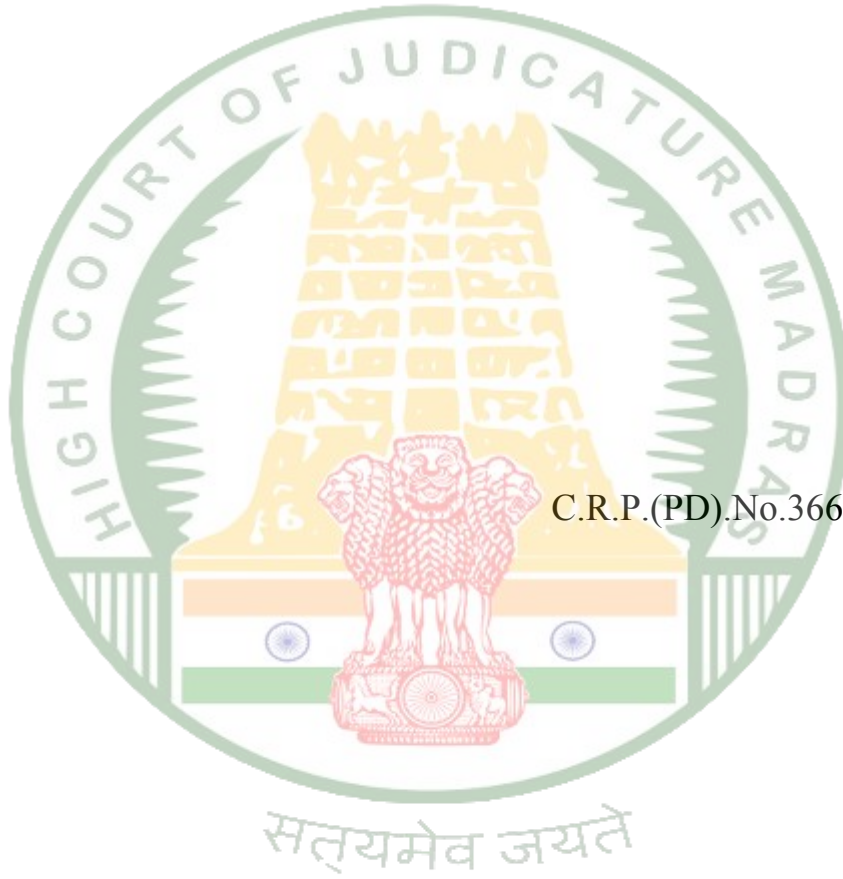
IV Judge Small Causes Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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