

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 22.04.2021	Date of Pronouncing Order 28.04.2021
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CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD).No.168 of 2018

M.Shaik Abdul Rahman

... Petitioner

Vs

Mariappan

... Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act), against the Order and decreetal order dated 01.03.2017 passed by the IX Small Causes Court at Chennai (Rent Controller Appellate Authority) in R.C.A.No.646 of 2015 modifying the order and decreetal order dated 18.11.2015 passed by the X Small Causes Court at Chennai in R.C.O.P.No.846 of 2012.

For Petitioner : Ms.P.Bagyalakshmi

For Respondent : Mr.V.Chanakya

ORDER

This Civil Revision Petition is filed against the Order and decreetal order dated 01.03.2017 passed by the IX Small Causes Court at Chennai (Rent Controller Appellate Authority) in R.C.A.No.646 of 2015 modifying the order and decreetal order dated 18.11.2015 passed by the X Small Causes Court at Chennai in R.C.O.P.No.846 of 2012, thereby modifying the fair and decreetal order dated 18.11.2015 on the file of the X Small Causes Court at Chennai, thereby fixed fair rent for the petition premises at Rs.62,267/- (Rupees Sixty Two Thousand Two Hundred and Sixty Seven only).

2. The petitioner is the landlord and the respondent is the tenant. The landlord filed the petition for fixation of fair rent. The respondent is the tenant in respect of the petition premises and its plinth area ground floor

488 sq.ft., godown portion 1109 sq.ft., and common passage and toilet 99 sq.ft., totally 1696 sq.ft. The monthly rent fixed at Rs.13,000/- per month and the tenant is paying the same from the month of September 2003. The petition premises is situated in a prime and commercial locality. It is situated just opposite to the High Court and very near to Burma Bazaar, General Post Office, Collectorate, Harbour, Railway Station and all the markets near Broadway. Therefore, the landlord filed the petition for fixation of fair rent for the petition premises.

3. Resisting the same, the tenant filed counter the petition premises only ad-measuring 1410 sq.ft., and the tenant is doing grocery and vegetables wholesale business in the petition premises. While pending the petition for fixation of fair rent, the tenant and the landlord reached settlement by fixing monthly rent at Rs.23,000/-. Accordingly, the tenant is paying a sum of Rs.23,000/- as monthly rent from the month of January 2013 for the petition premises. In fact, the landlord filed petition for eviction on the ground of willful default in R.C.O.P.No.2043 of 2013. Therefore, prayed for dismissal of the petition for fixation of fair rent.

4. On the side of the landlord P.W.1 was examined and Ex.P1 to Ex.P4 were marked. On the side of the tenant R.W.1 was examined and Ex.R1 and Ex.R2 were marked. On perusal of the evidence and the records, the learned Rent Controller fixed fair rent at Rs.62,267/- for the petition premises. Aggrieved by the same, the tenant filed appeal before the learned Rent Controller Appellate Authority and it was modified at Rs.23,000/- as fair rent payable by the tenant. Aggrieved by the same, the present Civil Revision Petition filed by the landlord.

5. The learned counsel appearing for the landlord submitted that the learned Rent Controller Appellate Authority without considering the evidence of Engineer and Report filed by him, mechanically fixed the rent at Rs.23,000/-, only for the reason that the landlord and the tenant settled the issues and fixed the rent at Rs.33,000/-. The landlord or the tenant never filed any Memorandum of Compromise or Settlement and only on the false averment stated by the tenant. The learned Rent Controller Appellate Authority fix the fair rent at Rs.23,000/-. He further submitted that the tenant categorically admitted in his counter that the cost of the construction per sq.ft., at Rs.400/- and the value of the rent per sq.ft., at Rs.3000/-. Even

before filing of the petition for fixation of fair rent, if according to the version of the tenant calculated the fair rent it would be more than Rs.23,000/-. Without any calculation simply on the basis of the alleged settlement between the landlord and tenant fix the fair rent at Rs.23,000/-.

6. Per contra, the learned counsel for the tenant submitted that the landlord amicably settled the issues and fixed the rent at Rs.23,000/-. Accordingly, the tenant is continuously paying monthly rent at Rs.23,000/- from the month of January 2013 till today. There is no arrears of rent payable by the tenant. In fact, while pending the appeal before the learned Rent Controller Appellate Authority the tenant filed petition in M.P.Nos.319 and 320 of 2016 to adduce evidence and the same was allowed. Accordingly, the Engineer was examined as R.W.1 and reports was marked as Exs.R3 to R6. Even according to the Engineer's reports revealed that the fair rent was fixed at Rs.18,746/- and even then, the tenant is paying monthly rent at Rs.23,000/- as per the settlement between them. Further, the learned Rent Controller wrongly calculated the fair rent in the plinth area as well as the ground area. Further, the value of the rent is very high and the learned Rent Controller Appellate Authority rightly modified the fair rent

fixed by the learned Rent Controller. Therefore, it does not required any interference by this Court and prayed for dismissal of this Civil Revision Petition.

7. Heard, Ms.P.Bagyalakshmi, learned counsel appearing for the petitioner and Mr.V.Chanakya, learned counsel appearing for the respondent.

8. The petitioner is the landlord and the respondent is the tenant. The landlord filed petition for fixation of fair rent for the petition premises. Admittedly, it is leased out for non residential purpose and it is located in the prime commercial area in front of the High Court and situated in St. Xavier Street, Broadway, Chennai 1. According to the report filed by the landlord's Engineer the cost of construction of the premises, after deducting depreciation value of the building fixed at Rs.8,87,219/-. The value of the land fixed at Rs.51,00,000/-.

9. Insofar as the amenities are concerned, Schedule-I was taking into consideration and fixed at 4%. The total cost of the petition premises fixed

at Rs.62,26,707/- in which fixed fair rent at 12% and fixed as Rs.62,267/- as monthly rent payable by the tenant. Whereas the learned Rent Controller Appellate Authority without making any calculation was simply modified only for the reason that the landlord and the tenant already amicably settled their issues in respect of fixing rent at Rs.33,000/- and modified as Rs.23,000/- as monthly rent payable by the tenant.

10. On perusal of the report submitted by R.W.1 the Engineer who was examined on behalf of the tenant revealed that the value of the building is fixed at Rs.548/- per sq.ft., as fixed by the landlord's Engineer. But the total area was taken into consideration of 1428 sq.ft., after deducting 10% depreciation and after adding the basic amenities value of the building fixed at Rs.8,29,510/-, in respect of value of the land fixed at Rs.72,00,000/- per ground. Accordingly, the petition for the petition premises the land was taken at 336 sq.ft., and calculated as Rs.1,08,360. After adding the Schedule-I amenities at 2% and total value fixed at Rs.18,74,627/-. The fair rent was fixed at 12% per annum for non residential purpose comes to Rs.18,746/-.

11. Insofar as the cost of construction of the petition premises is one and the same as fixed by the landlord's as well as tenant's Engineer, only in respect of the value of the land is differed. The petition premises is situated in front of the High Court at Door No.1, St.Xavier Street, Broadway, Chennai. The fair rent petition was filed in the year 2012. Even in the year 2012, the land of the petition premises valued at Rs.3,50,00,000/-. Whereas the tenant's Engineer value the land in petition premises valued at Rs.72,00,000/- per ground.

12. On perusal of the guideline value fixed by the Government it is more than Rs.2,00,00,000/- per ground in the year 2012. This Court finds that the land value fixed at Rs.2,00,00,000/- per ground is proper. Accordingly, for the land ad-measuring 408 sq.ft., the land value is at Rs.34,00,000/-. The cost of construction plus the basic amount is after deducting the depreciation fixed at Rs.10,00,000/-. Schedule-I amenities fixed at 5% is equal to Rs.2,20,000/- totally Rs.46,20,000/-. Therefore, the fair rent fixed at 12% per year is equal to Rs.5,54,400/- the fair rent per month fixed at Rs.46,200/-. Considering the facts and circumstances, this

Court fixed the monthly rent at Rs.45,000/- payable by the tenant from January 2016 onwards.

13. Accordingly, this Civil Revision Petition is partly allowed. The order passed by the IX Small Causes Court at Chennai (Rent Controller Appellate Authority) in R.C.A.No.646 of 2015 dated 01.03.2017 is set aside and the order passed by the X Small Causes Court at Chennai (Rent Controller Appellate Authority) in R.C.O.P.No.846 of 2012 dated 18.11.2015 is accordingly modified in respect of the monthly rent payable by the tenant. There shall be no order of costs.

28.04.2021

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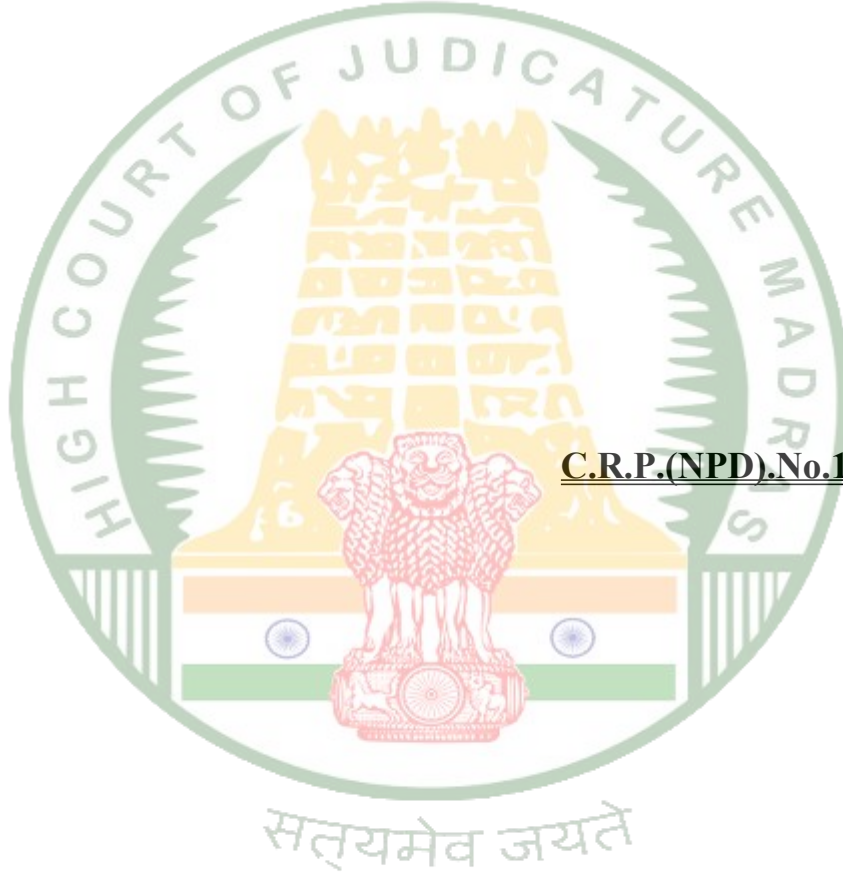
To

1.The IX Small Causes Court,
(Rent Controller Appellate Authority)
Chennai.

2.The X Small Causes Court,
Chennai.

G.K.ILANTHIRAIYAN. J.

rna



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