

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD) Nos.1437 and 1438 of 2019

P.R. Kandasamy, ... Petitioner

Vs.

B. Arumugam ... Respondent

Common Prayer: These Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 as amended by Act 23 of 1973) praying for to set aside the Judgment and decree dated 17.12.2018 made in R.C.A.Nos.460 and 535 and of 2017 on the file of VII Judge, Court of Small Causes (Rent Control Appellate Authority) at Chennai, in reversing with the Judgment and decreetal order dated 21.06.2017 made in R.C.O.P. No.340 of 2016 on the file of the XI Judge, Small Causes (Rent Controller) Chennai.

For Petitioner ... Mr.K. Doraisami (Senior counsel)
(For Muthumani Doraisamy)

For Respondent ... Mr.S.T.Raja
(For Om Sai Ram)

ORDER

These Civil Revision Petitions have been filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 as amended by Act 23 of 1973) praying for to set aside the Judgment and decree

dated 17.12.2018 made in R.C.A.Nos.460 and 535 and of 2017 on the file of VII Judge, Court of Small Causes (Rent Control Appellate Authority) at Chennai, in reversing with the Judgment and decreetal order dated 21.06.2017 made in R.C.O.P. No.340 of 2016 on the file of the XI Judge, Small Causes (Rent Controller) Chennai.

2. The case of the petitioner is that the petitioner is the owner and the respondent is the tenant in the petition premises. The petitioner-owner has filed RCOP No.340 of 2016 before the Small Causes Court, Chennai seeking for to fix the fair rent for the petition premises under the occupation of the respondent/tenant at Rs.40,000/- and direct the respondent herein to pay the same from the date of filing of the petition. The same was partly allowed by order dated 21.06.2017 having fixed the rent of Rs.9,779/- per month for the petition premises. Being aggrieved by the aforesaid order, both the petitioner-owner and the respondent-tenant have filed the appeals in R.C.A. No.460 of 2017 and R.C.A. No.535 of 2017 under Section 23(1)(b) of TNB (L&RC) Act, on the file of the Small Causes Court, Chennai. The Appellate Court, after hearing both sides and considering the oral and documentary evidence, has

dismissed the appeal in R.C.A.460 of 2017 filed by the petitioner-owner and allowed the appeal in R.C.A.No.535 of 2017 filed by the respondent-tenant by Judgment dated 17.12.2018 modifying the fair rent to Rs.5,300/- per month from Rs.9.779/- per month for the petition premises. Being aggrieved, the petitioner-owner has filed the present both Civil Revision Petitions against the orders in both appeals.

3. The learned counsel for the petitioner would submit that the Rent Control Appellate Authority had failed to consider the pleadings, evidence, documents, admitted facts and several other aspects while fixing the fair rent of Rs.5,300/- per month to the petition premises. While the petition premises is situated in the commercial area with all basic amenities, the rent of the same has been considered very low by both the Courts below. The fair and reasonable rent of the Schedule premises will fetch more than 40,000/- per month as the schedule premises is situated in a very busy area and commercial locality and the premises commands all locational advantages. The learned Rent Control Appellate Authority failed to give any valid reasons or findings for having fixed of fair rent of Rs.5,300/- per month to the petition

premises even though the judgment speaks about the highest market value, basic amenities and locational advantages. Both Judgements have been passed blindly relied on the averments of the respondent/tenant's engineer which is totally unfair and the same is liable to be rejected. The order of the Appellate Court is miscalculated the actual area under the use and occupation of the respondent-tenant as the findings are based on the report of R.W.1 and not of P.W.1. The valuation of Sq.feet of the premises has not been calculated properly and the Appellate Court has taken only 69.55 Sq.Feet in the said petition premises to calculate land value and ignoring the calculation of the Trial Court having 139.11 Sq. Feet in the said premises. Hence, as there is no proper reasons followed in fixing the fair rent in the order passed by the Appellate Court, the same is untenable and liable to be set aside.

4. The learned counsel for the respondent would submit that the tenant/respondent has inducted into the said petition premises as tenant in the year 1975 for rent of Rs.75/ per month having paid an advance of Rs.1000/-. Right from the year 1975, the tenant is paying the rent every month without any default even though the rent has been gradually

increased upto Rs.2,550/- per month. Further, the schedule premises is not situated in a very busy and high commercial locality and does not command all locational advantages as stated in the petition. However, the Appellate Court has fixed the fair rent of Rs.5,300/- per month after considering the entire oral and documentary evidence. As it is fair and reasonable rent, the respondent herein is paying the rent of Rs.5,300/- per month for the schedule premises up-to-date without any default. While being so, these Civil Revision Petitions challenging the orders of the Appellate Court is not sustainable and liable to be dismissed.

5. Heard, the learned learned counsel on either side as well as perused the material available on record.

6. On a perusal of record, it is seen that the portion rented out to the respondent/tenant is located in the highly commercial locality and surrounded by all commercial establishments. However, the extent of the portion occupied by the respondent/tenant is around 100 Square feet and he is rented out from the year 1975 in the same locality and paying rent without any default. Under such circumstances, this Court made a

suggestions to both parties to settle the issue by way of amicable conciliation and discussion between the parties. Accordingly, the learned counsel for the respondent on instruction from his client accepted to pay the rent of Rs.8,000/- per month for the said petition premises finally. Even though the respondent insisted upto 8,500/- per month, the rent of Rs.8,000/- per month offered by the respondent/tenant has been accepted by the appellant/owner of the premises without any objection. This Court after endorsing their statement in the petition with regard to amicable settlement between both parties, in fixation of the fair rent of Rs.8,000/- per month for the petition mentioned premises, the respondent/tenant is hereby directed to pay the rent of Rs.8,000/- per month from the date of filing of RCOP. Further it has been stated by the learned senior counsel appearing for the respondent/tenant that as the 10% hike in the rent would be done every year after the lease period is over, this Court may direct the petitioner/owner to hike the 10% rent once two years and not one year, after lease period is over enabling to the respondent/tenant to pay the rent of Rs.8,000/- per month as fixed by this Court in view of the business is fell down due to Corna pandemic situation.

7. Having considered the aforesaid facts and circumstances of case, the respondent/tenant is hereby directed to pay the arrears of Rent within a period of six months from the date of this order, as if the respondent/tenant has paid rent every month as fixed by the Appellate Court without any default and the petitioner/owner is directed to hike 10% on rent once two years and not one year after lease period is over, as at present the fair rent has been fixed to Rs.8,000/- per month from Rs.5,300/- per month as fixed by the Appellate Court enabling to the respondent-tenant to pay the remaining arrears of rent since there was National lock down due to Covid-19 pandemic.

8. With the above directions, these Civil Revision Petitions are disposed of. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

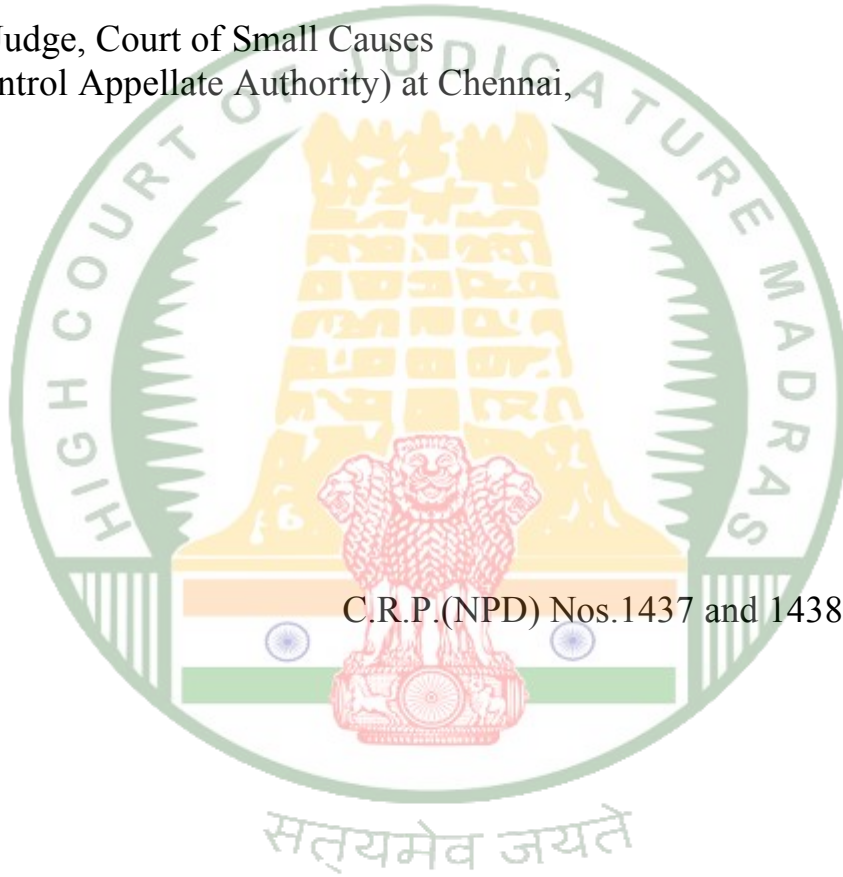
C.R.P.(NPD) No.1437 of 2019

V.BHAVANI SUBBAROYAN, J.,

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To:

The VII Judge, Court of Small Causes
(Rent Control Appellate Authority) at Chennai,



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