



C.R.P.Nos.1298, 1409 & 1433 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order <u>05.10.2021</u>	Date of Pronouncing Order 02.11.2021
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CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.1298 &1409 of 2021
and C.R.P.(NPD)No.1433 of 2021
and
CMP.Nos.10131,10987 &11207 of 2021

Sudhir Batra ...Petitioner in C.R.P.Nos.1298 & 1409 of 2021

1. Renu Batra (deceased)
2. Sudhir Batra
3. Shiv Batra
4. Gomathi Batra

(legal heirs of deceased Renu Batra)

(Cause title accepted vide Order dated
23.06.2021 made in CMP No.9309 of
2021 in CRP SR.50057 of 2021)

...Petitioners in C.R.P.No.1433 of 2021

Versus

1. V.L.Saraswathi
2. P.Keerthana
3. P.Vignesh ...Respondents in C.R.P.Nos.1298,1409 & 1433 of
2021



C.R.P.Nos.1298, 1409 & 1433 of 2021

PRAYER in C.R.P.(PD) No.1298 of 2021: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, against the fair and decreetal order dated 05.01.2021 made in R.C.A No.221 of 2019 on the file of VII Small Causes Court, Chennai modifying the fair and decreetal order dated 15.04.2019 made in M.P.No.267 of 2018 in R.C.O.P.No.506 of 2018 on the file of the XIV Small Causes Court, Chennai.

PRAYER in C.R.P.(PD) No.1409 of 2021: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the fair and decreetal order dated 05.01.2021 made in R.C.A.No.222 of 2019 on the file of VII Small Causes Court, Chennai, confirming the fair and decreetal order dated 15.04.2019 made in M.P.No.265 of 2018 in R.C.O.P.NO.504 of 2018 on the file of XIV Small Causes Court, Chennai.

PRAYER in C.R.P.(NPD) No.1433 of 2021: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 05.01.2021 made in R.C.A.No.223 of 2019 on the file of VII Small Causes Court, Chennai, modifying the fair and decreetal order dated 15.04.2019 made in M.P.No.266 of 2018 in R.C.O.P.NO.505 of 2018 on the file of XIV Small Causes Court, Chennai.

For Petitioners	: Mr.K.Raja in C.R.P.No.1409 of 2021 M/s.N.Kolandaivelu in C.R.P.No.1298 & 1433 of 2021
For Respondents	: Mr.Adinarayana Rao for Caveator R1 to R3 in all three C.R.P's



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COMMON ORDER

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C.R.P.No.1298 of 2021 is filed against the judgment passed in R.C.A.No.221 of 2019 on the file of learned VII small Causes Court Chennai, modifying the order made in M.P.No.267 of 2018 in R.C.O.P.No.506 of 2018 passed by the learned XIV Small Causes Court, Chennai.

2. C.R.P.No.1409 of 2021 is filed against the judgment passed in R.C.A.No.222 of 2019 by the learned VII Small Causes Court, Chennai confirming the order made in M.P.No.265 of 2018 in R.C.O.P.No.504 of 2018 on the file of the learned XIV Small Causes Court Chennai.

3. C.R.P.No.1433 of 2021 is filed against the judgement passed in R.C.A.No.223 of 2019 by the learned VII Small Causes Court, Chennai modifying the order made in M.P.No.266 of 2018 in R.C.O.P.No.505 of 2018 on the file of the learned XIV Small Causes Court Chennai.

4. The facts common to all the three cases, in brief, are as follows:-

C.R.P.No.1298 of 2021 relates to shop No.17 concerned in R.C.O.P.No.506 of 2018. C.R.P.No.1409 of 2021 relates to Shop 9 concerned in R.C.O.P.No.504 of 2018. C.R.P.NO.1433 of 2021 relates to house property



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concerned in R.C.O.P.No.505 of 2019. In R.C.O.P.No.504 of 2018 and

R.C.O.P.NO.506 of 2018, the respondent is Sudhir Batra and in R.C.O.P.No.505 of 2018 the respondent is Renu Batra. Common averments made in all the three petitions. It is seen from the common averments that shop No.9 was let out to tenant on a monthly rent of Rs.1000/- by Mr.Nanjudappa (father-in-law and grand father of landlords). The tenant paid a sum of Rs.50,000/- as advance. The rent was subsequently enhanced to Rs.3,750/- .Shop No.17 was let out to tenant on a monthly rent of Rs.1000/- and it was subsequently enhanced to Rs.3,750/-. Tenant paid a sum of Rs.50,000/- as advance. Residential premises was let out for a sum of Rs.1000 per month and it was subsequently enhanced to Rs.3,750/- per month and advance of Rs.28,000/- was paid. Original landlord Mr.Nanjudappa died on 21.05.2003. R.C.O.P.No.1520 of 2006, 1521 of 2006 and 1589 of 2006 had been filed for enhancing rent for the shop Nos.9, 17 and residential building. Fair rent for shop No.9 was fixed at Rs.4,702/- on 21.08.2007. The tenant filed R.C.A.No.294 of 2008 against the order passed in R.C.O.P.NO.1589 of 2006 and that was dismissed. Thus the fair rent was confirmed as Rs.4,702/- per month for shop No.9. For shop No.17, the fair rent was fixed at Rs.5,351/- per month in R.C.O.P.No.1589 of 2006. The tenant filed appeal in R.C.A.No.441 of 2008 and that was dismissed and the fair rent fixed at Rs.5,351/- per month by



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the learned Rent Controller for shop No.17 was confirmed by the Appellate authority. The fair rent for the residential building was fixed at Rs.8,453/- in R.C.O.P.No.1521 of 2006. The tenant filed R.C.A.No.295 of 2008 and that was dismissed, confirming the fair rent at Rs.8,453/- per month for residential building.

5. Mr.Nanjudappa seemed to have received a sum of Rs. 4,00,000/- from the tenants as advance for selling his property, but he later avoided selling the property. The tenants filed O.S.No.7320 of 2006 for recovery of said amount and obtained ex-parte decree on 25.09.2007. The Court ordered recovery of the amount from the estate of late Mr.Nanjudappa. The tenants are entitled to recovery of a sum of Rs.5,95,432.55/- together with interest on Rs.4,23,200 at 9 % per annum from the date of suit till the date of realization. The tenants are entitled to recover a sum of Rs.6,87,848.05/- as on 25.09.2007, which is inclusive of suit claim plus interest, costs, apart from interest rate at 9 % per annum on the principal amount. After the demise of Mr.Nanjudappa, all the properties were partitioned among his legal heirs and the properties concerned in these petitions were allotted to the share of first respondent Saraswathi's husband Mr.N.Pasupathy, as per the compromise decree passed in C.S.No.299 of 2005.



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6. Taking advantage of the death of Mr.Nanjudappa and the family issues among Mr.Nanjudappa's legal heirs, the tenants stopped paying the rents. Legal heirs of Mr.Nanjudappa filed R.C.O.P.Nos.747 and 748 of 2006 for willful default and R.C.O.P.Nos.1520 of 2006, 1521 of 2006 and 1589 of 2006 for fixing the fair rent. R.C.O.P.Nos.747 and 748 of 2006 were dismissed on the ground that the tenants paid Rs.4,00,000/-as advance. As per the fair rent fixed, arrears of rent payable, after adjusting the amounts to be paid by the tenants as per the decree passed in O.S.No.7320 of 2006, is a sum of Rs.5,51,586/- for shop No.9, Rs.6,63,168/-for shop No.17 and Rs.10,03,454/- for house property. Period of arrears is from 01.11.2003 to 31.06.2016. After adjusting the amount payable in O.S.No.7320 of 2006, tenants are liable to pay a sum of Rs.11,96,983/- as on 31.06.2016. Subsequent arrears from 01.07.2016 to 31.01.2018 comes to Rs.3,51,614/-. Thus the total arrears comes to Rs.15,48,587/-. Therefore, all the three eviction petitions had been filed under Section 10(2) (i) of Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as Amended by Act 23 of 1973 for evicting the tenants on the ground of willful default. Landlords have filed M.P.265 of 2018 in RCOP.No.504 of 2018, M.P.No.266 of 2018 in RCOP.NO.505 of 2018 and M.P.No.267 of 2018 in RCOP.No.506 of 2018 under Section 11(4) of Tamil Nadu Buildings (Lease



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and Rent Controller) Act 18 of 1960 seeking the tenants to pay a sum of Rs.5,11,704/- in M.P.265 of 2018 in RCOP.No.504 of 2018 , a sum of Rs.6,01,728/- in M.P.No.266 of 2018 in RCOP.NO.505 of 2018 and a sum of Rs.5,19,280/- in M.P.No.267 of 2018 in RCOP.No.506 of 2018 towards arrears of rent.

7. Learned Rent Controller, on going through the materials placed before him and submissions made by the parties, found that after giving credit to all the payments made by the tenants, including the proportionate 1/3rd amount due as per O.S.No.7320 of 2006 to each cases, directed the tenants to pay the amount due and payable to the landlords. It was further ordered, failing compliance, further proceedings will be stopped and eviction will be ordered. Against, the orders passed in these Civil Miscellaneous Petitions, tenants have preferred aforesaid Rent Control Appeals. Learned Rent Control Appellate Authority found no reason to interfere with the order of the learned Rent Controller in M.P.No.265 of 2018 in RCOP.No.504 of 2018 and confirmed the order of the learned Rent Controller in M.P.No.265 of 2018 in RCOP.No.504 of 2018 and dismissed RCA.No.222 of 2019. But learned Rent Control Appellate Authority, modified the orders passed by the learned Rent Controller in M.P.No.266 of 2018 in RCOP.No.505 of 2018 and M.P.No.267 of 2018 in



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RCOP.NO.506 of 2018 and partly allowed the appeals in RCA.Nos.221 of 2019 and 223 of 2019. Against the judgments of the learned Rent Control Appellate Authority, these Civil Revision Petitions are preferred.

8. Learned counsel for the petitioner/tenant in C.R.P.No.1409 of 2021 submitted that there is discrepancy with regard to Shop Number of the property in the memorandum of compromise entered between parties. In the memorandum of compromise, the property concerned in R.C.O.P.No.504 of 2018 is given as Shop Number 8 and not 9. Therefore, it is not known whether this property was allotted to respondents/landlords. Moreover, petitioners have paid a sum of Rs.14,00,000/- to Mr.Nanjudappa. The suit was filed only for Rs.4,00,000/- in O.S.No.7320 of 2006. In reality, petitioners paid Rs.14,00,000/- to Mr.Nanjudappa. They also purchased stamp papers worth Rs.2,49,000/-. The following expenses were also made:

- 1).A sum of Rs.1,00,000/- spent towards maintenance charges of two shops from 1995.
- 2). A sum of Rs.50,000/-spent towards maintenance of house since 1991.
- 3). A sum of Rs.90,000/- incurred for changing the Aluminum electrical wire into Copper wire for house.
- 4). A sum of Rs.1,04,120/- incurred towards property tax paid for two shops



and house.

5). A sum of Rs.78,000/- incurred towards house painting once in two years.

6). A sum of Rs.7,000/- was paid towards laying bitumen road.

7). A sum of Rs.20,000/- was incurred for renovation and drainage works.

8). A sum of Rs.50,000/- was incurred for maintaining the two shops and house.

Thus, the respondents/landlords are liable to pay a sum of Rs.14,62,825/-.

There is no default. However, without considering these aspects, both the Courts have wrongly ordered the petitioners/tenants to pay the amount. The orders have to be set aside.

9. Considered the rival submissions and perused the records.

10. From the submissions made and the records produced, one thing that is loud and clear that the tenants have not paid rents from 2003, specifically from 01.11.2003. Justification made by the tenants for not paying rent is that they paid a sum of Rs.14,00,000/- to Mr.Nanjudappa, the previous landlord. However they have not filed the suit for recovery of Rs.14,00,000/- from Mr.Nanjudappa. The suit was filed for recovery of only Rs.4,00,000/- and that was decreed. The decree was inclusive of principal, interest and costs.



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Therefore, the petitioners/tenants, at the most can claim only to adjust the amount as per the judgment and decree in O.S.No.7320 of 2006, the advance amount paid and available with landlord, in excess of one month rent, and not more than that.

11. However, it seen from the calculation memo filed by the petitioner in C.R.P.No.1409 of 2021 that he claimed interest at 24% on the stamp paper value of Rs.2,40,000/- for 224 months i.e., Rs.10,75,200/-; Stamp paper value and other charges at Rs.2,40,000/-, maintenance expenses of three properties at Rs.4,99,120/- etc. As per the calculation memo, he is entitled to get adjustment of amount as per the judgment in O.S.No.7320 of 2006, advance paid to the shops, amount deposited as per the order in RCAs and not more than that. Petitioner has not proved that he purchased stamp paper for Rs.2,40,000/- Therefore, his claim on this amount and interest claimed on this amount cannot at all be entertained.

12. With regard to discrepancy in the door number given in RCOP.No.504 of 2018, it is submitted by the respondents/landlords that door number was wrongly typed in the judgment and decree as 8 instead of 9. It seems correct for the reason that the old door number for this property is the



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same number. No one else, except the respondents/landlords claim right on this property. Therefore, the petitioners/tenants cannot take the plea that because of the discrepancy in the shop number, rent was not paid. In case of any doubt, petitioners/tenants should have taken steps to deposit the rents into Court. That has not been done. It shows that they wilfully not paid the rents. It is plain and clear that petitioners/tenants in all the three cases have wilfully not paid the rents from 01.11.2003. Both the Courts below have taken note of the payments made and payments due by the petitioners/tenants and ordered payment of arrears amount. In the considered view of this Court, the orders of Courts below do not suffer from any infirmity or illegality. Therefore, the judgments of learned Rent Control Appellate Authority in RCA.No.221 of 2019, RCA.No.222 of 2019 and RCA.No.223 of 2019 are confirmed.

13. Resultantly, these Civil Revision Petitions are dismissed. No Costs. Consequently connected miscellaneous petitions are closed. Petitioners are directed to pay the arrears of rent within a period of two months from today.

02.11.2021

jai/mra

Index: Yes/ No

Speaking Order / Non-Speaking Order



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To
The VII Judge,
Court of Small Causes,
Chennai.



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C.R.P.Nos.1298, 1409 & 1433 of 2021

G.CHANDRASEKHARAN, J.,

jai

order in
C.R.P.(PD)Nos.1298 &1409 of 2021
and C.R.P.(NPD)No.1433 of 2021

Dated: 02.11.2021