

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 01.09.2021	Orders pronounced on 28.09.2021
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Coram
THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) No.1492 of 2021
and
C.M.P.No.11753 of 2021

M/s.Automotive and Industrial Seals Private Limited
represented by its Managing Director
Mr.Jabagurunathan
No.206, SIDCO Industrial Estate
Ambattur, Chennai – 600 098. ... Petitioner

Vs

Sri Ranganatha Industries
Partnership represented by its Managing Partner
Mr.Rajagopalan
No.10, West Club Road, Shenoy Nagar
Chennai – 600 030. ... Respondent

Civil Revision Petition filed under Section 25(1) of Tamil Nadu
Buildings (Lease and Rent) Control Act, to set aside the Order and Decreetal
order dated 19.04.2021 in I.A.No.21 of 2021 in RCA No.3 of 2021 on the
file of the learned Subordinate Judge-cum-Rent Control Appellate Authority,
Poonamallee.

For Petitioner .. Mr.M.V.Seshachari
For Respondent .. Mr.A.Ilayaperumal

ORDER

The petition is filed against the order passed in I.A.No.21 of 2021 in RCA No.3 of 2021 on the file of the learned Subordinate Judge-cum-Rent Control Appellate Authority, Poonamallee.

2. I.A.No.21 of 2021 was filed under Section 23(2) of Tamil Nadu Buildings (Lease and Rent) Control Act for granting stay of all further proceedings in RCOP No.45 of 2018 pending on the file of learned District Munsif-cum-Rent Controller, Ambattur till the disposal of RCA No.3 of 2021. Learned counsel for the petitioner submitted that an agreement of lease was entered into between the petitioner/tenant and respondent/landlord in respect of the property mentioned in RCOP No.45 of 2018 for non-residential purpose of running his industry. The monthly rent was fixed at Rs.2,50,000/-. Advance amount was fixed at Rs.25,00,000/-. The petitioner/tenant has not paid the rent properly and there was arrears of rent from April 2017.

Therefore, eviction petition was filed on the ground of wilful default. An application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent) Control Act was filed in M.P.No.121 of 2018 and that petition was disposed directing the petitioner/tenant to pay Rs.31,80,000/- to the respondent/landlord towards arrears of rent from April 2017 to July 2018, failing payment, appropriate orders will be passed on the next hearing. Against the said order, petitioner/tenant preferred RCA No.3 of 2021 and he also filed I.A.No.21 of 2021 for stay of all further proceedings in RCOP No.45 of 2018 till the disposal of RCA No.3 of 2021. The stay petition was contested by the respondent/landlord. The learned Subordinate Judge-cum-Rent Control Appellate Authority, after considering the rival submissions, dismissed the petition. Against the said dismissal order, the present Civil Revision Petition is preferred.

3. Learned counsel for the petitioner/tenant submitted that non-payment of rent would not amount to any wilful or wanton attempt on the part of the petitioner/tenant. As per section 22 of the GST Act, when the rent

exceeds Rs.20,00,000/- per annum in the case of non-residential buildings, it attracts GST. Only if the landlord registers under GST regime, the tenant would be in a position to claim input tax credit under Section 16 of the GST Act for the payment of rent. Inspite of making several requests, the respondent/landlord has not given GST registration number. Certain offences committed under GST Act will be liable to penalty. That was the reason why the petitioner, as tenant, was not able to pay the rent. Not only that, there is an advance amount paid by the tenant available with the landlord. The landlord can adjust the rent due, from the advance amount. The petitioner/tenant is prepared to pay arrears, provided the landlord gives GST registration number. Therefore, learned counsel for the petitioner prayed for setting aside the order of learned Rent Control Appellate Authority and for stay of all other further proceedings in RCOP No.45 of 2018.

4. In response, learned counsel for the respondent submitted that the tenant cannot insist the landlord to register under GST regime. The fact that the petitioner/tenant has not paid rent right from the beginning and still he

is not interested to pay rent shows his deliberate, recalcitrant attitude in not paying the rent wilfully. He filed the appeal and the stay petition only to protract the proceedings. Therefore, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

5. Considered the rival submissions and perused the records.

6. It is seen from the records that the tenancy agreement was entered into on 01.09.2016. There is no dispute with regard to the advance amount and quantum of rent. Seven months after the inception of tenancy, the tenant stopped paying the rent and there is arrears of rent from April 2017. The tenancy agreement shows that the tenant is entitled to deduct income tax and other taxes as per law from the rent. It means that the petitioner/tenant is entitled to deduct the taxes, which the tenant is legally bound to deduct from the rent. But, he cannot withhold the payment of entire rent. What are all the taxes legally due, he can deduct that amount and pay the balance rent to the landlord. However, in the case before hand, the

petitioner/tenant has not chosen to follow this and withheld the entire rent amount, which is nothing but intentional, deliberate attempt with a view to deny the rightful rent amount due to the landlord. There are provisions in GST Act that even if the supplier is not a registered supplier, receiver can pay GST and then claim input tax credit. This is what is called reverse charge mechanism. Section 9(4) of GST Act states that if the vendor is not registered under GST and supplied goods to a person registered under GST, then reverse charge would apply. Therefore, the contention of the learned counsel for the petitioner that he was not able to pay the rent for the reason that landlord has not given GST registration number cannot be accepted. The tenant can request the deduction of advance amount only at the time of vacating the premises and not at the time when the tenancy is subsisting. Without paying the rents, the petitioner/tenant cannot proceed with the rent control proceedings and the learned Subordinate Judge-cum-Rent Control Appellate Authority has rightly dismissed the stay petition and this Court confirms the order of the learned Subordinate Judge-cum-Rent Control Appellate Authority, Poonamallee in I.A.No.21 of 2021 in RCA No.3 of 2021

dated 19.04.2021 and dismisses this Civil Revision Petition. Learned Subordinate Judge-cum-Rent Control Appellate Authority is directed to dispose the Rent Control Appeal in RCA No.3 of 2021 as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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28.09.2021

Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

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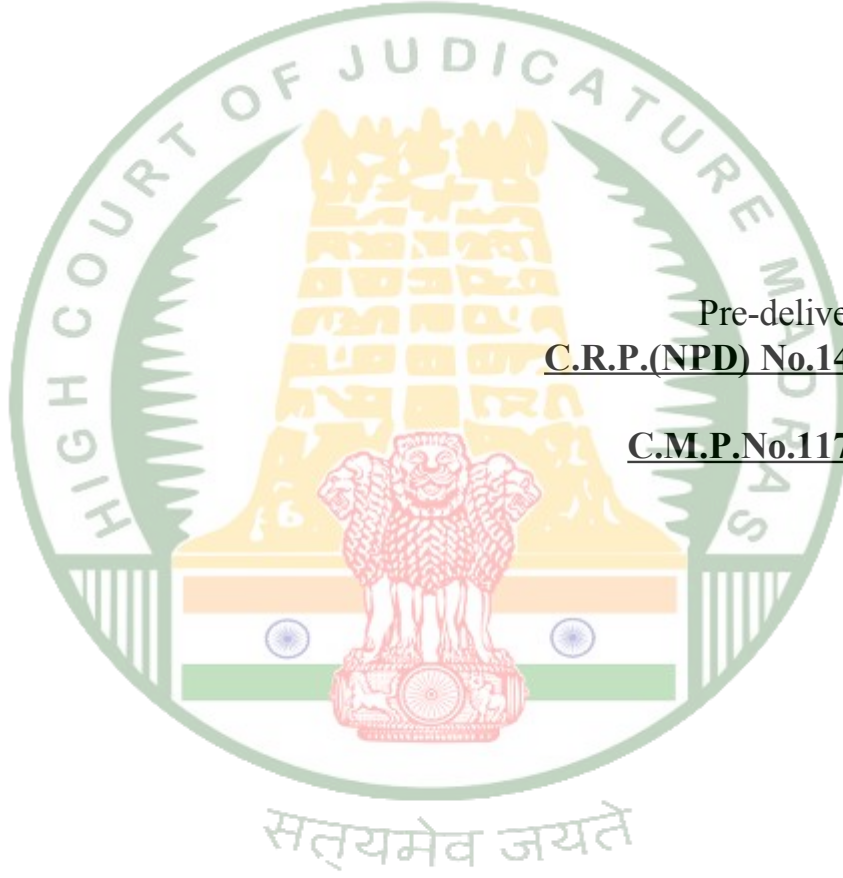
1. The Subordinate Judge-cum-Rent Control Appellate Authority
Poonamallee.
2. The District Munsif-cum-Rent Controller
Ambattur.

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G.CHANDRASEKHARAN, J.

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Pre-delivery order in
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