

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.06.2021

PRONOUNCED ON: 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) Nos. 1918 & 1919 of 2020

And

C.M.P.Nos. 11724 & 11725 of 2020

C.R.P. (NPD) No. 1918 of 2020:

Orra Traders Pvt. Limited.,
Represented by its Director Saptendra Behra
Office: Ploat No. 640, Krushnakutira
Friends Colony
Cuttack – 763001
Branch Office at Plot No. 77
Dr.Gurunathan Street, Paneer Nagar,
Mugappair East, Chennai – 600 037.
Office at Door No. 144/2
Purasawalkam High Road, Kellys
Kilpauk, Chennai – 600 010

... Petitioner/Respondent/Appellant/Respondent

-Vs-

Lawrence Kulandai Nathan
No.6, Jalan 3/10 Persiaran Tiga
Bandar Baru Selayang, 68100,
Bau Selangor, Kuala Kumpur,
Malaysia

... Respondent/Petitioner/Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu

Buildings (Lease and Rent Control) Act, 18 of 1960, against the fair and decreetal order dated 23.01.2020 passed in M.P.No. 381 of 2018 in R.C.A.No. 365 of 2018 by the learned IX Small Cause Court, Chennai.

C.R.P. (NPD) No. 1919 of 2020:

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 Malaysia

... Respondent/Respondent/Petitioner

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PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, against the fair and

decreetal order dated 3.03.2020 passed in R.C.A.No. 365 of 2018 by the learned IX Small Cause Court, Chennai confirming the fair and decreetal order passed in R.C.O.P.No. 448 of 2017 dated 14.02.2018 by the learned XVI, Court of Small Causes, Chennai.

For Petitioner in
both Cr.Ps. : Mr. Silambanan
Senior Counsel

For Respondent in
both Cr.Ps. : M/s. Rank Associates

COMMON ORDER

Both the above Civil Revision Petitions have been filed by the tenant, who had suffered an adverse order dated 23.01.2020 in M.P.No. 381 of 2019 in R.C.A.No. 365 of 2018 and a consequential order dated 03.03.2020 in R.C.A.No. 365 of 2018.

2. The petitioner and the respondent had entered into a registered agreement of lease on 27.05.2014 with respect to the land and building bearing Door No. 144/2, old Door Nos. 82, 144 and 144/1, Purasawalkam High Road, Kellys, Kilpauk, Chennai – 600 001, measuring about 1 ground and 654 sq.ft., Purasawalkam Division, Perambur Taluk, Chennai – 600 001.

The petitioner was the lessee/tenant and the respondent was the lessor/landlord. The lease was for commercial purpose. The period of lease was 15 years. It had been agreed that there would be a lock in period of three years. This would indicate that during that period of three years, the lessor would be permitted unhindered right of lessee over the property under lease. There was also an agreement with respect to renewal of the lease after the period of 15 years. There was also a rent free period of 90 days / 3 months. This meant that the first rent would fall due on 10.09.2014. It had been further provided that during the lock in period, the lease agreement cannot be terminated and if either party seeks to terminate the agreement within the lock in period, then compensation aggregating to the lease rent for the number of unexpired month on the total lease term of 36 months shall be paid. The rent was fixed at Rs.4,50,000/- per month. A security deposit of Rs.45/- lakhs had been paid by the lessee to the lessor. It had also been provided that the Lessor would not terminate the agreement so long as the Lessee continues to pay the monthly rents without default. However, it had also been provided that if there is any breach of the provisions of the agreement, particularly relating to failure of payment of lease rent for a period of more than one month, the Lessor can issue a notice seeking rectification of the breach within a period of 15 days and if such rectification

is not done, then the Lessor may terminate the lease without notice and resume possession.

3. Since the background facts relating to the Court proceedings will have to be narrated and the respondent herein was the petitioner who initiated eviction proceedings, to avoid confusion, the parties shall be referred as landlord and tenant. The revision petitioner is the tenant and the respondent herein is the landlord.

4. Originally, the landlord filed R.C.O.P.No. 147 of 2016 on the file of the XII Small Causes Court, Chennai. The said Petition was withdrawn with liberty to file a fresh Rent Control Petition by order dated 24.01.2017. Thereafter, the landlord again filed R.C.O.P.No. 448 of 2017, under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [the Act], before the XVI Small Causes Court, Chennai. The landlord claimed that the tenant had defaulted in the payment of monthly rents which default extended and stretched beyond the period of adjustment of the security deposit. It was stated that the rent for the month of August 2015 had not been paid. The tenant made a part payment of Rs.2/-

lakhs on 07.09.2015 on 22.09.2015. A notice was issued on 11.09.2015 and by a further letter dated 13.10.2015, the tenancy was terminated. An Advocate notice was issued on 18.11.2015. It had been stated that after adjusting the security deposit of Rs.45/- lakhs, the amount due and payable towards rent was Rs.36,50,000/-. Claiming that default to be willful, R.C.O.P.No. 448 of 2017 was filed.

5. A counter had been filed by the tenant to the said petition and it had been stated that the rents have been paid periodically and therefore, there was no default as alleged for the months of August, September and October 2015. It had been stated that there had been correspondences between the parties and the legal notice dated 18.11.2015 had been issued without reference to the negotiations between the parties. It had also been stated that even the earlier R.C.O.P.No. 147 of 2016 was not maintainable and the same had dismissed and therefore, the present RCOP was not also maintainable. It had been stated that the tenant filed O.S.No.1301 of 2016 to protect possession and in the suit, the landlord had stated that he would not take any steps to evict except under due process of law. It had been further stated that in view of the unlawful termination of the lease, compensation

was payable by the landlord and in that connection, C.S.No. 987 of 2016 had been filed before the Original Side of the High Court seeking compensation of a sum of Rs.1,50,90,900/-. It had also been stated that there was no landlord / tenant relationship since the landlord had issued a letter terminating lease on 30.10.2015 and that the R.C.O.P.No. 448 of 2017 should be dismissed.

6. In the said Rent Control Proceedings, the landlord filed M.P.No. 384 of 2017 under Sections 11(1) and 11(4) of the Act. That came up for consideration before the learned XVI Judge, Court of Small Causes, Chennai on 11.09.2017 where, taking into consideration the fact that the tenant had also filed a Civil Suit for recovery of money based on the lease agreement, and holding there was no jural relationship between the landlord and tenant, the application was dismissed.

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7. R.C.O.P.No. 448 of 2017 was then taken up for trial. On the side of the landlord, the landlord himself was examined as PW-1 and on the side of the tenant, the Director was examined as RW-1. The landlord filed

Exs. P-1 to P-12 and the tenant filed Exs. R-1 to R-7. After considering the evidence recorded and the documents filed, the learned Rent Controller by order dated 14.02.2018 directed eviction and granted two months time to vacate and hand over vacant possession.

8. Questioning that order, the tenant filed R.C.A.No. 365 of 2018 before the IX Court of Small Causes, Chennai. Pending the said Rent Control Appeal, the landlord filed M.P.No. 381 of 2018 under Section 11(4) of the Act seeking a direction against the tenant to deposit a sum of Rs.95/- lakhs being the arrears of rent upto 31.03.2018 and to direct further payment of future rents of Rs.4,50,000/- every month, failing which, to stop all further proceedings and dismiss the Rent Control Appeal.

9. A counter was filed to the said petition and it had been stated that the termination of tenancy itself was unlawful and that the tenant herein had also filed a Civil Suit claiming compensation and therefore, the said application was not maintainable and that it should be dismissed.

10. The said M.P.No. 381 of 2018 was taken up for consideration on 23.01.2020 and the learned IX Judge, Court of Small Causes, Chennai, while examining the lease agreement, had also observed that the tenant

having stated that there was no landlord/ tenant relationship after the notice of termination of the lease dated 31.10.2015 had not handed over the keys and possession of the petition premises and had also not paid the rents after termination of the lease deed. It was also observed that the High Court had dismissed C.S.No. 987 of 2016. It was further observed that the tenant had defaulted in the payment of rent from August 2015 and had also not filed any proof for payment of rent.

11. The contentions of the tenant that they were in possession as a 'care taker' of the petitioner premises was rejected. It was held that the default was willful and a direction was given to pay the arrears of rent upto 31.03.2018 amounting to Rs.95/- lakhs and a further direction was issued to pay the monthly rents from 31.03.2018 onwards till December 2019 at the rate of Rs.4,50,000/- per month on or before 24.02.2020 and continue to pay monthly rents from January 2020 failing which it was stated that eviction shall be ordered and further proceedings in R.C.A.No. 365 of 2018 would be stopped. Compliance of the directions of the said order was not done.

12. Questioning the order in M.P.No. 381 of 2018 dated 23.01.2020, C.R.P.No. 1918 of 2020 had been filed. Since the tenant did not

comply with the directions to pay the arrears of rent, further proceedings in R.C.A.No. 365 of 2018 was stopped and the RCA was dismissed by order dated 03.03.2020. Eviction was ordered. Two months time was granted to vacate and handover possession. Questioning that particular order, C.R.P.No. 1919 of 2020 had been filed.

13. Mr. Silambanan, learned Senior Counsel took the Court through the lease agreement which had been entered into between the parties on 27.5.2014. The lease was with respect to the land and building in Door No. 144/2, Old Door Nos. 82, 144 and 144/1, Purasawalkam High Road, Kellys, Kilpauk, Chennai – 600 001, in Purasawalkam Division, Perambur Taluk, Chennai. The tenant had taken the said property on lease for commercial use. The following clauses in the lease deed were pointed out by the learned Senior Counsel as relevant:-

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“2. LEASE PERIOD

The lease of the DEMISED PREMISES shall be or a period of 180 months (15 years). Out of the above 15 years, the lock in period will be for

an initial period of 36 months (3 years) from the date of commencement and execution of the agreement. The lock in period means the period during which the Lessor will allow unhindered possessionary rights over the property under lease.

3. COMMENCEMENT OF RENT

The Lesser will handover the vacant possession of the demised premises forthwith on execution of the document, 90 day period being rent free period is granted by the LESSOR as allowance to the LESSEE to do its fit-out, renovations and decorations of the store. This period called rent free period will start from the date of execution of the lease deed or the handing over the keys as possession of the property to the lessee which ever period falls earlier. Thereafter, the first payment of rent shall fall due from the month following the month of rent free period. To be precise the first rent will fall due on 10th September, 2014. The lease period of 15 years (180 months) will also be reckoned after the 90 days period being rent free period.

6. LOCK-IN-PERIOD

The lock-in-period will be for the lease is 36 months. The lock in

period will commence after the initial rent free period of 90 days. The lock in period means the period during which both parties are bound by the condition that the lease will be absolute and neither of the party can terminate the lease agreement. If for any reason, other than Force Majure conditions, either party wishes to terminate this lease agreement within the lock-in-period, then such party shall simultaneously with such termination, pay the other Party compensation aggregating to lease rent for the number of unexpired months on the compulsory lease term of 36 months, this clause shall not apply to termination of this lease agreement on account of any Force Majure conditions and also where both parties mutually agree to an alternate tenant of similar standing.

7. LEASE RENT

The LESSEE agrees to pay lease rent of Rs.4,50,000/- (Rupees Four lakhs and Fifty Thousand Rupees Only) per month fro the DEMISED PREMISES commencing from the month following the rent free period of 90

days. The rent shall be paid on or before the 10th day of each English

calendar month. The first rent will fall due on 10th September, 2014. In the event of any delay of default on the part of the LESSEE to discharge the rent

within the stipulated time as mentioned above, the LESSEE shall pay to the LESSOR interest thereon at 12% from the day on which the amount was due till the date of payment. Part of the day will be rounded off to the month for this purpose.

9. SECURITY DEPOSIT

*The LESSEE shall pay an amount of Rs.45,00,000/- (Rupees Forty Five Lakhs only) upon the execution of this lease agreement which amount will be called as SECURITY DEPOSIT. The nature of Security Deposit will be a Fixed amount and will not bear any interest. No escalation of security deposit will be done. The Security Deposit is to be maintained during the entire term of this tenancy and the same shall be refunded to the LESSEE upon the termination of the lease period or coming in to the end of the lease by any other reason. Any amount bonafidely acknowledged as due to the Lessor could be adjusted and set off against the Security Deposit. **The Balance shall be refunded to the Lessee by the Lessor within 7 days (one week) from the date from which vacant possession of the Demised Premises is handed back to the Lessor.***

14. BREACH AND TERMINATION

a. Both parties agree that the LESSOR shall not terminate this agreement under whatever circumstances as long as the LESSEE is discharging its liabilities under the agreement without any default except as provided in the agreement herein. If the LESSEE wishes to terminate this lease before its expiration of the lock in period, then it shall be taken that the lease agreement has been breached. The LESSEE shall forthwith pay to the LESSOR the sum equal to the rent for the whole of the unexpired period of the said term as agreed.

b. Subject to the LESSOR complying with the provisions of the agreement and in the case of any breach of the provisions of this agreement relating to the failure of payment of the lease rent or any other sum due under this agreement, for a period greater than 1 month, the LESSOR may issue a notice seeking rectification of the said breach within a period of 15 days and even then such breach is not rectified by the LESSEE, than the LESSOR may terminate the lease without notice and resume possession of the said DEMISED PREMISES after inspection by public officials or personnel with similar authority. The loss that has been accrued or assessed to have occurred to the Lessor on the breach of the condition will

be adjusted from the security deposit.”

14. It is the contention of the learned Senior Counsel for the tenant that out of the period of lease, there was lock in period for a period of 36 months from the date of commencement of the agreement. Further, during the said lock in period of 3 years, the landlord should allow unhindered possessory rights of the tenant over the property. It was therefore claimed that by filing of the Rent Control Petition within the three year lock in period the landlord had violated the terms of the lease and therefore, the learned Senior Counsel stated that any order passed pursuant to such a petition should interfered with by this Court.

15. It is the further contention of the learned Senior Counsel that unfortunately none of the contentions of the tenant were taken into consideration and merely because the tenant did not comply with the directions of the Court, further proceedings in the Rent Control Appeal were terminated. The learned Senior Counsel therefore stated that the tenant did not have any opportunity to put forth their case.

16. On the other hand, the learned counsel for the landlord contended that the landlord had every right to initiate proceedings to terminate the lease if the tenant had breached any of the terms of the lease agreement particularly with respect to payment of monthly lease.

17. It was stated that there had been a breach in payment of the monthly rents. As a matter of fact, it was also claimed that the landlord had adjusted the advance of Rs.45/- lakhs and there was still rental amounts due. With respect to the suit, it was stated that a learned Single Judge of this Court had dismissed the suit seeking compensation. Since even during the pendency of the Rent Control Proceedings, the tenant herein had not paid the monthly rents, the landlord had taken recourse to file a petition taking advantage of Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 and a lawful order had been passed directing the tenant to pay the arrears of rent. The stipulation to pay rent is predominant. It overrides every other covenant in the lease deed. So long as the tenant is in possession, he is under obligation to pay the rent. The tenancy was therefore terminated. The tenant cannot claim any right, much less claim to be in possession as a care taker. I am not able to comprehend that stand of

the tenant.

18. In the *Oxford Dictionary*, the word '*care taker*' has been defined as "*a person employed to look after a building*". In *Cambridge Dictionary*, the word '*care taker*' has been described as "*a person employed to take care of a large building, such as a school and who deals with the building, doing cleaning, repairs, etc.,*".

19. It is thus seen the primary aspect of a care taker is that he must be an employee, who has been employed for the work of taking care of a building. There must be a contractual employer /employee relationship. He must receive salary.

20. In the instant case, no such agreement has been put forth even by the tenant herein. The tenant has not been employed by the landlord to be a care taker. The tenant therefore remains to be in illegal and unlawful occupation of the premises. The stand taken by the tenant that they are in possession as a care taker has no legal grounds at all. The said stand is rejected.

21. I hold the order under revision suffers no infirmity. The

provision of law is clear. Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 is extracted below:-

“11. Payment or deposit of rent during the pendency of proceedings for eviction.-

(1) No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 23 against any order made by the Controller on the application unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

(2) The deposit of rent under sub-section (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building,

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the appellate authority, as the case may be. ”

22. The provision very clearly states that during the pendency of a litigation, the obligation of a tenant to pay monthly rent is sacrosanct. If the rents are not paid, then the tenant has no right to put forth any defence and the proceedings whether before the Rent Controller or before the Rent Control Appellate Authority will necessarily have to be immediately stopped. The Rent Controller gave an opportunity to the tenant to pay the arrears of rent. The tenant has refused to comply with the directions. The tenant has to suffer an order of eviction. This is the nature of the order the Rent Control Appellate Authority passed. There are no reasons to interfere with the said order.

23. The Civil Revision Petitions are dismissed with costs quantified totally at Rs.50,000/- (Rupees fifty thousands only) payable to the landlord. Two months time is granted to vacate and hand over vacant possession. Consequently, connected Miscellaneous Petitions are closed.

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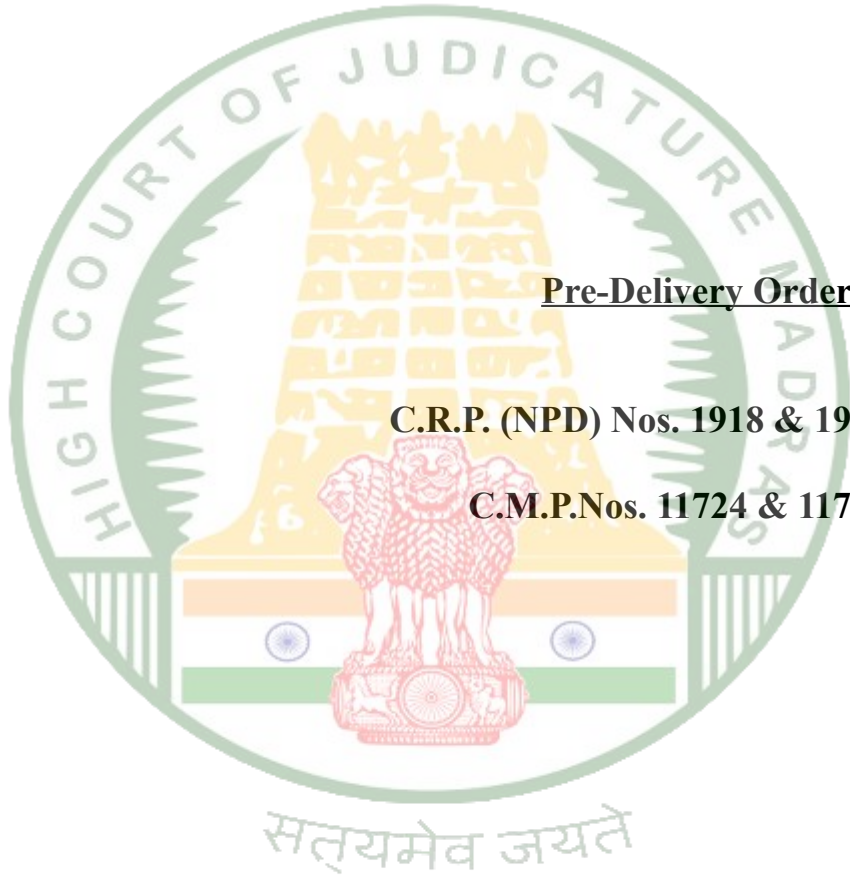
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Speaking / Non speaking

C.V.KARTHIKEYAN, J.



Pre-Delivery Orders made in

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