

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 03.09.2021	Orders pronounced on 28.09.2021
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Coram
THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1448 of 2021
and
C.M.P.No.11336 of 2021

Mrs.Sripriya Sankaran
W/o.Mr.Prassana Gobal
Proprietrix M/s.Kriya Innovation
No.1467, 22nd Street
Poombuhar Nagar
Kolathur, Chennai – 600 099.

carrying on business at
M/s.Turtle Wax Car Studio
No.201, 6th Avenue, Vaigai Colony
Anna Nagar, Chennai-600 040.

... Petitioner

Vs

Mr.S.Mohan

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.04.2021 made in I.A.No.3 of 2021 in O.S.No.580 of 2021 on the file of VI Additional Judge, City Civil Court, Chennai.

For Petitioner .. Mr.S.Sivakumar
For Respondent .. Mr.K.Manikandan

ORDER

This petition is filed challenging the order passed in I.A.No.3 of 2021 in O.S.No.580 of 2021 on the file of VI Additional Judge, City Civil Court, Chennai and consequently reject the plaint in O.S.No.580 of 2021.

2. I.A.No.3 of 2021 was filed under Order VII Rule 11 CPC for rejection of plaint. The affidavit filed in support of this petition shows that the respondent filed a suit in O.S.No.580 of 2021 for recovery of a sum of Rs.12,20,250/- with interest at 24% p.a. claiming it as arrears of rent. The petitioner is no way involved and connected with the business of M/s. Turtle Wax Car Studio. This suit is based on an unregistered lease agreement dated 19.01.2018 and 01.01.2019. As per clause 28 of lease agreement, the locking period ends on 30.10.2020. In para-4 of the plaint, the respondent claims that the locking period of 33 months ends on 30.10.2020. This makes it clear that the lease is for 33 months. Hence, the lease agreement ought to have been registered. It

has to be registered as per Section 17(1)(d) read with Section 49 of Registration Act. The cause of action for the suit arises mainly on this unregistered lease agreement. When this lease agreement is not admissible in evidence, the plaint has to be rejected as barred by law. As per Tamil Nadu Regulations of Rights and Responsibilities of Landlords and Tenants Act, 2017, the tenancy agreement has to be registered. This agreement is not registered under this Act. For all these reasons, the plaint is liable to be rejected.

3. Respondent objected this petition claiming that the lease is only for 11 months and subject to further renewal upto total period of 99 months. However, the lease has to be extended for every 11 months. It means that the lease is only for a period of 11 months with an option to extend for every 11 months subject to a maximum of 99 months. Therefore, the lease agreement need not be registered. Non-registration of lease agreement under Tamil Nadu Regulations of Rights and Responsibilities of Landlords and Tenants Act, 2017 is not the ground for rejecting the plaint.

4. Learned VI Additional Judge, City Civil Court, Chennai, on considering the rival submissions, dismissed the petition on a finding that the lease was entered into for 11 months and therefore, it requires no registration. Against the said order of dismissal, this Civil Revision Petition is preferred.

5. Learned counsel for the petitioner submitted that clause-28 of lease agreement stipulates that “The lessee after the 11 months of locking period agrees to continue locking period for 2 further terms of 11 months. The tenancy will be terminable on three month's notice on either side by the lessor or lessee after the locking period. ”. In para-4 of the plaint, it is averred that “as per clause 28 of the rental agreement dated 19.01.2018, the defendant had agreed for locking period of two further terms of eleven months, that is ending on 30.10.2020 and the tenancy will be terminated on three month's notice on either side, by the lessor or lessee, after the locking period. Therefore, termination notice of three months starts only from 01.11.2020 and that the defendant is liable to pay the rent till 31.01.2021.”

6. Learned counsel for the petitioner further submitted that the combined reading of clause-28 of the agreement dated 19.01.2018 and para-4 of the plaint shows that the lease is for a period of 33 months. If the lease exceeds more than 11 months, the lease agreement is required to be registered. Since the lease agreement dated 19.01.2018 is not registered, respondent cannot claim rental arrears on the basis of unregistered lease agreement. In this regard, learned counsel for the petitioner relied on the following judgments reported in:-

(i) ***AIR 1942 Sindh 27 (Radhomal Alumal ..vs.. K.B.Allah Baksh Khan Haji Muhammad Umar and others)***, wherein it is held as follows:

“49. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.”

(ii) ***AIR 1983 All 164 (Zarif Ahmad and others ..vs.. Satish Kumar and others)*** wherein it is held as follows:-

“an unregistered document cannot be admitted

*for proving either the duration or the rate of rent
which is one of the terms of the contract.”*

(iii) (2008) 5 CTC 260 (K.B.Saha and sons Pvt. Ltd., ..vs..

Development Consultant Ltd.,) wherein it is held as follows:-

*“any clause of unregistered lease deed could not be
taken into consideration even for collateral purpose.”*

and

(iv) AIR 2018 SC 3152 (Shyam Narayan Prasad ..vs.. Krishna

Prasad) wherein it is held as follows:-

*“Having regard to Section 49 of the
Registration Act, any document which is not
registered as required under law, would be
inadmissible in evidence and cannot, therefore, be
produced and proved under Section 91 of the
Evidence Act.*

The above judgments are relied on for the proposition that the unregistered document, which is required to be registered in law, is not admissible in evidence and any right claimed on the basis of unregistered document is barred.

7. Per contra, learned counsel for the respondent submitted that

though there are clauses in the lease agreement that the lease may be extended upto a total period of 99 months, the lease agreement was executed only for 11 months. Followed by the lease agreement dated 19.01.2018, another lease agreement was executed for 11 months on 01.01.2019. It makes it clear that the intention of the parties was to execute the lease agreement only for 11 months. When the lease period does not exceed more than 11 months, it is not necessary to register the lease agreement. The learned VI Additional Judge, City Civil Court, Chennai, has also found this view is correct and dismissed the petition.

8. Considered the rival submissions and perused the records. As said earlier, the suit is filed for recovery of Rs.12,20,250/- representing the arrears of rent, monthly maintenance, GST and TDS after deducting security deposit. The suit is based on lease agreement dated 19.01.2018 and then renewal of rental agreement dated 01.01.2019. Perusal of the lease agreement dated 19.01.2018 shows that the schedule property was leased out to M/s.Kriya Renovation represented by its proprietrix Mrs.Sripriya Sankaran, for the purpose of carrying on car spa. The first clause of the agreement shows that the lease shall commence

from first February 2018 for a period of 11 months. This 11 months period shall be the locking period. If the lessee desires to terminate this lease before the locking period, she shall pay a penalty of six months rent to the landlord. The second clause reads that the lease shall be further extended for eight (8) terms of 11 months, all totalling to 99 months, which will be renewed for every 11 months. There are other clauses as well. For the purpose of deciding the period of lease, these two clauses are important. These two clauses make it clear that the intention of the parties was to create a lease for 11 months, with an option to renew the lease for every 11 months upto a total period of 99 months. The plain reading of these clauses makes it clear that the lease was intended only for a period of 11 months.

9. The petitioner sought to take advantage of clause-28 that after 11 months locking period, the lessee agrees to continue the locking period of two further terms of 11 months ie., the locking period is extended upto 33 months. This is replicated in para-4 of the plaint. Learned counsel for the petitioner interpret this clause to mean that the lease is for the period of 33 months. This interpretation, in the

considered view of this Court, is not correct. Clauses 1 and 2 of the lease agreement makes it plainly clear that the lease was for only 11 months. Further, the period of lease would have to be extended for 11 months to a maximum period of 99 months. If the lease is not extended, then there is no possibility of continuation of lease. Therefore, the petitioner cannot take advantage of clause-28 to canvass that the lease was a period of 33 months and therefore, the lease agreement should have been registered.

10. The lease agreement dated 19.01.2018 was the basis document. Subsequently, there was renewal lease agreement on 01.01.2019. It effectively supports the case of the respondent that the lease was only for a period of 11 months and if the parties want to continue the lease, they should enter into a separate lease agreement. Therefore, this Court finds that the lease agreements dated 19.01.2018 and 01.01.2019 were entered into only for 11 months. In this case, these documents need no registration and the suit filed on the basis of these documents for recovery of arrears of rent and maintenance etc., is legally maintainable. In this view of the matter, this Court finds the Judgments relied on by the learned counsel for the petitioner are not helpful to her

case. Learned VI Additional Judge, City Civil Court, Chennai rightly considered these aspects and dismissed the petition to reject the plaint. This Court finds no reason to interfere with the order of the learned VI Additional Judge, City Civil Court, Chennai passed in I.A.No.3 of 2021 in O.S.No.580 of 2021 dated 07.04.2021 and confirms the said order.

11. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.09.2021

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Note : Issue order copy on 30.09.2021

Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

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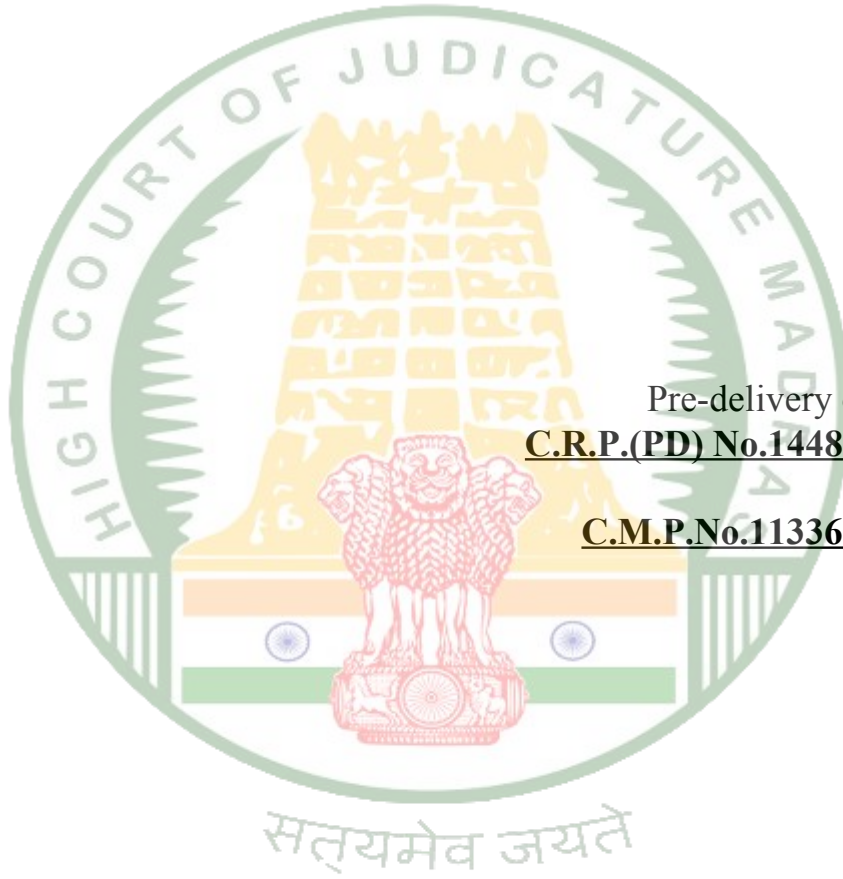
1. The VI Additional Judge, City Civil Court, Chennai.

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G.CHANDRASEKHARAN, J.

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Pre-delivery order in
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