

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.4453 of 2017
and C.M.P.No.21015 of 2017

S.Vishalakshi Petitioner

Vs.

G.Balakrishnan Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, to set aside fair and decreetal order of the VII Judge, Small Causes Court, Chennai dated 20.09.2017 made in RCA.SR.No.27208 of 2016 against order dated 23.06.2016 passed in M.P.No.621 of 2015 in RCOP.No.404 of 2012 on the file of the XIII Judge Small Causes Court, Chennai.

For Petitioner : Mr.Samir S.Shah
For M/s.Shah and Shah
For Respondent : Mr.C.Selvakumar

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 20.09.2017 passed by the learned VII Judge, Small Causes Court, Chennai (herein after called as "Rent Control Appellate Authority) in R.C.A.SR.No.27208 of 2016 thereby confirming the order

dated 23.06.2016 passed by the learned XIII Judge Small Causes Court, Chennai, (herein after called as 'Rent Controller') in M.P.No.621 of 2015 in R.C.O.P.No.404 of 2012, thereby dismissing the petition filed under Section 5 r/w Rule 11 & 12 of the Tamil Nadu Buildings Lease and Rent Control Act.

2. The petitioner is the tenant and the respondent is the landlord. The respondent (herein after called as "landlord") filed petition for fixation of fair rent for the petition premises. While pending the petition, the petitioner (herein after called as "tenant") filed petition in M.P.No.621 of 2015 under Section 5 r/w Rule 11 & 12 of the Tamil Nadu Building (Lease and Rent Control) Act, on the ground that the second petition for fixation of fair rent is barred under the said Act. The petition was dismissed by the Rent Controller and aggrieved by the same, the tenant preferred an appeal under Section 23(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act and the same was dismissed as not maintainable by the learned Rent Control Appellate Authority. Aggrieved by the same, the present Civil Revision Petition has been filed.

3. The only point for consideration is that whether the appeal as

against the order passed under Section 5 r/w Rule 11 & 12 of the Tamil Nadu Building (Lease and Rent Control) Act is maintainable or not?

4. It is seen from the records that the landlord already filed petition for fixation of fair rent in RCOP.No.2061 of 2003 and the same was dismissed by an order dated 28.09.2004, for the reason that the present rent paid by the tenant as per the rental agreement is held to be the fair rent for the petition premises. Though the landlord has engaged an engineer and given a report fixing the fair rent at Rs.9,779/-, in view of the above, a separate calculation is not made. Therefore, the tenant contended that the present second petition for fixation of fair rent is barred under Section 5 r/w Rule 11 & 12 of the Tamil Nadu Building (Lease and Rent Control) Act.

5. The learned counsel appearing for the tenant would submit that whenever the rights and liabilities of the parties are affected in the order passed in I.A. petitions, the same are appealable in nature. Therefore he prayer for allowing this present petition.

6. On perusal of the order passed in the earlier petition in R.C.O.P.No.2061 of 2003 for fixation of fair rent, the learned Rent

Controller observed that the rent paid by the petitioner, as per the agreement, is said to be fair rent. Aggrieved by the same the landlord preferred an appeal in RCA No.1302 of 2004 and the same was also dismissed. Further the learned Rent Controller dismissed the petition in M.P.No.621 of 2015 by stating that fixation of fair rent is not barred by Section 5 of the Tamil Nadu Building (Lease and Rent Control) Act. The learned Rent Control Appellate Authority also dismissed the appeal as not maintainable.

7. Considering the above facts and circumstances, without going into the merits of the order passed by the learned Rent Controller as well as the Rent Control Appellate Authority, this Court feels that the petition has to be considered afresh on merits and in accordance with law. Accordingly, the orders passed by the learned Rent Controller as well as the Rent Control Appellate Authority are hereby set aside. The petition in MP.No.621 of 2015 is remanded back to the learned Rent Controller for fresh consideration. The learned Rent Controller is directed to frame the maintainability as one of the issue and decide the main rent control original

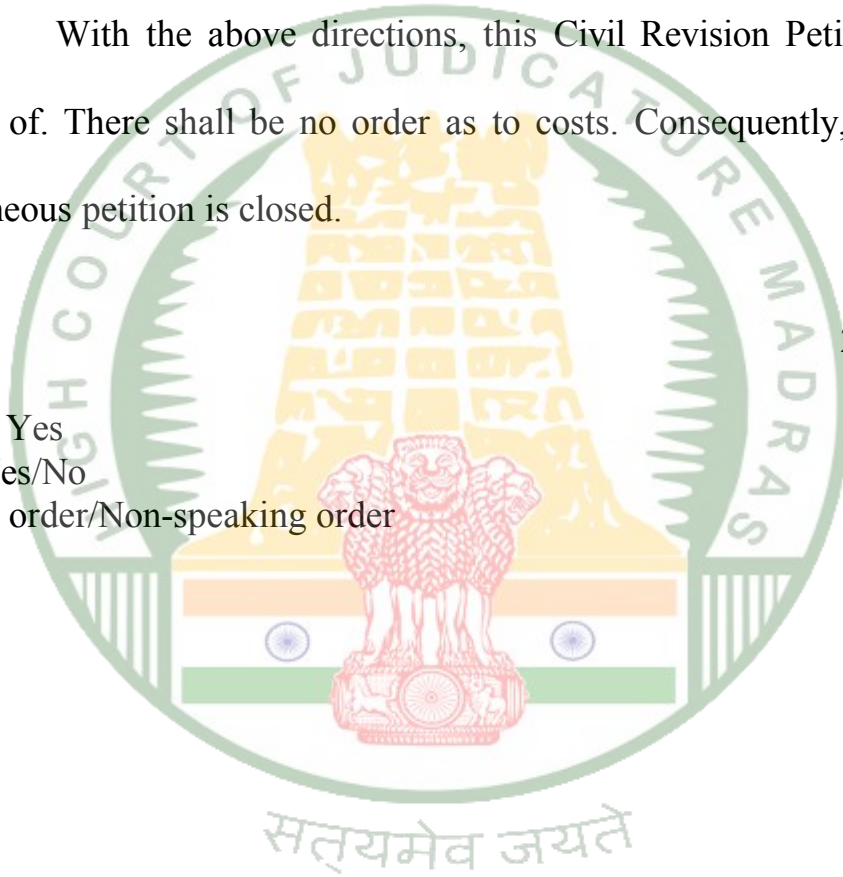
petition itself on merits and in accordance with law, within a period of three months from the date of the receipt of a copy of this Order, excluding the period of upcoming vacation.

8. With the above directions, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.03.2021

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

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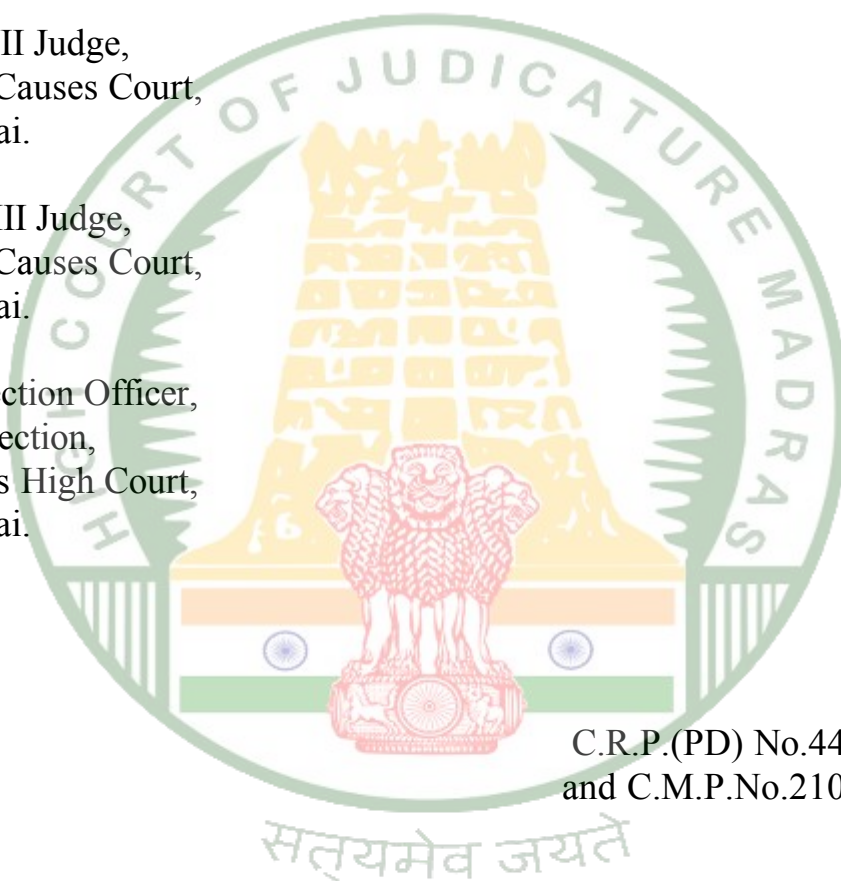
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G.K.ILANTHIRAIYAN, J.

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To

1. The VII Judge,
Small Causes Court,
Chennai.
2. The XIII Judge,
Small Causes Court,
Chennai.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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