

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>25.08.2021</i>
<i>Pronounced</i>	<i>30.09.2021</i>

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(NPD) No.671 of 2017

and

C.M.P.No.14995 of 2017

1. Mrs.Jeevan Lata
2. Mrs.Vandita Jain
3. Mrs.Naina Jain
4. Mrs.Reenu Jain

... Petitioners

Versus

Sri Vijay Kapoor

..Respondent

Prayer: Revision petition is filed against the fair and decretal order dated 09.12.2016 passed by the IX Judge, Small Causes Court, Chennai in RCA No.296 of 2016, reversing the order dated 24.03.2016 in RCOP No.2256 of 2012 passed by the XV Judge, Small Causes Court, Chennai.

For Petitioners : Mr. S.Krishnan

For Respondent: Mr. S. R. Rajagopal

ORDER

This Civil Revision Petition has been filed by the petitioner, against the order dated 09.12.2016 passed by the IX Judge, Small Causes Court, Chennai in RCA No.296 of 2016, reversing the order dated 24.03.2016 in RCOP No.2256 of 2012 passed by the XV Judge, Small Causes Court, Chennai.

2. The brief facts which led to the filing of the present Revision Petition, can be stated as under:

3. The petitioners herein are the absolute owners of the premises situated at D.No.155/158, Poonamallee High Road, Chennai-600 010. The respondent herein is a tenant in respect of non-residential portion consisting of ground floor, first floor and second floor of the premises on a monthly rent of Rs.1,40,080/- per month. Both the petitioners and respondent have entered into a Lease Agreement and the same was confirmed by the respondent vide his letter dated 11.05.2011, the monthly rent payable from 21.03.2011 is Rs.1,61,092/-. According to

rents. The petitioners sent a notice dated 24.05.2011 to the respondent for default of rent from January, 2011 to April, 2011. Pursuant to the same, the respondent started paying the rent. However, the respondent again failed to pay the rents from August, 2011 to August, 2012 amounting to Rs.21,36,220/-. It is also stated by the petitioners that the respondent without obtaining prior permission or consent from the petitioners, the respondent used to make a structural alterations to the demised premises and thereby committed an act of waste. In such circumstances, the petitioners filed petition in R.C.O.P.No.2256 of 2012 before the Rent Controller seeking eviction of the respondent.

4. Resisting the above petition, the respondent filed a counter, wherein it is stated that the respondent is the Managing Director of Derby Clothing Private Limited and he entered into a Lease Agreement dated 21.08.2008 in respect of the demised premises for the purpose of running their retail outlet to sell readymade garments, textiles etc. A total sum of Rs.14,00,800/- was paid towards rental advance and monthly rent was fixed at Rs.1,40,080/- per month. The respondent used to pay the rents in

respect of each petitioner at equal shares. Later, the petitioners through their representatives viz. Mr.Bharath and Mr.Fathesh have demanded 15% increase in rent as per Lease Agreement. According to the respondent, since there was no considerable progress in his business he could not accede to the petitioners' demand for increase in rent. In such circumstances, the petitioners instructed the respondent to vacate the premises. Accordingly, the respondent vacated and handed over the vacant portion on 22.02.2012 by issuing a notice dated 16.02.2012.

5. According to the respondent, having taken possession on 29.02.2012, the petitioners are due and liable to return the advance amount after adjusting the rental arrears. However, the petitioners were dragging on the settlement of accounts stating that they would adjust the rent from August, 2011 to February, 2012 with the advance amount on the enhanced rent which was not acceded to by the respondent. It is also stated by the respondent that he has paid TDS amount for the rents that were paid to the petitioners. With these averments, the respondent sought

6. The Rent Controller, upon consideration of both oral and documentary evidence, by Order dated 24.03.2016 allowed the petition, ordering eviction against the respondent on the both the grounds, viz., willful default and act of waste.

7. Aggrieved by the order of the Rent Controller, the respondent preferred an appeal before the Rent Control Appellate Authority. By judgment dated 09.12.2016, the Rent Control Appellate Authority after analysing the facts and circumstances and evidence and the findings of the Rent Controller, has allowed the appeal and set aside aside the order of the Rent Controller.

8. Challenging the order of the Rent Control Appellate Authority, the petitioners who are the owners of the demised premises have come forward with the present Revision Petition.

9. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent. Perused the entire materials available on record.

10. Before the Rent Controller, on behalf of the petitioners, it was argued that the respondent tenant was not prompt in payment of rents and committed wilful default and also committed act of waste. While on behalf of the respondent tenant, it was argued that the respondent issued notice, dated 16.02.2012 which was marked as Ex.P-10 indicating his intention to vacate and handover the vacant possession of the premises on 29.02.2012 and the same was acknowledged by the petitioners and he also requested to reconcile the accounts by adjusting the existing rental amount with the rental deposit and refund the balance to him. Having considered the above mentioned respective pleas, the Rent Controller has observed as under:

"From the above evidence, it is clearly seen that the respondent has filed the copy of notices exchanged between the petitioners and respondent and no single documentary evidence was shown that the respondent handed over the premises to the petitioners on 29.02.2012. In such circumstances, this court concludes that the respondent has not legally and factually handed over the premises to the petitioners and as such the jural relationship of landlords and tenant are still subsisting between the parties. Ex R-2 is not an authenticated document to believe the version of the respondent."

"9. Ex.P-2 is the copy of letter given by the respondent to the petitioners stating that he received four number of keys of the petitioner premises. Ex.P-5 is the photographs filed by the petitioners to show the internal alterations done by the respondent in the petition premises. The petitioners caused two legal notices dated 24.05.2011 and 01.08.2012 marked as P7 and P8 respectively, stating the above alterations of the premises called upon the respondent to restore the premises to its original condition and also calling upon to pay the arrears of rent. The respondent has admitted in his evidence that substantial alterations were done in the premises but no proof was shown that it was carried out with the consent of the petitioners. It is pertinent to note that the documents filed by the respondent are not sufficient to prove his contention. the Judgment relied upon by the respondent is not applicable to the present case. This court concludes that the petitioners have proved their case with preponderance of evidence both on the ground of wilful default and act of waste."

11. However, the Rent Control Appellate Authority has not accepted the findings of the Rent Controller and observed as follows:

"6. First of all, it is pertinent to note that, the appellant has taken the first step for vacating the petition premises. For which, the appellant issued a intimation notice, dated 16.02.2012, which was marked as Ex.P-10. Through the Ex.P-10, the appellant informed the respondent/landlord that he will vacate and handover the vacant possession on or before 29.02.2012 and the same has been duly

acknowledged by the respondent/landlord. Further, the appellant requested to reconcile the accounts by adjusting the existing rental amount. Since the security deposit on the hands of respondent/landlord, and he shall be refunded the balance amount. It is seen that the respondent/landlord has not sent any reply notice to the Ex.P-10, till the time of filing of the RCOP 2256/2012. In this regard, there is no clear explanation on the side of the respondent/landlord not sending of reply. Further, it is pertinent to note that, as per the version of respondent/landlord, he found that the appellant/tenant has took some alteration in the petition premises on 01.06.2011. On the other hand, no immediate notice issued to the respondent/landlord to stop the works. Provided, the appellant has not obtained the permission from the respondent/landlord as stated by the respondent/landlord. But, the respondent/landlord has preferred the RCOP 2256/2012 only on 15.10.2012. After lapse of one year, he has chosen to file RCOP against the appellant. Further, it is noted that, the cordial relationship of the parties were strained in the year 2011. But, why the respondent/landlord failed to send reply to Ex.P-10. Moreover, why, he has kept silence on 29.02.2012, since he is the landlord of the petition premises?..."

"8. From the above evidence, the respondent/landlord has exposed to prove his contention with regard to alteration. For which, the respondent/landlord relied upon the, Ex.P-6, that is the photographs of the petition premises. In this aspect, that there is no clear explanation on the side of the respondent/landlord that, he has preferred the

RCOP in the year 2012. Whereas Ex.P-6 has taken on 01.06.2011. How, he has taken the photographs? whether the appellant was present or not during the time of visitation of the petition premises? How the respondent/landlord would have known that there is a leakage in the Roof of the premises? It is reflected in Ex.P-6, that some alteration works only taken place, not any leakage scenes in the Ex.P-6. At this juncture, the view of this court is that, the respondent/landlord came to know about the leakage in the premises, only after vacating the petition premises by the appellant. Such being the scenario, the view of this court is that the appellant has proved that he has vacated the premises on 29.02.2012."

"10. Further, it is noted in para 4, it is mentioned as (a) "to vacate and handover vacant possession of the demised premises mentioned aforesaid to my client within 15 days of receipt thereof. It is seen that, Ex.P-7 was issued on 24.05.2011. The photographs taken on 01.06.2011. One of the point indicated with regard, to vacate the premises, whereas now the respondent/landlord pleaded that he has not insists the appellant to vacate the premises. From the above, the view of the court is that why the respondent/landlord has played dual role in this regard? According to Ex.P-8 dated 01.08.2012 also the respondent/landlord reflected the same view of the Ex.P-7 in addition to that to claim the arrears. It is pertinent to note that even in Ex.P-7 and Ex.P-8, that there is no whisper about Ex.P-10. Further, it is seen that, no denial of the Ex.P-10 on the side of respondent/landlord. Further, in Ex.P-10, the appellant/tenant categorically mentioned that as follows: "Subject-Cancellation of

Rental and Lease Agreement as per your request" which is sufficient to prove the contention of the appellant herein. Ex.P-10 is clearly established the stand of appellant."

12. It is the specific case of the respondent/tenant that he had vacated and handed over the demised premises as early as on 29.02.2012 and to prove the same, he relied upon Ex.P10 letter dated 16.02.2012. This letter was marked through PW.1, Nikil Jain, who is authorised by the petitioners/landlords to adduce evidence on their behalf. In Ex.P10 which is addressed to the petitioners/landlords, the respondent/tenant has specifically mentioned as below:

"....we are cancelling the rental agreement and we will hand over the store and the keys to you on or before 29th Feb 2012. We request you to reconcile the accounts thereby adjust the existing rentals (with no increase) with the rental deposit and refund the balance amount to us."

13. After receipt of the above, it is pertinent to note that the petitioners/landlords have kept silent and not even enquired whether the

Naturally, any landlord after getting the consent of the tenant for vacating and handing over the possession, will certainly take steps by visiting the premises in order to verify whether the demised premises are in tact or any damages were caused and will settle the dues payable to the tenant from and out of the amount received towards rental advance after adjusting the non-paid rental amounts and also towards damages if any and thereafter, will insist to hand over the keys. This is the natural corollary that would be taken place after the tenant expressing his consent to terminate lease agreement and to vacate the premises. In fact, on earlier occasion, i.e. in the year 2009, the petitioners/landlords deputed one Bharat Kumar who inspected the demised premises and noted down the material alterations alleged to have been done by the respondent/tenant in the second floor without their consent. While so, it is surprising to note that after receipt of Ex.P10 letter, dated 16.2.2012 sent by the respondent/tenant expressing his consent to vacate and hand over the premises by 29.02.2012, the petitioners/landlords have kept silent without taking any earnest efforts either to visit the premises or atleast to

insist the respondent/tenant to handover the keys. It is not the case of the petitioners that despite their demand, the respondent has not handed over the keys to them.

14. More over, in the month of May, the respondent/tenant has sent a letter dated 11.05.2012 which is marked as Ex.P9 through PW.1, the respondent/tenant has again mentioned the fact that he has vacated the premises on 29.2.2012 and requested the petitioners to refund a sum of Rs.3,98,527/- after detailing the amounts deducted towards rents due and payable by him. Since both the letters marked as Exs.P9 and P10 were marked through PW.1, it is clear that the said letters were acknowledged by the petitioners/tenants. In fact, in their reply letter dated 01.08.2012 to Ex.P9 letter dated 11.05.2012, though the petitioners/tenants have mentioned about the letter dated 11.05.2012 of the respondent/tenant and having come to the knowledge about vacating the premises by the respondent/tenant on 29.02.2012, the petitioners/landlords have not chosen either to deny specifically about the same or to reply on this

aspect, but by ignoring the same, in turn, they demanded Rs.19,75,128/- towards rental arrears, while strangely, they have not even mentioned about the advance amount received and lying with them. Therefore, despite having the knowledge about the consent of the tenant in vacating and handing over the demised premises on 29.02.2012, the attitude of the petitioners/landlords in keeping silent will clearly raise doubt as contended by the respondent/tenant that in order to set off the advance amount as well as to collect the arrears of rents, the petitioners/landlords have played tactics. It is very quite surprising to note that the petitioners/landlords have moved the Rent Controller for eviction of the respondent/tenant on the grounds of willful default and act of waste by filing RCOP on 15.10.2012. Instead of approaching the Rent Controller, they ought to have inspected the demised premises to know the ground reality whether the respondent/tenant vacated the premises or not or atleast they could have called upon the respondent/tenant to come and hand over the possession by handing over the keys. Even if they deny the version of the respondent/tenant by pointing out that there is absolutely

no material to prove that the respondent/tenant had actually vacated the premises, then it is not known as to why they kept silent when the respondent/tenant filed a Memo on 13.02.2013 in the RCOP before the Rent Controller, wherein, the tenant/respondent has specifically mentioned that he vacated and handed over the tenanted premises as early as on 29.02.2012. Further, even after coming to know this fact through the counter affidavit filed by the respondent/tenant on 06.06.2013 before the Rent Controller wherein, he specifically mentioned that he has vacated and handed over the premises on 29.02.2012, the petitioners/landlords have not filed any petition for appointment of Advocate-commissioner to inspect the premises and to record the ground reality nor they sought for any interim direction against the respondent/tenant to hand over the physical possession, by which, the matter would have come to end in the year 2013 itself.

15. The learned counsel for the respondent/tenant also

submitted that since the petitioners/landlords have been unjustly

enriching themselves by withholding the rental advance, the respondent/tenant had instituted a Civil suit in O.S.No.2363 of 2013 before the City Civil Court, Chennai for recovery of the advance amount and the same is pending.

16. In fact, during pendency of the revision before this Court, by order dated 05.10.2018, after taking note of the fact that the property was lying idle, has passed the following:

"4. I intend to post this revision petition for final hearing but, it would not be appropriate to allow the property to be vacant to nobody's physical possession or enjoyment. The issue as to whether the respondent had handed over the vacant possession or the demised premises to the petitioners on 29.02.2012 can be deliberated during the course of final hearing. In the mean time, in order to safeguard the property as such, it would be appropriate to handover the physical possession of the demised property to the petitioners herein, who had incidentally filed the present application, seeking for appointment of Advocate Commissioner for the said purpose."

By observing so, this Court appointed the Advocate-Commissioner and

directed him to break open the doors of the demised premises and re-seal the same with a fresh lock and hand over the keys to this Court. Pursuant to the same, the Advocate Commissioner after executing the entrusted work, handover the keys to the Court and as requested by the learned counsel for the petitioners, the same were handover to him. This was recorded by this Court vide proceedings dated 01.11.2018. By this, by intervention of this Court, atleast, the petitioners/landlords have got the possession of the demised premises.

17. Therefore, right from the inception, the petitioners have not taken any earnest efforts nor genuine attempts were made as regards taking possession from the respondent/landlord after coming to know his consent or atleast called him to come in person and hand over the keys. But the petitioners have played a technical role under the guise of Court proceedings in order to constrain the respondent/tenant to accept their case and forgo his advance amount and to pay the arrears of rent.

Therefore, the attitude of the petitioners is highly condemnable.

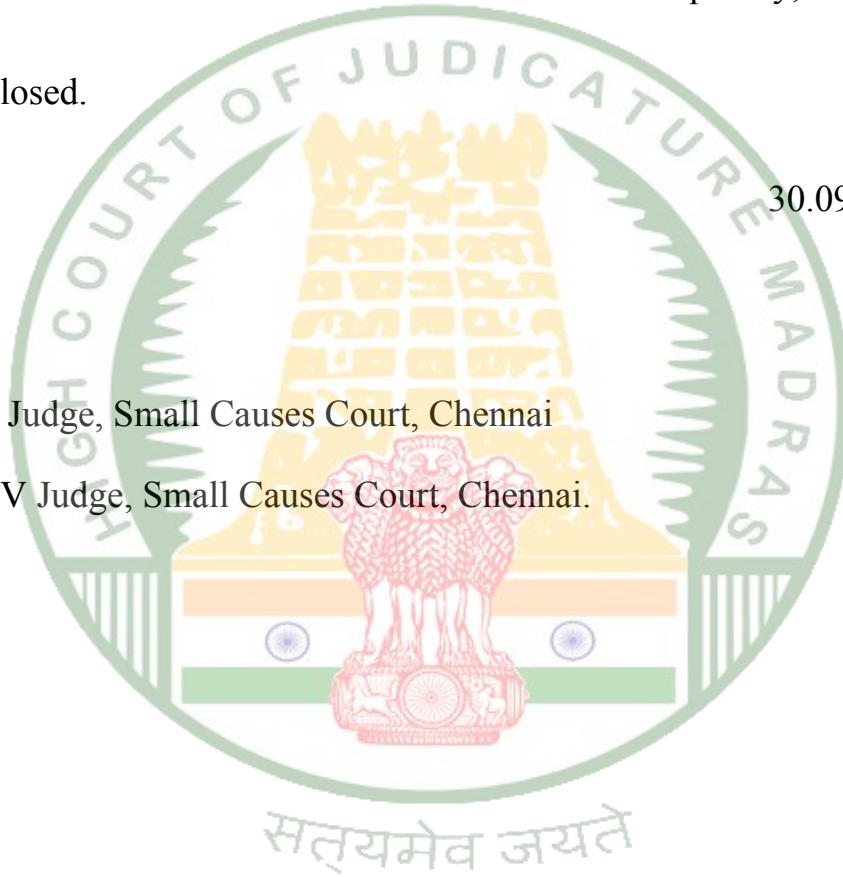
18. For the foregoing reasons, this Court does not find any infirmity or illegality in the order of the Rent Control Appellate Authority in order to interfere with the same. Accordingly, the Civil Revision Petition fails and it is dismissed with costs. Consequently, connected CMP is closed.

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30.09.2021

To

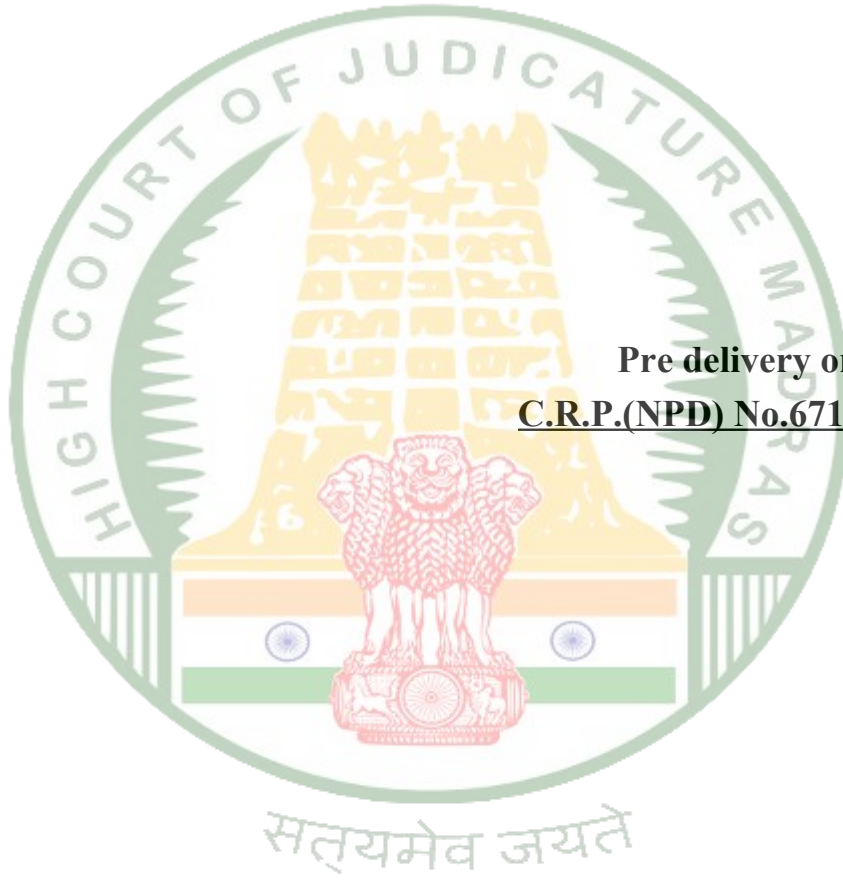
1. III Judge, Small Causes Court, Chennai
2. XIV Judge, Small Causes Court, Chennai.



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S.KANNAMMAL, J.

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C.R.P.(NPD) No.671 of 2017**

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