

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

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

C.R.P.(NPD)No.3598 of 2018
and C.M.P.No.20140 of 2018

A.V.S.Balaji

... Petitioner

Vs.

A.Parasuraman

... Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease & Rent Control) Act, against the judgment and decree dated 04.07.2018 passed in R.C.A.No.22 of 2016 on the file of the VII Small Causes Court, Chennai, confirming the judgment and decree dated 26.11.2014 made in R.C.O.P.No.1706 of 2012 on the file of the XIV Small Causes Court, Chennai.

For Petitioner : Mr.A.Laxmi Raj Rathnam

For Respondent : Mr.P.Rajendra Kumar

ORDER

This Civil Revision Petition is directed as against the judgment and decree dated 04.07.2018 passed by the learned VII Judge, Small Causes Court, Chennai (herein after called as “Rent Control Appellate Authority”) in R.C.A.No.22 of 2016 confirming the judgment and decree dated 26.11.2014 passed by the learned XIV Judge, Small Causes Court, Chennai (herein after called as “Rent Controller”) in R.C.O.P.No.1706 of 2012, thereby fixing the fair rent for the petition premises.

2. The petitioner is the tenant and the respondent is the landlord. The landlord filed petition in R.C.O.P.No.1706 of 2012, for fixation of fair rent for the petition premises and the learned Rent Controller fixed fair rent for petition premises at Rs.56,593/- per month. Aggrieved by the same, the tenant preferred an appeal before the learned Rent Control Appellate Authority and the same was dismissed by confirming the order passed by the learned Rent Controller. Aggrieved by the same the tenant filed this present Civil Revision Petition.

3. The case of the landlord is that he rented out the petition premises ad measuring 1008 sq.ft. plinth area for the monthly rent of Rs.23,760/- for non-residential purpose to the tenant. The tenant is also using open space ad measuring 480 sq.ft., which is exclusively available for the petition premises. The tenant is doing various business in the petition premises viz., in the name and style of Krishna Travels, Krishna Driving School, Krishna Xerox, Krishna couriers, agency for Rathi Meena travels ticketing and real estate businesses. The petition premises is situated in very busy and commercial locality. It is situated very nearby schools, hospitals, hotels, IAS training center, colleges, market, departmental store, etc. The land value about Rs.6 crores per ground and he prayed for fixation of fair rent.

4. Per contra, the tenant filed counter and stated that initially the petition premises was rented out to the tenant in the year 2007 for the monthly rent of Rs.18,000/- and within a period of two years, the rent was enhanced to the tune of Rs.23,760/-. The tenant is paying continuously the agreed rental amount. In fact, the landlord had sent a letter dated 19.07.2012

called upon the tenant to vacate the petition premises and handed over the same for the landlord's own occupation. Therefore, the intention of the landlord is very clear that only to evict the tenant from the petition premises, the present petition has been filed for fixation of fair rent, though the tenant is paying a sum of Rs.23,760/- as monthly rent.

5. On the side of the landlord, he examined P.W.1 and marked Ex.P.1 to Ex.P.4. On the side of the tenant, no witnesses were examined and no documents were marked. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made by the learned counsel on either side, the learned Rent Controller fixed fair rent of Rs.56,593/- per month and the same was also confirmed by the learned Rent Control Appellate Authority. Aggrieved by the same, the present Civil Revision Petition has been filed.

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6. The learned counsel appearing for the tenant would submit that the landlord simultaneously filed eviction petition in R.C.O.P.No.362 of

2015 on the ground of willful default and the same was allowed. The tenant vacated the petition premises as early as on 03.01.2019 and now he is facing the suit for damages and recovery of rental arrears. Unfortunately when the petition for fixation of fair rent was posted for further cross-examination of P.W.1, the tenant and his counsel, who appeared on behalf of him before the Court below, fell ill and both were admitted to hospital for their heart ailment. Both were undergone surgery in their hospitals as such, they could not be able to produce their evidence before the learned Rent Controller.

6.1. He further submitted that, the value of the land has valued at Rs.3,24,00,000/- per ground, on the basis of the sale deed produced by the landlord, in respect of the property situated at 2nd Avenue, Anna Nagar, Chennai. Whereas the petition premises is situated at 5th Avenue, Anna Nagar, Chennai. Therefore, it cannot be taken into consideration to fix the value of the land. He further submitted that while calculating the value of the building, the learned Rent Controller included the common car parking area along with the petition premises. Therefore, he prayed for determination of fair rent afresh.

7. Per contra the learned counsel appearing for the landlord submitted that the petition premises is located in prime commercial area and the tenant is running his driving school in the petition premises. He also conducted various business in the petition premises such as travel agency, Xerox copier, etc. In fact, the learned Rent Controller fixed the land value only at Rs.3,24,00,000/-, as per Ex.P.3, the sale deed which was marked by the landlord. Whereas the petition premises is situated at 5th Avenue, Anna Nagar and its value is more than the building situated at 2nd Avenue, Anna Nagar. Therefore, he prayer for dismissal of the Civil Revision Petition.

8. Heard Mr.A.Laxmi Raj Rathnam, learned counsel appearing for the tenant and Mr.P.Rajendra Kumar, learned counsel appearing for the landlord.

9. The landlord leased out the petition premises situated in the Ground Floor portion in MIG Flat at No.77/87, Z Block, 5th Avenue, Anna Nagar, Chennai-40. It is for non-residential purpose ad measuring 1008 sq.ft., of plinth area. The monthly rent for the petition premises was fixed at

Rs.23,760/-. After completion of evidence on the side of the landlord, the tenant did not produce any witness and did not mark any document, in his favour, since the tenant and his counsel admitted to the hospital for their heart ailment. Therefore, they could not be able to appear before the learned Rent Controller and failed to produce any document and also witness to sustain their version.

10. The landlord examined P.W.1, who is the Civil Engineer and his report was marked as Ex.P.1. By relying upon the sale deed, which was marked as Ex.P.3., the learned Rent Controller fixed the land value at Rs.3,24,00,000/- per ground. On perusal of Ex.P.3, the sale deed is in respect of the premises situated at New No.180/2, Old No.400/2, 2nd Avenue, Anna Nagar, Chennai-40. The said premises is located in Manasa Apartments, Flat No.2, Ground floor. Whereas, the petition premises is situated at 5th Avenue of Anna Nagar, Chennai-40. The same value had been taken into consideration and fixed the land value at Rs.3,24,00,000/- per ground. According to the tenant the land value is only at Rs.2,00,00,000/- and the fair rent to be fixed for the petition premises accordingly.

11. Insofar as the amenities provided for the petition premises is concerned, the basic amenities and schedule-I amenities were provided to the petition premises as such, the learned Rent Controller rightly considered the schedule-I amenities at 12% and the age of the building is taken as 35 years. Insofar as the value of the building is concerned, the learned Rent Controller had taken at Rs.494/- as construction cost with 20% for basic amenities. Therefore, this Court feels that the value of the building is rightly fixed by the learned Rent Controller and as far as the value of the land is concerned, it has to be reduced to Rs.2,00,00,000/- per ground. Now the tenant has vacated the petition premises as early as on 03.01.2019. Considering the above, this Court calculated the fair rent as follows :

The value of the land fixed as follows :-

1008/3=336 sq.ft.

336 X 2,00,00,000/2400 = 28,00,000

Depreciated cost of construction = 5,17,015

33,17,015

12% for schedule-I amenities = 3,98,042

Total = 37,15,057

Rent @ 12% = 4,45,807

Fair rent per month = 37,151

It comes to Rs.37,151/- and this Court feels that it can be rounded to Rs.35,000/- per month, since the tenant already vacated the premises as early as on 03.01.2019. Accordingly, the monthly rent is fixed at Rs.35,000/- (Rupees thirty five thousand only) for the petition premises.

12. Accordingly, this Civil Revision Petition is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to cost.

05.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

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

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