

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2957 of 2018

ICICI Bank Limited
A Company incorporated under the
Companies Act
Represented by its Director
Bandra – Kurla Complex
Mumbai-400 051.

Having its Regional Office at
ICICI Bank Limited
Arihant Insight Plot No.24
Block-1, Industrial Estate
Ambattur, Chennai-600 058.

... Petitioner

Vs.

D.Jaswanth Raj

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu
Buildings (Lease and Rent Control) Act, 1960 amended by Act XXIII of

1973 and by Act 1 of 1980 against the judgment and decree dated 10.04.2018 made in R.C.A.No.599 of 2016 on the file of the learned Appellate Authority-cum-IX Small Causes Court, Chennai, confirming the fair and decretal order dated 18.10.2016 made in M.P.No.325 of 2016 in R.C.O.P.No.409 of 2016 on the file of the learned Rent Controller-cum-XV Small Causes Court, Chennai.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.Rajasekhar

ORDER

Civil Revision Petition is filed against the judgment and decree dated 10.04.2018 made in R.C.A.No.599 of 2016 on the file of the learned Appellate Authority-cum-IX Small Causes Court, Chennai, confirming the fair and decretal order dated 18.10.2016 made in M.P.No.325 of 2016 in R.C.O.P.No.409 of 2016 on the file of the learned Rent Controller-cum-XV Small Causes Court, Chennai.

2.The petitioner Bank is respondent and respondent is petitioner in

R.C.O.P.No.409 of 2016 on the file of the learned Rent Controller-cum-XV Small Causes Court, Chennai. The respondent filed the said R.C.O.P. for eviction of the petitioner from the petition premises on the ground of wilful default. While R.C.O.P. was pending, the respondent filed M.P.No.325 of 2016 in R.C.O.P.No.409 of 2016 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the “Act”) alleging that the petitioner has committed wilful default in payment of rent from March 2014 to June 2016.

3.The petitioner filed counter statement and stated that after taking possession of the petition premises, they have done interior work at the cost of Rs.50,00,000/-, installed A.T.M. machine and generated I.F.S.C. code. There was a dispute between original lessor viz., Dhanasingh, father of the respondent and one Mariappan and in view of the said dispute, the petitioner could not occupy the petition premises and carry on business. The said Mariappan prevented the Bank officials from entering into the premises and use of common area. The original lessor has suppressed the

dispute with regard to petition premises and litigation pending. The customers of the petitioner Bank also could not come to the Bank due to the threat and intimidation by the said Mariappan. Even though a formal lease deed was executed, the petitioner could not open its Branch even for a single hour. In such circumstances, the petitioner Bank could not intimate to Reserve Bank of India about the opening of Branch Office in the petition premises as mandated under the Rules. Due to suppression of material fact by the original lessor, father of the respondent, the lease deed dated 05.04.2013 registered before the Joint II, Sub-Registrar, Central Chennai, is invalid and petitioner is not liable to pay any rent. The respondent is not entitled to maintain R.C.O.P. and M.P.No.325 of 2016 filed under Section 11(4) of the Act, as other legal heirs were not impleaded and prayed for dismissal of the said M.P.

4.Before the learned Rent Controller, the respondent did not let in any oral evidence, but marked 13 documents as Exs.P1 to P13. The petitioner did not let in oral and documentary evidence.

5.The learned Rent Controller considering the averments made in the affidavit, counter statement, the documents filed and marked by the respondent, held that the petitioner Bank is liable to pay rent from March 2014 to September 2016 for 31 months at the rate of Rs.1,30,000/- per month, totalling Rs.40,30,000/- and directed the respondent to retain one month rent of Rs.1,30,000/- from the advance amount paid by the petitioner and after adjusting remaining advance amount, directed the petitioner to deposit a sum of Rs.28,60,000/- towards arrears of rent for the period from March 2014 to September 2016. The learned Rent Controller also held that if the petitioner fails to deposit the amount, all further proceedings will be stopped in the main R.C.O.P., directed the petitioner to deposit subsequent future rent at the rate of Rs.1,30,000/- per month on or before 5th day of every English calendar month and posted the matter for compliance on 21.11.2016.

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6.Challenging the order of the learned Rent Controller dated 18.10.2016 made in M.P.No.325 of 2016 in R.C.O.P.No.409 of 2016 on

the file of the learned Rent Controller-cum-XV Small Causes Court, Chennai, the petitioner filed R.C.A.No.599 of 2016 on the file of the learned Appellate Authority-cum-IX Small Causes Court, Chennai.

7.The learned Appellate Authority considering the pleadings, documents, order of the learned Rent Controller and grounds of appeal raised by the petitioner, dismissed the appeal holding that the petitioner having taken possession of petition premises, failed to pay the rent and when there is dispute with regard to title of petition premises, petitioner failed to file application under Section 9 of the Act to deposit the rent before the trial Court and also failed to pay the arrears of rent to the respondent.

8.Against the order of dismissal dated 18.10.2016 in M.P.No.325 of 2016 in R.C.O.P.No.409 of 2016 passed by the learned Rent Controller and judgment dated 10.04.2018 in R.C.A.No.599 of 2016 passed by the learned Appellate Authority, the petitioner has come out with the present Civil Revision Petition.

9.The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit, grounds of appeal raised before the learned Appellate Authority and grounds raised in the present Civil Revision Petition. The learned counsel for the petitioner extensively argued with regard to pendency of Civil Suit between Mariappan and original lessor and that the petitioner was prevented from entering into the common area. The learned counsel for the petitioner has also extensively referred to the documents filed in the typed set of papers (which were not filed before the learned Rent Controller) and submitted that in view of suppression of dispute by the original lessor, the lease agreement is invalid, the petitioner denied possession and occupation of the petition premises, when there is no landlord – tenant relationship exists and prayed for allowing the Civil Revision Petition.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

11.From the materials available on record, it is seen that the petitioner and respondent's father have entered into a registered lease agreement dated 05.04.2013 for 15 years in respect of petition premises. The petition premises is in the ground floor. The possession of the petition premises was handed over to the petitioner. The petitioner took possession of the premises, did interior work, installed A.T.M. machine and generated I.F.S.C. code for the Branch. As per the lease agreement, no rent is payable for first 45 days from the date of lease agreement. In view of such term, the petitioner is liable to pay rent from 10.05.2013. The petitioner has belatedly paid rent for six months on 06.05.2014, a sum of Rs.7,02,000/- after deducting TDS at 10% for six months. The petitioner made further payment of rent of 7th month on 27.05.2014, 8th month rent on 27.06.2014 and 9th month rent on 31.07.2014 after deducting TDS at 10%. Totally, the petitioner paid rent from 10.05.2013 to 10.02.2014 only. The petitioner did not pay rent after 10.02.2014 and is due from March 2014. Original lessor died on 24.10.2014 leaving behind the respondent, his mother, two brothers and three sisters. The respondent by letter dated

06.08.2015 called upon the petitioner Bank to pay rent. The petitioner sent reply dated 21.09.2015 stating that after taking possession, they have done interior work, installed A.T.M. machine and generated I.F.S.C. Code. The petitioner could not carry on business due to dispute between one Mariappan and original lessor, father of the respondent. According to the petitioner, the said Mariappan prevented the petitioner from entering into the petition premises. The respondent sent rejoinder dated 05.10.2015 stating that dispute is only with regard to first and second floors and there is no dispute with regard to ground floor, which was leased out to petitioner.

12.From the above materials, it is seen that ground floor portion was leased out to the petitioner and the petitioner was put in possession of said portion. It is an admitted fact that after taking possession, petitioner did interior work, installed A.T.M. machine and generated I.F.S.C. code for the said Branch. From the beginning, the petitioner has not paid rent every month, as per the lease agreement. The petitioner paid lumpsum amount of

Rs.7,02,000/- on 06.05.2014 after deducting TDS. The petitioner after paying rent for three months upto 10.02.2014, did not pay the rent for subsequent months. It is the contention of the learned counsel appearing for the petitioner that petitioner was prevented from using common area and in view of the same, they could not do the business in the petition premises and prevented from opening the Branch. The petitioner has not stated that when the petitioner was prevented from entering the premises and petitioner has also not proved that they requested the original lessor to make arrangements. The petitioner has also not proved that they informed the lessor about their inability to enter the premises and use of petition premises for the business. The petitioner has also not requested the lessor to take action against the said Mariappan, who is preventing the petitioner from using the petition premises as Branch office. The petitioner has also not taken any steps against the said Mariappan and father of the respondent about the difficulty they are facing to carry out business in the petition premises. If really, the petitioner was unable to enter the premises and carry on business, they ought to have terminated the lease agreement

and ought to have surrendered the possession of the petition premises to the lessor. Having retained possession, the petitioner is liable to pay rent for their occupation of the petition premises as per the lease agreement. The petitioner has also not stated that when they relocated their Branch to some other place.

13. From the materials on record, it is seen that respondent filed a letter dated 13.03.2017 written by the petitioner Bank addressing to respondent that they are handing over the possession of the petition premises as per the order of this Court and handed over the keys without prejudice to their rights in the R.C.O.P. The learned counsel appearing for the petitioner submitted that on the same day, the possession was taken over by the respondent and petition premises is not in their possession. The petitioner Bank being in possession of petition premises till 13.03.2017, is liable to pay rent as per the lease agreement. Both the learned Rent Controller and the learned Appellate Authority considering the materials placed before them in proper perspective, passed impugned

order and judgment by giving cogent and valid reasons. There is no error or irregularity in the order of the learned Rent Controller and judgment of the learned Appellate Authority warranting interference by this Court.

14.For the above reasons, the Civil Revision Petition stands dismissed. No costs.

14.09.2021

Index : Yes/No
Internet: Yes/No
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To

1.XV Judge
Small Causes Court, Chennai.

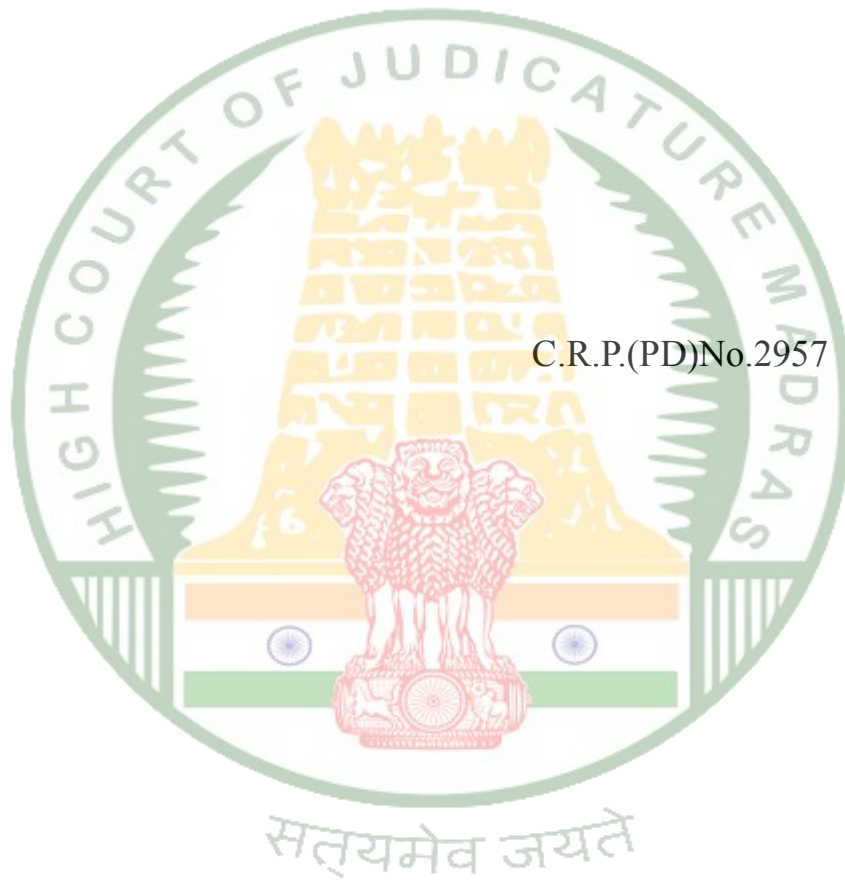
2.IX Judge
Small Causes Court, Chennai.

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V.M.VELUMANI,J.

Kj



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