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C.R.P.(NPD) No.964 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(NPD) No.964 of 2020
and C.M.P.No.5253 of 2020

Amrath Kavar Bafna

... Petitioner / Appellant / Petitioner /
Respondent (Tenant)

Vs.

1.Nirmal Kumar
2.Aarthi Maheswari

...Respondents / Respondents/ Respondents
/ Petitioners (Landlord)

3.M/s.Style Print
Kapil Vastu
No.213 & 214 Ground Floor
Purasaiwakkam High Road
Purasaiwakkam
Chennai – 600 007.

4.M/s.Poorvika Mobiles
Kapil Vastu
No.213 & 214 Ground Floor
Purasaiwakkam High Road
Purasaiwakkam
Chennai – 600 007.



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5.M/s.Salai Enterprises
Kapil Vastu
No.213 & 214 Mezzanine Floor
Purasaiwakkam High Road
Purasaiwakkam
Chennai – 600 007.

6.M/s.J.J.Mobile World
Kapil Vastu
No.213 & 214 Ground Floor
Purasaiwakkam High Road
Purasaiwakkam
Chennai – 600 007.

7.M/s.Singapore Gold House
Kapil Vastu
No.213 & 214 Mezzanine Floor
Purasaiwakkam High Road
Purasaiwakkam
Chennai – 600 007.

8.M/s.Mummy Fashions
Kapil Vastu
No.213 & 214 Basement Floor
Purasaiwakkam High Road
Purasaiwakkam
Chennai – 600 007.

... Respondents / Respondents /
Respondents / 3-7 Subtenants

Prayer : Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, praying to allow the civil revision petition and thereon set aside the fair and decretal order in MP.No.212 of 2015 in RCA.No.50 of 2014 dated 19.12.2018 on the file of the VIII Court of Small Causes / Rent Control Appellate Authority



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confirming the orders passed in M.P.No.245/2013 in RCOP.No.485/2012 dated 10.01.2014 by the XI Court of Small Causes / Rent Controller.

For Petitioner : Mr.A.Palaniappan

For Respondents : Mr.A.C.Kumaragurubaran [R2]

ORDER

This revision is filed by the principal tenant challenging the order of the Rent Control Appellate Authority in R.C.A.No.50/2014, by which he confirmed the order passed by the Rent Controller in M.P.No.245/2013 in RCOP.No.485/2012, filed under Section 11(3) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960.

2. The learned counsel for the revision petitioner submitted that the lease deed between the original owner of the property and the revision petitioner herein, has granted the right to the tenant to induct sub-tenants, and accordingly he has inducted as many as five sub-tenants. The RCOP itself was filed not only against the revision petitioner who is the principal tenant, but also against other sub-tenants. He submitted that physically the revision petitioner is not in possession, but the sub-tenants who were in



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possession would neither paid the rent from 2019 onwards nor vacated the premises. He also added that the building in question comprises of 5 portions, covering an extent of 5,958 sq.ft., The present landlords derive a fractional right in the fraction of the portion of the property from the original owner.

3. The learned counsel for the second respondent/landlord submits that the first respondent is the title holder of the entire property. But the counsel for the revision petitioner corrects that both the first and second respondents together are still entitled only to a portion of the right which the original landlord / the lessor under the sale deed had, and not the whole of it. This apart, the lease deed provided for the completed building by the landlord, but this was not done, and only the skeleton was given, and the revision petitioner has incurred considerable expenses towards completing these construction, and the amount so spent is deducted in the rent payable etc., He submitted that all the receipts are available, but the learned Rent Controller has not looked into in any of the rent receipts that are issued.

4. This Court is impressed more by the last leg of the argument of the



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counsel for the revision petitioner. Now, the arrears of rent in terms of Section 11(4) of the Act, may have to be ascertained based on the terms of the lease deed, then the receipts issued for the rentals paid by the tenant. This will quantify the rent actuals. If only the statement of the tenant that the amount expended by her for completing the construction which she had undertaken in the property, was deducted over the arrears of the rent payable, then they may have to be looked into.

5. The learned counsel for the second respondents/landlord submitted that the revision petitioner is in arrears of about Rs.70.0 lakhs, to which, the learned counsel for the revision petitioner would submit that he had paid a sum of Rs.19,93,003/- towards property tax of the building, which as per clause-9 of the lease deed that landlord is liable to pay, and he demanded that this amount has to be adjusted in the outstanding.

6. The counsel for the respondent/landlord made a statement on instruction that the landlord agrees for adjustment of Rs.19.93 lakhs, out of the outstanding rental arrears payable by the revision petitioner.



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7. The learned counsel for the revision petitioner submitted that the tenant also now makes a counter claim for about Rs.88,88,331/-, and that if the entire amount claimed to be remaining as an outstanding rental arrears is adjusted against the counter claim, then the tenant may not have to pay anything to the landlord. And, he also added that inasmuch as the building is in possession of sub-tenants and the main RCOP is being contested by the sub-tenants, he is not interested in prosecuting. The revision petitioner only requires that his interest may be protected.

8. The aforesaid statement of the revision petitioner is recorded. This rally of submissions somewhere has to conclude, since it keeps expanding the scope of revision. The revision petitioner will be entitled to raise all such heads of claims under which he wants to raise a claim against the landlord by way of a suit, or if the landlord institutes a suit for any arrears of rent to make a counter claim, if he is so desirous. For the present, this Court disposes of the revision, recording the statement of the counsel for the revision petitioner.

9. The revision petitioner has also filed an affidavit surrendering the



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tenancy and symbolic possession of the property. The landlord has raised his objection to the symbolic delivery.

10. This Court cannot insist the tenant to stay as a tenant, if the tenant is not willing to it. And inasmuch as the physical possession of the property is with the sub-tenants, who are inducted based on the term of the lease deed, this Court cannot allow the revision petitioner to continue his tenancy based on the affidavit. If the landlord has any claims against the tenant, that may have to be independently claimed in a separate proceeding, if the landlord is so desirous. Accordingly, the symbolic delivery of the property is recorded herein.

11. In the result, this revision is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2022

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

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To:

1.The Judge
VIII Court of Small Causes
Chennai.

2.The Judge
XI Court of Small Causes
Chennai.



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N.SESHASAYEE.J.,

ds

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