



CRP (NPD) Nos.543 of 2014 and 2217 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.04.2022

DELIVERED ON: 08.06.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.(NPD)Nos.543 of 2014 and 2217 of 2010
and MP Nos.1 of 2014 and 1 of 2012

Mrs.Sourath Bibi Petitioner in both the revisions

vs

A.V.S.Subramania Sarma Respondent in both the revisions

Civil Revision Petitions filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the fair and decretal order passed in RCOP No.99 of 2001 dated 07.02.2003 on the file of XVI Court of Small Causes, Chennai as modified by the fair and decretal order passed in RCA No.82 of 2004 dated 07.01.2010 on the file of VII Court of Small Causes, Chennai and R.C.A No.152 of 2012 dated 10.12.2013 on the file of VIII Court of Small Causes, Chennai, reversing the order and decree made in RCOP No.563 of 2010 dated 11.02.2011 on the file of XI Court of Small Causes, Chennai.

For Petitioner : Mr.M.Mohideen Pitchai

For respondent : Mr.S.R.Rajagopal



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COMMON ORDER

Challenging the fair and final order passed in R.C.A.No.152 of 2012 on the file of VIII Court of Small Causes, Chennai and R.C.A.No.82 of 2004 on the file of VII Court of Small Causes, Chennai, against the order passed in RCOP Nos.563 of 2010 and 99 of 2001 on the file of XI Judge, Court of Small Causes, Chennai and VII Judge, Small Causes Court, Chennai, respectively, the tenant has filed the above Civil Revision Petitions.

2. The facts of the case is as follows:

The respondent (hereinafter referred to as "landlord") in both the revision petitions is the absolute owner of the building, ground and premises bearing Old Nos.24 and 25 and New Nos. 41 & 43, Arcot Road, Kodambakkam, Chennai – 24. The revision petitioner is the tenant under the respondent for a non-residential commercial shop at Old Door No.25, New Door No.43 , Arcot Road, Kodambakkam, Chennai. The tenant is paying a monthly rent of Rs.1,000/-. The landlord filed a petition in RCOP No.99 of 2001 to fix the fair rent for the petition premises and fair rent was fixed at Rs.8,537/- vide order dated 7.2.2003. Aggrieved by the same, the tenant has preferred an appeal in RCA No.82 of 2004 and it was partly allowed by modifying



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the fair rent as Rs.7,412/- per month.

ii) The landlord filed RCOP No.563 of 2010 to evict the tenant which was dismissed by the learned Rent Controller. Aggrieved over the dismissal order passed by the learned Rent Controller, the landlord filed RCA No.152 of 2012 before the Appellate Authority. The learned Appellate Authority has allowed the appeal and ordered eviction on 10.12.2013 by setting aside the order and decree passed by the learned Rent Controller. Aggrieved over the order of eviction and the order of modifying the fair rent, the tenant has come forward with these civil revision petitions.

3. The learned counsel for the revision petitioner would submit that he has challenged the judgment and decree of the learned Appellate Authority mainly on the ground that the market value of the land in that locality was Rs.24 lakhs per ground and the learned Rent Controller and the Appellate Authority have erred in fixing the value of the land and for the petition schedule land measuring 270 sq.ft, the fair rent could be fixed at Rs.2,012/- only. He would further submit that there is no cause of action for willful default for non payment of difference between fair rent and contractual rent, if the Civil Revision Petition against the fixation of fair rent is admitted. There is also no



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cause of action for the respondent to file eviction petition. The revision petitioner/tenant filed M.P.1/2014 in CRP.No.543/2014 for stay of all further proceedings in RCA.152/2012 pending disposal of C.R.P. and this Court has also granted stay of execution of the order of eviction on condition to deposit the entire arrears of rent as fixed and the revision petitioner/tenant has also deposited the entire arrears of rent of Rs.10,06,684/- as directed by this Court. The tenant has been paying the fair rent at Rs.7412/- p.m. till date without default.

4. Learned counsel would further submit that the respondent's eviction petition was allowed in Appeal, only on the basis of the decision in ***Girdharilal Chandak and Bros vs. S.Mehdi Ispahani*** reported in **2011(4) LW 455 = 2011 (5) CTC 252**. But the said decision came to be passed on 02.08.2011, after disposal of RCOP.No.563 of 2010 on the file of XI Judge, Small Causes Court, Chennai on 11.02.2011. The tenant came to know about the legal proposition that the decision as to fixation of fair rent will reach finality on disposal of an appeal by the Appellate Authority only after the judgment and decree dated 10.12.2013 in RCA No.152 of 2012. The tenant deposited the entire arrears of rent as directed by this Court. Hence, there is no willful default as the petitioner had already



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deposited the entire arrears of rent before this Court. Hence, the learned counsel would pray to allow the CRP.No.2217/2010 by fixing the fair rent at Rs.2,012/- by modifying the judgment and decree dated 7.1.2010 in RCA.No.82/2004 and to allow CRP.No.543/2014 by setting aside the order of eviction dated 11.12.2013.

5. On the contrary, the learned counsel for the respondent/ landlord would submit that the learned Rent Controller has fixed the fair rent at Rs.8,537/- with effect from 11.01.2001, from the date of filing of RCOP petition. In the appeal filed by the tenant in RCA No.82 of 2004, the fair rent was revised to Rs.7,412/- per month. The Appellate Court has taken the measurement of the portion of the property let out to the tenant as 270 sq.ft for fixing the fair rent based on the admission of the tenant in Ex.P.3. Actually, the portion let out to the tenant is measuring 319 sq.ft. and as per the market value of the property, the fair rent has to be fixed at Rs.8,971/-. Though the learned Rent Controller had fixed the fair rent as Rs.8543/- per month, the learned Appellate Authority had revised the Fair rent as Rs.7412/- per month.

6. Learned counsel for the respondent would further submit that the issue is whether mere filing of a revision challenging an Appellate



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Authority's order fixing the fair rent would amount to an automatic stay. In this regard, he would rely on the judgment reported in ***Girdharilal Chandak and Bros (HUF) and another vs. S.Mehdi Ispahani*** reported in **2011(4) L.W.455**. He would further submit that mere filing of revision against an order, fixing fair rent does not amount to automatic stay and admittedly, the order fixing fair rent in RCA.No.82 of 2004 was not stayed by this Court and the said order has been rightly interfered with by the Appellate Authority. The learned Appellate Authority has rightly come to the conclusion that the non-payment of rent as per the order fixing fair rent is willful and wanton. Hence, the tenant has committed willful default in payment of rent. Since the tenant has defaulted, the order of eviction is valid. Therefore, the revisions filed by the tenant is baseless.

7. Learned counsel would further rely on the following judgments in support of his arguments.

i) D.Radhakrishnan and another v. M.Loorduswamy and others reported in (2001) 10 SCC 641

ii) Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.: (2005) 1 SCC 705

iii) Olympic Industry v. Mula Hussainy Bhai Mulla Akberally &



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others reported in (2009) 15 SCC 528.

Hence, the learned counsel would pray for dismissal of both the CRPs.

8. Heard the learned counsel for the petitioner/tenant and the learned counsel for the respondent/landlord.

9. The points that arise for consideration are:

i) Whether the order of eviction passed by the learned Appellate Authority on account of the wilful default in paying the rent is correct?

ii) Whether the fair rent fixed by the Appellate Authority is correct?

10. There is no dispute that the schedule mentioned property belongs to the respondent/landlord and it was rented out to the revision petitioner on a monthly rent of Rs.1000/-. Initially, the mother of the respondent herein/landlord filed RCOP.No.99 of 2001 and the same was allowed by fixing a fair rent of Rs.8,537/- per month. Aggrieved over the same, the tenant preferred appeal in RCA.No.82/2004 and the said appeal was partly allowed modifying the fair rent to Rs.7,412/- per month on 7.10.2010. Pending appeal, the respondent's mother passed away and necessary petition for amendment was preferred and allowed. The RCOP.No.563 of 2010 was filed by the landlord to evict the tenant from the premises on the ground of wilful default in payment of differential amount between the



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fair rent and the contractual rent from 11.01.2001 but the same was dismissed on the ground of pendency of CRP.No.2217/2010 before this Court challenging the fair rent fixed in RCA No.82/2004 and that the willful default in payment of differential rent will arise only after disposal of the said CRP. Aggrieved over the said order, the landlord filed RCA No.152/2012 and the same was allowed by relying upon the decision reported in **2011(5) CTC 252 (Girdharilal Chandak and Bros v. S.Mehdi Ispahani)**.

11. The above decision came to be passed on 02.08.2011 after the fixation of fair rent by the Rent Controller i.e., on 11.02.2011. The revision petitioner came to know about the legal proposition that the decision as to fixation of fair rent will reach finality on disposal of an appeal by the appellate authority. In the instant case, the appeal, revising the fair rent was decided on 10.12.2013. It is not in dispute that the petitioner/tenant has paid the arrears of fair rent as fixed by the Appellate Court and has been paying the same till date. Therefore, in view of the above decision, the non-payment of the fair rent cannot be construed as wilful default. Further more, the petitioner is now aged more than 72 years and is depending upon the income from the petition schedule shop for her livelihood.



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12. Considering the fact that the petitioner has paid the entire arrears of fair rent as per the direction of this Court and continues to pay the fair rent till date and that the petitioner is aged more than 72 years and depending upon the income of the Shop, this Court is of the opinion that fixing the fair rent of Rs.8000/-per month would be just and reasonable and the petitioner shall not be evicted from the premises. Accordingly, the fair rent is fixed at Rs.8000/- per month and the petitioner is directed to pay the arrears of fair rent fixed by this Court from the date of the order of the Rent Controller within a period of eight weeks from the date of receipt of a copy of this order and she is also directed to continue to the pay the fair rent at the rate of Rs.8000/-per month.

13. In the result, the order of eviction dated 07.01.2010 passed in RCA.No.82 of 2004 is set aside and C.R.P.No.2217 of 2010 is allowed and the order dated 10.12.2013 passed in RCA.No.152 of 2012 is modified on the aforesaid terms and C.R.P.No.543 of 2014 is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

08.06.2022

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

1. XVI Court of Small Causes, Chennai
2. VII Court of Small Causes, Chennai
3. VIII Court of Small Causes, Chennai,
4. XI Court of Small Causes, Chennai.



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J.NISHA BANU.J.,

vsi

Pre-Delivery Common Order in
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