



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 2480 of 2017

M/s. SARK Cosmetics Pvt. Limited.,
Rep. by its Director, K.Soundariya
No.3-A, 1st Floor, Alsa Mall,
No.149, Monteith Road, Egmore,
Chennai – 600 008.

Also at

Old Door No.20, New Door No. 8,
Rutland Gate, 4th Street,
Nungambakkam,
Chennai – 600 006.

... Petitioner/Respondent/Appellant/Respondent/Tenant

Vs

1. M/s. UNIMAX International
a partnership firm
Rep. by its partner
Paadyumma Reddy.

2. Pradyumna Reddy

3. Varada Reddy

4. Mrs. Prashanti Reddy

...Respondents/Petitioners/Respondents/Petitioners/Landlords



PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973, Act 1 of 1973), against the common order dated 25.10.2016 passed in M.P.No. 214 of 2016 in R.C.A.No. 80 of 2016 passed by the learned IX Judge, Small Causes Court, Chennai, (Rent Control Appellate Authority), confirming the order dated 15.07.2015 in M.P.No. 752 of 2014 in RCOP No. 2260 of 2013 by the learned X Judge, Small Causes Court, Chennai (Rent Controller).

For Petitioner : Mr. Ashok Menon

For RR 1 to 4 : Mr. N.Vijayaraj

ORDER

Heard Mr.Ashok Menon, learned counsel appearing for the revision petitioner and Mr. N.Vijayaraj, learned counsel appearing for the respondents.

2. It would only prudent that this Court does not this Civil Revision Petition any more on the board of this Court.

3. Parties have been at lis for quite a considerable number of years and the fundamental issue as to the schedule of the property for which the



Rent Control Original Petitions were filed is still in dispute. Dispute is more on paper, but I am confident that both the landlord and the tenant are aware as to which portion for which eviction was sought and the portion for which eviction was directed, the portion for which for possession had been taken and the remaining portion, wherein the tenant claims to be still in possession.

4. Without even before entering into a detailed discussion on the facts, a plea had been made by the learned counsel for the revision petitioner, who is appearing for the tenant that this Court should appoint an Advocate Commissioner to determine the area of the tenanted premises which had been taken possession through Court and to further determine whether the tenant is still in possession of any remaining area.

5. This Court is not inclined to take up that particular request of the petitioner. An Advocate Commissioner cannot be appointed and should not be appointed to gather evidence. If at all an issue of the area of the portion taken possession is called into question, then the landlord or the tenant should have to graze the witness box and inform the Court as to the actual area which had been tenanted and taken possession.



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6. The entire issue surrounds two separate Revision Petitions filed with respect to the first floor portion of premises in Old Door No. 20, New No.8, Rutland Gate 4th Street, Nungambakkam, Chennai -6.

7. One Petition, namely, R.C.O.P.No. 2260 of 2013 had been filed by the respondent herein/landlord, claiming recovery of possession of the middle portion of the first floor of aforementioned premises. Similarly the respondent/landlord also filed R.C.O.P.No. 2261 of 2013 seeking eviction of the western portion of the first floor of the aforementioned premises at Old Door No. 20, New No.8, Rutland Gate 4th Street, Nungambakkam, Chennai – 6. The total area in the first floor which was in the occupation of the revision petitioner/ tenant was 2300 sq.ft. In the Rent Control Petitions at one particular place, it had been stated that the middle portion and the western portion each measured 1500 sq.ft., but in reality, the middle portion though wrongly stated to have an area of 1500 sq.ft., measured only 800 sq.t. The western portion measured about 1500 sq.ft.

8. The agreement was that for the middle portion, the monthly rent would be Rs.50,000/- and the amenities charges would be Rs.15,000/-.



For the western portion measuring 1500 sq.ft., the monthly rent was Rs.1/-

lakh.

9. Counters were filed in both the Rent Control proceedings which were focused on Section 10(2)(i) of the Tamilnadu Buildings Lease and Rent Control Act 1960 which indicated that the tenant was in arrears of rent.

10. As on date, arguments were advanced with respect to the actual area of the middle portion and the actual area of the western portion. But that is an issue which should have been stated in the counter affidavits before the trial Court in the Rent Control Petition.

11. Both the parties were prepared to go to trial with the description as given in the Rent Control Petitions. Thereafter, two Miscellaneous Petitions were filed, namely, M.P.No. 752 of 2014 in R.C.O.P.No. 2260 of 2013 / middle portion and M.P.No. 749 of 2014 in R.C.O.P.No. 2261 of 2013 / western portion. Counter affidavits were filed in both the Miscellaneous Petitions.



WEB COPY 12. Both the Miscellaneous Petitions had been filed holding that even pending the Rent Control Petitions, there were rental arrears. Therefore taking advantage of Section 11 (3) and 11(4) of the Rent Control Act, it was sought that further proceedings in both the Rent Control Petitions should be stopped and the tenant should be directed to pay the arrears of rent.

13. Orders were passed in both the Petitions on 15.07.2015. The Rent Controller / 10th Court of Small Causes had directed arrears of rent to be paid within a stipulated period as stated in the said order and further ordered that failing which, further proceedings shall be stopped and eviction shall be ordered.

14. Since the arrears were not paid, further proceedings in both the Rent Control Petitions were stopped and evictions were directed. This was by order dated 17.08.2015.

15. Thereafter, the tenant filed R.C.A.Nos. 81 of 2016 and 40 of 2016. In those Rent Control Appeals, M.P.No. 213 of 2016 was filed in



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3. *The learned counsel appearing for the caveator/landlord would submit that the tenant is bound to pay rental arrears and without paying the same, they cannot contest the case. It is reasonable to claim the admitted rentals and the tenant cannot be permitted to squat in the property without paying the monthly dues. At the same time the hardship caused to the tenant shall also be considered.*

4. *Considering the facts and circumstances of the case and order of interim stay is granted on condition that the tenant pays 75% of the rental arrears and amenities charges to the tune of Rs.45,00,000/- within a period of six weeks from today, failing which, interim stay granted shall stand vacated automatically, without any further reference to this Court.*

After such payment, both the parties are agreeable for referring the matter for mediation. Accordingly, post this matter on 1st September 2017 for reporting compliance and thereafter, the matter will be referred to mediation.”



17. The order is crystal clear. The tenant was directed to pay 75% of Rs.55/- lakhs, which was the amount due towards the rental arrears and 75% of Rs.9,42,000/-, which was the amount due towards amenities. The tenant then took up a very specious stand. He paid 75% of Rs.9,42,000/- which was a sum of Rs.7,80,000/- but has till this date not paid 75% of Rs.55/- lakhs as directed.

18. On the other hand, a memo was filed that the tenant is prepared to vacate the said premises for which a direction was already there to pay 75% of the rental arrears and that he would vacate. I am informed that he has also vacated. But it must be observed that this act of the tenant must be condemned.

19. A revision petition had been filed in this Court seeking protection from an order passed by the Rent Control Appellate Authority. In that revision petition, an application for stay had been filed. The learned Single Judge had directed that 75% of the rental arrears of Rs.55/- lakhs must be paid. A Revision Petition has a solemnity behind it. If there is a direction to pay 75% of the arrears, the tenant cannot simply withdraw



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20. There was a precondition to pay the arrears for the portion in which the tenant was in occupation. That liability has to be discharged before the tenant can be permitted to walk away from that particular premises. I hold that the revision petitioner /tenant had played a fraud of this Court by stating that he would file an undertaking affidavit to vacate the premise without complying with the directions of this Court to pay 75% of the arrears of Rs.55/- lakhs.

21. When the petition to vacate, on the basis of undertaking affidavit came up before another learned Single Judge of this Court, it was observed by order dated 25.01.2018, that the tenant shall vacate, and it was also observed that the Civil Revision Petition is disposed of and that the undertaking affidavit should form part of the records and it was open to the respondent to agitate the issue of possession and area of possession before the Court below if aggrieved.

22. Mr. Ashok Menon, learned counsel pointed out the nature of the order passed and wondered over which portion that particular order applied to, namely, whether it was the middle portion or the western



portion. The High Court had directed the parties to go before the trial Court on that particular issue.

23. Having filed the Revision Petition, the tenant should inform this Court as to whether he has vacated the middle portion or the western portion. It is not for him to throw that particular burden on the Court to determine and seek assistance of an advocate Commissioner for that purpose and slip away. This conduct of the tenant requires to be condemned.

24. I am confident that the tenant knew that he had an existing the liability to pay of 75% of Rs.55/- lakhs and to avoid which he had filed, in an unassuming manner, the undertaking affidavit and therefore be absolved of the liability of making payment of 75% of Rs.55/- lakhs.

25. Mr. Ashok Menon, learned counsel appearing for the petitioner stated that a petition has been filed by the respondent/landlord seeking assistance of not just the jurisdictional police but also the Deputy Commissioner of Police, Triplicane Police District, Assistant Commissioner of Police, Nungambakkam Range, Inspector of Police, F4 Police Station, Thousands Light, to give assistance to the bailiff to execute the warrant in the execution petition. It is the watch out of the landlord to inform the Court as to the necessary police force required to put in



execution a particular decree of the Court. He will naturally mention the names of higher police officials and they would in a position to direct the actual officials to assist the bailiff to take possession of the property. Having given an undertaking affidavit before this Court, it would have been honourable on the part of the tenant to have vacated in accordance with the undertaking and handed over possession of the portion and pay the rents. Till this date, rents have not been paid.

26. A statement of accounts has been presented in Court today wherein, the tenant had stated that according to his calculation, a sum of Rs.17,95,500/- is due and payable as rental arrears.

27. It is for the landlord to work out remedies to collect the rental arrears but this Revision Petition does not survive. It is based on fraud and on deception. The provisions under Section 11 (3) and (4) of the Rent Control Act, directly come into effect. The tenant has to pay arrears during the pendency of the Rent Control Petition and should have paid the entire arrears without default month after month. The order of the learned First Appellate Court directing payment of the arrears within a stipulated period and ordering that failing which further proceeding would be stopped is perfectly in order.



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28.03.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. IX Small Causes Court, Chennai.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

C.V.KARTHIKEYAN, J.



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