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CRP.NPD Nos.1731 and 1733 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

C.R.P.NPD.Nos.1731 and 1733 of 2023

a n d

C.M.P.Nos.11214 and 11215 of 2023

Vasantha Bhavan Hotels India Private Limited

rep. By its Chairman

Mr.M.Ravi

Industrial Estate, Guindy

Chennai 600 032.

...

Petitioner in both the
petitions

Vs

1. S. Sekar

2. S. Kumar

3. S. Manohar

4. S. Anbarasu

...

Respondents in both the
petitions

Prayer in C.R.P.No.1731 of 2023: Petition filed under Section 24 of the Code of Civil Procedure against the judgment and decree dated 18/2/2023 made in R.C.A.No.5 of 2022, on the file of the learned Subordinate Judge, Alandur, confirming the fair and decreetal order passed in M.P.No.65 of 2021 in R.C.O.P.No.29 of 2018 dated 22/10/2021 on the file of the Principal District Munsif-cum-Rent Controller, Alandur.



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Prayer in C.R.P.No.1733 of 2023: Petition filed under Section 24 of the Code of Civil Procedure against the judgment and decree dated 18/2/2023 made in R.C.A.No.4 of 2022, on the file of the learned Subordinate Judge, Alandur, confirming the fair and decreetal order passed in R.C.O.P.No.29 of 2018, dated 22/12/2021 on the file of the Principal District Munsif-cum-Rent Controller, Alandur.

For Petitioner	...	Mr.Vijayan Subramanian
For respondents	...	Mr.P.Valliappan Senior Advocate

COMMON ORDER

Civil Revision Petition No.1731 of 2023 is filed aggrieved by the judgment and decree, dated 18/2/2023 passed in R.C.A.No.5 of 2022 on the file of the learned Subordinate Judge, Alandur, confirming the fair and decreetal order passed in M.P.No.65 of 2021 in R.C.O.P.No.29 of 2018, dated 22/10/2021, on the file of the Principal District Munsif-cum-Rent Controller, Alandur.

2. Civil Revision Petition No.1733 of 2023 is filed against the judgment and decree, dated 18/2/2023 made in R.C.A.No.4 of 2022 on



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the file of the learned Subordinate Judge, Alandur, confirming the fair and decreetal order passed in R.C.O.P.No.29 of 2018, dated 22/10/2021, on the file of the Principal District Munsif-cum-Rent Controller, Alandur.

3. The facts in brief are that the respondents are the joint and absolute owners of the schedule of properties. The said property was leased out to the petitioner Company for running the hotel business as per the terms of rental agreement dated 28/5/2009 for a period of nine years on a monthly rent of Rs.3,60,000/-. The respondents have received an amount of Rs.50 lakhs, as an advance. The petitioner has spent Rs.3 lakhs towards interiors of the premises and commenced the business from 11/6/2009 onwards.

4. In the year 2013, at the request of the respondents, for their convenience, the petitioner Company has executed two new rental agreements dated 1/4/2013 in respect of the same property, viz., (i). maintenance agreement, dated 1/4/2013, in favour of one Mr.Sriram and Geetha and (ii) the rental agreement, dated 1/4/2013, in favour of the respondents. As per the terms of the new agreements, dated 1/4/2013, the petitioner Company has agreed to pay rent of Rs.2,66,666/- p.m., to



the respondents and also agreed to pay Rs.1,33,334/- to Mr.Sriram and Geetha, towards maintenance, thereby, the total amount agreed to be paid by the petitioner Company is Rs.4 lakhs.

5. In the year 2017, respondents have demanded petitioner Company to pay Rs.5 lakhs, as monthly rent, however, the petitioner Company has felt that the said demand is too high, as the petitioner has already paid Rs.50 lakhs, as an advance to the respondents. However, the petitioner Company has continued to pay agreed rent regularly to the respondents. In the month of September 2017, the petitioner company has sent cheques, dated 28/4/2018, to the respondents towards rent, but the said cheques were not encashed by the respondents. Instead, respondents have sent a legal notice, dated 10/3/2018, alleging that the petitioner Company has committed defaulted in payment of rent, for a period of seven months. The petitioner Company has suitably replied to the notice, and the petitioner Company sent a notice dated 19/5/2018 to the respondents, enclosing four cheques dated 28/4/2018, in favour of the respondents and retained two cheques which were issued in favour of M/s.Sriram and Geetha. The petitioner Company has also sent cheques towards rents for the months of April and May 2018.



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6. The respondents have filed R.C.O.P.No.50 of 2018, under Section 18 of the Tamil Nadu Lease and Rent Control Act, for eviction of the petitioner Company from the schedule of property. The respondents have also filed an application, under Section 11 (4) of the Act in M.P.No.259 of 2019 for arrears of rent for the period from September 2017 to October 2020 to the tune of Rs.1,80,91,800/- and the said petition was allowed, on 1/12/2020 directing the petitioner Company to pay Rs.1,30,91,800/-, after deducting Rs.50 lakhs already paid as an advance. The petitioner Company in compliance of the said order has paid Rs.1,12,82,620/- after deducting TDS, but the respondents did not accept the same.

7. The respondent has once again filed M.P.No.65 of 2021 for arrears of rent for a period commencing from November 2020 to May 2021, and the said petition was allowed on 22/10/2021, directing the petitioner to pay Rs.47,13,390/- {Rs.52,37,100/- being the arrears of rent from November 2020 to September 2021 without giving credit to TDS amounts paid by the petitioner previously.



8. Aggrieved by the orders passed, on 22/10/2021, in M.P.No.65 of 2021, the petitioner Company has preferred C.R.P.No.2963 of 2021, on the file of this Court. In the meanwhile, for non-compliance of the orders passed in M.P.No.65 of 2021, the trial Court has passed consequential orders, closing R.C.O.P.No.29 of 2018. Accordingly, C.R.P.No.2963 of 2021 was dismissed with liberty to the petitioner to approach the appropriate Court.

9. Aggrieved by the dismissal order in R.C.O.P.No.29 of 2018, the petitioner has preferred an appeal on 3/3/2022 with an application to condone the delay, which was allowed on 4/4/2022 and appeal was numbered as R.T.A.No.4 of 2022. The petitioner has also filed an appeal, challenging the order passed in M.P.No.65 of 2021 and the same was numbered as R.T.A.No.5 of 2022. The respondents, on the other hand filed E.P.No.3 of 2022, for execution of decree in R.C.O.P.No.29 of 2018, on the file of the Principal District Munsif, Alandur which was transferred to the District Munsif, Pallavaram and the same was renumbered as E.P.No.6 of 2022.



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10. R.T.A.No.5 of 2022 which was filed for challenging the decreetal order made in M.P.No.65 of 2021 in R.C.O.P.No.29 of 2018, dated 22/10/2021 and R.C.A.No.4 of 2021 was filed challenging R.C.O.P.No.29 of 2018, dated 22/12/2021. The learned Subordinate Court, Alandur, has dismissed R.C.A.Nos.5 and 4 of 2022. R.C.A.No.4 of 2022 was dismissed, on the ground that the petitioner has not paid arrears of rent to the respondents. R.C.A.No.5 of 2022 was dismissed, on the ground that the petitioner has not paid the rental arrears to the respondents, even during the pendency of the appeal. Being aggrieved, the present Civil Revision Petitions are filed.

11. Heard Mr.Vijayan Subramanian, learned counsel for the petitioner and Mr.P.Valliappan, learned Senior Advocate for the respondents. Perused the materials available on record.

12. Originally as per the agreement dated 28/5/2009, the rent to be paid was Rs.4,76,100/- p.m. However, on 1/4/2013, at the request of the respondents, two lease agreements were executed by superseding earlier lease agreement, dated 28/5/2009, thereby, the petitioner was required to



pay Rs.4 lakhs, p.m., towards rent and maintenance. But the respondents have demanded a sum of Rs.4,76,100/- p.m., as rent, thereby there is a dispute in respect of quantum of rent. As there is a dispute in respect of quantum of rent, the petitioner Company has raised an objection during the enquiry, in M.P.No.65 of 2021, however, the Rent Court has observed that the enquiry in respect of quantum of actual rent can be decided later in main O.P.No.29 of 2018 and accordingly, M.P.No.65 of 2021 was allowed. However, without giving any finding, in respect of actual rent, the proceedings, in R.C.O.P.No.29 of 2018, were closed holding that the petitioner has committed default in payment of rent, under Section 11 (4) of the Act. On account of closure of main O.P.No.29 of 2018, ultimately, the petitioner has ended up in a situation as if the petitioner Company has committed default of payment of rent at Rs.4,76,000/-, p.m., whereas, the monthly rent and maintenance, as per the rental agreements, dated 1/4/2013 is only Rs.4 lakhs.

13. The petitioner has filed R.C.A.No.5 of 2022, aggrieved by the dismissal of M.P.No.65 of 2021 and also filed R.C.A.No.4 of 2022, aggrieved by the closure of R.C.O.P.No.29 of 2018, and both of them were dismissed, without considering the fact that the trial Court has



failed to conduct an enquiry, under Section 11 (3) of the Act, in respect of actual rent to be paid.

14. Now, the question to be determined is whether without giving any finding as to the quantum of rent, can the rent Court pass orders, under Section 11 (4) of the Act, directing the tenant to vacate the tenant on the ground that the petitioner has committed default in payment of rents.

15. It is the contention of the petitioner that orders passed by the trial Court and also Appellate Court are erroneous, as both the Courts have failed to consider that there is a dispute with regard to quantum of rent and hence, without conducting an enquiry, as required, under Section 11 (3) of the Act, thereby, the orders passed by the trial Court, directing the petitioner to vacate the premises are erroneous.

16. On the other hand, the learned counsel appearing for the respondents/landlords submit that the petitioner has admitted the rent at the rate of Rs.4,76,100/- p.m., and also paid them when M.P.No.259 of



2019 was filed before the Court and hence, there is no dispute in respect of quantum of rent.

17. The petitioner Company as a tenant, has filed a counter in M.P.No.65 of 2021, mentioning about execution of two agreements, on 1/4/2013. The petitioner/tenant has not filed any rejoinder, denying the execution of the said agreements. On account of execution of new agreements on 1/4/2013, the total amount to be paid towards rent and maintenance is Rs.4 lakhs and not Rs.4,76,100/-. The trial Court has taken this aspect into consideration while disposing of M.P.No.65 of 2021, however could not answer this question except observing that the issue with regard to the execution of this agreement, on 1/4/2013, can be decided during the enquiry. In an application filed, under Section 11 (4) of the Act, the Rent Court is expected to determine arrears of rent, for which an enquiry should be conducted and a finding has to be given in respect of agreed rent.

18. Further, according to the agreement dated 1/4/2013, the rent to be paid to the respondents is only Rs.2,66,666/- p.m., and not Rs.4,76,100/-. Because a separate maintenance agreement was executed



with Mr.Sriram and Geetha, on the very same day i.e., on 1/4/2001 for Rs.1,33,334/- p.m., thereby, the rent to be paid to the respondents/landlords is only Rs.2,66,666/-. If at all the petitioner Company is not paying Rs.1,33,334/-, towards maintenance, the respondents shall not have any grievance, as long as the petitioner Company pays Rs.2,66,666/- p.m., towards the rent. The respondents cannot demand the maintenance amount paid to Mr.Sriram and Geetha. The respondents/landlords instead of demanding the rent at Rs.2,66,666/- p.m., as agreed, as per the new agreement, dated 1/4/2013 have been demanding Rs.4,76,100/- as monthly rent, which is contrary to the agreement. The direction given by the Rent Court and confirmed by Appellate Court to pay arrears at Rs.4,76,100/- is basing on the lease agreement, dated 11/6/2009 which is not in force, as on the date of alleged period during which the petitioner has committed default.

19. M.P.No.65 of 2021 is filed by the respondents, seeking for a direction to the petitioner to deposit Rs.33,32,700/- for a period of seven months, at the rate of Rs.4,76,100/-. The petitioner Company has taken a plea that as per the agreements dated 1/4/2013, 10% of the amount due has to be deducted towards TDS. While allowing M.P.No.65 of 2021,



the Court has deducted 10% of TDS, towards income tax. That means,

the Court has recognised the right of deduction of 10% towards TDS.

The petitioner Company has got the said right only as per the agreement, dated 1/4/2013 and such clause is not available in the lease agreement, dated 11/6/2009. Thereby, there is no dispute about execution of lease agreement dated 1/4/2013.

20. Considering the above, it can be concluded that the trial Court has taken cognisance of the execution of agreement, dated 1/4/2013 and also took cognisance of the clauses in the said agreement, only then, a direction is given to the petitioner to deduct 10% of the rent towards TDS. When such is the case, when the trial Court has considered the agreement, dated 1/4/2013, the trial Court should not have concluded that the rent to be paid by the petitioner Company is Rs.4,76,100/- p.m., as per the agreement dated 11/6/2009, when the rent to be paid is only Rs.2,66,666/-, as per the agreement dated 1/4/2013.

21. It is submitted by the counsel for the respondents that the petitioner in M.P.No.259 of 2009 has deposited Rs.1,30,91,800/- before the Rent Court, thereby the petitioner Company cannot raise any dispute



in respect of quantum of rent. This submission of the learned counsel appearing for the respondents has no strength as the quantum of rent has to be paid only basing on the lease agreement only but not basing on the directions of the Court to deposit the arrears of rent. That too, when such directions are given, without determining the actual rent to be paid per month. If the direction of the Rent Court are not obliged, he will be committing default. Hence, the rent has to be paid, basing on the written agreement dated 1/4/2013 and not on the basis of orders passed by the Court in I.A. Further the respondents have not been disputing the execution of agreement dated 1/4/2013.

22. Considering the discussions made above, it is clear that there is no dispute in respect of execution of fresh agreements dated 1/4/2013, wherein, the petitioner has agreed to pay the rent, at the rate of Rs.2,66,666/-, p.m., thereby, earlier agreement, dated 11/6/2009, wherein the petitioner has agreed to pay Rs.4,76,100/- becomes superseded. Therefore, both the Courts should have calculated the arrears of rent, at the rate of Rs.2,66,666/- p.m., as per new lease agreement dated 1/4/2013.



23. In view of the above, orders passed by the Rent Court and Appellate Court, directing the petitioner to vacate the premises on the ground of non payment of arrears of rent is incorrect, consequently, the directions of eviction on the ground of non compliance of the orders, under Section 11 (4) of the Act also erroneous. Accordingly, both orders are required to be set aside.

24. Further, orders of eviction passed in R.C.O.P.No.29 of 2018, dated 22/12/2021, on the ground that the petitioner has not paid the arrears of rent, as directed in M.P.No.65 of 2021. When the orders in M.P.No.65 of 2021 itself is erroneous, consequential orders passed in R.C.O.P.No.29 of 2018, dated 22/12/2021 and also subsequent order passed in R.C.A.No.4 of 2021, on the file of the learned Subordinate Judge, Alandur, dated 18/2/2023 are also erroneous. Therefore, both the orders need to be set aside.

25. In the result,

(i). Civil Revision Petition No.1731 of 2023 is allowed, setting the orders passed in M.P.No.65 of 2021 in R.C.O.P.No.29 of 2018, dated



22/10/2021 and order passed in R.C.A.No.5 of 2022, dated 18/2/2023, on the file of the learned Subordinate Judge, Alandur. Consequently, M.P.No.65 of 2021 is restored to its file and the trial Court is directed to make enquiry in M.P.No.65 of 2021, keeping in view of the agreements, dated 1/4/2013 and also earlier agreement, dated 11/6/2009 and decide the quantum of rent, if necessary, conduct an enquiry, under Section 11 (3) of the Act and then give a direction to the petitioner to deposit arrears of rent. In case if there are no dues, pass orders appropriately, as per law.

(ii). This Civil Revision Petition is allowed and order passed in R.C.O.P.No.29 of 2018 dated 22/12/2021 on the file of the Principal District Munsif-cum-Rent Controller, Alandur and order passed in R.C.A.No.4 of 2022 on the file of the learned Subordinate Judge, Alandur, dated 18/2/2023 are set aside. The matter is remanded back to the trial Court. The learned District Munsif-cum-Rent Controller is directed to restore R.C.O.P.No.29 of 2018 to its original file and proceed to enquire and pass appropriate orders, as per law. Till that time, the petitioner/tenant is directed to pay the rent to the respondent/landlord and



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the land lord is directed to consider giving the account number for depositing the rent.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

30/6/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Subordinate Judge, Alandur
2. The Principal District Munsif-cum-Rent Controller, Alandur.



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Dr.D.NAGARJUN,J

mvs.

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