

**CRP No. 3507 of 2023****T.V.THAMILSELVI, J.**

A final order came to be passed in the above CRP on 13.10.2023 and also hosted in the website. It was subsequently noticed that the draft order was inadvertently uploaded in the website. Hence, the matter is posted today under the caption 'for being mentioned'. Counsels for the parties are present.

2. The actual order is as follows:

"This petition has been filed to call for the records culminating in the impugned fair and decreetal order dated 01.09.2023 passed in R.C.A No.1 of 2022 by the learned Rent Control Appellate Authority/Principal subordinate Judge at Kancheepuram dismissing the said R.C.A and confirming the Fair and Decreetal order dated 29.06.2022 made in M.P. No. 1 of 2022 in R.C.O.P No. 10 of 2017 the learned Rent Controller/Principal District Munsif Court, Kancheepuram, and to set aside the same.

2.The petitioner herein is the tenant and respondent herein is the landlord.

3. The learned counsel for the petitioner submitted that the order passed by the learned Rent Control appellate authority in R.C.A No. 1 of 2022 is contrary to the law which warrants interference of this Court. Further, he submitted that the admittedly the revision petitioner was set exparte in RCOP No. 10 of 2017 and exparte order was passed on 02.02.2021. Thereafter, the tenant/petitioner herein filed an application R.C.A No. 1 of 2022 before the learned rent control appellate authority to set aside the said exparte decree, the situation leading to the petitioner being remains exparte due to Covid – 19 Pandemic but that has not been properly appreciated by the rent control appellate authority



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while dealt with the R.C.A filed by the tenant challenging the said exparte decree passed by the rent controller. Further, he submitted that rent control authority should have considered the term sufficient cause which requires under Order 9 Rule 13 of CPC, during Covid - 19 pandemic period. It was undisputed that the several restrictions have been imposed by the Government during Covid 19 pandemic so the tenant was not able to attend the rent control proceedings but without considering the same rent controller passed exparte decree despite the tenant having valid defence to prove his case hence the petitioner filed appeal before the rent control appellate authority which also not considered the facts and circumstances of the case dismissed the said petition as such is totally arbitrary and unjust and liable to be set aside. Further, he submitted that rent control authority should have taken into consideration of the order passed by this Court in CRP No. 109 of 2023 and CRP NO. 4303 of 2022, wherein this Court directed the tenant to pay a sum of Rs.90,00,000/- of fair rent fixed by the Trial court in RCOP No. 10 of 2017 within the period of four weeks from the date of that order into the account of RCOP No. 10 of 2017 to comply the above order the petitioner filed the petition before the learned rent controller but the same was returned as as not maintainable. In the meanwhile, the rent control appellate authority passed the order in RCA No. 1 of 2022 if at all as such is unsustainable. Hence he prayed to allow this petition.

4. Per contra, the learned counsel for the landlord/respondent submitted that to vacate the tenant he filed RCOP No. 10 of 2017 before the rent controller/Principal District Munsif, kanchipuram, in the year 2017 and also filed RCOP No. 9 of 2017 was filed for fixation of fair rent, in spite of receiving notice the petitioner not appeared before the Court so he was set exparte in the year 2018 and also fair rent was fixed as Rs.4,85,127/- per month in RCOP No. 9 of 2017 on 22.03.2018 to execute the same E.P No. 1 of 2019 was filed for delivery. Immediately the tenant filed application to set aside the exparte order in



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M.P No. 53 of 2019 and same was allowed with payment of cost. Even though the tenant was not cooperate with the landlord and the case was adjourned on various dates, again the tenant was set exparte and the case was posted for orders on 05.12.2020 the same was intimated to the tenant through notice but he was not replied to that notice. Thereafter, exparte decree was passed on 02.02.2021 in RCOP No. 10 of 2017, and to execute the same E.P 98 of 2021 was filed by the landlord for delivery of possession after receiving the notice the tenant immediately came up with another petition in MP No. 1 of 2022 in RCOP No. 10 of 2017 for a second time to set aside the exparte decree. After hearing the submissions on either side the Trial Court dismissed the said application as no merits. Against which, he preferred R.C.A No. 1 of 2022 before the rent control appellate Court by stating that rent controller wrongly came to the conclusion they were not interested in conduct the case due to the covid pandemic period the were not follow the proceedings and prayed to set aside the order in M.P No. 1 of 2022 in RCOP No. 10 of 2017 and that application was contested by the land lord stating that there is arrears of rent to the tune of Rs. 2,72,31,795/- as pending as per the fair rent fixed by the rent controller in RCOP No. 9 of 2017. On considering the same the learned appellate rent controller granted stay with the condition to deposit 50 per cent of rent arrears within as period of one months. Challenging the said findings both the land lord and tenant preferred CRPs before this Court in that petition this Court ordered the tenant to deposit 90 lakhs of arrears of fair rent fixed by the learned rent controller but the same was not complied by the tenant. Hence, the appellate rent control authority rightly dismissed the appeal as no merits which needs no interference of this Court prayed to dismiss this petition.

5. Admittedly, the facts reveals that revision petitioner was tenant under Subbaraya Muthaliar then owner of the petition mentioned property after him under his wife Premavathy for a monthly rent of Rs.11,000/-. Thereafter the said premises was said to be purchased by the



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landlord/respondent herein in the year 2012 thereafter dispute arose with regard to payment of rent. Immediately tenant filed RCOP NO. 6 of 2012 for depositing rent into the court and the rent was deposited by the tenant in the Court but in that petition the original owner S. Premvathy was made as respondent not the subsequent purchaser/respondent herein of the property. Subsequently purchaser of the property filed RCOP No. 9 of 2012 for fixation of fair rent and another RCOP No. 10 of 2017 for eviction of the tenant from the premise on the ground that wilful default in payment of rent and in that RCOP tenant appeared through his counsel and the case was adjourned on various dates in the year 2018, due to non filing of counter exparte decree was passed so also fair rent fixation was allowed by fixing a sum of Rs.4,85,127/- per month as rent and also eviction petition was ordered immediately the landlord filed a petition in E.P No. 1 of 2019 in RCOP No. 10 of 2017 to execute the same. Immediately the tenant filed a petition to set aside the exparte decree in RCOP No. 10 of 2017 and the same ordered with cost. Subsequently, the case was adjourned for cross examination of the landlord/P.W.1 on various dates from the year 2020 the matter was adjourned on various dates admittedly those period was covid -19 pandemic. During the second covid - 19 period P.W.1 evidence was closed as he was not cross examined by the tenant and exparte decree was passed on 02.02.2021. Thereafter, E.P. 98 of 2021 was filed, immediately tenant filed M.P No. 1 of 2022 to set aside the expart decree but same was dismissed by the rent controller stating the sufficient opportunity was given to the petitioner it was not utilised by him. But, admittedly from 24.03.2020 there was Covid pandemic hence dates of the adjournments also reveals that cross examination of tenant posted from 2022 various dates it was adjourned upto 03.03.2021. Admittedly during those period Apex court has also imposed restrictions from 02.05.2022 to 20.08.2022 but the learned rent controller failed to appreciate the above erroneously held that tenant was in lethargic attitude. Further, challenging the said



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order tenant preferred appeal in RCA No. 1 of 2022 wherein rent controller passed order to deposit 50 per cent of arrears of fair rent fixed in exparte order in RCOP No. 9 of 2017. But the learned rent control appellate authority blindly without considering all these legal proposition directed the tenant to pay 50 per cent arrears of fair rent fixed by the Court which is near about one crore eighty lakhs admittedly tenant are the poor weavers, when the said order challenged before this Court at the insistence of the land lord this court directed the tenant to deposit a sum of Rs.90 lakhs in RCOP proceedings, immediately to comply with the order the filed lodgment schedule before the RCOP proceedings in RCOP 10 of 2017 but it was returned that Rent was Court not inclined to receive the said amount on the other hand appellate authority passed said orders stating that order of this Court was not properly complied and dismissed RCA No. 1 of 2022 by confirming the findings of the exparte decree. Furthermore, E.P proceedings will also be also initiated based on exparte decree. In fact, land lord not produced material documents to establish how four lakhs was arrived as fair rent.

6. Admittedly, it is an exparte decree. Furthermore, the fixation of fair rent is independent proceedings and order for eviction prayed by the tenant is totally independent one in RCOP No. 10 of 2017, if at all appellate authority want to impose any condition same should have been taken into consideration not arrears arising out of exparte fair rent fixation in RCOP No. 9 of 2017. Furthermore, the learned counsel for the petitioner/tenant also pointed out that due to the wrong guidance given by the counsel who was appeared for the tenant and on his direction they filed RCOP 6 of 2012 against the original owner without impleading present landlord who is subsequent purchaser, due to which wilful default happened on the side of the tenant and also pointed out that same counsel appeared for the land lord in RCA also verified and found the same as correct. There is possibility that the tenant might be mis-led by the then counsel who



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might have gained over by the land lord as it happened on many occasions. Hence, if the opportunity is not given to the tenant, their valuable right to defend the case will be defeated. Admittedly second time they filed application to set aside the exparte decree as it was happened during the Covid period same was not properly appreciated by the appellate rent control authority. Hence the order passed by the Authority depositing the arrears which was not pertaining to RCOP 10 of 2017 is also arbitrary. However, in order to avoid further complications, the tenant agreed to deposit the said amount of 90 lakhs, therefore order passed by the trial court is liable to be set aside. Furthermore, four weeks is granted to deposit and trial court is directed to receive the same without unnecessary delay, on such deposit rent controller is directed to proceed with RCOP by giving opportunity to adduce evidence and dispose the case as per manner known to law.

7. The Order passed by the learned rent control appellate authority in RCA 1 of 2022 is set aside consequentially delivery order passed by the executing Court also set aside. Now, RCOP 10 of 2017 is restored. Further the rent Controller/Principal District Munsif Court, Kancheepuram is directed to dispose the case after cross examine P.W.1 and also by giving fair opportunities to both parties further to adduce further evidence and dispose the case on merits.

8. Accordingly, this petition is allowed. No cost. Consequentially connected miscellaneous petition is closed.”

3. Registry is directed to issue fresh order copy to the parties.

09.11.2023

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