



C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022

C.M.P.Nos.22401 and 22400 of 2022 in W.A.No.378 of 2022

**THE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

ORDER

(Made by the Hon'ble Mr.Justice D.Bharatha Chakravarthi, J.)

The petitioner was allotted three shops namely, shop Nos.1, 2 and 3 in *Pillaiyar Koil Thottam, Mylapore, Chennai*, for a monthly rent of Rs.23,007/- for each shop. The lease was periodically extended on payment of enhanced rent. The petitioner paid monthly rents till January, 2020 without any default. Thereafter, due to *COVID-19 Pandemic*, he defaulted. The respondent, therefore, issued a notice in Form-A, dated 17.12.2020, to which, the petitioner sent a detailed representation on 16.02.2021. However, the respondent issued Form-B notice on 24.03.2021. But, it was not given effect to. The petitioner made another representation on 21.04.2021. However, subsequently, second Form-A notice was issued on 21.06.2021 and following the same, on 13.07.2021, Form-B notice was issued to him. Having aggrieved, the Writ Petition was filed by the petitioner.

2. By way of an interim order, the petitioner was directed to pay 50% of demand amount being Rs.5,64,761/- including GST to the



*C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022*

respondent. The petitioner complied with the conditional order.

Thereafter, the Writ Petition was taken up for final hearing and by a judgment, dated 20.09.2021, the Writ Petition was disposed off by directing the petitioner to pay the balance 50% of the demand raised by way of monthly installment at a rate of Rs.1,00,000/- per month, along with the current monthly rent, on or before fifth of every English Calendar month. It was ordered that in default thereof, the respondent can proceed further with the eviction proceedings.

3. Aggrieved by the said order, the petitioner preferred Writ Appeal in W.A.No.378 of 2022 and by a judgment, dated 01.03.2022, the Writ Appeal was disposed off only by modifying the monthly installment of Rs.1,00,000/- per month, awarded by the learned Single Judge, to Rs.50,000/- per month starting from first January, 2022.

4. Aggrieved by the same, the petitioner herein preferred an appeal before the Hon'ble Supreme Court of India in S.L.P.(Civil) Diary.No.21218 of 2022 and by an order, dated 02.12.2022, the Hon'ble Supreme Court of India observed that the petitioner has to move this Court if at all he wants to seek waiver which is granted for a period of six months as per an order of this Court in W.A.(MD).No.428 of 2021, dated 22.03.2022.



*C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022*

WEB COPY

Accordingly, these applications in C.M.P.Nos.22401 and 22400 of 2022 are filed to recall the order, dated 01.03.2022 made in the above W.A.No.378 of 2022 and pass suitable orders on waiver on rent from 20.04.2020 till 06.09.2020 and for an interim direction to unlock the shops.

5. Learned Counsel for the petitioner relied upon G.O.(D).No.298, dated 02.09.2020, in and by which, in respect of all the similarly situated shops which are affected *COVID - 19 Pandemic*, the Government granted waiver of rent from 01.04.2020 to 31.05.2020 and the same came to be considered by this Court in W.A.(MD).No.428 of 2021, whereunder, this Court held that when waiver has been given for the lock down in the months of April, 2020 and May, 2020, it has to be extended to September, 2020 and hence these prayers.

6. A counter-affidavit is filed by learned Counsel for the respondent. It is the contention of the respondent that G.O.(D).No.298 is passed by the Municipal Administration and Water Supply Department and the same is only applicable to the properties of Urban Local Bodies and Greater Chennai Corporation and other Corporations and Town Panchayats and is



C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022

not made expressly applicable to the present shops which belong to Tamil Nadu Urban Habitat Development Board. Secondly, he would submit that the shops were not completely closed during *COVID - 19 Pandemic* and therefore, the petitioner is not entitled to waiver. Thirdly, by submitting a statement or arrears of rent, claiming a total sum of Rs.6,54,200/- to be the arrears amount, the learned Counsel submitted that unless the petitioner pays the entire arrears, lock and seal cannot be opened and he would further contend that all the other shop owners have paid the entire rent without praying for waiver.

7. We have perused the material records of the case and considered the rival submissions made on either side. It can be seen that taking into account the *COVID - 19 Pandemic* and the lock down imposed, waiver of rent of all Government owned shops, including in Greater Chennai Corporation, 14 other City Corporations, 121 Municipalities and 528 Town Panchayats, has been granted. While so, merely because the present shopping complex, which is owned by the Tamil Nadu Urban Habitat Development Board, is not expressly mentioned in the G.O, it would be discriminatory to hold that the tenants in these shops alone should pay entire rent during the *COVID - 19 Pandemic* and therefore, even though



*C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022*

WEB COPY

the Government Order is not expressly applicable, since the petitioner, who is also a tenant in another organ of the State of Tamil Nadu, has to be treated equally in the same manner as the other tenants of the other public sector buildings, accordingly, we hold that the petitioner will be entitled for waiver of rent for the period from 20.04.2020 till 06.09.2020. Further contention, that the other shop owners have not availed the waiver, cannot come in the way of the petitioner claiming his lawful entitlement.

8. As far as the arrears are concerned, the petitioner shall pay the arrears as directed by the order, dated 01.03.2022 in W.A.No.378 of 2022. Therefore, these applications are ordered on the following terms:-

(i) The petitioner shall be entitled for waiver of rent in respect of the Shop Nos.1, 2 and 3 for the period 20.04.2020 till 06.09.2020;

(ii) Accordingly, the respondent shall calculate and deduct the rent for the above period in the total arrears payable;

(iii) The balance arrears have to be paid at the rate of Rs.50,000/- per month along with the prevailing monthly rent on or before the fifth day of every English Calendar month;

(iv) On the petitioner paying the first installment and the monthly



*C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022*

WEB COPY

rent on or before 05.03.2023, lock and seal, in respect of the three shops, shall be opened and the petitioner be entrusted with the shops and be permitted to run his business;

(v) The petitioner shall continue to pay the monthly rent without fail along with installment amount on or before the fifth of every month continuously;

(vi) It goes without saying that the if petitioner again defaults the payment of monthly rent or installment of arrears, the respondent will be entitled to take action in accordance with law including proceedings for eviction;

(vii) To the above extent, the earlier order of this Court, dated 01.03.2022 in W.A.No.378 of 2022 shall stand modified.

(T.R., ACJ.) (D.B.C., J.)
27.02.2023

grs



WEB COPY



*C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022*

**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**
grs

C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022

27.02.2023



WEB COPY



*C.M.P.Nos.22401 and 22400 of 2022
in W.A.No.378 of 2022*