



WEB COPY

C.R.P.No.196 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.196 of 2023

and

C.M.P.No.1590 of 2023

1.M/s.Trishla, rep. by its
Partner,
Shri Shamji Hansraj
Shri Shamji Hansraj
(deceased)

2.Vinod Kumar S.Savla

3.Kiran Kumar S.Savla

4.Sharat Kumar S.Savla

... Petitioners

Vs.

K.R.Parthiban

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the above civil revision petition by revising the fair and decretal order dated 07.06.2022 passed in R.C.A.No.326 of 2019 by the Rent Control Appellate Authority / IX Judge (FAC) Court of Small Causes, Chennai against the order and decretal order dated 26.04.2019 passed by the Rent Controller, XIII Small Causes Court, Chennai in R.C.O.P.No.344 of 2017.



WEB COPY

C.R.P.No.196 of



For Petitioners : Mr.S.Suresh Kumar
For Respondent : Mr.M.Balasubramanian

ORDER

The civil revision petition on hand has been instituted against the fair and decreetal order passed by the Rent Control Appellate Authority dated 07.06.2022 in R.C.A.No.326 of 2019 confirming the order and decree passed in R.C.O.P.No344 of 2017 by the Rent Controller.

2. The revision petitioner is the defendant in occupation of the commercial premises owned by the respondent / landlord. It is not in dispute that the rental agreement is not in force and the landlord has not entered into any rental agreement renewing the tenancy or otherwise. The landlord filed R.C.O.P for fixation of fair rent under the provisions of the Act. The Rent Controller adjudicated the issues with reference to the documents and evidences placed by the respective parties and fixed the fair rent as Rs.38,420/-. Not satisfied with the order passed by the Rent Controller, the revision petitioner / tenant preferred an Appeal in R.C.A.No.326 of 2019 before the Rent Control Appellate Authority, who in turn adjudicated the facts



and circumstances with reference to the documents and evidences made by the respective parties.

WEB COPY

3. The landlord has filed R.C.O.P under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for fixation of fair rent for the premises situated in the Ground Floor Shop portion of an extent of 869 Sq.ft together with undivided share of land of an extent of 197 Sq.ft from and out of 2400 Sq.ft bearing New Door No.231, Old Door No.134, Royapettah High Road, Mylapore, Chennai.

4. The revision petitioner / tenant is in occupation of the Ground Floor bearing Old Door No.134, New Door No.234, Royapettah High Road, Mylapore, Chennai on monthly rent of Rs.3000/- excluding electricity charges payable according to English calendar month for carrying on business in readymade garments and hosiery. The premises consist of ground floor, first floor, second floor, third floor and partly constructed fourth floor and the tenant has been in occupation of the shop portion in the ground floor meant for commercial purposes and the premises is located in a busy commercial locality in Mylapore, Kapaleeshwarar Temple Cuthery Road, Police Station, Vevek



and Co., Mohan Jewellery, Kerala Fashion, Hotel Sangeetha, Hotel Saravana Bhavan, Sai Baba Temple, etc., are situated very near to the premises and the guideline value as per Sq.ft is around Rs.24,000/- and the market value per ground exceeds Rs.6 Crores. The respondent / landlord claimed before the Rent Controller that the building is framed structure with brick walls plastered with cement mortar and reinforced cement concrete roofing. The shop is fitted with rolling shutters and ceramic tile flooring. The building is aged 35 years and electricity alone is provided as basic amenity. Accordingly, the landlord claimed that the fair rent would be around Rs.55,125/- per month.

5. The revision petitioner tenant objected the said contention of the landlord before the Rent Controller. The tenant admitted that tenancy, is for commercial purpose and that he was paying the monthly rent of Rs.3000/- excluding electricity charges payable according to English calendar month. The revision petitioner / tenant claimed that the subject property is situated in a partially commercial and partially residential locality. There is one way traffic in the road and the area is clustered with unauthorised payment shops and arbitrary vehicle parking that are made in that locality, which is not conducive for conducting the business profitably.



WEB COPY

6. Before the Rent Controller, on the side of the landlord one Mr.G.N.Poornachandran, Engineer was examined as PW1 and the report of the Engineer dated 20.02.2017, rough plan and certified copy of sale deed dated 11.02.2015 and the analysis report for arriving at the market value have been marked as Ex.P1 to Ex.P4 respectively. Similarly, on the side of the tenant one Mr.Azeez Mohaideed, Engineer was examined as RW1 and the report of the Engineer dated 27.04.2017, rough plan, certified copy of sale deed dated 30.03.2015 and the analysis report for arriving at the market value have been marked as Ex.R1 to Ex.R4 respectively.

7. The Rent Controller elaborately adjudicated all the criterias with reference to the provisions of the Act and accordingly, arrived at a conclusion that the fair rent is to be fixed as Rs.38,420/- per month. The said fair rent fixed by the Rent Controller was challenged before the Rent Control Appellate Authority, who in turn, also re-visited the findings of the Rent Controller and further considered the grounds raised by the revision petitioner / tenant. The Rent Control Appellate Authority considered the type of the building and its descriptions, age of the building, depreciation, plinth area, cost of construction,



apportionment area, land value, basic amenities and scheduled I amenities as per provisions of the Rent Control Act. Accordingly, the fair rent calculations are made by the Rent Control Appellate Authority.

8. The learned counsel for the petitioner mainly contended that certain portions, which are not in occupation of the revision petitioner are also calculated for the purpose of calculating the fair rent, which is perverse and to that extent the order of Rent Control Appellate Authority is to be set aside.

9. In this context, the learned counsel for the petitioner drew the attention of this Court with reference to the sketch, and elaborated that the cantilever portion is not in occupation. Certain portions in the front side of the building are not in exclusive occupation of the revision petitioner / tenant and therefore, he is not liable to pay the rent for the said portions. However, it is not in dispute that the revision petitioner is in occupation of the ground floor of the building and the said portion is also in ground floor and under those circumstances, the Rent Control Appellate Authority made a finding that PW1 Engineer in his report marked as Ex.P1 has concurred and has fixed the plinth area at $869+92.81=962$ Sq.ft The revision petitioner / tenant's Engineer



WEB COPY



examined as RW1 has calculated the build-up plinth area in ground floor at 910 Sq.ft. The tenant's Engineer has not given any measurement for the shop area and cantilever portion in his report. However, while perusing the rough plan marked as Ex.R2 it could be seen that RW1 has not taken the area measuring (9'x7'3") in the cantilever portion into consideration. If the said area is taken into consideration, the plinth area would come to 975 Sq.ft. There is no explanation in the evidence of RW1 as to why the above mentioned area has not been taken into consideration. Thus, the Rent Control Appellate Authority arrived at a conclusion that the Rent Controller has rightly rejected the Ex.R1 for the purpose of calculation of the plinth area and accepted Ex.P1 and fixed the plinth area at 962 Sq.ft. The said calculation with reference to these two documents were found to be correct, which was accepted by the Rent Control Appellate Authority and thus, this Court do not find any merit in respect of the ground raised by the revision petitioner in this regard.

10. That apart, both the Rent Controller and the Rent Control Appellate Authority have elaborately considered the criterias as per the provisions of the Act for arriving fair rent fixation. Every aspect of the building was taken into



consideration for ascertaining the fair rent and the Engineers report submitted, both by the petitioner as well as by the respondent were taken into consideration.

11. Considering the totality of the facts and taking note of the elaborate findings of the Rent Controller and the Rent Control Appellate Authority, this court do not find any infirmity or perversity in respect of the fair rent fixed by the Rent Appellate Authority.

12. The Rent Controller fixed the fair rent of Rs.38,420/- and the said fair rent was reduced to Rs.37,703/- by the Rent Control Appellate Authority, which seems to be proper and in consonance with the provision of the Act. Thus, this Court is not inclined to interfere with the order passed by the Rent Control Appellate Authority.

13. The learned counsel for the respondent submitted the copy of memo of calculation and even as per the revision petitioner / tenant, the rent to be



calculated as per the fair rent fixed by the Court, the revision petitioner / tenant is liable to pay the arrears of rent to the tune of Rs.24,63,913/-. Thus, the revision petitioner / tenant is liable to pay the rental arrears as per the fair rent fixed by the Rent Control Appellate Authority.

14. In view of the facts and circumstances, the fair and decretal order passed by the Rent Control Appellate Authority / IX Judge (FAC) Court of Small Causes, Chennai in R.C.A.No.326 of 2019 dated 07.06.2022 partly allowing the appeal and modifying the order and decree passed by XIII Judge of Small Causes Court (Rent Controller), Chennai in R.C.O.P. No.344 of 2017 dated 26.04.2019 stands confirmed and consequently, the Civil Revision Petition is dismissed. No costs. Connected Miscellaneous Petition is closed.



WEB COPY

15. The revision petitioner / tenant is directed to pay the arrears of rent of Rs.24,63,913/- to the respondent / landlord within a period of one month from the date of receipt of a copy of this order. Failing which the respondent / landlord is entitled to evict the revision petitioner from the premises.

01.02.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Judge,
IX Court of Small Causes,
Chennai.
- 2.The Judge,
XIII Court of Small Causes,
Chennai.



WEB COPY

C.R.P.No.196 of



S.M.SUBRAMANIAM, J.

Jeni

C.R.P.No.196 of 2023

01.02.2023