



C.R.P.[NPD].No.4392 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4392 of 2024 & CMP.No.24427 of 2024

1. Anand Kumar Bhowmick
2. Rajkumar Bhowmick

. . . Petitioners

Versus

1. N.R.P.Kandasamy
2. N.K.Hemalatha
Respondents

. . .

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal Order dated 23.09.2024 passed in E.P.No.1139 of 2022 in RCOP.No.98 of 2016 by the learned XIV Judge, Court of Small Causes, Chennai and allow the above Civil Revision petition.

For petitioners : Mr.Ashok Menon

Respondents : Mr.S.Natarajan



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ORDER

Challenging the Order of eviction passed by the Execution Court, the present Civil Revision Petition has been filed.

2. Brief facts of the case is as follows :

The respondents has originally filed an application under section 4 of the Tamil Nadu Buildings [Lease and Rent Control] Act 1960 for fixing of fair rent in RCOP No.98 of 2016. The said petition has been allowed by an Order dated 01.04.2019 fixing fair rent at the rate of Rs.22,622/- from the date of filing of the petition. As against fixing of fair rent, the tenant has filed an appeal in RCA.No.251 of 2019. In the said RCA, a petition has been filed by the landlord in M.P.No.409 of 2019 under section 11[4] of the Tamilnadu Buildings [Lease & Rent Control] Act for deposit of the differential amount of the original rent and fair rent. The appellate Court directed the revision petitioners herein to deposit the differential amount between the fair rent and contractual rent of Rs.5,97,558/- on or before 30.03.2020. As the amount as



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directed by the rent controller has not been paid, M.P.No.409 of 2019 was filed, the appellate authority passed the final Order stopping further proceedings. Challenging the said Order, Civil Revision Petition Nos.1805, 1806 and 1808 of 2021 have been filed and this Court by an Order dated 09.09.2021 disposed of the above Civil Revision Petitions wherein this Court has clearly held that the application under section 11 [4] of the Tamil Nadu Buildings [Lease and Rent Control] Act 1960 can be maintained only when an application for eviction has been filed under section 10 of Tamilnadu Buildings [Lease and Rent Control] Act and such an application under section 11[4] cannot be maintained when the appeal filed against the Order fixing the fair rent is pending. Accordingly, the Civil Revision Petitions have been allowed and the matters have been remanded to the appellate authority to re-fix fair rent in the manner known to law. Pursuant to the said remand, now it appears that the Rent Control Appellate authority has modified and fixed the fair rent at Rs.19,340/- from the date of filing of Rent Control Original Petition. Thereafter, it appears that the same has reached finality. Subsequently, a suit has been filed for recover of money. However, based on the judgment of the



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appellate authority, fixing fair rent, the execution petition has been straight away filed in which Orders came to be passed.

3. It is the contention of the learned counsel appearing for the revision petitioners that as the amount fixed by the appellate authority has not been paid, the tenant has to be evicted automatically. Therefore, the execution petition is maintainable.

4. Heard both sides and perused entire materials available on record.

5. At the outset, entertaining execution petition for an Order of eviction, in view of this Court, cannot be sustained in the eye of law for the simple reason that the fair rent has been determined in the rent control proceedings and no application has been filed for eviction of the tenant pursuant to the fair rent already fixed. Therefore, as long as there is no Order of eviction, mere fixation of fair rent will not amount to Order of eviction. Therefore, entertaining execution petition by the execution Court and Ordering eviction is



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without jurisdiction. There is no Order of eviction to execute any execution proceedings. The remedy of the petitioners is to either to file a suit for recover money or file an application for willful default. Therefore, in the absence of any Order of eviction, execution petition straight away cannot be filed merely on the basis of fixation of fair rent and hence, the Order impugned has to be set aside. It is for the revision petitioners to recover possession in the manner known to law.

6. At this stage, the the learned counsel appearing for the revision petitioners submitted that the revision petitioners is prepared to pay the differential amount from next month and he also filed an affidavit to the effect that they undertake to pay the arrears of rent in monthly instalments at the rate of Rs.10,000/- per month commencing from the rent of November 2024 payable in December 2024, along with the fair rent of Rs.19,340/- which they are paying from April 2022. The affidavit filed by the revision petitionerss is recorded.



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7. With the above observations, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

29.11.2024

Index : Yes / No

Internet: Yes

Speaking/non speaking order
vrc

To,

The XIV Judge,
Court of Small Causes, Chennai.



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N. SATHISH KUMAR, J.

VTC

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