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C.R.P.No.1003 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1003 of 2022

1.Berger Paints India Limited,
No.32, Chowringhee Road,
Kolkata 700 071

2.Berger Paint India Limited,
Old No.126, New No.232,
Peters Road, Gopalapuram,
Chennai – 600 086.

.. Petitioners

Versus

R.Jayalakshmi

.. Respondent

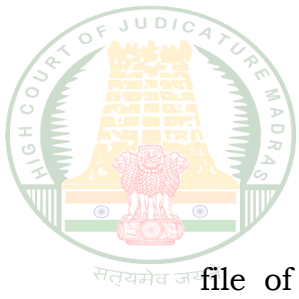
Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 07.10.2020 in RCA.No.458 of 2014, on the file of the VII Judge, Court of Small Causes, Chennai confirming the order and decree passed in RCOP.No.111 of 2008 dated 10.06.2014 on the file of the XI Court of Small Causes, Chennai.

For Petitioners : Mrs.Chitra Sampath, Senior Counsel,
for Mr.Vivek Menon

For Respondent : Mr.T.Sezhian

ORDER

This revision has been filed by the tenants to set aside the judgment and decree dated 07.10.2020 in RCA.No.458 of 2014, on the



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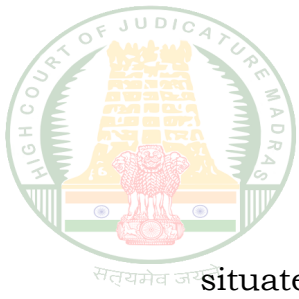
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file of the VII Judge, Court of Small Causes, Chennai confirming the order and decree passed in RCOP.No.111 of 2008 dated 10.06.2014 on the file of the XI Court of Small Causes, Chennai.

2. The civil revision petitioners are the tenants/respondents in RCOP.No.111 of 2008. The respondent in this revision is the landlady.

3. For the sake of convenience, the parties will be referred to as landlady and tenant.

4. The landlady presented RCOP.No.111 of 2008 invoking Section 4 of the erstwhile Tamil Nadu Buildings (Rent and Lease Control) Act, 1960. Her plea is that she is the absolute owner of the schedule mentioned property and that, it had been occupied by the tenants for the purpose of non-residential business. She pleaded that the ground floor, (the tenant is in occupation), measures 2153 sq.ft., a mezzanine floor to an extent of 1540 sq.ft. and a portion of the first floor measures 444.5 sq.ft. are in the occupation of the tenant. She pleaded that the building is an RCC construction consisting of several amenities and that, the building is aged about 30 years. It was further alleged that the property is centrally located in a commercial area, having several locational advantages. She alleged that the land value, where the property is



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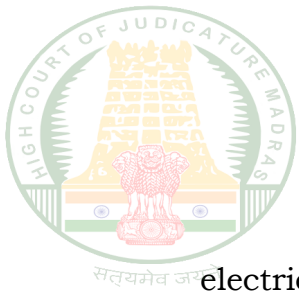
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situated, is around Rs.1,00,00,000/-. Applying the calculation for fair rent, she pleaded the fair rent of the building is Rs.1,71,337/-.

5. Summons were served on the tenants. The tenants agreed to the relationship of landlady and tenant. They pleaded that the property is not situated in the Peters Road as alleged, but in Peters lane. They further stated that the land cost is only about Rs.15,31,365/-. On the basis of calculation given by them in the counter with respect to the value of the site, cost of construction, depreciation and the land cost, the tenants pleaded that the fair rent should only be Rs.17,949.42/-. Substantiating this plea, an additional counter too was presented.

6. Before the rent controller, the plaintiff examined one Mr.Ajeez Moideen and marked Ex.P1 to Ex.P4. On the side of the tenants, one Mr.Narendra Dass was examined as RW1. Ex.R1 to Ex.R4 were marked on their side.

7. Learned Rent Controller held that it is a Type-I Class A construction. The age of the building was assessed at 48 years. The cost of construction was fixed at Rs.393/- per sq.ft. for the ground floor, Rs.365/- per sq.ft. for the first and mezzanine floor, and Rs.300/- per sq.ft. for the sit out. The court found that the basic amenities like



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electricity and sewage were existing and granted 15% towards the same.

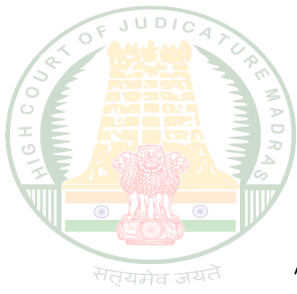
In addition to these basic amenities, the court concluded that the premises had schedule -1 amenities and awarded 5 % for the same.

8. Insofar as the depreciation is concerned, the learned Rent Controller awarded 1% for 48 years and worked it out to 0.6172. With respect to the land value, the learned Rent Controller fixed the value, relying upon Ex.P3, at Rs.1,67,00,000/-. On the basis of these details, the court came to a conclusion that the fair rent would be Rs.76,981/-.

9. Aggrieved by the said order, the tenants preferred an appeal to the learned VII Court of Small Causes, cum Rent Control Appellate Authority at Chennai. This appeal was numbered as RCA.No.458 of 2014. The landlady too, preferred an appeal against the order of the learned Rent Controller and it was taken on file as RCA.No.494 of 2014.

10. Being the appeals arising out of a single order, the learned Rent Control Appellate Authority clubbed the appeals and took them up for consideration.

11. The Appellate Authority agreed with the findings of the learned Rent Controller on the following:



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Type of the building	- Type-I Class A
Age of the building	- 48 years
Basis amenities	- 15%
Schedule – I amenities	- 5%
Depreciation	- 0.6172
Plinth area and cost of construction ground floor	- 1152
Pantry and Dining on the ground floor	- 388.8 sq. ft
First floor and mezzanine floor	- 687.115 sq ft
Sit out portion	- 31 sq ft.
Cost of construction for the floor	- Rs.393 per sq. ft.
Cost of construction for the mezzanine and first floor	- Rs.365 per sq ft.
Sit out portion cost of construction	- Rs.300 sq.ft.
Land value	- Rs,1,67,00,000/-

12. As he agreed with these findings, the learned Rent Control Appellate Authority found no merit in both the appeals and consequently, dismissed both RCA.No.458 of 2014 and RCA.No.494 of 2014 and held the fair rent fixed at Rs.76,981/- is correct. This civil revision petition challenges the aforesaid orders.



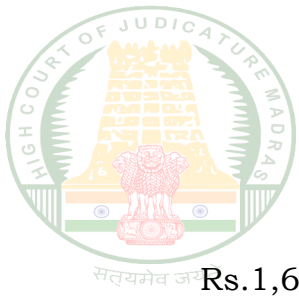
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13. I should record here that the tenants had vacated the premises pending the RCOP and therefore, the landlady would be entitled for the fair rent only from the date of petition till the date of vacating and handing over the premises.

14. I heard Mrs.Chitra Sampath, learned Senior Counsel representing Mr.Vivek Menon for the petitioners and Mr.T.Sezhian for the respondent.

15. Two points were raised by Mrs.Chitra Sampath. The first one being that as the landlady had not cross-examined RW1 – Engineer as regards the measurements in the report under Ex.R1, the same should have been deemed to be admitted. She relied upon the classic judgment of the Calcutta High Court in **A.E.G. Carapiet v. A.Y. Derderian, AIR 1961 Cal 359**. She pointed out from the memo of calculation that the learned Rent Controller, having accepted the calculation under Ex.R1, instead of concluding the apportioned site area as 928 sq.ft., had calculated the same at 965.638 sq.ft. She also pointed out under Ex.R1, the expert Engineer had concluded that RCC roof area in the first and mezzanine floor was only 574 sq.ft., whereas the learned Rent Controller had calculated it at 687.115 sq.ft. She urged that the value of the land given by the landlady was only Rs.1,00,00,000/-, whereas the learned Rent Controller had come to the conclusion that the value is



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Rs.1,67,00,000/-. On these two points, she pleaded that there is a material irregularity in the order passed by the learned Rent Controller and hence, it requires interference.

16. Per contra Mr.T.Sezhian urged that the measurements for the apportioned area arrived at by the learned Rent Controller is perfectly justified as it is based on records. He further points out that the value of the land given by the landlady in the rent control petition is only an approximate figure and not conclusive. He states that he had examined the expert, who had produced Ex.P3 and hence, the value fixed on the basis of that document does not require any interference. He urges that being concurrent finding of facts, this Court should not interfere with the learned Rent Controller's order in exercise of the powers under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

17. I have carefully considered the submissions on both sides and have gone through the records.

18. As Mr.T.Sezhian has raised an objection as regards the scope of revision, I necessarily would have to address the same at this stage. A Constitution Bench of the Supreme Court in ***Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78*** dealt with the



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revisional powers of the High Court under various State Rent Acts. The Bench held that the Tamil Nadu Act 18 of 1960 does not confer on the revisional authority a power as wide as that of the Appellate Court. It held that such a revisional power is wider than the scope of Section 115 of the Code of Civil Procedure. It further held that while exercising revisional powers, the High Court should not convert the same into an appellate proceeding. It made it clear that the revisional court is not entitled to re-appreciate the evidence and substitute its own conclusion in the place of the conclusion of the courts below. Having come to this conclusion, the Supreme Court confirmed the judgment in ***Rukmini Amma Saradamma v. Kallyani Sulochana, (1993) 1 SCC 499***. It held that while dealing with the “legality”, “regularity” or “propriety” of the decision of the courts below, the revisional court is entitled to find out if the findings of fact recorded by the court or authority below are according to law and do not suffer from any error of law. If there exist misreading of evidence, or overlooking and ignoring material evidence altogether, a revisional court can interfere. Therefore, if this court were to find misappreciation of evidence, then certainly Section 25 can be utilized for interference. Having decided my jurisdiction, I now proceed to deal with the merits of the case.



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19. With respect to the first plea of Mrs.Chitra Sampath, I am entirely with her. The trial authority in paragraph No.6(iii) had come to a conclusion that there is no cross-examination of RW1 with respect to the measurements found in the report.

20. It is here that I will usefully refer to the judgment of the Supreme Court in **Sarwan Singh v State of Punjab, (2003) 1 SCC 240**. The Supreme Court held that it is a rule of essential justice that whenever a party has declined to avail himself of the opportunity to put his case in cross examination, it must follow that the evidence tendered on that issue ought to be accepted. Having held so, the Supreme Court confirmed the opinion of Justice P.B.Mukharji (As His Lordship then was) in **A.E.G. Carapiet's** case.

21. With the assistance of Mrs.Chitra Sampath and Mr.T.Sezhian, I went through the evidence. I do not find any cross examination by the landlady with respect to the measurements found in the report of the expert Engineer, RW1. That being the position, I have to conclude that the measurements found in Ex.R1 that the apportioned area is 928 sq. ft., had been admitted by the landlady. Once an admission exists, I have to agree with Mrs.Chitra Sampath that there is a material irregularity in the order of the learned Rent controller, as well as the learned Appellate

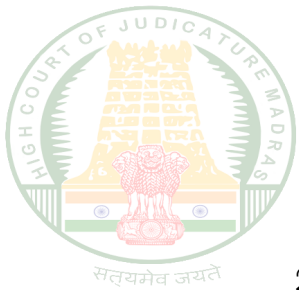


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Authority in coming to a conclusion that the apportioned area is 965.638 sq.ft. The trial court, as well as the lower appellate court, having accepted Ex. R1, ought to have concluded that the apportioned site area is only 928 sq ft.

22. While I agree with Mrs.Chitra Sampath on the first point, I am not in a position to agree with her on the second issue raised by her. The second issue relates to the jurisdiction of the learned Rent Controller while arriving at the land value. The fact that the landlady had claimed the value at Rs.1,00,00,000/- does not mean that the learned Rent Controller should accept that value. An application under Section 4 of the Rent control Act is akin to a proceeding under the erstwhile Land Acquisition Act of 1894 with respect to fixation of the value of the land. The landlady might claim high figure or might even claim a figure which is extremely low. The same would be the case of the tenant as well. However, it is the duty of the learned Rent Controller to arrive at a just and reasonable value for the petition mentioned premises. This duty is not dependent upon the claim made by the landlady or the denial by the tenant. It is an essential duty to be performed by the learned Rent Controller on the basis of the documents produced before it.



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23. In this case, two documents had been produced. One by landlady and another by tenants. The document produced by the landlady is of the year 2007, i.e., dated 22.03.2007. The document produced by the tenant is four years earlier to the rent control petition, namely 28.07.2004. Even with respect to the area, to which the documents Ex.P3 pertains to a property situated in Gopalapuram which is closer to Peters Road where the demised premises are situated, Ex.R4 is at Buddi Begum Street in Triplicane, a locality situated further away. On this aspect, I do not find any error in the trial Court as well as appellate authority in accepting Ex.P3 in preference to Ex.R3. They have considered the time period, area and the value of the land in a proper manner. Therefore, on this point, the landlady succeeds and the tenant fails.

24. In the light of the above discussion, the fair rent calculation is as follows:

RCC built up area in ground floor	Rs.6,05,534/-
1540.8 sq.ft. at Rs 393/- per sq. ft.	
RCC roof area in first and mezzanine floor 574 sq. ft. at Rs.365/- per sq.ft.	Rs.2,09,510/-
Sit out Portion 31 sq.ft. at Rs.300/- per sq.ft.	<u>Rs. 9300/-</u>
	Rs.8,24,344/-
15% of Basic amenities	<u>Rs.1,23,652/-</u>
	Rs.9,47,996/-



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Depreciation @ 1% for 48 years
 $0.6172 \times 9,47,996/-$ Rs.5,85,103/-

Land Value
928 sq.ft. x 1,67,00,000/2400 Rs.64,57,333/-

Total cost of land and building Rs.70,42,436/-

5% for schedule I amenities Rs.3,52,122/-

Total value Rs.73,94,558/-

Monthly fair rent @ 12% per annum, since being used for non-residential purpose, amounts to Rs.73,946/-

25. This revision is partly allowed in the above terms. To make it clear, the liability of the tenants to pay fair rent arises in December 2007 and concludes with the date of handing over of possession. No costs.

27.06.2025

nl
Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

1.The VII Judge, Court of Small Causes, Chennai

2.The XI Court of Small Causes, Chennai.



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V.LAKSHMINARAYANAN, J.

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