

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.R.P.NO.1108 of 2015
and
M.P.No.1 of 2015

1.S.A.Narashimman
2.S.N.Rajmohan

... Petitioners

Vs.

1.Family Manager R.Durairaj
2.D.Chandrasekaran

.... Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 and amended by Act 1/1980 to set aside the fair and decretal order dated 23.01.2015 made in I.A.No.105 of 2014 in R.C.A.No.1 of 2013 on the file of the Rent Control Appellate Authority, (Sub Court), Sathyamangalam.

For Petitioners : Mr.R.T.Doraisamy

For Respondents : -

JUDGMENT

The petitioners are tenants, who suffered the order of eviction, which was appealed and the appeal was dismissed for default, to set aside the said dismissal order, a petition was filed and the same was dismissed, against which only the present revision petition has been filed.

2. Heard Mr.R.T.Duraisamy, learned counsel appearing for the petitioners.

3. It is seen from the records that the respondents filed R.C.O.P.No.1 of 2006 against the petitioners herein under Section 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for eviction of the petitioners, as the petitioners are the tenants in respect of the petition premises. The matter was contested and after six years, the order of eviction was passed on 17.12.2012.

4. Aggrieved over the said order, the petitioners filed R.C.A.No.1 of 2013 before the Appellate Authority. The Appellate Authority posted the matter for arguments on 22.03.2014, on which

day, the petitioners failed to appear and the counsel for the petitioner reported no instructions resulting in dismissal of appeal

5. The learned counsel appearing for the petitioners would submit that it is only the first petition and due to the ill-health of the first petitioner, he could not instruct his counsel, when the matter was posted for argument. However, a close scrutiny of records would show that after notice to the respondents and after calling and receiving the records, the appeal was posted for argument on 27.03.2013. For one year, the matter has been adjourned for 17 hearings and was posted finally on 22.03.2014 for arguments. When the matter was listed on 22.03.2014, the petitioners' counsel reported no instructions from the petitioners and therefore, the petitioners were called absent and the appeal was dismissed for default. The contention of the petitioners is that the first petitioner was bedridden and therefore, he could not instruct his counsel, does not hold water for the simple reason that when the appeal is before the appellate Court, the necessity of giving instructions to the counsel does not arise as everything is borne out by pleadings and evidence. Therefore, the question of giving instruction does not arise and it is only falsehood pleaded by the petitioner to prolong the matter. The appeal has been deliberately allowed to be dismissed for default and therefore the appeal cannot be restored. There is no document also to show that the first petitioner was bedridden due to ill-health.

6. It has become routine before the lower court to allow the matter to go for *ex parte* or dismissed it for default and thereafter filing petition very casually, so as to prolong the matter or to avoid the Judicial Officer who is very strict. In case of Rent Control proceedings, it is being done at the instance of the tenants only to prolong the matter and squat over the property and without allowing the Court to finally dispose of the matter. This is a *modus operandi* being adopted and the same *modus operandi* is sought to be adopted in this case also. It is high time to protect the interest of the parties, who are having faith in the system and approach the Court for getting relief. Even after 13 years, if the parties are unable to get the disposal of the matter and enjoy the fruits of the decree, it will definitely frustrate the parties who approach the Court and this kind of attitude on the part of the petitioners would only make the parties not to come to the Court and to indulge in extra-judicial methods. Therefore, the order passed by the appellate Court cannot be found fault with.

7. It is curious to note that the original counsel R.Duraisamy filed the appeal and he himself reported no instruction, when the matter was called before the appellate Court on 22.03.2014. It is not known whether he has issued notice to the parties through RPAD, before reporting no instructions as per the Judgment of the Hon'ble Supreme Court. To the surprise of this Court, the very same counsel

filed the restoration application, which is also borne out by the records in the preamble of the order. It will only fortify the view of this Court that the matters are being deliberately allowed for dismissal for default and thereafter it is being sought to be restored, according to the convenience of the parties, frustrating/infringing the rights of the other side. Time has come to deal with this kind of matters very firmly, failing which the existence of Justice delivery system will be at stake.

8. It is also noted by the appellate Court that I.A.No.17 of 2013 was taken out by the petitioners herein to stay the eviction order passed by the trial Court and after enquiry, the said petition was dismissed on 23.07.2013 and no appeal/ revision has been filed and it has become final. It is not known as to why the counsel for the landlord has not filed E.P proceedings in the absence of stay or dismissal of said petition. The conduct of the petitioners has to be deprecated for prolonging the matters with malafide motive. Therefore, the civil revision petition fails and the same is dismissed. No costs. Consequently, connected M.P. is closed.

9. It is seen from the records that the respondents have already filed E.P.No.1 of 2014 and the matter was posted for delivery on 12.12.2014 itself. It is not known whether the possession was also taken or not. In view of the dismissal of this petition, there is no prohibition for the respondents or to the trial Court to execute the decretal order passed by the Rent Controller and issue warrant for delivery of possession within four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Rent Control Appellate Authority,
(Sub Court),
Sathiyamangalam.

+1 cc to Mr.R.T.Doraisamy, Advocate, SR.14352.

ssi(co)
krd 1/4

C.R.P.NO.1108 Of 2015