

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2015

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THE HONOURABLE **Mr. JUSTICE K.KALYANASUNDARAM**

CRP(NPD).Nos.921 to 924 of 2015

and

M.P.Nos. 1 to 1 of 2015

Dr.Gnanasekar 2015	...	Petitioner	in	CRP	921	of
Sumit Khemka 2015	...	Petitioner	in	CRP	922	of
S.Srinivasulu 2015	...	Petitioner	in	CRP	923	of
S.Aruldasan 2015	...	Petitioner	in	CRP	924	of

vs.

1.M/s.Bala Murali Theatre

Rep.by its Partner Ruthupurna

2.Ruthupurna

3.Viushnu Karthick ... Respondents in all CRPs

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the judgment and Decree dated 17.12.2014 made in M.P.No.65 of 2014 in R.C.O.P.No.63 of 2012, M.P.No.66 of 2014 in R.C.O.P.No.64 of 2012, M.P.No.67 of 2014 in R.C.O.P.No.65 of 2012 & M.P.No.68 of 2014 in R.C.O.P.No.66 of 2012 respectively, on the file of the Principal District Munsif Court, Poonamallee.

For Petitioner : Mr.T.Muthamilselvi

For Respondents : Mr.Praveen Kumar

ORDER

These civil revision petitions have been filed by the tenants. The original petitions were filed by the respondents/landlords for fixation of fair rent.

2. The petitioners/tenants were set exparte in the fair rent proceedings and exparte decree was passed against them on 29.01.2014. The petitioners have filed applications to condone the delay of 12 days in filing the applications to set aside the exparte decree.

3. The landlords resisted the applications. The learned Rent Controller dismissed the applications observing that the petitioners have not explained the delay. Aggrieved by the order, the tenants have preferred the present civil revision petitions.

4. Ms.T.Muthamilselvi, learned counsel for the petitioners submitted that the petitioners have explained the delay in filing the applications to set aside the exparte decree, but, the learned Rent Controller, by adopting hyper technical view, dismissed the applications. The learned counsel further submitted that the tenants

should be given an opportunity to contest their case.

5. Per contra, Mr. Praveen Kumar, learned counsel for the respondents/landlords submitted that despite the Rent Controller had given opportunity, the tenants have not chosen to file their counter and that they have also not explained the delay and after filing the application filed under Section 8(5) of the Act, they deliberately did not appear in these cases.

6. The Hon'ble Apex Court in ***Esha Bhattacharjee Vs. Mg.Commit. Of Raghunathpur Nafar*** reported in **2013 (12) SCC 649**, has held as follows -

“ 15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-

situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

7. It is seen that the landlords filed the petitions for fixation of fair rent and the tenants have filed the applications to condone the delay of 12 days in filing the applications to set aside the exparte decree. I am of the view that class (VIII) of the guidelines formulated by the Hon'ble Supreme Court in the above cited decision is applicable to this case.

8. In view of my findings supra, the order passed by the learned Rent Controller in M.P.No.65 of 2014 in R.C.O.P.No.63 of 2012, M.P.No.66 of 2014 in R.C.O.P.No.64 of 2012, M.P.No.67 of 2014 in R.C.O.P.No.65 of 2012 & M.P.No.68 of 2014 in R.C.O.P.No.66 of 2012

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respectively, are set aside, however, with a condition that the petitioners shall pay cost of Rs.5,000/- in each of the cases to the learned counsel for the respondents within a period of two weeks from the date of the receipt of this order.

9. Accordingly, The civil revision petitions are allowed No costs. Consequently, connected miscellaneous petitions are closed. On such compliance, the learned Rent Controller shall dispose of all the rent control proceedings on merits and in accordance with law, as expeditiously as possible, preferably, on or before 30.09.2015

20.03.2015

Index :- Yes / No

Internet:- Yes / No

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To

The Principal District Munsif Court,
Poonamallee.

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