



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.2768 of 2015

and

M.P. (MD) .No. 1 of 2015

1. Sheik Barid Mohideen
2. Abdul Rahman
3. Nazima
4. Asiza
5. Alima Beevi

.. Petitioners

Vs.

- 1.S.Mohammed Umare Parook
- 2.S.Mohammed Usman

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to pass an order in the nature of Direction directing the Execution Court/Principal District Munsif Court/Rent Controller, Tenkasi to number the unnumbered E.A.No. Of 2015(U/O.21 R.106 of C.P.C) in E.P.No.76 of 2015 in R.C.O.P.No.4 of 2005 and dispose the same on merits within a stipulated time and to keep the ex-parte delivery order dated 15.12.2015 in abeyance till such stipulated time by allowing this Civil Revision Petition.

For Petitioners : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

For Respondents : Mrs.N.Krishnaveni

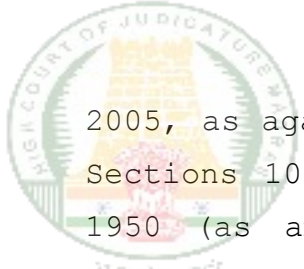
ORDER

This Revision Petition is filed under Article 227 of Constitution of India, by the petitioners, who are the Judgment Debtors in R.C.O.P.No.4 of 2005, seeking direction to the Court of first instance/Execution Court/Principal District Munsif Court/Rent Controller, Tenkasi to number the unnumbered E.A... of 2015 (Under Order 21 Rule 106 of C.P.C.,) in E.P.No.76 of 2015 in R.C.O.P.No.4 of 2005 and dispose the same on merits within a stipulated time and to keep the ex-parte delivery order, dated 15.12.2015 in abeyance till such stipulated time.

2.Heard the learned counsel Mr.D.Nallathambi, for the petitioners and the learned counsel Mrs.N.Krishnaveni for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Insofar as this Revision Petition is concerned, the respondents had taken out the Rent Control proceedings in R.C.O.P.No.4 of



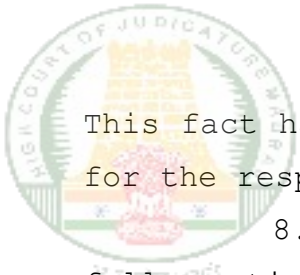
2005, as against the tenant one Mohammed Ibrahim Sahib (since died) under Sections 10 (2)(i) and 10 (3) (a) (iii) of Tamil Nadu Rent Control Act 1950 (as amended) seeking the relief of eviction. This petition was contested by the tenant. However, based on the evidences available on record, the learned Rent Controller has allowed the petition ordering for eviction.

4. Having been aggrieved by the order of eviction, an appeal in R.C.A was filed by the tenant, but it was returned. In the interregnum, the original Judgment Debtor/tenant had passed away and his legal representatives, who are the revision Petitioners 2 to 5 were subsequently impleaded in the execution proceedings and the Execution Petition was ordered ex-parte on 13.10.2015. Subsequently, delivery was also ordered on 15.12.2015. Now, the Execution Petition stands posted on 21.01.2016 for effecting delivery.

5. Under these circumstances, the Revision Petitioners being the respondents in the execution petition, have filed an un numbered application under Order 21 Rule 106 of C.P.C., for setting aside the ex-parte order.

6. The first return was made on 15.12.2015 and the same was represented on 16.12.2015 questioning the maintainability of the application and the same was represented on the same date I.e., on 16.12.2015. On perusal of the contents of pages No.47 to 53 of the typed set of papers, it is understood that the ex-parte order was passed on 13.10.2015. As contemplated under Order 21 Rule 106(3) of C.P.C., an application to set aside the ex-parte order shall have to be made within 30 days from the date of the order or where, in the case of an ex-parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.

7. In this connection, the learned counsel Mr.D.Nallathambi has submitted that the period of one month had to be reckoned from 13.10.2015. Accordingly, this application was filed within time. He has also maintained that the application should have been filed on or before 13.11.2015. But Deepavali holidays intervened from 07.11.2015 to 15.11.2015. Therefore, the application was not able to be filed on 13.11.2015 and hence, on the 1st working day, after the holidays I.e., on 16.11.2015, this application was filed, as seen from page No.50 of the typed set of papers. Therefore, this application was filed within time.



This fact has also been conceded by the learned counsel Mrs.N.Krishnaveni for the respondents.

8.Now, the period of limitation is concerned, this Court is fully satisfied that the application was filed within time. However, with regard to the aspect of maintainability, the Lower Court/the Executing Court is directed to take the unnumbered Execution application, that is filed by the Revision Petitioners under Order 21 Rule 106 of C.P.C., on his file after numbering the same. The Lower Court/the Execution Court is also directed to decide the application on merits, on 22.12.2015 in respect of other aspects, after inviting objections from other side. Till then, the order of delivery shall be kept in abeyance.

9.The Registry is directed to return the original execution application so as to enable the respondents to represent the same before the Execution Court. With this direction, the civil revision petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (C.S. -II)

/True copy/

Sub Assistant Registrar(CS)

To

The Principal District Munsif/Rent Controller,
Tenkasi.

Copy to : The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.Nallathambi, Advocate in SR.72797
+1cc to Mr.N.Krishnaveni, Advocate in SR.72792

akm/18.12.15 /3p-5c/ ngm/ss/SAR-I