IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).No.2241 of 2014
and M.P.Nos.1 & 2 of 2014
and C.M.P.No.7074 of 2016

M/s.CNCC Engineering Products Pvt Ltd.,
rep by its Director T.Sureshkumar
No.38, East Chetty Street,
St. Thomas Mount,
Chennai – 600 016. ... Petitioner

Vs.

R.Sankari ... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 and Act 1/1980 against the order dated 07.02.2014 in I.A.No.33 of 2013 in the un-numbered R.C.A.(SR).No.4505 of 2013 on the file of the Subordinate Judge, Tambaram preferred against the eviction order passed in R.C.O.P.No.31 of 2011 on the file of the District Munsif, Alandur.

For Petitioner : Ms.K.Bhuvaneswari

For Respondent : Mr.C.Saravanan

O R D E R

Challenging the order passed in I.A.No.33 of 2013 in the un-numbered R.C.A.(SR).No.4505 of 2013 on the file of the Subordinate Court, Tambaram,

the tenant has filed the above Civil Revision Petition.

2.The respondent/landlady filed R.C.O.P.No.31 of 2011 for eviction under Sections 10(2)(i), 10(2)(iii), 10(2)(v) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act (i.e.) willful default, act of waste, act of nuisance and own use and occupation. In the said Rent Control Original Petition, the landlady filed a petition in M.P.No.210 of 2011 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The Rent Controller allowed the petition and consequently, ordered eviction in R.C.O.P.No.31 of 2011.

3.Aggrieved over the same, the tenant preferred an appeal before the Rent Control Appellate Authority, Subordinate Court, Tambaram with a delay of 278 days. To condone the delay of 278 days, the tenant filed an application in I.A.No.33 of 2013 in un-numbered R.C.A.(SR).No.4505 of 2013. In paragraph no.5 of the affidavit filed in support of the petition, the tenant has stated that for want of funds, the delay has occurred in filing the appeal. Further, in paragraph no.3, the tenant has stated that they were not aware of the orders passed for the reason that their counsel did not inform about the adverse order and the steps to be taken by them. The averments stated in the affidavit filed in support of the petition were

disputed by the landlady.

4.Admittedly, the revision petitioner is a tenant under the respondent in respect of the petition premises on a monthly rent of Rs.30,000/-. The Rent Controller passed a conditional order in M.P.No.210 of 2011 filed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act directing the tenant to pay Rs.4,50,000/-, being the rent for the period from January 2011 to March 2012. Since the tenant did not pay the said amount, eviction was ordered in R.C.O.P.No.31 of 2011. Pursuant to the order of eviction passed by the Rent Controller, the landlady filed an Execution Petition in E.P.No.135 of 2012 and the tenant also filed their counter and the Executing Court ordered delivery. The Rent Control Appellate Authority, taking into consideration the case of both parties, found that the tenant is in arrears of a sum of Rs.9,30,000/- and condoned the delay of 278 days in filing the appeal on condition the tenant paying the arrears of rent of Rs.9,30,000/- to the respondent/landlady. The said order was passed on 07.02.2014. Against this order, the tenant has filed the above Civil Revision Petition.

5.In the typed set of papers produced by the learned counsel for the petitioner/tenant, she has enclosed a Demand Draft for a sum of

Rs.35,000/- dated 05.03.2011. The learned counsel appearing for the petitioner fairly submitted that the tenant has not paid any rent after 05.03.2011 to the landlady. Therefore, it is clear that as of today, the tenant is in arrears of rent for approximately 64 months, amounting to Rs.19,20,000/-. The learned counsel for the petitioner further submitted that the tenant had paid an advance of Rs.1,00,000/- to the landlady. Even if this amount is deducted, a sum of Rs.18,20,000/- is due and payable by the petitioner/tenant to the respondent/landlady. The learned counsel appearing for the petitioner submitted that the Rent Control Appellate Authority ought not to have directed the tenant to pay Rs.9,30,000/- while condoning the delay and the payment of Rs.9,30,000/- should not be set as a pre-condition for condoning the delay of 278 days in filing the appeal.

6.In support of her contentions the learned counsel for the petitioner relied upon the following judgments:

(i)2015-5-L.W. 859 [M/s.GMG Engineering Industries & Ors Vs. M/s.Issa Green Power Solution & Ors] wherein the Hon'ble Supreme Court held as follows:

> "11.In the present case, while the trial Court has exercised the discretion to condone the delay in filing the applications to set aside the ex-parte decrees, in our view, the trial Court should not have imposed such an unreasonable

and onerous condition of depositing the entire suit claim of Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the suits when the issues are yet to be decided on merits. While considering the revision, the High Court should have kept in view that the parties are yet to got for trial and the appellants ought to have been afforded the opportunity to contest the suits on merits. When the S.L.Ps came up for admission on 1.08.2013, this Court passed the conditional order that subject to deposit a sum of Rs.50,00,000/- before the trial Court, notice shall be issued to the respondents. In compliance with the order dated 1.08.2013, the appellants have deposited Rs.50,00,000/- before the trial Court. Since the appellants have satisfactorily explained the reasons for the delay and with a view to provide an opportunity to the appellants to contest the suit, the impugned order is liable to be set aside."

(ii)(2012) 1 Supreme Court Cases 455 [Sanjeev Kumar Jain Vs. Raghubir Saran Charitable Trust and others] wherein the Hon'ble Supreme Court held as follows:

"6.On a careful consideration, we find that the impugned order, including the portion regarding costs, was not a consent order. During hearing on merits, the Division Bench indicated that the losing party should pay the "litigation expenses" relating to the appeal. this is nothing but a reiteration of what is stated in law, namely, Section 35

of the Code of Civil Procedure. The counsel naturally agreed to the suggestion. But there was no consent for Rs.45,28,000 being determined or being awarded as costs. There was no assessment of the costs by the Taxing Officer of the High Court. We may therefore examine whether the award of such costs is contrary to law."

(iii)2010 (5) CTC 853 [Palanisamy Vs. Muthusamy Gounder] wherein this Court held as follows:

"7.The Application filed by the Petitioner before the Lower Court in I.A.No.70 of 2010 in O.S.No.332 of 2006 was for setting aside the ex parte decree passed against him on 06.10.2009. The lower Court had considered the reasons mentioned in the Affidavit filed along with the said petition and the objections raised in the Counter filed by the respondent and had accepted the reasons and had imposed conditions to allow the said Application with a direction to deposit a sum of Rs.25,000/- a part of the suit claim and a sum of Rs.1,000/- to Kangayam Taluk Legal Aid Committee and another sum of Rs.1,000/- to the Respondent by the Petitioner on or before 11.03.2010. The only point to be seen in this Revision would be whether the condition imposed by the lower Court was based on any sound and legally based reasons. The lower Court in its order stated that the said Application was filed for second time and therefore, it has come to the conclusion to impose a condition to deposit Rs.25,000/- towards part of the suit claim."

(iv)(2013) 9 Supreme Court Cases 446 [Jhau Lal and another Vs. Mohan Lal and others] wherein the Hon'ble Supreme Court held as follows:

> "3.In our view, while deciding the civil revision petitions, the High Court should have concentrated primarily on the ground on which the trial Court had dismissed the suit of the appellant-plaintiffs. There was no reason for the High Court to have observed in its order that the suit itself was not maintainable before the trial Court. In that view of the matter, we cannot sustain the impugned judgments and orders passed by the High Court. Therefore, while disposing of these appeals, we remand the matters to the High Court for fresh disposal in accordance with law, keeping in view the aforesaid observations made by us in the order. No costs. Ordered accordingly."

7.Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the petitioner, since the facts and circumstances of the present case differs from the judgments relied upon by the learned counsel for the petitioner, the judgments are not applicable.

8.The learned counsel appearing for the respondent/landlady submitted that since the petitioner is in arrears of rent for more than 64 months, the order passed by the Rent Control Appellate Authority directing

the tenant to pay a sum of Rs.9,30,000/- towards arrears of rent is just and proper and that the landlady having let out the premises to the petitioner/ tenant is put to monetary loss and hardship. Further, the learned counsel submitted that when the petitioner is in arrears of rent for more than 64 months, the condition imposed by the Rent Control Appellate Authority cannot be said as onerous. That apart, the learned counsel also submitted that when the petitioner/tenant themselves admit that they have not paid the rent after 05.03.2011, the order passed by the Rent Control Appellate Authority may be confirmed and the Civil Revision Petition may be dismissed.

9.Having regard to the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the learned counsel for the petitioner, it could be seen that it is not in dispute that the petition premises was leased out to the tenant by the respondent/landlady on a monthly rent of Rs.30,000/-. Even according to the petitioner, they have not paid the monthly rent after 05.03.2011 (i.e.) for more than 64 months, amounting to Rs.19,20,000/-. According to the petitioner/tenant, they have paid an advance of Rs.1,00,000/- to the respondent/landlady. Even if this amount is deducted from the admitted arrears of rent of Rs.19,20,000/-, the balance arrears of rent comes to

Rs.18,20,000/-. The petition filed by the landlady under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act in M.P.No.210 of 2011 was allowed by the Rent Controller by directing the tenant to pay the arrears of rent of Rs.4,50,000/- for the period from January 2011 to March 2012. Even that amount was not paid by the tenant and therefore, eviction was ordered in the Rent Control Original Petition. Thereafter, with a delay of 278 days, the tenant has filed an appeal stating that they were not informed by their counsel with regard to the order passed in the Rent Control Original Petition and that for want of funds, they could not file the appeal in time. In the affidavit filed in support of the petition, allegation was made against their counsel, even without mentioning the name of the counsel. In this aspect, the ratio laid down by the Hon'ble Supreme Court in ***(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]*** squarely applies to the facts and circumstances of the present case. If the party seeking for condonation of the delay fails to give sufficient cause for the condonation of the delay, the same cannot be condoned.

10.In the case on hand, the petitioner has merely stated that their counsel did not inform them about the order passed in the Rent Control Original Petition and that for want of funds, they could not file the appeal

in time. For want of funds, the filing of the appeal cannot be delayed for the reason that Legal Aid Services are available to the petitioner/tenant for filing an appeal. When the respondent/landlady had invested huge money and let out the premises for rent, it is the bounden duty of the petitioner/ tenant to pay the monthly rents regularly. As already stated, the petitioner/tenant is in arrears of more than Rs.18,20,000/- as of today, even after deducting the advance paid by them. The petitioner/tenant cannot treat the building leased out to them as rent free accommodation and remain in possession of the same forever. At least to show their *bona fide*, they could have paid the arrears of rent as directed by the Rent Control Appellate Authority or at least as directed by the Rent Controller. Without paying a single pie after 05.03.2011, the petitioner has challenged the order passed by the Rent Control Appellate Authority.

11.Though the petitioner has not explained the reasons in a proper manner, the Rent Control Appellate Authority had condoned the delay, however, directed the tenant to pay a sum of Rs.9,30,000/- towards arrears of the rent. The condition imposed by the Rent Control Appellate Authority cannot be termed as onerous for the reason that the tenant themselves had admitted that there is arrears of rent amounting to Rs.19,20,000/- as of today.

12.In these circumstances, I do not find any reason to interfere with the order passed by the Rent Control Appellate Authority. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
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To

1.The Subordinate Judge,
Tambaram.

2.The District Munsif,
Alandur.

M.DURAISWAMY,J.
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