

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2768 of 2016 and
C.M.P.No.14169 of 2016

B.S.Kannappan

...Petitioner

versus

S.Sivaraj

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order and Decreetal Order dated 12.06.2015 made in I.A.No.44 of 2013 in RCA No.1 of 2013 on the file of Sub Judge (Rent Control Appellate Authority) Ottacamund.

For Petitioner : Mr.J.Nandagopal

For Respondents : Mr.S.Elambharathi

ORDER

The respondent filed Original Petition in R.C.O.P.No.13 of 2011 for eviction. The Rent Controller, Ottacamund allowed the eviction petition. The petitioner filed an appeal before the Sub-Court at Ottacamund. The appeal was dismissed for default. The petitioner filed an application in I.A.No.44 of 2014 to restore the appeal which was also dismissed. Feeling aggrieved the petitioner has come up with the Civil Revision Petition.

2. Heard the learned counsel for the petitioner and counsel appearing for the respondent.

3. When the appeal preferred by the petitioner challenging the eviction order came up for hearing, his counsel was not present. The appeal was dismissed. Subsequently, the petitioner filed application in I.A.No.44 of 2013 to restore the First Appeal in RCA No.1 of 2013. The application was dismissed by the trial court on the ground that proper reasons were not given in support of the prayer for restoration.

4. The petitioner has produced the notes paper relating to the adjournments given by the trial court. Majority of the adjournments were given on the ground that Sub-Judge was on leave or not sitting. When such be the case, the trial court was not correct in dismissing the appeal and the related application for restoration. The trial court could have restored the petition with a condition that the appeal should be heard during the next date of hearing. Such a course was not taken. The impugned order is therefore liable to be set aside.

5. In the result the order dated 12.06.2015 is set aside. The application in I.A.No.44 of 2013 is allowed. The proceedings in RCA No.1 of 2013 is restored to file.

6. The learned Subordinate Judge (Rent Control Appellate Authority), Ottacamund is directed to post the appeal for final disposal during the last week of November, 2016. The petitioner shall appear before the trial court through counsel on the appointed date. In case the petitioner fails to appear before the trial court, it is open to the trial court to dispose of the Appeal on the basis of available materials.

The Civil Revision Petition is allowed with the above direction.
No costs. Consequently, connected miscellaneous petition is closed.

02.11.2016

Index:Yes/No
Internet: yes / No
ssd

K.K.SASIDHARAN, J.

ssd

To

The Sub Judge

(Rent Control Appellate Authority) Ottacamund.

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