

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)Nos.67 and 68 of 2016
and C.M.P.Nos.371 and 372 of 2016

A.S. Hansraj

... Petitioner in both the revisions

vs

C.R. Balasubramanian

... Respondent in both the revisions

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.11.2015 passed in M.P.Nos.333 of 2015 and 334 of 2015 in R.C.O.P No.996 of 2010 on the file of XV Judge, Court of Small Causes at Chennai.

For Petitioner : Mr.V. Raghupathi

For respondent : Mr.B. Manivannan

COMMON ORDER

Challenging the fair and final orders passed in M.P.Nos.333 of 2015 and 334 of 2015 in R.C.O.P No.996 of 2010, on the file of XV Judge, Court of Small Causes at Chennai, the tenant has filed the above Civil Revision Petitions.

2. The respondent/landlord filed a Rent Control Original Petition in R.C.O.P No.996 of 2010 for eviction under Sections 10(2)(iii), 10(2)(v), 10(2)(vi) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

3. The petitioner/tenant filed counter in R.C.O.P.No.996 of 2010 and was contesting the Original Petition. Subsequently, since the tenant remained absent, the Rent Controller set him ex-parte and passed an ex-parte order of eviction on 16.12.2014. Thereafter, the revision petitioner has filed applications in I.A.Nos.333 and 334 of 2015 to condone the delay of 207 days in filing the petition to set aside the ex-parte order dated 16.12.2014.

4. In the affidavit, filed in support of the petition, the petitioner/tenant had stated that during February 2014, his wife was diagnosed Cardinoma left breast and admitted in Apollo Cancer Hospital and underwent surgery on 6.3.2015. Further, the petitioner stated that his wife is continuing with the treatment and therefore, he was not in a position to attend the Court proceedings. In these circumstances, the tenant has filed applications to condone the delay of 207 days in filing the petition to set aside the exparte order.

5. The respondent/landlord filed his counter and disputed the averments stated in the affidavit, filed in support of the petition.

6. Before the Rent Controller, the tenant produced documents to establish that his wife was taking treatment for Cancer and therefore, he was not in a position to file a petition to set aside the exparte order in time. However, the Rent Controller disbelieved the case of the petitioner and dismissed both the petitions.

7. On perusal of the medical records, produced by the petitioner/tenant, it is clear that his wife was taking treatment at

Apollo Cancer Hospital and also underwent surgery on 6.3.2015. When the petitioner has satisfactorily explained the reasons for his non-appearance before the Rent Controller, the Rent Controller should have condoned the delay and given an opportunity to contest the matter on merits.

8. Now, it is brought to the notice of this Court by the learned counsel for the respondent/landlord that the tenant is in arrears of a sum of Rs.1,50,000/-. The learned counsel for the petitioner submitted that the tenant had already sent a cheque for a sum of Rs.20,000/- towards arrears of rent. However, the learned counsel for the respondent disputed the said contention. Even if the sum of Rs.20,000/- is taken into account, the balance amount to be paid by the tenant comes to Rs.1,30,000/-.

9. In these circumstances, the order dated 16.12.2014 can be set aside on payment of the balance arrears of rent of Rs.1,30,000/- (Rupees one lakh thirty thousand only) to the respondent/landlord.

10. Accordingly, the delay of 207 days in filing the petition to set aside the exparte order dated 16.12.2014 is condoned, on condition that the petitioner/tenant paying a sum of Rs.1,30,000/- (Rupees one lakh thirty thousand only) to the respondent/landlord within a period of six weeks from the date of receipt of copy of this order. The ex-parte order dated 16.12.2014 shall stand set aside on payment of the sum of Rs.1,30,000/-(Rupees one lakh thirty thousand only) within the stipulated time.

11. With these observations, the fair and decreetal orders passed in M.P.Nos.333 of 2015 and 334 of 2015 in R.C.O.P No.996 of 2010 on the file of XV Judge, Court of Small Causes at Chennai are set aside and the petition in M.P.Nos.333 and 334 of 2015 stand allowed on condition that the petitioner paying a sum of Rs.1,30,000/- to the respondent/landlord within a period of six weeks from the date of receipt of copy of this order. Accordingly, both the Civil Revision Petitions are allowed. Consequently, connected MPs are closed.

12. Since the Rent Control Original Petition in R.C.O.P.No.996 of 2010 is pending from the year 2010, I direct the Rent Controller/XV

Judge, Court of Small Causes, Chennai to dispose of the Rent Control Original Petition in R.C.O.P.No.996 of 2010, on merits and in accordance with law, within a period of two months from the date of expiry of six weeks time.

21-01-2016

Index:no
website:yes

To

The XV Judge, Court of Small Causes, Chennai

M. DURAISWAMY,J.,

sr

CRP(NPD)Nos.67 & 68 /2016

21-01-2016