

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2860 of 2012
and
M.P.No.1 of 2012**

1.Amaravathy
2.Palanivelrajan
3.Dhanabagiyam
4.Rajavel
5.Karthick Sethupathi
6.Azhaguvalli Nachiar
7.Rajiv Gandhi

.. Petitioners

Vs.

1.Venkatesan @ Venkatesalu
2.Babu
3.C.Shanmugam

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Order and Decree passed in I.A.No.1496 of 2011 in O.S.No.557 of 1998, dated 15.02.2012, on the file of the Principal District Munsif at Alandur.

For Petitioners : Mr.S.Gopal Ratnam

For Respondents : Mr.V.Balakrishnan

ORDER

The revision petitioners are the defendants 2 to 7 in O.S.No.557 of 1998. The said suit was originally filed in the year 1981 before the learned District Munsif Court, Poonamallee in O.S.No.1426 of 1981 by the respondents herein against the revision petitioners' mother Mrs. Amaravathy for eviction, recovery of arrears of rent from 08.05.1981 to 07.08.1981 at the rate of Rs.70/- per month and for recovery of future damages. Pending suit, the 1st defendant died and therefore the revision petitioners were brought on record as legal heirs of the deceased 1st defendant.

2.The above suit was originally filed before the learned District Munsif Court, Ponnammallee and later on the same was transferred to the learned District Munsif Court, Alandur and renumbered as O.S.No.557 of 1998.

3.According to the revision petitioner one Jinnah was a tenant in respect of the suit property on a monthly rent of Rs.45/- and he erected a thatched shed over the same. Subsequently the leasehold

right was assigned and transferred to one Hussain in the year 1974. The thatched house was sold to and delivered to the said Hussain during the month of November 1976. The above said Hussain in turn sold the thatched shed in favor of the revision petitioner's mother Amaravathi. The plaintiffs / respondents 1 and 2 herein recognized the assignment of lease hold right in her favor. The monthly rent was fixed at the rate @ Rs.60/- from December 1976 and the rent was enhanced to Rs.70/-. The revision petitioner's mother was regularly paying the monthly rent, but the respondents 1 and 2 herein refused to receive the rent and they filed the above said vexatious suit for eviction against the mother of the revision petitioner.

4.Since, the revision petitioners are having lease hold right with regard to the thatched house and therefore they are entitled to 3 months notice prior to the filing of the eviction suit as contemplated under the Tamil Nadu City Tenants Protection Act,1921, Act III of 1922 as amended in G.O.Ms.No.1285 (Revenue) dated 31.05.1975. Therefore the 1st defendant, mother of the revision petitioners filed application under section 9 of the Tamil Nadu City Tenants Protection Act, in I.A.No.1307 of 1982 to condone the delay of 40 days in filing the above petition. The said application came to be dismissed for

default on 10.02.1987. Therefore the revision petitioners filed application in I.A.No.1496 of 2011 seeking to condone the delay of 8,826 days in filing the restoration petition to restore the I.A.No.1307 of 1987 which was dismissed for default on 10.02.1987.

5.The respondent herein filed detailed counter affidavit to the above said condone delay application and prayed to dismiss the same on the ground saying that the huge delay of 8,826 days has not been explained properly. The Learned Principal District Munsif by order and decree dated 15.02.2013 was pleased to dismiss the condone delay application by holding that the revision petitioners have not assigned valid reason and no sufficient materials are produced to condone the very huge delay of 8,826 days.

6.I heard Mr.S.Gopal Ratnam, learned counsel appearing for the petitioners and Mr.V.Balakrishnan, learned counsel appearing for the respondents and perused all the relevant records.

7.A careful perusal of the records shows that there is no acceptable or convinced reason given by the revision petitioners in their affidavit to condone the huge delay of 8,826 days in restoring section 5 application. It is a settled proposition of law that the length

of delay is immaterial, but cogent and convincing reason must be assigned for the delay. In the present case on the hand, according to the revision petitioners, their mother, 1st defendant was set ex-parte and an ex-parte decree was passed against her. The ex-parte decree was came to set aside on filing application to set aside the ex-parte decree by the mother of the revision petitioner. Thereafter, the suit was dismissed for default at the instance of the plaintiffs. Subsequently the suit was restored to its file on filing restoration application by the plaintiffs. While so, by mistake, the application filed under section 9 of the Tamil Nadu City Tenants Protection Act and the condone delay application filed in I.A.No.1307 of 1982 was not restored to file. Except the above said reason, no other sufficient acceptable reason was assigned by the revision petitioners.

8. Whereas the respondent's herein contented that the suit was filed for delivery of vacant possession of the schedule mentioned property and recovery of arrears of rent and till date no finality could be reached only because of the delaying tactics adopted by the revision petitioners. That apart the application under section 9 of the Tamil Nadu City Tenants Protection Act with condone the delay of 40 days itself it is not at all maintainable in law.

9.The learned trial Court after elaborate discussion held that the application filed under section 9 of the Tamil Nadu City Tenants Protection Act by the mother of the revision petitioners in I.A.No.1307 of 1982 was dismissed for default on 10.02.1987. Thereafter the suit was transferred from District Munsif Court, Poonamallee to the file of District Munsif Court, Tambaram and later transferred to the present trial court namely Principal District Munsif Court at Alandur in the year 1997. The revision petitioners allowed the said application to be dismissed for default, but filed the present application to restore the above said I.A. when PW1 was about to be Cross Examined by the defendant. Therefore the learned Judge has rightly held that the revision petitioners have been restlessly adopting delaying tactics to prolong the suit.

10.The learned Judge further held that the person seeking the benefit available under section 9 of the Tamil Nadu City Tenants Protection Act must be always very prompt and bonafide in approaching the Court. But the 1st defendant filed the application in I.A.No.1307 of 1982 to condone the delay of 40 days in filing the petition under section 9 of the Tamil Nadu City Tenants Protection

Act. It is pertinent to note here that the petition under Section 9 of the Tamil Nadu City Tenants Protection Act must be filed within one month from the date of receipt of Summon in the suit for eviction. In the present case the 1st defendant filed the said application with the delay of 40 days. Though Section 5 application is maintainable in filing petition under Section 9 of the Tamil Nadu City Tenants Protection Act, in the present case, the above said application was filed under Section 9 of the Tamil Nadu City Tenants Protection Act, with a delay of 40 days and the same was allowed to be dismissed for default and to restore the same revision petitioners filed application with a delay of 8,826 days and the same cannot be condoned without any valid reason.

11.The trial Court had very clearly held that for the huge delay of 8826 days in filing the restoration of the Section 9 application, these petitioners have not given any valid reason. The Hon'ble Apex Court in number of Judgments very categorically held that for condoning the delay, the party must give the reason for each and every day, but this case on hand for the huge delay of 8826 days, the petitioners have not given any valid reasons.

12.For the foregoing reason, there is no ground to interfere with the order of the Trial Court to condone the inordinate delay of 8,826 days in restoring the application filed by the revision petitioners. The revision petitioners failed to make out a case for allowing this revision. Therefore this Court is of the view that this Civil Revision Petition is liable to be dismissed.

13.In the result this Civil Revision Petition is dismissed. However there is no order as to cost. Consequently, connected miscellaneous petition is closed.

22.12.2016

Note:Issue order copy on 27.04.2017

Internet:Yes

Index:Yes

vs

To

The Principal District Munsif,
Alandur.

M.V.MURALIDARAN, J.

VS

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