



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 02.11.2016

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P (MD) No.1828 of 2016

and

C.M.P (MD) No.8812 of 2016

G.Viswanath .. Petitioner/Appellant/Petitioner
vs.

S.Mohan Kumar .. Respondent/Respondent/Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order, dated 10.06.2016 on the file of the learned Sub Judge, Padmanabhapuram, made in I.A.No.124 of 2015 in R.C.A.SR.No.4207 of 2015.

For Petitioner : Mr.K.N.Thampi
For Respondent : Mr.T.Lajapathi Roy

ORDER

The petitioner has filed the present Civil Revision Petition against the order, dated 10.06.2016 passed in I.A.No.124 of 2015 in R.C.A.SR.No.4207 of 2015 by the learned Sub Judge, Padmanabhapuram.

2.According to the petitioner, the respondent filed R.C.O.P.No.1 of 2012 before the Rent Controller under Section 10 (2) (i), 10(3) (c) under Rule 29 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, to direct the respondent to vacate and hand over the vacant possession of the scheduled house building to the petitioner/landlord. The said R.C.O.P.No.1 of 2012 was allowed by the Rent Controller (Principal District Munsif), Padmanabhapuram. Against the said order, the respondent has preferred an appeal in R.C.A.SR.No.4207 of 2015 before the Rent Control Appellate Authority (Sub Court, Padmanabhapuram). Along with the said appeal, the petitioner has filed an application in I.A.No.124 of 2015 to condone the delay of 127 days in filing the above appeal. The above said application was dismissed by the lower Appellate Court. Therefore, the revision petitioner has preferred the present Civil Revision Petition before this Court.



3. Per contra, the learned counsel appearing for the respondent would submit that the revision petitioner filed the said application with a huge delay of 127 days in filing the appeal. The respondent herein also filed execution petition and the same is now pending. At this stage, the present appeal along with the condone delay application has been filed and therefore, the trial Court has rightly dismissed the application.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5. It is an admitted fact that the revision petitioner has filed an appeal before the Rent Control Appellate Authority. In the said appeal, the petitioner has also filed an application to condone the delay of 127 days in filing the appeal. In paragraph No.9 of the affidavit filed by the revision petitioner before the trial Court, it is stated that the order passed by the trial Court was not informed by the erstwhile counsel and he has got the knowledge of the order passed by the Rent Controller, after getting a notice in E.P.No.28 of 2015. Only due to the said bonafide reasons, the petitioner was not in a position to file the appeal in time and therefore, the delay is neither wilful nor wanton. Hence no prejudice is caused, if the present application is allowed.

6. Considering the fact that the said application is filed to condone the delay of 127 days and considering the reasons assigned by the petitioner that he had knowledge about the disposal of the case only after receiving notice in Execution Petition, there shall be an liberal approach in considering the delay in the light of the decision of the Apex Court in **2015 (5) CTC 534 [H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another]** and the order, dated 26.09.2016 made in C.R.P(MD) No.1716 of 2016 of this Court. Therefore, in the light of the said decision, this Court is inclined to pass the following order:-

i) The order passed by the Rent Control Appellate Authority in I.A.No.124 of 2015 in R.C.A.SR.No.4207 of 2015 by the Sub Judge, Padmanabhapuram is set aside and the delay in filing the appeal is condoned.

ii) The Appellate Court is directed to number the appeal.

iii) In the event of appeal is numbered and the process is completed, the Appellate Court is directed to dispose of the appeal, on merits and in accordance with law, as expeditiously as possible.



7. With the directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar(As)

Sub Assistant Registrar

To
The Subordinate Judge,
Padmanabhapuram.

+1cc to Mr.K.N.Thampi, Advocate SR.No.65168

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