



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.2144 & 2145 of 2016 (NPD)

and

CMP(MD) No.10032 of 2016

Kumaran Masala Company
Rep. By its Share holders
1.K.Sakthivel
2.N.Venkateshan

... Petitioners/Petitioners/Appellants
in both C.R.Ps.

Vs.

A.Mohammed Ali

... Respondent/Respondent/ Respondent
in both C.R.Ps.

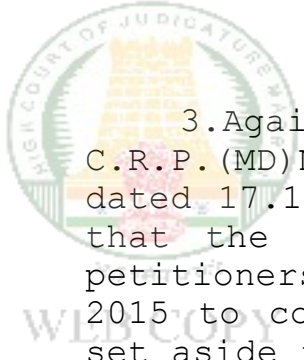
PRAYER in both C.R.Ps.: Civil Revision Petitions are filed, under Section 25(1) Tamil Nadu Buildings Lease & Rent Control Act 18/1960) to set aside the fair order and decreetal order dated 12.01.2016 in I.A.Nos.7 & 8 of 2015 in un-numbered R.C.M.A.No. Of 2015 on the file of the Learned Principal Sub Court, Dindigul and allow these Civil Revision Petitions.

For Petitioners : Mr.T.Antony Arulraj
For Respondent : Mr.H.Lakshmi Shankar

COMMON ORDER

The issues involved in both the Civil Revision Petitions are interlinked. Hence, common order is passed in both the revision petitions.

2.The petitioners in both the Civil Revision Petitions are the respondents and Tenants in H.R.C.O.P.No.23 of 2009. The respondent is the landlord and he filed H.R.C.O.P.No.23 of 2009 before the Rent Controller, District Munsif, Dindigul for eviction. An ex-parte order of eviction was passed on 29.06.2010. Against the said ex-parte order, the petitioners filed I.A.No.7 of 2012 to condone the delay in filing the petition to set aside the ex-parte decree and I.A.No.8 of 2012 to set aside the ex-parte order passed on 29.06.2010 in H.R.C.O.P.No.23 of 2009. Both the Interlocutory applications were dismissed on 17.08.2012.



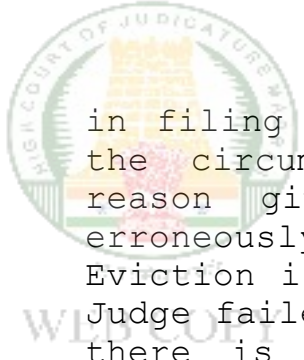
3. Against the said judgement and decree, the petitioners filed C.R.P. (MD) Nos. 2047 & 2048 of 2012. This Court, by a common order, dated 17.12.2014, dismissed the Civil Revision Petitions, holding that the remedy available is only by way of an appeal. The petitioners filed R.C.M.A. Of 2015 along with I.A. Nos. 7 & 8 of 2015 to condone the delay of 856 days in filing the petition to set aside the ex-parte order and I.A. No. 8 of 2015 to set aside the ex-parte order passed on 29.06.2010 in R.C.O.P. No. 23 of 2009. According to the petitioner, he ought to have filed R.C.A., within 15 days from the date when I.A. Nos. 7 & 8 of 2012 were dismissed. Instead he filed C.R.P. No. 2047 and 2048 of 2012. The same were pending before this Court till 24.12.2014 and the Civil Revision Petitions were dismissed. After obtaining copy of the order, they filed R.C.M.A., on 23.01.2015.

4. The respondent filed counter stating that the petitioners are the tenants from the year 2007 and they did not pay the rent from the year 2009, therefore, the respondent filed R.C.O.P. No. 23 of 2009. The petitioners entered appearance through Advocate and took number of adjournments for filing counter, but they did not file any counter. An ex-parte decree of eviction was passed on 29.06.2010. The respondent filed E.P. NO. 110 of 2011 to execute the order passed in the R.C.O.P. No. 23 of 2009. After that, the petitioners filed I.A. No. 7 & 8 of 2012 to condone the delay in filing the petition to set aside the ex-parte decree, dated 29.06.2010 and to set aside the ex-parte decree, dated 29.06.2010. Both petitions were dismissed and against that order, Civil Revision Petitions have been filed and the said Civil Revision Petitions were also dismissed. The petitioners have not properly explained the delay in filing the R.C.M.A. The reason given by the petitioner is not sufficient to condone the huge delay in filing the R.C.M.A., and prayed for dismissal of the Petitions.

5. The learned Judge considering the averments made in the affidavit and counter affidavit and also perused the materials available on record, dismissed both the applications.

6. Against the order of dismissal, the petitioners have filed the present Civil Revision Petitions.

7. The learned counsel for the petitioners submitted that the petitioners have made out sufficient reason for condoning the delay. The learned Judge failed to see that the petitioners filed I.A. Nos. 7 & 8 of 2012 for condonation of delay in filing the petition to set aside the ex-parte order, dated 29.06.2010 and to set aside the ex-parte order, dated 29.06.2010. After dismissal of the I.A. Nos. 7 & 8 of 2012, dated 17.08.2012, the petitioners have filed C.R.P. (MD) Nos. 2047 & 2048 of 2012 and the said C.R.Ps., were dismissed by this Court, on 17.12.2014 with liberty to challenge the ex-parte order, dated 29.06.2010. Therefore, the petitioners have filed I.A. Nos. 7 & 8 of 2015 to condone the delay

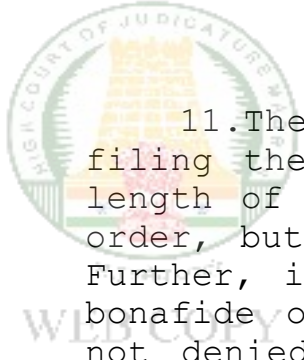


in filing the R.C.M.A., and to set aside the ex-parte order. In the circumstances, the learned Judge without considering the reason given by the petitioner, dismissed the applications erroneously. The learned Judge failed to see that the order of Eviction is only ex-parte order and is not on merits. The learned Judge failed to see that the petitioners specifically pleaded that there is no relationship as landlord and tenant between the petitioners and the respondent and failed to see that the petitioners are in possession as per the Agreement entered between the petitioners and one Selvaraj.

8. The learned counsel for the respondent submitted that the petitioners are tenant from the year 2007 and they have not paid any rent from the year 2009. After taking number of adjournments for filing counter in the RCOP, they did not file any counter and contest the matter and therefore, an ex-parte order of eviction was passed on 29.06.2010. Only to drag on the proceedings, the petitioners have filed an applications to condone the delay in filing the petition to set aside the ex-parte order and to set aside the ex-parte order. He further submitted that the petitioners in the affidavit filed in support of the petition for condone the delay stated that they are tenant under one Selvaraj from the year 2007 on payment of Rs.1,00,000/- subsequently, they have handed over the possession of the property to said Selvaraj. Contrary to the said stand taken by the petitioners in the affidavit, they have filed application to condone delay of ex-parte order, CRP, the RCMA, only to harass the respondent/landlord and not to pay the rent.

9. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and also perused the materials on record.

10. From the materials, it is seen that the petitioners have entered appearance through Advocate in R.C.O.P.No.23 of 2009 filed by the respondent for eviction of the petitioners and they took number of adjournments, but they did not file any counter, an ex-parte order was passed on 29.06.2010. The respondent filed E.P.No.110 of 2011 to execute the order and after that the petitioners filed I.A.Nos.7 & 8 of 2012 in R.C.O.P.No.23 of 2009 for condonation of delay in filing the petition to set aside the ex-parte order and to set aside the ex-parte order. Both applications were dismissed on 17.08.2012. Against the said orders, the petitioners filed C.R.P.(MD)Nos.2047 & 2048 of 2012 before this Court and this Court, by the order, dated 17.12.2014 dismissed both C.R.Ps. The petitioner filed R.C.M.A., along with I.A.Nos.7 & 8 of 2015 to condone the delay in filing the RCA and to set aside the ex-parte order passed on 29.06.2010 made in



11.The reason given by the petitioners to condone the delay in filing the petition is not proper. It is well settled that the length of the delay is not a criteria to set aside the ex-parte order, but there must be sufficient reason to condone the delay. Further, it is to be seen whether the intention of the party is bonafide or malafide. In the present case, the petitioners have not denied the relationship of landlord and tenant between the petitioners and the respondent. Therefore, the statement of the petitioners that they are the tenants under one Selvaraj from the year 2007 and subsequently, handed over the possession to one Selvaraj. After taking such stand, the petitioners have initiated several proceedings to condone the delay in setting aside the ex-parte order and setting aside the ex-parte order dated 29.06.2010. The learned Judge considering all these facts in a proper perspective, by giving cogent and valid reason, dismissed both the applications. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

12.In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

The Principal Sub Judge,
Dindigul.

+1 CC to M/s.T.ANTONY ARULRAJ, Advocate, SR No. 81964

+1 CC to M/s.H.LAKSHMISHANKAR, Advocate, SR No. 81784

AM

PSM/CM-MSA/03.02.2017/4P/4C

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