

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.1320 of 2017

L.Kannan

.. Petitioner

/versus/

M.Kuppusamy

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and final order dated 03.03.2017 made in I.A.No.1102 of 2016 in R.C.O.P.No.32 of 2014 passed by the learned District Munsif, Erode by allowing the prevent civil revision petition.

For Petitioner :Mr.B.Kumarasamy

For Respondent :Mr.R.Karthikeyan

O R D E R

Civil Revision Petition filed to set aside the fair and final order dated 03.03.2017 made in I.A.No.1102 of 2016 in R.C.O.P.No.32 of 2014 passed by the learned District Munsif, Erode.

2. The brief facts of the case is that the respondent herein filed a petition in R.C.O.P.No.32 of 2014 before the Rent Controller (I Additional District Munsif Court), Erode. The said case was posted on 28.03.2016 for enquiry. On that day, the petitioner did not appear for enquiry on 28.03.2016 before the I Additional District Munsif Court, Erode and hence, the learned I Additional District Munsif, Erode, has passed an exparte order on 06.06.2016. Thereafter, the petitioner herein filed the application in I.A.No.1102 of 2016 in R.C.O.P.No.32 of 2014 to condone the delay of 149 days caused in filing the petition to set aside the exparte order dated 06.06.2016. In the said application, on the side of the petitioner, the petitioner was examined as P.W.1 and one document was marked as Ex.P1. Even though Ex.P1-Medical Certificate was accepted by the Court below, the reason stated by the petitioner for his non appearance before the Court for enquiry, is not genuine one and the delay caused in filing the set aside petition was not properly explained to the satisfaction of the Court. Ex.P1-medical certified filed by the petitioner was disbelieved by the Court below without giving any opportunity to the petitioner by

examining the validity of the certificate. Therefore, the order passed by the Court below is erroneous. Hence, the civil revision petition has been filed before this Court.

3. On the contrary, the learned counsel appearing for the respondent would submit that the petitioner has not satisfied the court below to condone the delay of 149 days in filing the petition to set aside the exparte order. The petitioner has produced the medical certificate, which was disbelieved by the court below. Hence, there is no warrant to interfere with the order of the Court below. Hence, he prayed for dismissal of the civil revision petition.

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

5. The petitioner filed an application in I.A.No.1102 of 2016 in R.C.O.P.No.32 of 2014 under Section 5 of the Limitation Act to condone the delay of 149 days to set aside the exparte order dated 06.06.2016 passed in R.C.O.P.No.32 of 2014. The petitioner has produced medical certificate and the same was marked as Ex.P1. The petitioner was also examined as P.W.1 in the aforesaid application. On the side of the respondent, no witness was examined and no document was marked. The respondent has filed a petition in R.C.O.P.No.32 of 2014 for eviction. It is also admitted fact that the petitioner has not in a position to appear for the enquiry on 06.06.2016, due to his illness. Therefore, the reasons stated in the affidavit for non appearance of the petitioner is a genuine and bonafide reason. There is no intention to drag on the proceedings.

6. By considering the decision of the Hon'ble Supreme Court reported in Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy and others [2013(5) CTC 547] wherein, the Hon'ble Supreme Court has held that the Court should liberal approach while dealing with the condoning the delay to set aside the exparte order. There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. The above said judgment has been followed by this Court in the case of S.Krishnan v. S.Ganeshan C.R.P.(PD) No.140 of 2010 dated 26.04.2016.

7. Considering the facts and circumstances of the case and in the light of the decision of the Hon'ble Supreme Court cited supra, I am inclined to interfere with the impugned order passed by the court below and the impugned order is liable to be set aside.

8. At this juncture, the learned counsel appearing for the

respondent would submit that the time may be fixed by this Court to dispose of the R.C.O.P.No.32 of 2014 on the file of the I Additional District Munsif Court, Erode.

9. In view of the above submission, this Court is inclined to pass the following orders:

1)The order dated 03.03.2017 passed in I.A.No.1102 of 2016 in R.C.O.P.No.32 of 2014 on the file of the I Additional District Munsif, Erode, is hereby set aside and the delay of 149 days is condoned on payment of cost of Rs.2,500/- (Rupees two thousand and five hundred only) to the respondent herein, within a period of two weeks from the date of receipt of a copy of this order.

2)The I Additional District Munsif, Erode, is directed to dispose of the petition in R.C.O.P.No. 32 of 2014 as expeditiously as possible, preferably within a period of six months thereafter.

10. With the above directions, the civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The I Additional District Munsif, Erode.

+lcc to Mr.B.Kumarasamy, Advocate in sr.no.21890

+lcc to Mr.R.Karthikeyan, Advocate in sr.no.21890

C.R.P. (NPD) No.1320 of 2017

SCD(CO)
NR 17/07/2017