

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) NO.190 OF 2017

AND

CMP NO.792 OF 2017

1.Kothainayaki Ammal
2.J.Durairaj
3.J.Jayakumar
4.J.Priya

... Petitioners

Vs.

Murali

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and final order passed in R.C.O.P.No.170 of 2007 dated 03.12.2014 on the file of Rent Controller and the 1st Additional District Munsif Court, Coimbatore, confirmed on 27.09.2016 in R.C.A.No.65 of 2015 on the file of the Rent Control Appellate Authority and the Principal Subordinate Judge at Coimbatore.

For Petitioners	:	Mr.C.Deivasigamani
For Respondent	:	Mr.V.Lakshminarayanan for Mr.I.Abrar Md Abdullah

ORDER

The revision petitioners are the tenants. Originally, the case was filed against the husband and father of the petitioners. The matter was posted for enquiry and evidence of P.W.1 was recorded by way of proof affidavit on 17.11.2008 and Exhibits P1 to P12 were marked. Thereafter, on 28.07.2011, the husband and father of the revision petitioners died. On 12.12.2013, the revision petitioners have entered appearance in the matter. The matter was posted for counter on 06.01.2014. Since they have not filed counter, they were set *exparte* and an *exparte* order came to be passed on 19.12.2013. On application, the *exparte* order was set aside and again the matter was posted for P.W.1 cross by 07.07.2014. Since the revision petitioners called absent on several hearings, once again they were set *exparte* on 02.08.2014.

2. Earlier, the revision petitioners filed two Civil Revision Petitions viz., C.R.P.(NPD) Nos.3004 and 3005 of 2014 before this Court. This Court, by its order dated 18.09.2014 set aside the *exparte* order and further directed the Trial Court to dispose of the rent control proceedings within a period of three months.

3. Again the matter was posted for P.W.1 cross on 24.11.2014, on which date, the petitioners did not appear. It was adjourned to 26.11.2014 and thereafter on 02.12.2014, with a view to provide opportunity to the revision petitioners. In spite of specific direction by this Court to dispose of the matter within three months and several opportunities given to the revision petitioners, they did not cooperate for an early disposal, but always remained absent on all hearings. Therefore, the Rent Controller had once again set the petitioners exparte on 03.12.2014.

4. Aggrieved by the order of the Rent Controller, the petitioners have filed an appeal. The petitioners would contend that no intimation was served by the Rent Controller for taking up the matter on file. No summons were issued to the petitioners for hearing the matter. In rent control proceedings, it is contended that proof affidavit cannot take place the oral examination in chief. Therefore, they sought the exparte order be set aside. After considering the grounds raised by the petitioners, the Rent Control Appellate Authority had dismissed the appeal. Against which, the present Civil Revision Petition is filed.

5. The learned counsel appearing for the petitioners would vehemently contend that duty is cast upon the Rent Controller to issue summons or intimate the hearing date to the petitioners. In the absence of notice or summons, the petitioners cannot be faulted for their non appearance. Further, the husband and father of the petitioners had filed a counter affidavit and therefore, the Rent Controller should not have observed that no counter was filed by the petitioners. Further, the reliance of evidence based on the proof affidavit is unsustainable and untenable in law.

6. The learned counsel appearing for the petitioners would further contend that immediately after the order of this Court in CRP (NPD) Nos.3004 and 3005 of 2014, the petitioners have filed a memo before the Rent Controller setting out the fact of direction to dispose of the proceedings within a period of three months. In spite of the same, the Rent Controller has failed to intimate the next date of hearing by summons. Therefore, the exparte order passed by the Rent Controller and as confirmed by the Rent Control Appellate Authority is liable to be set aside.

7. The learned counsel appearing for the respondent would submit that the revision petitioners have neither adopted the counter filed by the original respondent namely Durairaj nor filed any independent counter thereafter. The petitioners have deliberately absented themselves on all hearings with an ulterior motive to protract the proceedings. It is also contended that it is not the first occasion they were set exparte and it is the third time.

8. I have considered the rival contentions.

9. From the perusal of records, it is seen that P.W.1 is in the box from 17.11.2008 till 02.12.2014 for a period of over six years. On all these hearings, the petitioners were absent. Even though this Court has fixed time limit for disposal of the Rent Control Proceedings, within three months, due to non cooperation of the petitioners, it could not be complied with. In fact, such a direction was issued in the Civil Revision Petitions filed by the petitioners themselves. Therefore, duty is cast upon the petitioners to cooperate with the Court for early disposal within the time limit stipulated by this Court, more so, when the time limit is

fixed at their instance. A litigant, who has approached the Court twice for the very same matter, should be vigilant in following up the proceedings. On the other hand, the lethargic attitude that he will attend the Court only after receipt of summons shows supine indifference to the orders passed by this Court at his instance.

10. It is also relevant to mention that the very same petitioners have approached this Court by another Civil Revision Petition viz., CRP (NPD) No.3602 of 2015. The said Civil Revision Petition was filed against the execution proceedings in the above rent control proceedings. The execution was stayed until the disposal of appeal filed with condone delay petition. This Court by its order dated 12.10.2015, has allowed the petition to condone delay in filing the appeal and further directed the Executing Court not to proceed with the execution proceedings till the disposal of the appeal and if the same is dismissed, it can proceed with the execution proceedings.

11. The action of the petitioners in filing the present Civil Revision Petition clearly shows that they have been watching the

proceedings and were very much aware of the developments in their case. When that being the case, the fence sitters shall not be encouraged to abuse the process of law. The *exparte* order which is sought to be set aside was passed on 03.12.2014. If at all the petitioners have *bonafide* intention, they should have pursue the matter on merits and cross examine P.W.1. On the other hand, they have failed to cooperate in violation of the order passed by this Court in CRP (NPD) Nos.3004 and 3005 of 2014. Therefore, the petitioners who have failed to follow up the matter vigilantly, cannot take a lame excuse that they were not intimated of the hearings of the Rent Controller. Therefore, the Civil Revision Petition merits no consideration and accordingly, dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

04.08.2017

Index : Yes/No
Internet : Yes/No
KAS/TK
Note : Issue order copy on 27.10.2017

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M.GOVINDARAJ, J.

KAS/TK

To

1. The Rent Controller cum
First Additional District Munsif
Coimbatore.
2. The Rent Control Appellate Authority cum
Principal Subordinate Judge
Coimbatore.



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