

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) NO.2310 OF 2017
AND CMP NO.10873 OF 2017

Dr.M.Govalan

... Petitioner

Vs.

M/s.Blend Steel Engineering Pvt. Ltd.,
Rep. by its Director
Mr.Prabhu Jayaraman
No.72, Shanthi Nagar,
S.M. Nagar Post, Avadi,
Chennai - 600 062.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to reject the condone delay application in M.P.No.81 of 2017 in RCOP No.48 of 2016 on the file of District Munsif Court, Ambattur.

For Petitioner : Mr.S.Ramesh Kumar

ORDER

This Civil Revision Petition is filed to reject the petition filed under Section 5 of the Limitation Act to condone the delay of 182 days in

filing the petition to set aside the *exparte* order.

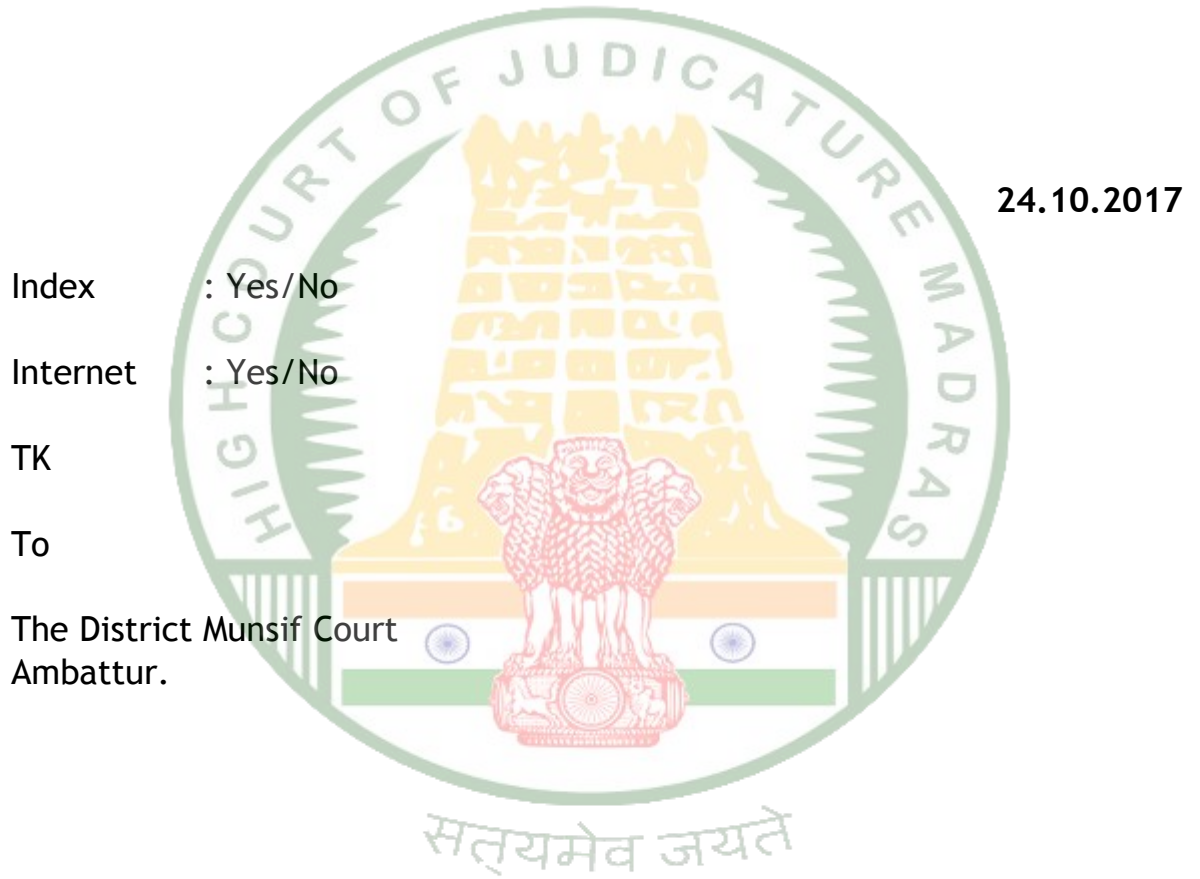
2. The petitioner is the landlord. He filed RCOP No.48 of 2016, for eviction, under Sections 10(2)(i) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, before the District Munsif, Ambattur. The respondent / tenant was set *exparte*. Against which, the respondent filed a petition under Order IX Rule 7 of the Civil Procedure Code. The said application was contested by the petitioner / landlord on merits. Whereas, the Rent Controller has dismissed the same on the grounds of maintainability that the miscellaneous petition filed under Order IX Rule 7 of the Civil Procedure Code is not maintainable, as it should have been filed under Rule 12(3) of the Tamil Nadu Buildings (Lease and Rent Control) Rules 1974. It was also observed that there is a delay in filing the petition, as it was not clearly stated as to when the respondent / tenant got knowledge of the *exparte* order. Thereafter, the respondent / tenant filed a petition under Rule 12(3) to set aside the *exparte* order along with a petition under Section 5 of the Limitation Act to condone the delay in filing the petition to set aside the *exparte* order.

3. The Rent Controller has issued notice on 12.06.2017 to the

petitioner. The petitioner would contend that the matter was set *exparte* on 18.08.2016 and the petition to set aside the *exparte* was also dismissed. The only redressal available to the respondent / tenant is to file an appeal before the Rent Control Appellate Authority. Without availing the appeal remedy, the petition now filed under Section 5 of the Limitation Act to condone the delay as well as the petition under Rule 12(3) of the Tamil Nadu Buildings (Lease and Rent Control) Rules is not maintainable. Filing repeated petitions for the very same issue is an abuse of process of law and therefore, the Rent Controller has erred in entertaining the petitions.

4. On a perusal of the order passed by the Rent Controller dated 04.04.2017, it is clear that it was purely on the issue of maintainability. The Rent Controller has not considered the matter on merits of the case. In any event, the litigants shall not be thrown out on technicalities, but rather the matter shall be decided on merits and substantial justice has to be rendered. The Rent Controller has issued only notice and hence, it is open to the petitioner / landlord to raise all his objections before the Rent Controller by way of filing counter affidavit.

Therefore, the Civil Revision Petition at this stage is premature and does not merit consideration. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.



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M.GOVINDARAJ, J.

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