

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.01.2017  
CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP(NPD).No.1370 of 2011**  
**and**  
**M.P.No.1 of 2011**

K.V.Viswanathan

.. Petitioner

vs.

1.C.V.Prasanna  
2.Shyam Sunder  
3.Minor R.Priyanka

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the order dated 27.01.2011 passed in I.A.No.25 of 2010 in R.C.O.P.No.221 of 2006 on the file of the Principal District Munisif Court, Coimbatore.

For Petitioner : M/s.Sivakumar

For Respondents : M/s.G.Ganesh Kumar  
for R1 to R3

**ORDER**

The case of the petitioner is that the respondents/landlords filed R.C.O.P.No.221 of 2006 on the file of the Principal District Munsif Court, Coimbatore. Challenging the order in I.A.No.25 of 2010 in R.C.O.P.No.221 of 2006, dated 27.01.2011, this revision is filed.

2. The case of the revision petitioner/tenant is that respondents/landlords have filed R.C.O.P.No.221 of 2006 for eviction on the ground of additional accommodation. In the said R.C.O.P.No.221 of 2006, this petitioner/respondent also filed his counter.

3. When the R.C.O.P.No.221 of 2006 was taken up for hearing, this petitioner who is the respondent in the above Rent Controller proceedings has not appeared. Hence, an ex-parte decree was passed in the above R.C.O.P.No.221 of 2006 on 14.11.2007 in favour of the respondents/landlords.

4. For setting aside the said ex-parte decree dated 14.11.2007,

this petitioner has filed an application in I.A.No.25 of 2010 along with the condonation of delay of 40 days and according to him, he has given proper reason for the delay of 40 days. Therefore, he prays that the Rent Controller has erroneously dismissed the said application.

5. Considering the arguments of both sides, the learned Principal District Munsif Court, Coimbatore, was pleased to dismiss the application on 27.01.2011 on the ground that due to non appearance of this petitioner/tenant dated 14.11.2007, this Court has passed the ex-parte decree and on filing the set aside application, the petitioner in I.A.No.25 of 2010 for condoning the delay of 40 days, the petitioner has not given any valid reason for the delay. Though he has made an averment in the affidavit stating that he was not feeling well on the date of hearing of the case dated 14.11.2007 and he could not appear before the trial Court, he has not produced any medical certificate for proving the same. Challenging the said order, this petitioner filed the Civil Revision Petition before this Court.

6. Heard Mr.Shivakumar, learned counsel appearing for the petitioner and Mr.G.Ganesh Kumar, learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

7. It is the case of the petitioner that the respondents/landlords filed the Rent Controller Proceedings in R.C.O.P.No.221 of 2006 for eviction of the petitioner from the tenant portion on the ground of additional accommodation. But the said R.C.O.P.No.221 of 2006 was decreed ex-parte on 14.11.2007, due to non appearance of the revision petitioner/tenant.

8. The application filed for setting aside the ex-parte decree along with the application for condoning the delay of 40 days in filing the set aside application was dismissed.

9. Time and again, this Court and Hon'ble Apex Court categorically held that the Courts below must have shown their leniency while considering the condone delay petition. In this case, though it is only a minimum delay of 40 days but the learned Judge without showing leniency, simply dismissed the petition by order dated 14.11.2007 stating that he has not produced any medical certificate to prove his illness. The said application was dismissed on the sole ground that this petitioner/tenant has not produced any medical certificate.

10. For the dismissal of the said application this Civil Revision Petition has been filed in the year of 2011 and it is pending for the past five years. If the learned Judge would have passed orders with leniency definitely, this Civil Revision Petition would not have been pending for past five years. In fact, the delay is only 40 days, that can be condoned by the learned Judge himself and the said Rent Control Proceedings could be disposed on merits in the meantime.

11. This is the case of example that the trial Courts should have applied their mind in the proper manner and shown their leniency with Judicial view, while dealing this type of condoned delay application which would for minimize without multiplicity of Court proceedings. This Court and the Hon'ble Apex Court have categorically held and directed the trial Court to consider the application for condone delay by showing their leniency with judicial view but it is totally lack in this case.

12. Therefore, in the interests of justice, it is necessary, this Court warrants interference in the order passed by the learned

Principal District Munsif, Coimbatore, in I.A.No.25 of 2010 in R.C.O.P.No.221 of 2006, dated 27.01.2011 and accordingly the order ought to be set aside.

13. Though the said application has been filed with a delay of 40 days, this petitioner/tenant should be compensated by way of cost.

14.In the result:

(a) The Civil Revision Petition is allowed by setting aside the order dated 27.01.2011, made I.A.No.25 of 2010 in R.C.O.P.No.221 of 2006, on condition that the petitioner should pay a sum of Rs.1,000/- as costs to the respondent within a period of two weeks from the date of receipt of a copy of this order;

(b) The trial Court is directed to number the set aside application and to dispose of the same within a period of one month from the date of receipt of a copy of this order, by giving opportunity to both the parties;

(c) Thereafter, after passing order in the set aside application, the learned Principal District Munsif, Coimbatore is hereby directed to dispose the case in R.C.O.P.No.221 of 2006

within a period of two months on a day-to-day basis, without giving adjournments to either parties and both the parties are hereby directed to co-operate for early disposal of the suit.

15. Accordingly, the Civil Revision Petition is allowed with costs.

**18.01.2017**

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Index:Yes/No

Internet:Yes/No

To

The Principal District Munisif Court,  
Coimbatore.

**Note:Issue order copy on 23.01.2017**

**M.V.MURALIDARAN,J.**

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