

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN

CRP (NPD) No.4370 of 2014
& MP.No.1 of 2014

Indira ... Petitioner

Vs.

Jayaraman ... Respondent

Prayer : Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act, praying to set aside the fair and decretal order dated 03.09.2014 in RCA.No.524 of 2013 on the file of the learned VIII Court of Small Causes at Chennai, confirming the fair and decretal order dated 16.08.2013 in RCOP.No.988 of 2012 on the file of the learned XIV Court of Small Causes, Chennai.

For Petitioner : Mr.S.Subramanian
For Respondent : Mr.R.Sathyakumar

ORDER

The respondent filed eviction petition in RCOP.No.988 of 2012 before the Rent Controller (XIV Court of Small Causes, Chennai). The trial Court passed an order of eviction *ex parte*. The said order was challenged by the petitioner before the Appellate Authority (VIII Court of Small Causes, Chennai). The Appellate Judge taking into account the

background facts, dismissed the appeal as not maintainable. The appellate decree is under challenge in this Civil Revision Petition.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The respondent instituted the proceedings in RCOP.No.988 of 2012 before the Rent Controller praying for an order of eviction. The petitioner though received summons, failed to appear before the trial Court and as such, she was declared *ex parte*. The petitioner filed an application to set aside the *ex parte* order. The application was allowed subject to costs. Since the petitioner failed to pay the costs, the application was dismissed. The trial Court thereafter passed an order of eviction. The order was challenged before the Appellate Authority in RCA.No.524 of 2013. The Appellate Authority was more concerned with the delaying tactics adopted by the petitioner and her failure to pay the costs awarded by the trial Court. The learned Appellate Judge was of the view that the remedy of the petitioner herein was only to approach the trial Court to set aside the *ex parte* decree of eviction and not a regular appeal against the order of eviction.

4. There is no substance in the finding given by the learned Appellate Judge that the petitioner is not entitled to invoke the remedy of appeal before the Appellate authority.

5. The issue raised in this Civil Revision Petition is no longer res-integra, in view of the decisions of this Court and the Supreme Court. In fact, the very same issue was considered by a Division Bench of this Court in CMA.No.3700 of 2010. The Division Bench indicated the remedy available to a party against whom *ex parte* decree was passed. The Division Bench observed that the parties are entitled to file an appeal before the Appellate Court or approach the very same Court under Order 9, Rule 13 of CPC to set aside the *ex parte* decree.

6. When two options are available to the petitioner, the Appellate Authority was not correct in rejecting the appeal on the ground that the proper remedy is only to file an application to set aside the *ex parte* decree. I am therefore of the view that the impugned judgment is liable to be set aside.

7. The judgment and decree dated 03.09.2014 in RCA.No.524 of

2013 is set aside. The appeal filed against the order in RCOP.No.988 of 2012 before the Rent Controller is restored to file. The learned Appellate Authority is directed to dispose of the appeal on merits and as per law, within a period of two months from the date of receipt of a copy of this order.

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2017

ds

To:

- 1.The VIII Court of Small Causes
Chennai.
- 2.The XIV Court of Small Causes
Chennai.

K.K.SASIDHARAN, J.

ds

CRP (NPD) No.4370 of 2014
& MP.No.1 of 2014

20.03.2017

<http://www.judis.nic.in>