

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No. 1550 of 2013 and
MP.No.1 of 2013

D.Jawahar

...Petitioner

Vs

V.Jayaraman

...Respondent

Prayer:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, as against the order and decretal order dated 21.02.2013 made in M.P.No.91 of 2013 in R.C.A.No.80 of 2011, on the file VIII Court of Small Causes Court, Chennai dismissing the condone delay petition to condone the delay of 167 days in filing the petition to set-aside the exparte judgment and decree of dismissal on merits in the absence of the petitioner, dated 19.07.2012 made in R.C.A.No.80 of 2011, on the file of VIII Court of Small Causes, Chennai.

For Petitioner : Mr.S.Sreesh
For Respondent : Mr.S.D.S.Philip

ORDER

This civil revision petition is directed against the order dated 21 February 2013 in M.P.No.91 of 2013 in R.C.A.No.80 of 2011 dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 167 days.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The respondent initiated proceedings in RCOP No.674 of 2010 for eviction. The trial Court allowed the eviction petition. The petitioner filed a statutory appeal before the VIII Court of Small Causes, Chennai in RCA No.80 of 2011. The appellate Court granted a conditional stay subject to deposit. The petitioner failed to appear before the appellate authority and the same resulted in disposal of the appeal on merits. Thereafter, the petitioner filed an application in M.P.No.91 of 2013 to condone the delay of 167 days in filing the petition to set aside the *ex parte* decree in R.C.A.No.80 of 2011. The learned appellate authority dismissed the application by way of a very brief order. According to the learned Judge, the reasons given by the petitioner are not *bona fide*. No other reasons are given to dismiss the application in M.P.No.91 of 2013.

4. The fact that the landlord initiated proceedings to execute the decree cannot be a reason to reject the application filed by the petitioner to condone the delay. The appellate authority adopted a too strict view of the matter and refused to condone the delay. While rejecting the application, the appellate authority ought to have considered the fact that the petitioner has been prosecuting the appeal. In any case, the learned appellate authority was not correct in dismissing the application for the reasons indicated in the

order impugned in this civil revision petition. I am therefore, of the view that the order dated 21 February 2013 is liable to be set aside.

5. In the result, the order dated 21 February 2013 is set aside. The application filed before the appellate authority in M.P.No.91 of 2013 is allowed.

6. The appellate authority is directed to dispose of the appeal as expeditiously as possible and in any case, within a period of two months from the date of receipt of a copy of this order.

7. In the upshot, I allow this civil revision petition. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2017

Gms

To

VIII Court of Small Causes Court, Chennai.

K.K.SASIDHARAN,J.

Gms

2013 **C.R.P.(N.P.D.) No. 1550 of**

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