

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.2593 of 2012
and
M.P.No.1 of 2012**

Dandayuthapani Chettiar .. Petitioner

Vs.

K.Arumugam .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and the decretal orders dated 03.04.2012 in I.A.No.666 of 2011 in O.S.No.161 of 2009 on the file of the District Munsif's Court, Rasipuram.

For Petitioner : Mr.S.Kalyana Raman

For Respondent : Mr.P.Valliappan

ORDER

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This Civil Revision petition is directed against the Fair and Decretal Order dated 03.04.2012 made in I.A.No.666 of 2011 in OS.No.161 of 2009 on the file of the learned District Munsif Court, Rasipuram.

2.The respondent herein as plaintiff has filed the above suit against the revision petitioner for recovery of arrears of rent.

3.The case of the respondent / plaintiff is that the Revision petitioner was inducted as tenant during the lifetime of his father in the suit premise belonging to respondent's family.

4.According to the respondent, the revision petitioner who conducts grocery shop in the suit premise went default towards the monthly rent payable and that the default was figured at Rs.72,000/-. Despite reminders to pay the monthly rent the revision petitioner failed to pay the monthly rent. Therefore the above suit for recovery of rent arrears was filed by the respondent. The revision petitioner failed to defend the said suit and accordingly he was set Ex-parte on 03.04.2012 and an Ex-parte Decree came to be passed on 03.04.2012.

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5.In the said circumstance the revision petitioner has come up with an application to set aside the Ex-parte Decree passed against him. Whereas as the said application was found filed beyond the

statutory limitation period and there was delay, the revision petitioner filed the Interlocutory Application in I.A.No.666 of 2011 under Section 5 of the Limitation Act seeking to condone the delay of 460 days in filing the above the application to set aside the Exparte Decree.

6.The learned Trial Judge has dismissed the revision petitioner's application holding that the reason assigned towards the failure to defend the suit and projected behind the delay is unacceptable. As against the said Order the present Civil Revision petition is filed.

7.I heard Mr.S.Kalyana Raman, learned counsel for the petitioner and Mr.P.Valliappan, learned counsel for the respondent and perused the entire materials available on record.

8.On perusal of the impugned order and the case records, it is not in dispute that the revision petitioner is a tenant under the respondent. The parties have not disputed the landlord - tenant relation. Admittedly the suit is one for recovery of Rental arrears and the same is not for eviction.

9. Therefore the only point for consideration in the instant suit is only with regard to the quantum of alleged rent payable to the respondent. It is equally important to state that the reason assigned by the revision petitioner for his non-appearance is that he suffered out of Jaundice and that the respondent has informed the revision petitioner that the Suit Notice was issued on him in a suit filed amongst the family members of the respondent, concerning a family dispute.

10. Therefore, considering the relation prevailing between the revision petitioner and the respondent and the facts and circumstances involved in the case, I am of the considered opinion that one more chance can be given to the revision petitioner to defend the suit, however on terms as to cost payable to the respondent.

11. In the result:

सत्यमेव जयते

(a) this Civil Revision Petition is allowed by setting aside the fair and Decretal Order dated 03.04.2012 made in I.A.No.666 of 2011 in O.S.No.161 of 2009 on the file of the learned District Munsif Court, Rasipuram, on condition that the petitioner should pay a sum of Rs 25,000/- as cost to the respondent within a period of four weeks from

the date of receipt of a copy of this order.

(b) on production of the payment receipt, the trial Court namely learned District Munsif Court, Rasipuram is hereby directed to number the set aside application and pass orders within a period of one month thereafter, by giving notice to both the parties;

(c) on passing order in the set aside application, the trial Court is directed to take up the suit on day to day basis without giving any adjournment to either parties and to dispose of the suit within a period of three months thereafter. Both the parties are hereby directed to give the fullest co-operation for early disposal of the suit. No cost. Consequently, connected Miscellaneous Petition is closed.

15.03.2017

vs

Note: Issue order copy on 18.02.2019

Internet: Yes

Index: Yes

To

The District Munsif Court, Rasipuram.

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)Nos.2593 of 2012
and
M.P.No.1 of 2012**

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