



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.142 of 2017 and
CMP(MD).No.532 of 2017

S.C.Balakrishnan : Petitioner/Petitioner/Respondent

Vs.

Sugandhi : Respondent/Respondent/Petitioner

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.07.2016 passed in I.A.No.12 of 2015 in R.C.O.P.No.8 of 2014 on the file of the Buildings Rent Controller Cum District Munsif, Theni.

For Petitioner : Mr. G. Aravinthan

For Respondent : Mr. D. Nallthambi

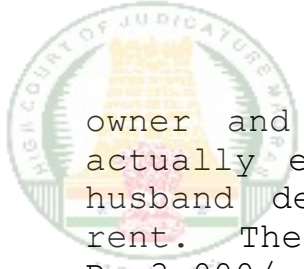
O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated 12.07.2016 passed in I.A.No.12 of 2015 in R.C.O.P.No.8 of 2014 on the file of the Buildings Rent Controller Cum District Munsif, Theni.

2. The petitioner is the tenant. The respondent, landlord filed RCOP.No.8 of 2015, on the file of the Buildings Rent Controller Cum District Munsif, Theni for eviction of the petitioner herein on the ground wilful default.

3. The petitioner received notice in RCOP, but did not enter appearance. Therefore, he was set ex parte and order of eviction was passed on 12.01.2015. The respondent filed E.P.No.20 of 2015 for evicting the petitioner. On receiving notice in the Execution Petition, the petitioner filed I.A.No.12 of 2015 to condone the delay of 323 days in filing petition to set aside the ex parte order of eviction.

4. According to the petitioner, after receipt of notice in RCOP he entrusted the matter to his Advocate MR. Ganesan, services.educats.gov.in/user/203/ the Advocate did not file vakalat and did not defend the petitioner's case. The respondent's husband is the real



owner and petitioner was regularly paying rent, which was actually enhanced during November 2013. The respondent's husband demanded Rs.6,000/- per month, from Rs.3,000/- as rent. The petitioner did not agree for the same and rendered Rs.3,000/-. The respondent's husband refused to receive the rent. The petitioner is willing to pay the reasonable rent.

5. The respondent filed counter and opposed the said application and submitted that petitioner has not given any valid reason for condoning the delay of 323 days in filing a petition to set aside the ex parte order of eviction. Even after receiving notice in Execution Petition he took two adjournments and then only he filed an application to condone the delay and prayed for dismissal of this application.

6. The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record dismissed the application holding that if the petitioner had any doubt about ownership of the property he ought to have taken steps to deposit the rent into Court and that reason given by the petitioner for condoning the delay is not valid one. The petitioner has not produced any document to substantiate his case.

7. Against that order, present Civil Revision Petition has been filed.

8. The learned counsel appearing for the petitioner submitted that the learned Judge ought to have seen that the petitioner engaged his Advocate Mr. Ganesan and the said Advocate did not file vakalat and did not defend the petitioner's case. The learned Judge ought to have given an opportunity to defend petitioner's case on merits. The petitioner himself appeared before the learned Judge and argued the matter. He further submitted that today also the petitioner is willing to deposit the entire arrears of rent and prayed opportunity may be given to defend the case on merits.

9. The learned counsel appearing for the Caveator submitted that RCOP was filed by the respondent to evict the petitioner from the petition premises on the ground of wilful default. Notice in RCOP was served on the petitioner. He did not contest the case and hence, ex parte order of eviction was passed. The petitioner received notice in the Execution Petition, even then he did not file application immediately. The petitioner has not paid or deposit the rent into the Court, till date. The reason given by the petitioner for condoning the delay is not valid one and only to drag on the proceedings he has come out with the present petition. Without paying any rent petitioner has filed an application to condone the delay. The learned counsel also contend that any order passed by the learned Rent Control Officer is not maintainable under Section 23 of the Rent Control Act and relied on the Judgment reported in 2011 (3) CTC 822



submitted that the Civil Revision Petition itself is not maintainable.

10. I have heard the learned counsel appearing on either side and perused the materials available on record.

11. It is an admitted fact that petitioner did not appear and contest the RCOP after receiving notice. According to the petitioner, he has engaged MR. Ganesan Advocate to defend his case. The said Advocate did not file vakalat and appear on his behalf. The petitioner after entrusting the matter to the said Advocate did not take any steps to find out stage of the RCOP and deposit the rent into Court. Till today, petitioner has not taken any steps to deposit the rent for more than one year even after knowing, the respondent has filed petition for eviction evicting him on the ground of willful default.

12. The petitioner is not diligent enough to prosecute the case, but, his contention cannot be considered as bonafide as he did not prosecute the RCOP diligently after receiving the notice. It is well settled that delay in filing the petition can be considered, if sufficient reasons are given by the party. The length of the delay is not a criteria but the intention of the party must be bonafide. In the present case petitioner has not given sufficient reason for condoning the delay.

13. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the Interlocutory Application in I.A.No.12 of 2015 in R.C.O.P.No.8 of 2014 on the file of the Buildings Rent Controller Cum District Munsif, Theni. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar[CS-I]

/True copy/

Sub Assistant Registrar

To

The Buildings Rent Controller Cum District Munsif, Theni.

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<https://hcservices.ecourts.gov.in/hcservices/>

The Section officer,

V.R.Section, Madurai Bench of Madras High Court, Madurai.



+1cc to Mr.g.Aravinthan, Advocate, SR.4810
+1cc to Mr.D.Nallathambi, Advocate, SR.4453

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