



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.154 of 2017 (PD)
& C.M.P.(MD)No.596 of 2017

A.Raja Sekar

.. Petitioner

Vs.

1.S.Suresh

2.S.Mahesh

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 28.11.2016, passed in I.A.No.53 of 2016 in R.C.O.P.No.48 of 2014, on the file of the III Additional District Munsif Court, Tiruchirapalli.

For Petitioner : Mr.K.Kumaresan

For Respondents : Mr.S.T.Gopinaath

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 28.11.2016, passed in I.A.No.53 of 2016 in R.C.O.P.No.48 of 2014, on the file of the III Additional District Munsif Court, Tiruchirapalli.

2. Facts of the case:-

(i) The petitioner / tenant is the respondent in R.C.O.P.No.48 of 2014 on the file of the District Munsif Court, Tiruchirapalli. The respondents / landlord filed the said R.C.O.P. for eviction on the ground of owners' occupation. The petitioner did not appear and conduct the R.C.O.P. Therefore, an ex-parte order of eviction was passed on 08.07.2014. The respondents filed E.P.No.89 of 2015 on the file of the III Additional District Munsif Court, Tiruchirapalli, to evict the petitioner as per the order dated 08.07.2014, passed in R.C.O.P.No.48 of 2014. The petitioner filed I.A.No.53 of 2016 to condone the delay in filing the application to set aside the ex-parte order. According to the petitioner, no notice was served on him and therefore, he could not appear on the date of hearing and he came to know about the ex-parte order in the R.C.O.P., when he received notice in the E.P., and therefore, he prayed for allowing the R.C.O.P.

(ii) The respondents filed counter and opposed the said application and according to the respondents, the petitioner know about the pendency of the R.C.O.P. and deliberately did not appear



and contest the said R.C.O.P., after receiving notice. The petitioner even after receipt of notice in the E.P., immediately, he did not file this application to set aside the ex-parte order.

(iii) The learned III Additional District Munsif, Tiruchirapalli, upon considering the averments mentioned in the affidavit and the counter affidavit and also considering the materials available on record, dismissed the application holding that the petitioner has not furnished any details as to when he came to know about the ex-parte order passed in the R.C.O.P., and the reason given by him is not valid and sufficient for condoning the delay of 530 days in filing the application to set aside the ex-parte order and has also stated that the petitioner has failed to explain each day of delay.

3. Against the said order of dismissal dated 28.11.2016, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the learned III Additional District Munsif, Tiruchirapalli, is not correct in dismissing the application filed for condonation of delay on the ground that the petitioner has failed to give sufficient reason to condone the delay in filing the application. On the other hand, the learned III Additional District Munsif ought to have seen the petitioner has given valid reason for condoning the delay. He further submitted that the learned III Additional District Munsif has also failed to see that the respondents have filed R.C.O.P.No.211 of 2013 against the petitioner for evicting him in respect of the very same property on the ground of demolition and reconstruction. The respondents, suppressing the said fact, filed the present petition, which is hit by the principles of *res judicata*. The present R.C.O.P., is liable to be dismissed on the ground of 'suppression of facts'.

5. The learned counsel for the respondents/caveator submitted that the petitioner after receiving notice and knowing fully well about the pendency of R.C.O.P., did not appear and contest the R.C.O.P., and prayed for dismissal of the Civil Revision Petition.

6. I have considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record.

7. The petitioner filed I.A. for condonation of delay of 530 days in filing the application to set aside the ex-parte order passed in the R.C.O.P. According to the petitioner, he did not receive any notice in the R.C.O.P. and therefore, he could not appear and contest the R.C.O.P. and he came to know about ex-parte order in the R.C.O.P., only when he received notice in the E.P.

8. From the materials available on record, it is seen that the R.C.O.P. is filed for evicting the petitioner from the petition premises on the ground of willful default. According to the respondents, when they demanded the rent, the petitioner abused the respondents in filthy language and also threatened them with Goondas and 71 months rent is due and payable by the petitioner. The petitioner has not furnished any details in the affidavit to condone the delay as to when he came to know about the ex-parte order passed in the R.C.O.P. The learned III Additional District Munsif,



considering this fact in proper perspective, had dismissed the application for condonation of delay on the ground that the petitioner has not given any valid reason for condoning the delay. The affidavit filed by the petitioner clearly shows that he has not given any valid and sufficient reason for condoning the delay.

9. The Hon'ble Apex Court as well as this Court and the various High Courts have held that the length of delay is not the criteria and the reason given for condonation of delay must be *bona fide* and sufficient to condone the delay. The condonation of delay is the discretion of the Court and the said discretion must be exercised judicially. The Court must be liberal in considering to condone the delay and should not shut down the parties at the threshold itself preventing from putting forth their case. At the same time, the Courts must consider whether the reason given by the parties are *bona fide* or *mala fide* with a view to drag on the proceedings. The Courts must also take into consideration any right that would have accrued to the opposite party.

10. From the facts stated above, it is clear that the intention of the petitioner is only to drag on the proceedings and only with *mala fide* intention, he filed application in I.A.No.53 of 2016 for condonation of delay of 530 days in filing petition to set aside the *ex-parte* order passed in the R.C.O.P. In the circumstances, the learned III Additional District Munsif has rightly considered these facts and dismissed the application.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The III Additional District Munsif,
Tiruchirapalli.

Copy to:

The Section Officer/Record Keeper
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

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MAS/SV-MMS:02.02.2017:3P/3C

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