

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

C.R.P.No.6205 of 2016

ORDER

This civil revision petition is arising out of the order and decree dated 25.10.2016 passed in I.A.No.236 of 2016 in O.S.No.171 of 2015 by the learned Principal Junior Civil Judge, Parvathipuram, Vizianagaram District.

2. The respondent/landlord herein filed suit in O.S.No.171 of 2015 on the file of Principal Junior Civil Judge, Parvathipuram, against the revision petitioner/tenant, for eviction and recovery of arrears of rent. The said suit was decreed *ex parte* on 05.05.2016. Thereafter, the respondent/decreed-holder filed E.P.No.27 of 2016 for delivery of possession of the tenanted premises. The revision petitioner/judgment-debtor filed I.A.No.236 of 2016 in O.S.No.171 of 2015 under Section 5 of Limitation Act, seeking to condone the delay of 81 days in filing the application to set aside the *ex parte* decree dated 05.05.2016. By order impugned, the said petition was dismissed by the trial Court holding that there is no sufficient cause to condone the delay. Aggrieved by the said orders, the present revision is filed.

3. Learned counsel for revision petitioner submits that the petitioner came to know about passing of *ex parte* decree only after service of notice in the E.P. filed against him. He further submits that though the petitioner handed over the written statement to his

counsel for filing before the Court, the same was not filed and therefore, he could not prosecute the suit in time and *ex parte* decree was passed against him and subsequently, he engaged another counsel after service of notice in E.P., and therefore, he sought condonation of delay in filing the application to set aside the *ex parte* decree. Learned counsel further submits that the petitioner has already vacated and handed over the scheduled premises to the decree-holder as he was no longer interested to continue the tenancy in the scheduled premises. He further submits that the petitioner has paid an amount of Rs.12,50,000/- towards arrears of rent and the dispute is only with regard to refund of advance amount by the respondent/landlord.

4. Learned counsel for respondent submits that since there are no sufficient grounds to condone the delay, the trial Court has rightly dismissed the application. He further submits that as the revision petitioner was evading appearance before the Court and not filing the written statement, *ex parte* order was passed against him. He further submits that the amount of Rs.12,50,000/- has been paid by revision petitioner towards arrears of rent and the petitioner has to pay an amount of Rs.63,500/- towards advance rent as on the date of filing of suit. He further submits that the E.P. was closed and the respondent has filed I.A. to reopen the said E.P., and for delivery of possession.

5. In view of the arguments advanced by both the learned counsel, it is obvious that the respondent herein filed suit for eviction

and recovery of arrears of rent and the same was decreed *ex parte* on 05.05.2016 and thereafter, the decree-holder filed E.P., for delivery of possession and recovery of arrears of rent. It is stated by the learned counsel for revision petitioner that the petitioner has vacated the tenanted premises and delivered the possession to the respondent/landlord. Whereas learned counsel for respondent contends that the possession of tenanted premises has not been delivered and it is under lock and key. From this, it is clear that there is a dispute between the parties with regard to delivery of possession and for recovery of arrears of rent. In the circumstances, it is for the trial Court to find out whether the possession of the premises has been delivered and handed over to the respondent or not. In case the revision petitioner has vacated the premises, the trial Court shall decide the payment of arrears of rent, if any.

6. In view of the foregoing reasons and also the reasons mentioned in the affidavit that the delay was not intentional and it was due to non-filing of written statement by his counsel before the Court even though the petitioner handed over the same, the delay of 81 days in filing the application to set aside the *ex parte* decree, is condoned and both parties are directed to agitate their rights before the trial Court.

7. The Civil Revision Petition is allowed, setting aside the order dated 25.10.2016 in I.A.No.236 of 2016 in O.S.No.171 of 2015 on the file of Principal Junior Civil Judge, Parvathipuram. The trial Court is directed to dispose of the suit within three months from the date of

receipt of a copy of this order. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

17th March, 2017
sj

