

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).No.2623 of 2011

and

M.P.No.1 of 2011

K.Devaraj

... Petitioner

Vs

Arulmigu Virupaksheeswarar Koil Devasthanam,
Represented by its
Fit Person and Executive Officer,
Virupaksheeswarar Koil Street,
Mylapore,
Chennai-600 004.

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., against the order and decretal order dated 08.06.2010 made in C.M.A.No.18 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai, confirming the order and decretal order dated 25.06.2008 made in I.A.No.15201 of 2007 in O.S.No.3984 of 2004 on the file of the I Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.Dhanya Kumar

For Respondent : Mr.S.Sridhar

ORDER

The short question involved in this case is that the plaintiff has filed the suit for recovery of rental arrears of Rs.34,505/- and also recovery of possession against the defendant. The defendant has filed his written statement disputing the quantum of rent payable and also resisting the eviction. The case was taken up for trial and when it was posted for cross examination of PW1, the same was not done consequent to which the trial court has set the revision petitioner / defendant exparte and passed an exparte decree. This is under challenge.

2. Heard Mr.T.Dhanya Kumar, the learned counsel for the petitioner and Mr.S.Sridhar, the learned counsel for the respondent.

3. The learned counsel for the petitioner submits that petitioner's substantial interest in stake, and that the petitioner has filed his application in I.A.No.15201 of 2007 within a week of passing of the exparte decree. He further argued that the petitioner was ready for cross-examination on the day appointed for the same, that the case was passed over till after lunch, and when the learned counsel for the petitioner went for cross-examination at 3 p.m., in the post lunch session, he learnt to his dismay that an exparte decree has already been passed in the forenoon session.

4. This is the matter where the Court below ought to have been more sensitive and should have realized that the Courts exist for upholding the cause of justice and that the Courts as remedial forum are not meant for pettifogging issues and create obstruction to the free flow of justice.

5. Taking a broader view of the matter, this Court holds that this a case where the trial court ought to have exercised its discretion in favour of setting aside the exparte decree, and should have given an opportunity for the justice in the cause to survive.

6. Accordingly, this Civil Revision Petition is allowed and the order of the trial court in I.A.No.15201 of 2007 is set aside. In view of the long pendency of the suit since 2004, this Court directs the trial court to complete the trial on or before 31.08.2018. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

11.04.2018

Index:Yes/No
ssn

To:

1. The IV Additional Judge,
City Civil Court, Chennai.
2. The I Additional Judge,
City Civil Court, Chennai

WEB COPY

N.SESHASAYEE, J.,
ssn



**C.R.P.(NPD).No.2623 of 2011
and
M.P.No.1 of 2011**

WEB COPY

11.04.2018