

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1959 of 2015
& C.M.P.No.3193 of 2016

Valarmathi .. Petitioner
Represented by Power Agent
Ramalingam

Vs.

Philippe Marcel .. Respondent
PRAYER: Civil Revision Petition filed under Section 25 of Pondicherry
Buildings Lease and Rent Control Act 1969 against the fair and
decretal order dated 15.12.2014 made in I.A.No.459 of 2014 in
R.C.A.No.25 of 2012 on the file of the III Additional District Judge,
Puducherry.

For Petitioner : M/s.G.Sumitra

For Respondent : Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decretal
order dated 15.12.2014 made in I.A.No.459 of 2014 in R.C.A.No.25
of 2012 on the file of the III Additional District Judge, Puducherry.

2.The petitioner is the tenant and respondent is the owner.

The respondent filed H.R.C.O.P.No.102 of 1997 on the file of the

Rent Control Authority, Pondicherry, for eviction against the petitioner. The petitioner filed counter statement on 10.02.1998. Pending H.R.C.O.P, the respondent filed I.A.No.63 of 2010 under Section 11(4) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 for a direction to the petitioner to pay a sum of Rs.1,59,600/- towards arrears of rent till March 2010 and also the arrears of electricity charges till March 2010.

3.The petitioner filed counter affidavit and denied that she is liable to pay a sum of Rs.1,59,600/- and stated that only a sum of Rs.45,600/- is due by her. The learned Rent Controller, by the order dated 04.09.2012, directed the petitioner to pay a sum of Rs.1,10,400/- on or before 04.10.2012 to the respondent. The petitioner did not pay the amount, but filed R.C.A.No.25 of 2012 on the file of the III Additional District Judge, Puducherry. The petitioner also filed I.A.No.2 of 2013 for filing additional documents. According to the petitioner, on 12.06.2014, both the petitioner and counsel were not present in the Court and the learned Appellate Authority dismissed the appeal by exparte judgment.

4.The petitioner filed I.A.No.459 of 2014 under Rule 12 & 13 of Pondicherry Building Lease and Rent Control Rules, 1980 to set

aside the judgment and decree dated 17.07.2014 made in R.C.A.No.25 of 2012 and for an order of re-hearing the appeal. According to the petitioner, her Power of Attorney is a Government employee working at Karaikal. She was informed by her counsel that only after filing counter affidavit by the respondent in I.A.No.2 of 2013, the R.C.A.No.25 of 2012 and I.A.No.2 of 2013 will be taken up for final hearing together. The counsel for petitioner was pre-occupied in the college admission of his son and could not attend the Court proceedings and lost track of hearing dates and prayed to set aside the judgment and decree dated 17.07.2014 made in R.C.A.No.25 of 2012.

5.The respondent filed counter affidavit and denied all the allegations and contended that the counsel for the petitioner took adjournments on number of hearings and subsequently, both the Power of Attorney of the petitioner and counsel were not present. The learned Judge considering all the materials on record and arguments of the counsel for the respondent, passed the judgment on merits. The petitioner, with a view to avoid depositing arrears of rent and to drag on the proceedings, has come out with the present application. The judgment is not an exparte judgment. It was passed on merits and prayed for dismissal of the said application.

6.The learned Judge considering averments in the affidavit, counter affidavit, materials on record and the fact that the counsel for the petitioner partly argued the matter on 11.02.2013 and took time till 12.06.2014 for further arguments and did not appear on that day, appeal was adjourned to 10.07.2014, the learned counsel for the petitioner was present on that day, but did not argue the appeal and after hearing the arguments of counsel for the respondent, the judgment was pronounced on 17.07.2014, dismissed the application filed by the petitioner, holding that remedy available to the petitioner is only by way of an appeal.

7.Against the said order of dismissal dated 15.12.2014 made in I.A.No.459 of 2014 in R.C.A.No.25 of 2012, the present Civil Revision Petition is filed by the petitioner.

8.Heard the learned counsel for the petitioner and perused the materials available on record.

9.The learned counsel for the petitioner contended that the documents filed along with I.A.No.2 of 2013 are relevant to decide the issue in appeal and having allowed I.A.No.2 of 2013, without

considering the said documents, the learned Appellate Authority passed the judgment, dismissing the appeal. The petitioner counsel was not present and the learned Appellate Authority without hearing the arguments of the petitioner, has passed the judgment and therefore, it is only an ex parte judgment.

10. The arguments of the learned counsel for the petitioner is contrary to the facts. From the impugned judgment of the learned Appellate Authority, it is seen that R.C.A was taken up for final hearing and counsel for the petitioner argued the appeal partly on 11.02.2013 and took time for further arguments from that date onwards, till 12.06.2014. On that day, there was no representation for petitioner either personally or through counsel. The appeal was adjourned to 10.07.2014. On that day, the counsel for the petitioner was present and after hearing the counsel for respondent, the impugned judgment was passed in the R.C.A on 17.07.2014.

11. From the records, it is seen that the learned Appellate Authority has heard the arguments of the respondent and considered the documents and delivered the judgment. The above facts show that the judgment delivered on 17.07.2014 by the learned Appellate Authority is not an ex parte judgment and it was

passed on merits. The learned Judge dismissed the application filed to set aside the said judgment dated 17.07.2014 by considering the above facts in proper perspective by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 15.12.2014 made in I.A.No.459 of 2014 in R.C.A.No.25 of 2012.

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

19.02.2018

Index :: Yes/No
gsa

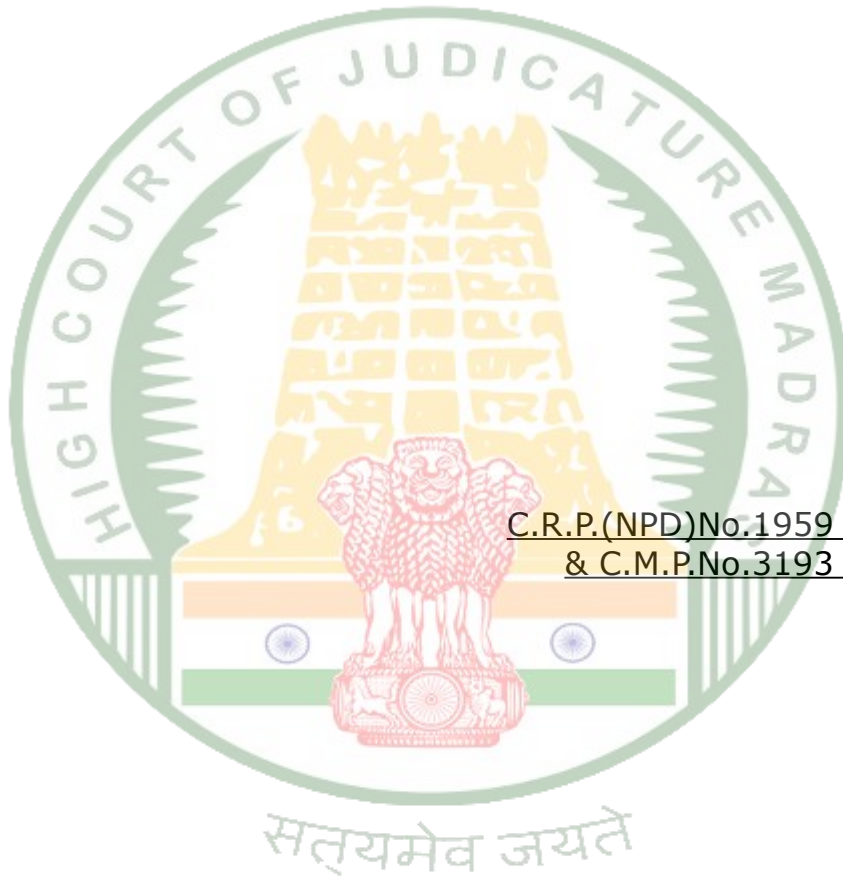
To

The III Additional District Judge,
Puducherry.

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V.M.VELUMANI,J.

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