

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

The HONOURABLE **MS. JUSTICE V.M.VELUMANI**

C.R.P.(PD)Nos.442 to 446 of 2013

A.K.S.Mohamed Nazar

.. Petitioner in all
five CRPs.

Vs.

N.M.Noorul Ameen

.. Respondent in all
five CRPs.

Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, against the judgment and decree dated 03.10.2012 made in R.C.A.Nos.68 to 72 of 2011 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, which are filed against the fair and decretal order dated 18.06.2010 made in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996 and M.P.Nos.559 to 562 of 2005 in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996 on the file of the XV Small Causes Court, Chennai.

In all C.R.Ps.

For Petitioner : Mr.K.Bijai Sunder

For Respondent : Mr.M.Ganeshan

COMMON ORDER

The Civil Revision Petitions are filed against the judgment and decree dated 03.10.2012 made in R.C.A.Nos.68 to 72 of 2011 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, which are filed against the fair and decretal order dated 18.06.2010 made in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996 and M.P.Nos.559 to 562 of 2005 in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996 on the file of the XV Small Causes Court, Chennai.

2.In all the five Civil Revision Petitions, the parties and issues are one and the same and hence, they are disposed of by this common order.

3.The petitioner is tenant and respondent is landlord. The respondent filed R.C.O.P.No.2292 of 1996 on the file of the XV Small Causes Court, Chennai, for eviction on the ground of wilful default and owner's occupation. In the said R.C.O.P., the petitioner did not appear

and an ex parte order of eviction was passed on 26.03.1997. The respondent filed E.P.No.318 of 2005 to take possession of the petition premises as per the eviction order. An ex parte delivery was ordered and the respondent took delivery of the petition premises. The petitioner filed four M.P.Nos.559 to 562 of 2005 under Rule 12(3) of the Tamil Nadu Buildings (Lease and Rent Control) Rules, (i) to set aside the ex parte order of eviction dated 12.07.2005 passed in E.P.No.318 of 2005, (ii) not to record delivery of the execution of the eviction order based on the bailiff's report, (iii) to set aside the ex parte order of eviction dated 26.03.1997 passed in R.C.O.P.No.2292 of 1996 and (iv) to redeliver the petition premises to the petitioner.

4. According to the petitioner, notice in R.C.O.P.No.2292 of 1996 and E.P.No.318 of 2005 was not served on him. The respondent manipulated the records as though notice in the R.C.O.P. and E.P. was served on the petitioner. By paper publication only, notice was served in R.C.O.P. The said notice of service is not proper service. As far as notice in the E.P. is concerned, respondent sent only private notice by Registered Post with Acknowledgment Due and did not take any steps to serve the petitioner through the Court. The respondent with the help of postman, forged the signature of the petitioner as though

notice was served on the petitioner. The construction of the building was completed only in the year 1993 and R.C.O.P. was filed in the year 1996 i.e. within five years of construction. The provision of Rent Control Act is not applicable to the present proceedings. The respondent is not owner of the property and the petition premises is owned by Ammakamma Charities.

5.The respondent filed common counter affidavit and denied all the averments made by the petitioner and contended that the petitioner was tenant under the respondent from the year 1989 on a monthly rent of Rs.11,250/-. It is not correct to state that the monthly rent is Rs.3,000/- as alleged by the petitioner. The petitioner did not pay advance of Rs.8,15,000/-. Notice in the R.C.O.P. as well as E.P. sent to the petitioner was duly served as per the procedure. The petitioner was aware of the order of eviction passed in the E.P. and requested the respondent not to execute the same. The petitioner was originally carrying on business in gold covering and he closed the said business and is running P.C.O. The petitioner is unable to pay the rent and he has committed default and hence, the respondent has filed R.C.O.P. on the ground of wilful default and owner's occupation. Therefore, he has prayed for dismissal of all the four M.Ps.

6. Before the learned Rent Controller, in M.P.Nos.559 to 562 of 2005, the petitioner examined himself as P.W.1 and marked 20 documents as Exs.P1 to P20. The respondent examined himself as R.W.1 and did not mark any documents. The Court document was marked as Ex.C4/private notice in E.P.

7. The learned Rent Controller considering the averments made in the affidavit, common counter affidavit and materials available on record, terminated E.P. and dismissed all the M.Ps. filed by the petitioner.

8. Against the said order of dismissal dated 18.06.2010 made in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996 and four M.P.Nos.559 to 562 of 2005 in E.P.No.318 of 2005, the petitioner filed five R.C.A.Nos.68 to 72 of 2011 on the file of the VIII Small Causes Court, Chennai.

9. The learned Appellate Authority on verification of the Court records, held that notice in R.C.O.P. was sent to the petitioner through Court, which was affixed in the petition premises as 'door was locked'. Again fresh notice was ordered and in second time, again notice was

affixed in the petition premises as 'door was locked'. As per the order of the Court ordering substituted service, notice was affixed in the Court notice board and paper publication was effected. The learned Appellate Authority dismissed all the five R.C.As. holding that as per Ex.C4, notice in the E.P. was served on the petitioner on 05.07.2005. The petitioner has not filed any application for condonation of delay in filing application to set aside the exparte order of eviction and E.P. was terminated, since possession was handed over to the respondent, after due service.

10. Against the said judgment and decree dated 03.10.2012 made in R.C.A.Nos.68 to 72 of 2011, which are filed against the fair and decretal order dated 18.06.2010 made in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996 and M.P.Nos.559 to 562 of 2005 in E.P.No.318 of 2005 in R.C.O.P.No.2292 of 1996, the present five Civil Revision Petitions are filed by the petitioner/tenant.

11. The contention of the learned counsel for the petitioner is that notice was not served on the petitioner and as per the Rule 22 of Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, service by publication is not proper service. Similarly, in the E.P. also, notice was

not served on the petitioner and the Courts below failed to appreciate the facts and rules properly. Further, the learned counsel for the petitioner has contended that the signature in Ex.C4 is not the signature of the petitioner. The respondent has failed to prove that the petitioner signed Ex.C4/private notice in E.P. and received notice in E.P.

12.The learned counsel for the petitioner has relied on the following judgments in support of his contentions:

(i) **1999 (II) CTC 247 (Thangamani v. Krishnan);**

"9. It is clear from the aforesaid Rule (d) that if none of the means aforesaid is available, the notice has to be affixed in some conspicuous part of the last known place of residence of business. The learned counsel for the respondent attempted to state that notice was also affixed, but no record has been filed to support and substantiate the same. However, service of notice through publication is not contemplated under these rules. The Rent Control Act is a special enactment and it has got separate rules to be followed. This being so, the notice has to be sent in accordance with the prescribed rules and if the notice was sent in any other manner, it cannot be deemed to be a proper service under law. Considering the fact that publication is not one of the modes provided under Rule 22, I am of the view that the service is not

a proper one so far as the petitioner is concerned. Moreover, when the party has already filed a caveat, after the dismissal of both the rent control petitions, he would not have evaded service of notice if sent to the proper address."

(ii) ***Order dated 15.07.2015 made in C.R.P.(NPD)No.1263 of 2014 (M.Sakthivel and others v. Sankareswari);***

"31. The decree in question was passed by the learned Appellate Judge without analyzing the facts of the case or documents relating to title. The learned Trial Judge decreed the suit in a routine manner presumably under the impression that in case the defendants are set exparte, the suit should be decreed as a matter of course without testing the bona fides of the claim made by the plaintiff.

(iii) ***2010 (5) CTC 827 (Bhagmal and others v. Kunwar Lal and others);***

"7. In our opinion, the High Court was not justified in taking a hypertechnical view. We have seen all the orders. It is quite clear from the Trial Court's order that the Trial Court entertained the application on merits. The Trial Court undoubtedly has referred to the reply of the respondents to the effect that the application for setting aside the ex-parte decree was

beyond the limitation. However, the view taken by the Trial Court was based more on the merits. In fact, it went on to record the finding that there was no compromise and the theory of compromise and delay on account of that was not acceptable. The Trial Court has more or the less based its findings regarding delay on the basis of the order sheets. That was not right as the order sheets nowhere bore the signatures of the parties. They were mechanically written mentioning "parties as before". Therefore, the Trial Court did not throw the application under Order IX, Rule 13 merely on the basis of the fact that no application for condonation of delay was made. It went on to consider the delay aspect as well as the merits and even allowed the parties to lead evidence. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellants/defendants had clearly pleaded that they did not earlier come to the Court on account of the fact that they did not know about the order passed by the Court proceeding ex-parte and also the ex-parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellants/defendants for making the Order IX Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay.

The question of filing Order IX Rule 13 application was, in our opinion, rightly considered by the appellate Court on merits and the appellate Court was absolutely right in coming to the conclusion that appellants/defendants were fully justified in filing the application under Order IX Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex-parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hyper-technical view that no separate application was filed under Section 5. The application under Order IX Rule 13 CPC, itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice. Here was a party which bona fide believed the assurance given in the compromise panchnama that the respondent No.1/plaintiff would get his suit withdrawn or dismissed. The said compromise panchnama was made before the elders of the village. Writing was also effected, displaying that compromise. The witnesses were also examined. Under such circumstances, the non-attendance of the appellants/defendants, which was proved in the further proceedings, was quite justifiable. The

appellants/defendants, when ultimately came to know about the decree, had moved the application within 30 days. In our opinion, that was sufficient.”

13.Per contra, the learned counsel for the respondent contended that on verification of records only, the Courts below have held that notice has been served on the petitioner as per Rule 22 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974. The petitioner, who is disputing the signature in Ex.C4, has not taken any steps to substantiate his claim and prayed for dismissal of the Civil Revision Petitions.

14.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

15.The only point for consideration in all the Civil Revision Petitions is whether notice was served on the petitioner in R.C.O.P. as well as in E.P. as per the Tamil Nadu Buildings (Lease and Rent Control) Rules.

16.From the impugned judgment of the learned Appellate Authority, it is seen that notices sent to the petitioner in the R.C.O.P.

through Court on two occasions were affixed on the petition premises as 'door was locked' and thereafter only, substituted service was ordered. As per the order of the Court, paper publication was effected and notice was affixed in the Court notice board. Paper publication was in addition to affixture in petition premises as well as by affixture in Court notice board. The procedure adopted by the learned Rent Controller is in compliance with the Rules regarding service of notice on the respondent.

17.As far as service of notice in the E.P. is concerned, the contention of the learned counsel for the petitioner is that the respondent with the help of postman, has forged the signature of the petitioner in Ex.C4 and it was served on 'Seema Gold covering' and not to the petitioner by Registered Post with Acknowledgment Due. The learned counsel for the petitioner further contended that the petitioner is disputing the signature in Ex.C4 and it is for the respondent to prove that the signature in Ex.C4 is the signature of the petitioner. The above said contentions are without merits. When the petitioner has disputed the signature in Ex.C4 and contended that the respondent has fabricated the documents with the help of postman, the petitioner ought to have taken steps to examine the postman and taken steps to

send the signature in Ex.C4 along with his admitted signature to the handwriting expert for comparison and to get opinion with regard to the genuineness of Ex.C4. In view of such failure, the contention of the learned counsel for the petitioner that the respondent has failed to prove that the signature in Ex.C4 is the signature of the petitioner, cannot be accepted. The Courts below have held that petitioner was served in R.C.O.P. as well as E.P. as per the Rules and petitioner's contentions are contrary to records.

18. All the findings of the learned Rent Controller were confirmed by the learned Appellate Authority by appreciating the facts and Court records. The learned Appellate Authority is the final authority of question of facts. Only when the finding of the Courts below is arbitrary, perverse or without any evidence, this Court can interfere in the said findings of the fact. In the present case, findings of the fact of the Courts below are based on the Court's records. The Courts below have appreciated all the materials on record in proper perspective and dismissed all the M.Ps., terminated E.P. and dismissed all the appeals. There is no arbitrariness, perverseness or illegality in the judgment of the learned Appellate Authority warranting interference by this Court. In view of the facts stated above, the judgments relied on by the

learned counsel for the petitioner do not advance the case of the petitioner.

19.In the result, all the five Civil Revision Petitions are dismissed. No costs.

16.03.2018

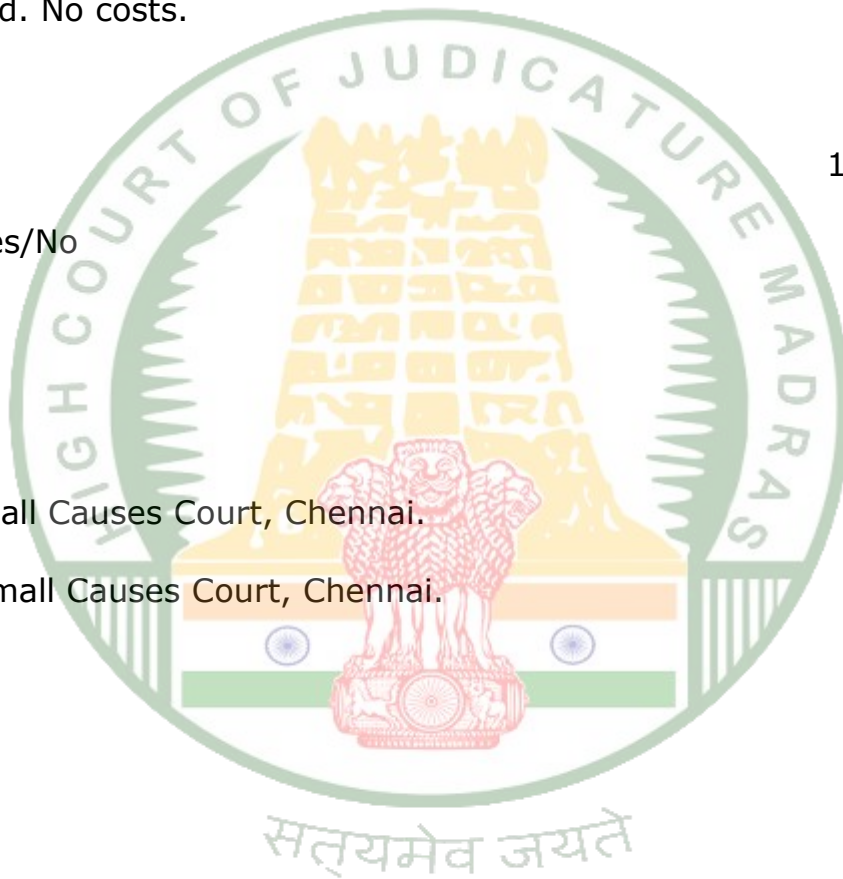
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To

1.XV Small Causes Court, Chennai.

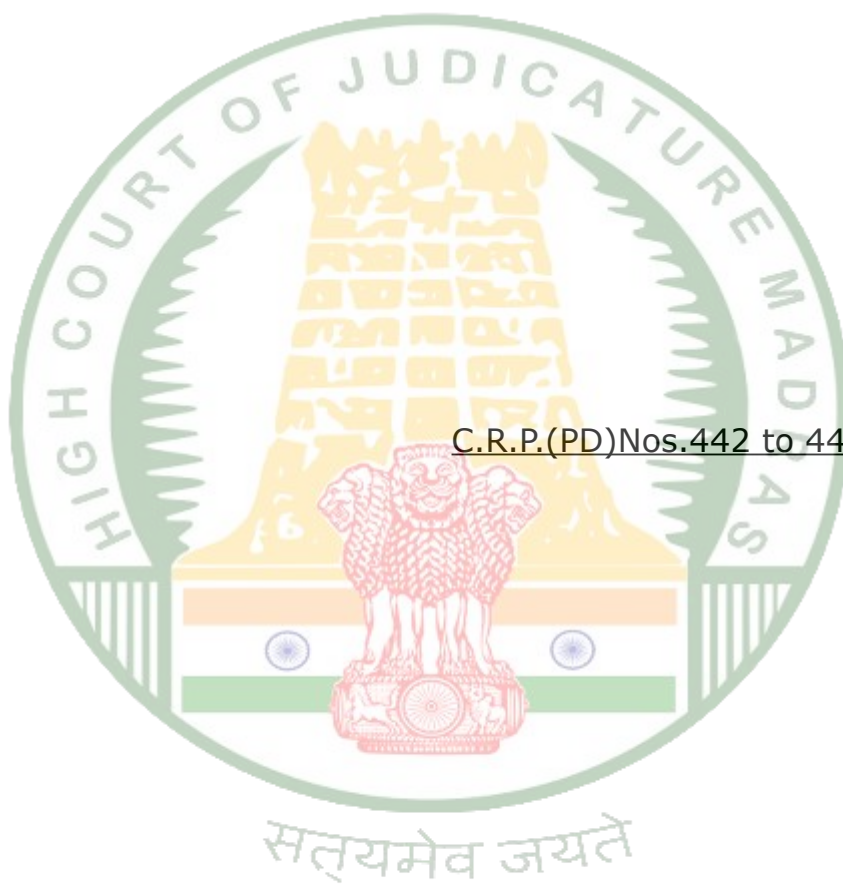
2.VIII Small Causes Court, Chennai.



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V.M.VELUMANI,J.

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