



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.06.2018

DELIVERED ON : 20.11.2018

WEB COPY

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.326 and 1092 of 2018

and

CMP (MD) Nos.1527 and 4738 of 2018

Raja

.. Petitioner in both the CRPs

vs

Santhi

.. Respondent in both the CRPs

Civil Revision Petition No.326 of 2018 filed under Section 115 of Civil Procedure Code against the order dated 14.12.2017 in E.A.No.71 of 2017 in E.P.No.8 of 2017 in R.C.O.P.No.1 of 2017 on the file of the District Munsif Court, Tiruvaiyaru.

Civil Revision Petition No.1092 of 2018 filed under Article 227 of Constitution of India against the order dated 12.04.2018 in I.A.No.8 of 2017 in R.C.O.P.No.1 of 2017 on the file of the District Munsif Court (Rent Controller), Tiruvaiyaru.

(In both the CRPs)

For Petitioner	:	Mr.R.Nanda Kumar
For Respondent	:	Mr.P.Vadivel

COMMON ORDER

C.R.P.(MD) No.326 of 2018 is directed against the order of the learned District Munsif, Thiruvaiyaru dated 14.12.2017 in E.A.No.71 of 2017 in E.P.No.8 of 2017 in R.C.O.P.No.1 of 2017, allowing the petition on payment of cost of Rs.1,000/- payable by the respondent to the petitioner.

2. C.R.P.(MD) No.1092 of 2018 is directed against the order of the learned District Munsif, Thiruvaiyaru dated 12.04.2018 in I.A.No.8 of 2017 in R.C.O.P.No.1 of 2017, allowing the petition on payment of cost of Rs.3,000/- payable by the respondent to the

3. Since the parties, property and the issue involved in both

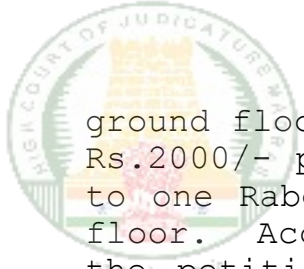


the revisions are one and same, both the revisions were taken up together and disposed of by this common order.

4. The petitioner is the landlord and the respondent is the tenant in R.C.O.P.No.1 of 2017. R.C.O.P.No.1 of 2017 has been filed by the petitioner for eviction of the respondent from the petition mentioned premises on the ground of wilful default. In R.C.O.P.No.1 of 2017 an ex parte order was passed on 19.04.2017.

5. The respondent herein filed I.A.No.8 of 2017 under Section 5 of the Limitation Act to condone the delay of 209 days in filing petition to set aside the ex parte decree dated 19.04.2017. In her petition, the respondent alleged that the sons of the petitioner were jointly running chicken centre and due to loss in the business, the respondent was unable to pay the housing loan obtained from Repco Bank. In order to grab the house property and also under the influence of alcohol to the elder son of the respondent, the petitioner obtained sale deed with regard to the petition mentioned property from her without consideration and advised her to live in the house. The petitioner informed the respondent to re-convey the property in favour of the respondent after discharging the loan. When the Court staff attempted to serve notice on the respondent, the petitioner came and advised the respondent not to receive the notice and sent back and then only she will get the house. Believing the words of the petitioner and also without knowing the contents of the notice, the respondent returned the notice several times. In the mean while, on 03.11.2017, when the Court Amin with police came to the petition mentioned premises for vacation of the respondent, she came to know that the petitioner had filed RCOP and obtained an ex parte decree in his favour. Due to ill-advise of the petitioner, the respondent had not received the notice sent by the Court and appeared before the Court. Since the respondent was suffering diabetic and was bedridden, she could not file the petition to set aside the ex parte decree and a delay of 209 days occurred in filing the petition to set aside the ex parte decree. The delay is neither wilful nor wanton. Hence, prayed for condonation of delay of 209 days in filing the petition to set aside the ex parte decree.

6. Resisting I.A.No.8 of 2017, the petitioner filed counter stating that in order to discharge the loan availed by the respondent, she and her sons agreed to sell the property in his favour and had entered an agreement of sale on 17.02.2015 for a sum of Rs.32.00 lakhs and received advance of Rs.1.00 lakh. Subsequently, after receiving the entire sale consideration, the respondent executed the sale deed on 09.3.2015 thereby the petitioner discharged the loan amount of Rs.11,26,783/- to the Repco Bank and issued cheque for Rs.8,73,217/- and paid cash of Rs.11.00 lakhs. It is stated that the petition mentioned house consisting of two portions in the ground floor and first floor in single portion. After selling the petition mentioned property by the respondent to the petitioner, the petitioner let a portion of the property in



ground floor purchased by him to the respondent on a monthly rent of Rs.2000/- per month and another portion in the ground floor was let to one Rabert. The petitioner shifted his residence to the first floor. According to the petitioner, the respondent was residing in the petition mentioned property as tenant. In order to evict the respondent from the petition mentioned premises, the petitioner had filed R.C.O.P.No.1 of 2017 and after knowing the filing of the RCOP, the respondent wantonly failed to appear before the Court. It is stated that in order to execute the decree, the petitioner filed Execution Petition and when the Court Amin visited and deliver possession of the property with the assistance of police, the respondent had filed the petition to set aside the ex parte decree with a delay of 209 days. In order to drag on the Execution Petition, the respondent had filed the petition and there was no bona fide in the petition and prayed for dismissal of the same.

7. Similar is the allegation and counter allegation of the respective parties in E.A.No.71 of 2017 filed by the respondent to set aside the ex parte order dated 07.09.2017 passed in E.P.No.8 of 2017.

8. Upon consideration of the rival submissions, the learned Rent Controller, by an order dated 12.04.2018, allowed I.A.No.8 of 2017 on payment of cost of Rs.3,000/- by the respondent to the petitioner on or before 06.06.2018, failing which the petition shall stand automatically dismissed.

9. As far as E.A.No.71 of 2017 is concerned, the learned Executing Court allowed the petition on payment cost of Rs.1,000/- payable by the respondent to the petitioner, failing which the petition shall stand dismissed.

10. Assailing the orders of the Rent Controller/Executing Court, the learned counsel for the petitioner submitted that the Rent Controller failed to note that the respondent has kept quiet till the EP was filed and when adverse order was passed in the EP, the respondent filed a petition to set aside the decree along with delay condonation petition. He would submit that each and every delay has not been properly explained by the respondent and the intention of the respondent is to squat on the property after executing the sale deed in favour of the petitioner and without paying any rent.

11. As far as C.R.P.(MD)No.326 of 2018 is concerned, the learned counsel for the petitioner submitted that in the Execution Petition, the respondent refused to receive the notice thereby allowing the EP to be ordered. He would submit that the petition filed by the respondent is barred by limitation as the same was filed beyond 30 days. In order to drag on the proceedings, the respondent had filed the petition and prayed for setting aside the order of the Executing Court.



12. Reiterating the order of the Rent Controller, the learned counsel for the respondent submitted that taking note of the issue involved in the main RCOP that whether there was any relationship as landlord and tenant between the petitioner and the respondent and in order to render justice and also to consider the matter on merits, the Rent Controller allowed I.A.No.8 of 2017 on condition. As far as E.A.No.71 of 2017 is concerned, the Executing Court observed that in order to give a chance to the respondent, set aside the ex parte order passed in E.P.No.8 of 2017 on payment of cost. The learned counsel further submitted that there is no illegality in the orders passed by the Rent Controller/Executing Court and prayed for dismissal of both the revisions.

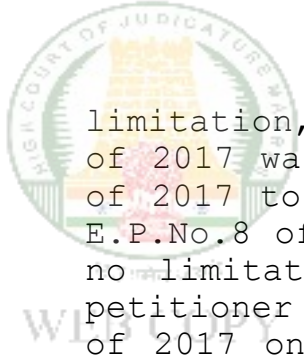
13. I have heard Mr.R.Nandakumar, learned counsel for the petitioner and Mr.P.Vadivel, learned counsel for the respondent in both the Civil Revision petitions and also perused the materials available on record.

14. According to the petitioner, he is the owner of the property purchased from the respondent for valuable consideration and after purchase, he let a portion of the property to the respondent on a monthly rent of Rs.2,000/-. Since the respondent committed default in paying the rent, he had filed R.C.O.P.No.1 of 2017 and despite notice, the respondent had failed to appear before the Rent Controller and on 19.04.2017, an ex parte decree has been passed. Pursuant to the ex parte decree, the petitioner had filed E.P.No.8 of 2017 for execution of the decree, wherein also the respondent remained ex parte and when the Executing Court passed an order of delivery, the respondent has come up with petition to set aside the ex parte decree with a delay of 209 days. According to the petitioner, the delay was not explained properly and in order to drag on the EP, the respondent has filed the petition.

15. On the other hand, it is the case of the respondent that she had not executed any sale deed as alleged by the petitioner and in the capacity of the owner of the property, she was in possession and enjoyment of the petition mentioned property. There was no landlord and tenant relationship between them. As far as delay in filing the petition to set aside the ex parte decree is concerned, it is the say of the respondent that when the Court notice came, the petitioner advised her not to receive the same and believing his words, the respondent had not received the notice. It is also the say of the respondent that she got a good case on merits.

16. On a perusal of the pleadings, it is seen that the respondent denied the execution of the sale deed said to have been executed by her in favour of the petitioner and also denied the landlord and tenant relationship between them. This aspect is to be decided in the main RCOP.

17. As far as E.A.No.71 of 2017 is concerned, though the petitioner raised an objection that the petition was barred by



limitation, nothing has been produced to show that really E.A.No.71 of 2017 was barred by limitation. The respondent filed E.A.No.71 of 2017 to set aside the ex parte order dated 07.09.2017 passed in E.P.No.8 of 2017. For setting aside the ex parte order, there was no limitation period and also in order to give a chance to the petitioner to defend the EP, the Executing Court allowed E.A.No.71 of 2017 on payment of costs. Considering the dispute involved in the main R.C.O.P.No.1 of 2017, the Executing Court was right in allowing E.A.No.71 of 2017 on cost and this Court finds no infirmity and/or illegality in the order in E.A.No.71 of 2017.

18. In so far as the order of the Rent Controller dated 12.04.2018 passed in I.A.No.8 of 2017 is concerned, taking note of the submissions of both sides and also finding that really a relationship of landlord and tenant exist between the petitioner and the respondent and the said issue has to be decided on merits and also in order to afford an opportunity to the respondent, the Rent Controller allowed I.A.No.8 of 2017 on payment cost. This Court finds that in order to render justice, the Rent Controller allowed I.A.No.8 of 2017 on payment of costs after satisfying the reasons for the delay. I find that there is no illegality and/or perversity in the order of the Rent Controller and the revision preferred against the order passed I.A.No.8 of 2017 is liable to be dismissed.

19. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The District Munsif,
Thiruvaiyaru.

+ 2 CC TO Mr.R.NANDAKUMAR, ADVOCATE IN SR No. 96386 & 96385

VSV

TE/PM/SAR-1 : 10/12/2018 : 5P/4C

order made in
C.R.P. (MD) (PD) Nos.326 and 1092 of 2018 and
CMP (MD) Nos.1527 and 4738 of 2018
20.11.2018