



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.1338 of 2018 (PD)
and
CMP (MD)No.5728 of 2018

Mahalakshmi

... Petitioner

Vs.

1.Ramasamy

2.Radhamani

... Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.32 of 2017 in RCOP No.1 of 2015 on the file of the Rent Control Authority (District Munsif Court), Palani dated 27.03.2018.

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.M.R.Murugesan for R1 & R2

ORDER

The tenant is the revision petitioner. The respondents filed RCOP No.1 of 2015 on the file of the Rent Control Authority (District Munsif Court), Palani for evicting the revision petitioner on the grounds of willful default and demolition and re-construction. The revision petitioner was set exparte. Thereafter, EP No.32 of 2016 was filed to enforce the eviction order. Much later, on 09.07.2017, the revision petitioner filed a petition for setting aside the exparte eviction order. Since there was a delay of 444 days in filing the set aside petition, IA No.32 of 2017 was filed to condone the same. The court below by order dated 27.03.2018 dismissed the said interlocutory application. Questioning the correctness of the said order, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the landlords/respondents herein contended that the order in question is appealable and that therefore, invoking the jurisdiction of this Court under Article 227



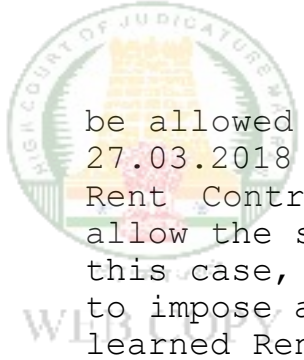
of the Constitution of India is not justified. In this regard, he placed reliance on the decision of the Madras High Court reported in 2007 (3) CTC 822 (S.M.Chandrasekaran vs. S.S.Jayamani). He also castigated the conduct of the petitioner. According to the learned counsel for the respondents, the rental arrears mounted to more than Rs.12.00 lakhs even at the time of filing of the RCOP. He pointed out that the revision petitioner with an intention to drag on the proceedings had allowed the matter to go exparte.

4.This Court must record that there is considerable force in each of the contentions raised by the learned counsel for the respondents. The order in question is undoubtedly an appealable one. But then, this Court is of the view that substantial justice must be rendered. It is not in dispute that the property originally belonged to the revision petitioner. The revision petitioner had executed a sale deed in favour of the respondents on 21.01.2013. Thereafter, the lease agreement was entered into between the parties. The case of the revision petitioner is that the revision petitioner had availed a loan from the respondents and that the sale deed itself is sham and nominal and the monthly rent payable as per the agreement dated 31.05.2013 is actually the interest component. The revision petitioner had subsequently filed OS No.38 of 2016 on the file of the District Court, Dindigul for declaring that the sale deed is sham and nominal. It was subsequently dismissed for default and the learned counsel for the revision petitioner submits that the suit has since been restored to file and that PW.1 was examined and cross examined.

5.Therefore, this Court is of the view that the revision petitioner is having a triable defence. This aspect of the matter impels this Court to adopt a liberal and indulgent approach. Even though the revision petitioner has the remedy of appeal, it can never be stated that she has no right to move this Court by invoking the jurisdiction under Article 227 of the Constitution of India. It is a constitutional remedy and therefore, no impediment can be put against it. Of course, there are number of limiting factors. But then, they do not pertain to the jurisdiction of this Court. This Court is therefore of the view that in this case in order to render substantial justice, the revision petitioner deserves to be given one more opportunity to contest the RCOP on merits.

6.But then, as rightly pointed out by the learned counsel for the respondents, the conduct of the petitioner is such that she has to be put on terms. The learned counsel for the revision petitioner on instructions from the revision petitioners undertakes to pay the respondent a sum of Rs.50,000/- towards costs. The revision petitioner shall pay the said amount within a period of four weeks. It is made clear that under no circumstances an application for extension of time will be entertained.

7.On such payment being made by the revision petitioner, the RCOP shall stand restored to file and the revision petitioner shall



be allowed to contest the same on merits. The impugned order dated 27.03.2018 dismissing I.A No.32 of 2017 is set aside. The learned Rent Controller shall also number the set aside application and allow the same. Considering the special circumstances obtaining in this case, the learned counsel for the respondents wanted this court to impose a time limit for conclusion of the RCOP proceedings. The learned Rent Controller shall conclude the entire proceedings within a period of four months from the date of receipt of a copy of this order. This Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar(CS-III)

To

The Rent Control Authority (District Munsif), Palani

+1cc to Mr.D.Venkatesh, Advocate, SR.No.79929

+1cc to Mr.BABU RAJENDRAN, Advocate, SR.No. 79903

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SKM

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