



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD) No.1401 of 2018 (NPD)
and
CMP(MD)No.6042 of 2018

Mohamed Ibrahim ... Petitioner/Petitioner/Respondent

Vs.

Ravichandran
Rep.by his power agent
N.Anandhavalli ... Respondent/Respondent/Petitioner

Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records pertaining to the fair and decreetal order passed by the learned Principal District Munsif, Madurai Town dated 27.04.2017 in I.A No.236 of 2017 in RCOP No.242 of 2013 and set aside the same.

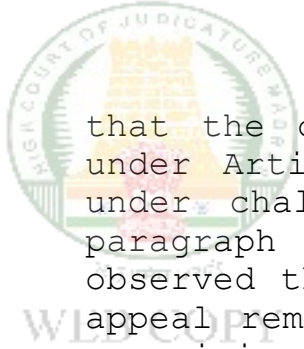
For Petitioner : Mr.S.M.A.Jinnah

For Respondent : Mr.Rajaraman

ORDER

The respondent herein filed RCOP No.242 of 2013 on the file of the Rent Controller/Principal District Munsif Court, Madurai Town for evicting the revision petitioner herein on the grounds of willful default and change of user. On account of the non appearance of the revision petitioner, an exparte order came to be passed on 27.04.2017. To set aside the same, the revision petitioner took steps. But then, there was a delay of 30 days in filing the said application. To condone the delay, the revision petitioner filed I.A No.236 of 2017. The court below by the order impugned in this CRP dismissed the said I.A. Questioning the same, this revision petition has been filed.

2.When the matter was taken up for hearing, the learned counsel appearing for the landlord/respondent pointed out that the proper course open to the revision petitioner would be to file an appeal before the appellate authority and that Article 227 of the Constitution of India cannot be invoked. He drew the attention of this Court to the decision reported in 2007 (3) CTC 822 (S.M.Chandrasekaran vs. S.S.Jayamani and others). It is true that in the aforesaid decision, the learned Judge has observed



that the court has no power to entertain the revision petition under Article 227 of the Constitution of India since the order under challenge is appealable. But then, in the preceding paragraph No.8, the learned Judge of this Court has specifically observed that he is conscious of the fact that simply because the appeal remedy is available, the High Court is not precluded from exercising its power under Article 227 of the Constitution of India.

3.Hence, I hold that this civil revision petition is maintainable. But then, a litigant cannot invoke this power as a matter of course or under normal circumstances. In this case, if I was dealing with the matter at the admission stage, I would have relegated the revision petitioner to go before the appellate authority. Since notice was ordered and the respondent had also entered appearance, I am inclined to dispose of the matter on merits. The delay occasioned in this case is only 30 days. It cannot be said to be inordinate. I am satisfied that sufficient cause has been made out.

4.Therefore, the order impugned in this civil revision petition is set aside. This Civil Revision Petition is allowed. The Rent Controller is directed to number the set aside application and allow the same. The revision petitioner is given one more opportunity to contest the RCOP on merits. But then, the revision petitioner will have to be necessarily put on terms. On account of his conduct only the matter has been hanging fire from April 2017 onwards. The revision petitioner shall pay a sum of Rs.5,000/- as costs to the landlord within a period of three weeks from the date of receipt of a copy of this order to the learned counsel appearing for the respondent in this CRP. Upon proof of such payment, the Rent Controller shall number the set aside application and allow the same. Since the RCOP is of the year 2010, a direction is given to the Rent Controller to dispose of the same on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. The tenant shall also clear the rental arrears in the meanwhile. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Principal District Munsif, Madurai Town.

+1CC TO M/S.S.M.A.JINNAH, ADVOCATE, SR.NO.89352

+1CC TO M/S.M.RAJARAMAN, ADVOCATE, SR.NO.89348

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and

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BUC(08.07.2019) 3P 4C