



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1483 of 2018

and

C.M.P.(MD) No.6412 of 2018

Mohideenbi

... Petitioner/Petitioner/Respondent

-vs-

1.H.Khaja Mohideen

2.K.Abdul Latif

... Respondents/Respondents/Petitioners

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 14.03.2018, made in I.A.No.140 of 2017 in R.C.O.P.No.54 of 2014, on the file of the learned Principal District Munsif Court, Madurai Town.

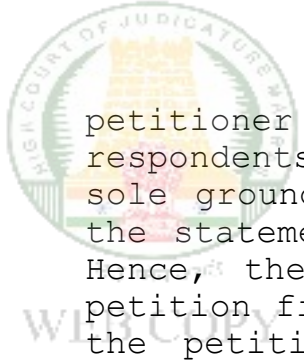
For Petitioner	: Mr.P.Suresh Kumar
For R1	: M/s.G.Vidhya Maheswaran
For R2	: No Appearance

O R D E R

The revision petitioner is the respondent in R.C.O.P.NO.54 of 2014, on the file of the learned Principal District Munsif Court, Madurai Town. The petitioners / respondents herein in this petition sought the relief of eviction against the respondent / tenant / petitioner herein directing him to vacate and put the petitioners / respondents herein in vacant possession of the property.

2. The Trial Court, by order dated 17.11.2015, had passed an exparte order in the petition filed by the respondents herein and allowed the petition. Aggrieved by the said exparte and dismissal order as against the petitioner herein, the revision petitioner filed I.A.No.140 of 2017, on the file of the Principal District Munsif Court, Madurai Town with the prayer to condone the delay in preferring the petition to set aside the exparte order. The said petition was dismissed and challenging the said order, the petitioner is before this Court.

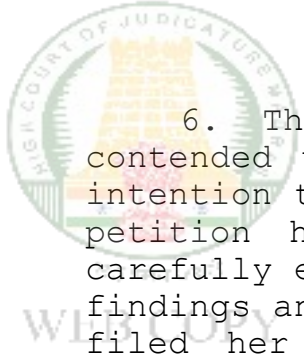
3. It is the case of the revision petitioner that he is the tenant under the second respondent. The property in question belongs to the second respondent herein. The said property had been leased out to the revision petitioner for residential purpose for a monthly rent of Rs.300/-. The said tenancy was oral. The



petitioner is paying the rent without any default. While so, the respondents filed an eviction petition before the trial Court on the sole ground of wilful default. The petitioner was unable to file the statement of objections, on time, due to her health condition. Hence, the trial Court passed an exparte order in the eviction petition filed by the respondents herein. Aggrieved over the same, the petitioner herein has filed I.A., to condone the delay in preferring the petition to set aside the exparte order. The same was dismissed stating that sufficient reasons to condone the delay have not been shown by the petitioner herein and also on the ground of delay. Assailing the same, the petitioner is before this Court with the present Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner submits that the petitioner is paying the rent regularly to the second respondent without any default and receiving receipt for the same from the respondents. There was no arrears of rent as alleged by the respondents. He was in possession of the property since 1960 by paying appropriate rent. While so, the respondents have filed eviction petition against the petitioner herein on the ground of wilful default, though the petitioner is paying the rent without any default. The petitioner herein was conducting the case. When the matter stood thus, the petitioner's health was not good and as she was taking treatment, hence she was not able to instruct her counsel to conduct the case. While so, the second respondent assured the petitioner that he would, when the eviction petition is pending before the trial Court, withdraw the petition as the dispute among themselves is compromised, since the petitioner herein is paying the rent regularly to the second respondent and he is also receiving the same. Hence, the petitioner was in possession and enjoyment of the property by paying the rent regularly to the second respondent. While being so, a bailiff came to the house of the revision petitioner on 27.02.2017 to evict the petitioner from the property of the respondents herein. Thereafter only, the petitioner came to know that the respondents herein have colluded with each other and cheated the petitioner as if they are going to withdraw the eviction petition and got an exparte order on 17.11.2015. Hence, the petitioner filed I.A., to condone the delay in preferring the petition to set aside the exparte decree. The learned counsel submitted that the trial court, without considering the facts of the case, had mechanically dismissed the petition to condone the delay.

5. It is further stated that since there was an error committed by the Trial Court, the revision petitioner sought to file a petition against the exparte decree on account of existence of valid grounds to assail the decree and judgment, with a delay of 439 days. The delay was occurred due to some unavoidable circumstances, as the health condition of the petitioner did not support her to contest the case. However, the Trial Court, without properly appreciating the facts and circumstances, has simply dismissed the application instead of condoning the delay. Contending that the order of the Trial Court is per se illegal, it is prayed that the order is liable to be set aside.



6. The learned counsel appearing for the respondents has contended that the petitioner has filed the petition only with an intention to drag on the proceedings and the delay in preferring the petition has not been properly explained. The Trial Court had carefully examined all the material particulars before rendering its findings and delivered the judgment. The revision petitioner has not filed her counter affidavit though she was represented by her counsel in the eviction petition and hence she was set exparte on 11.11.2014 and an exparte decree was passed on 17.11.2015. Therefore, finding no valid ground or reasons to condone the delay, the Trial Court has slightly dismissed the application. Hence, there is no error in the order of dismissal passed by the learned trial Judge and the petition is liable to be dismissed.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. This Court also perused the material documents available on record.

8. It is the stand of the revision petitioner that she is the tenant under the second respondent, since 1960. Though the petitioner herein was paying the rent regularly without any default to the second respondent, the second respondent has filed an eviction petition before the trial Court with a prayer to evict the petition on the sole ground of wilful default. But the petitioner is paying the rent regularly to the second respondent. Hence, she sought to condone the delay in preferring the petition to set aside the exparte decree passed against the petitioner by the trial Court, to prove her defence.

9. It is not in dispute that the Trial Court had allowed the eviction petition in favour of the respondents herein. Hence, the revision petitioner decided to file a petition to set aside the exparte decree with the delay of 439 days. The only reason adduced on the side of the petitioner is that the petitioner was suffering from jaundice and also with heart pain. She was taking treatment both as inpatient and out patient during the relevant period of time. Therefore, the petition to set aside the exparte decree could not be filed in time.

10. Though the revision petitioner was able to contest the suit regularly before the Trial Court, due to some health condition of the petitioner herein, she could not contact her Advocate and file the petition in time, which put her in an unsafe position. As repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay.

11. In the present case on hand, it has been repeatedly reiterated by the petitioner that because of her ill-health, there was no communication between her and her Advocate and therefore, the delay in filing the petition, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing both sides and finding merits in the contention raised by



the petitioner, this Court is of the view that the order dated 14.03.2018 passed in I.A.No.140 of 2017 in R.C.O.P.No.54 of 2014, by the learned Principal District Munsif Court, Madurai Town, is liable to be set aside.

WEB COPY 12. In the result,

(a) this Civil Revision Petition is allowed and the order dated 14.03.2018 passed in I.A.No.140 of 2017 in R.C.O.P.No.54 of 2014 by learned Principal District Munsif Court, Madurai Town, is hereby set aside, subject to the condition that the petitioner shall pay the entire arrears of rent amount from the date of filing of the eviction petition in R.C.O.P.No.54 of 2014 to till date within a period of four weeks from the date of receipt of a copy of this order;

No costs. Consequently, C.M.P.(MD)No.6412 of 2018 is also closed.

13. The Registry is directed to list this matter for reporting compliance.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

- 1.The Principal District Munsif, Madurai Town.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**
- 3.The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.Karunanidhi, Advocate SR.No. 77167

+1cc to M/S.G.Vidhya Maheswaran, Advocate SR.No. 77074

C.R.P. (PD) (MD) No.1483 of 2018
02.08.2018

tsg

JM/SKN RSK/SAR 1/29.08.2018/4P/7C