

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P. No.559 of 2019 and C.M.P.No.3710 of 2019

S.Krishnamoorthy

... Petitioner

-Vs-

E.Jegadeesan

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the order dated 22.01.2019 in M.P.No.508 of 2018 in R.C.O.P.No.1729 of 2018 on the file of the learned XI Judge, Small Cause Court, Chennai.

For Petitioner : Mr.S.Kumara Devan

ORDER

This revision petition has been filed as against the fair and decreetal order dated 22.01.2019 in M.P.No.508 of 2018 in R.C.O.P.No.1729 of 2018 on the file of the learned XI Judge, Small Cause Court, Chennai.

2. The petitioner herein is the petitioner in the said R.C.O.P. which was filed against the respondent herein. In the said R.C.O.P., the respondent did not file counter despite enough time was given to him. Therefore, on 16.06.2017, he was set exparte and the R.C.O.P. was ordered. Thereafter, after a delay of 435 days, a petition to set aside the exparte order seems to have been filed. As there has been delay, the respondent herein had filed the said M.P.508 of 2018 to condone the delay of 435 days. The reason adduced by the respondent before the

Court below for such huge delay was that, he suffered with some illness and therefore he had been bedridden and for a long time he has not been able to contact his counsel for filing a petition to set aside the exparte order.

3. Even though the said petition was resisted by the petitioner herein / respondent in the said M.P., after having considered the said application, the learned Judge in the Court below, through the impugned order, has allowed the said M.P., for condoning the said delay on payment of costs of Rs.21,750/- ie., at the rate of Rs.50/- for each day and the said costs was directed to be paid on or before 12.02.2019, failing which the petition will be dismissed.

4. As against the said order, the present revision has been filed, wherein this Court on 18.02.2019 has granted an interim order of stay. It is ascertained by the learned counsel for the revision petitioner that, the respondent did not come forward to pay the costs imposed by the Court below while allowing his petition through the impugned order on or before the said date of 12.02.2019 and therefore, assuming that the order is sustainable, the non-compliance of the condition imposed by the Court below of paying costs on or before 12.02.2019 itself makes it clear that the respondent herein is not interested in proceeding with the matter and in order to drag on the proceedings, he filed a belated petition purposefully and even though it was allowed, the condition of payment of costs has not been complied with.

5. Here also, notice had been served on the respondent and his name and full address has been printed in the cause list. However, when the case is called today, no one has appeared on behalf of the respondent. It shows that the respondent is not having any interest in pursuing with the matter.

6. This attitude on the part of the respondent, discloses that the respondent has not been serious to pursue the legal battle between the petitioner and himself, before the Rent Control Court and therefore, the only inference that could be drawn by this Court is that, the said petition filed to condone the delay of more than 400 days itself could have been filed only for the purpose of delaying the issue, and the attitude of the respondent is well established as he has not chosen to come before this Court in the present revision also despite having received the notice.

7. Moreover, the impugned order itself was a conditional order imposing a condition that if the costs is not paid on or before 12.02.2019, the petition will be

R. SURESH KUMAR, J.

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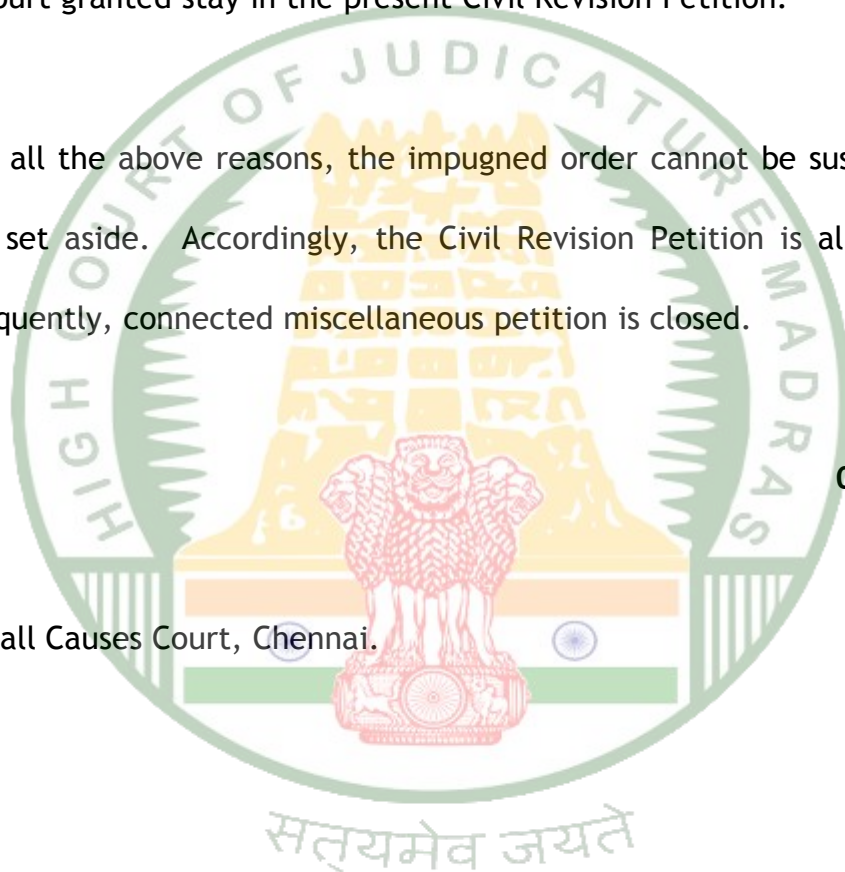
dismissed. The same has been given effect to on 18.02.2019 itself, the date on which this Court granted stay in the present Civil Revision Petition.

8. For all the above reasons, the impugned order cannot be sustained and the same is set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09-09-2019

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To

XI Judge, Small Causes Court, Chennai.



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