

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2019

DELIVERED ON : 23.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) Nos.4316 & 4317 of 2014

and

MP.No.1 of 2014

Natarajan (Deceased)

Rep. by his legal heirs

1.Chitti Babu

2.Hari Krishnan

3.Vatchala

... Petitioners in both CRPs.

Vs.

Padmalakshmi

... Respondent in both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair order passed in unnumbered SR No.2490 of 2011 in O.S.No.150 of 2010 dated 30.04.2012 and against the fair order passed in unnumbered SR.No.2491 of 2011 in O.S.No.150 of 2010 dated 09.04.2013, both on the file of District Munsif Court, Thiruvottriyur.

For Petitioners in both CRPs. ... Mr.G.Dilip Kumar

For Respondent in both CRPs. ... Mr.K.Prabhakaran

COMMON ORDER

The points for consideration in these revisions are as follows:

(a) Whether the tenant in an ejectment suit where an ex parte decree has been passed against the tenant is empowered to file an application under Section 9 of the Chennai City Tenants Protection Act, 1921 even before the ex parte decree is set aside.

(b) Whether sufficient reasons have been given by the petitioner/tenant for condonation of delay of 22 years in filing an application under Section 9 of the Chennai City Tenants Protection Act, 1921.

2. The instant civil revision petitions have been filed challenging the order dated 30.04.2012 passed by the learned District Munsif, Thiruvottiyur in unnumbered I.A.SR.2490 of 2011 in O.S.No.150 of 2010 and also the consequential order dated 09.04.2013 passed by the learned District Munsif, Thiruvottiyur in unnumbered I.A.SR.2491 of 2011 in O.S.No.150 of 2010.

Brief facts leading to the filing of these revisions filed under Article 227 of the Constitution of India:

3. The petitioners are the legal heirs of the defendant in the ejectment suit O.S.No.300 of 1974 and the respondent is the legal heir of the plaintiff. Originally the said ejectment suit O.S.No.300 of 1974 was filed by one Ramakrishnan/plaintiff against Natarajan/defendant before the learned District Munsif, Poonamallee and subsequently, transferred to the file of the learned District Munsif, Thiruvottiyur and renumbered as O.S.No.150 of 2010. The plaintiff filed the suit against the defendant seeking for a direction to direct the defendant to vacate and hand over vacant possession of the suit schedule property, after demolishing the unauthorised construction put up by the defendant.

4. An ex parte decree dated 30.10.1974 came to be passed in favour of the plaintiff against the defendant in O.S.No.300 of 1974. An execution petition viz., E.P.No.119 of 1985 was also filed by the legal representatives of the decree holder/plaintiff before the learned District Munsif, Ponneri to execute the ex parte decree dated 30.10.1974.

I.A.No.1817 of 1997 was filed by the tenant/revision petitioners who are the legal representatives of the deceased Natarajan, the defendant to set aside the ex parte decree dated 30.10.1974 and the said application came to be allowed on 17.08.2010 and the renumbered suit O.S.No.150 of 2010 was restored to file on 17.08.2010. I.A.SR.6503 of 1985 which was subsequently renumbered as I.A.SR.2490 of 2011 was filed by the tenant/defendant under Section 9 of the Chennai City Tenants Protection Act, 1921 on 02.09.1985 and the said application was returned by the Court on 08.02.1988 and represented only on 14.11.2011.

5. By order dated 30.04.2012, the learned District Munsif, Thiruvottiyur, dismissed I.A.SR.2490 of 2011 in O.S.No.150 of 2010 on the ground that the petitioners have not given sufficient reasons to condone the delay of more than 22 years in filing an application under Section 9 of the Chennai City Tenants Protection Act, 1921. In view of the dismissal of I.A.SR.2490 of 2011, by a consequential order dated 09.04.2013, the Trial Court returned the amendment application filed in I.A.SR.2491 of 2011. Aggrieved by the order dated 30.04.2012 passed in I.A.SR.2490 of 2011 in O.S.No.150 of 2010 and the consequential order dated

09.04.2013 passed in I.A.SR.2491 of 2011 in O.S.No.150 of 2010 by the learned District Munsif, Thiruvottiyur, the instant civil revision petitions have been filed.

Submissions of the learned counsels:

6. Heard Mr.G.Dilipkumar learned counsel for the petitioners and Mr.K.Prabhakaran, learned counsel for the respondent.

7. According to the learned counsel for the petitioners, the Trial Court on misconception of fact held that the application filed by the petitioners under Section 9 of the Chennai City Tenant Protection Act, 1921 is barred by law of limitation as it has been represented with delay of more than 22 years. According to him, the petitioners' father late Natarajan against whom the ejectment suit was filed had categorically pleaded in his affidavit filed in support of I.A.No.1817 of 1997 seeking to set aside the ex parte decree dated 30.10.1974 that he did not receive the suit summons. Since I.A.No.1817 of 1997 was allowed and the ex parte decree dated 30.10.1974 was set aside on 17.08.2010, the application filed by the petitioners who are the legal heirs of the

deceased Natarajan, the original defendant in the suit filed in unnumbered I.A.SR.2490 of 2011 in O.S.No.150 of 2010 is filed within the period of limitation as the said application was filed within 30 days from the date of knowledge of the ejectment suit i.e., on 03.08.1985, when he received the notice in the execution petition No.118/1985 on the file of the District Munsif Court, Ponneri.

8. According to the learned counsel for the petitioners, the application under Section 9 of the Chennai City Tenants Protection Act, 1921 was filed by the petitioners' father late Natarajan in unnumbered I.A.SR.2490 of 2011 on 02.09.1985 immediately on receipt of notice in the execution petition, within a period of 30 days from the date of receipt of the said notice. In view of the ex parte decree, according to the learned counsel for the petitioners, the application under Section 9 of the Chennai City Tenants protection Act, 1921 though filed on time i.e., on 02.09.1985 could not be numbered and can be numbered only after the ex parte decree dated 30.10.1974 was ultimately set aside by the Court on 17.08.2010. Since the suit summons was not received by the petitioners' father late Natarajan, who was the defendant in the suit,

according to the learned counsel for the petitioners, the application filed on 02.09.1985 on receipt of the notice in the execution petition is well within a period of 30 days as prescribed under Section 9 of the Chennai City Tenants Protection Act, 1921.

9. According to the learned counsel for the petitioners, there was no delay in filing the application viz., unnumbered I.A.SR.2490 of 2011 and therefore, there was no necessity to file an application under Section 5 of the Limitation Act, seeking for condonation of delay. According to him, the Trial Court under the impugned order dated 30.04.2012 has erroneously rejected the application filed by the petitioners' father late Natarajan under Section 9 of the Chennai City Tenants Protection Act, 1921 on the ground that no condone delay application has been filed and further, there is an inordinate delay of more than 22 years in filing the said application.

10. According to the learned counsel for the petitioners, since the original defendant, Natarajan, the petitioners' father, who had filed an application under Section 9 of the Chennai City Tenant Protection Act,

1921 in unnumbered I.A.SR.2490 of 2011, died, there become a necessity to file an amendment application under Order VI Rule 17 CPC to amend the application under Section 9 of the Chennai City Tenants Protection Act, 1921 in I.A.SR.6503 of 1995 renumbered as I.A.SR.2490 of 2011. According to him, only after the ex parte decree is set aside, the amendment application can be taken up for consideration. However, the Trial Court by a consequential order dated 09.04.2013 also rejected the amendment application, in view of the order dated 30.04.2012. According to him, the Trial Court, contrary to law rejected the application against the dead person Natarajan and returned the application filed to implead the legal heirs of the deceased Natarajan by way of amendment in I.A.SR.2491 of 2011. According to him, the application under Section 9 of the Chennai City Tenants Protection Act, 1921 is filed within time and the amendment application to amend Section 9 application ought to have been allowed by the Trial Court.

11. Per contra learned counsel for the respondent would submit that the application under Section 9 of the Chennai City Tenants Protection Act, 1921 filed by the petitioners' father late Natarajan who

was the original defendant in the suit on 02.09.1985 in I.A.Sr.2490 of 2011 is barred by law as Section 9 of the Chennai City Tenants Protection Act, 1921 stipulates that the said application will have to be filed within 30 days from the date of receipt of the suit summons. Since the ex parte decree was passed on 30.10.1974 and the suit summon was served on the defendant much prior to that date, the application filed on 02.09.1985 is beyond the period of 30 days as prescribed under Section 9 of the Chennai City Tenants Protection Act, 1921.

12. The learned counsel for the respondent would further contend that since Section 5 of the Limitation Act is applicable for an application under Section 9 of the Chennai City Tenants Protection Act, 1921. The petitioners' father late Natarajan who was the defendant in the suit has not filed any application under Section 5 of the Limitation Act to condone the delay in filing an application under Section 9 of the Chennai City Tenants Protection Act, 1921. Hence, on this ground also, according to him, the petition filed by the petitioners' father late Natarajan under Section 9 of the Chennai City Tenants Protection Act, 1921 in unnumbered I.A.SR.2490 of 2011 is not maintainable.

13. The learned counsel for the respondent drew the attention of this Court to Section 9 of the Chennai City Tenants Protection Act, 1921 and submitted that the limitation period begins to run from the date of receipt of the suit summons. According to him, since the suit summons was served on the defendant much prior to 30.10.1974, being the date of the ex parte decree, the application under Section 9 of the Chennai City Tenants Protection Act, 1921 filed on 02.09.1985 is hopelessly barred by law and further, since no application under Section 5 of the Limitation Act having been filed, an application in unnumbered I.A.SR.2490 of 2011 is not maintainable. He submitted that the Trial Court has rightly rejected the application under Section 9 of the Chennai City Tenants Protection Act, 1921 filed by the petitioners' father late Natarajan in unnumbered I.A.SR.2490 of 2011 and also the amendment application in unnumbered I.A.SR.2490 of 2011.

14. The learned counsel for the respondent drew the attention of this Court to the following authorities:

(a) The Division Bench Judgment of Madras High Court in the case of *S.Ramanujam and others v. M.E.Manicka Mudaliar* reported in **93 L.W. 411**

Relying upon the said judgment, the learned counsel for the respondent would submit that even in cases, where the first appeal or second appeal is pending, an application under Section 9 of the Chennai City Tenants Protection Act, 1921 can be filed as pendency of the first appeal or second appeal will be tantamount to the pendency of the suit itself.

(b) A Single Bench Judgment of Madras High Court in the case of *S.Venkitachalam Iyer vs. S.Rama Iyer* reported in **1983 (II) MLJ 300**.

Relying upon the said Judgment, the learned counsel for the respondent would contend that an application under Section 9 of the Chennai City Tenants Protection Act will have to be filed only before the execution court when a decree has already been passed. According to him, in the case on hand, it is an admitted position that only on receipt of the notice in the execution petition, the defendant Natarajan came to know about the ex parte decree and this being the case, the defendant Natarajan ought to have filed the application under Section 9 of the Chennai City

Tenants Protection Act, 1921 only before the executing court and not in the suit.

(c) A Single Bench Judgment of the Andhra Pradesh High Court in the case of *Sriramula Ramachandran and others vs. V.Sriramula Bhoodamma and others* reported in **AIR 1994 ANDHRA PRADESH 79**.

Relying upon the said judgment, the learned counsel for the respondent would submit that an application under Order VI Rule 17 CPC seeking to amend the application filed under Section 9 of the Chennai City Tenants Protection Act, 1921 in unnumbered I.A.SR.2490 of 2011 is not maintainable as the petitioners ought to have filed an application under Order XXII CPC to bring the legal representatives of the deceased defendant K.Natarajan on record.

(d) A Single Bench Judgment of Madras High Court in the case of *Bharat Petroleum Corporation Ltd., vs. Muthumani and others* reported in **2015 (2) MWN (Civil) 144**.

Relying upon the said judgment, the learned counsel for the respondent would submit that a defaulter in the payment of rent is not entitled to file an application under Section 9 of the Chennai City Tenants Protection Act, 1921. According to him, the petitioners are chronic

defaulters in the payment of the rent and hence, not entitled to file an application under Section 9 of the Chennai City Tenants Protection Act, 1921.

(e) A Single Bench Judgment of Madras High Court in the case of *Sri Ahobila Madam rep. by its Power Agent vs. Revenue Court, Thanjavur and another* reported in **1996 (2) LW 544**.

Relying upon the said Judgment, the learned counsel for the respondent would submit that after the demise of Natarajan, the original defendant, the application in unnumbered I.A.SR.6503 of 1985 renumbered as I.A.SR.2490 of 2011 has become nullity, as the legal heirs of the deceased Natarajan were not brought on record on the said application. According to him, the representation of the application in unnumbered I.A.SR.6503 of 1985 renumbered as I.A.SR.2490 of 2011 by the counsel when the original defendant Natarajan who filed the application was dead is not maintainable as the entire proceedings by the counsel on behalf of the dead person is a nullity.

Discussion:

15. Section 9 of the Chennai City Tenants Protection Act, 1921 provides for compulsory sale by a landlord of land in the possession of the tenant on which he has put up a superstructure. This provision in the Act is on grounds of equity as, with the sale of the land to him, a guarantee of enjoyment of the superstructure put up by the tenant is assured. However, there are certain statutory requirements which the tenant must comply with, if he intends to avail of this benefit.

16. The Hon'ble Supreme Court in the case of *S.R.Radhakrishnan and others vs. Neelamegam* reported in (2000) 3 CTC 488 (SC) has observed that a person seeking remedy under Section 9 of the Chennai City Tenants Protection Act, 1921 should satisfy the following conditions, namely,

- (a) He should be a tenant in possession of the land.
- (b) He should have erected a superstructure on the land in respect of which he will be entitled to claim compensation under Section 3.

(c) The landlord should have taken a suit or proceeding in ejectment against the tenant.

(d) The tenant should have applied to the Court for direction in that regard within one month from the date of service of summons in the suit.

17. As seen from Section 9 of the Act, the legislature has thought it fit that within a short time i.e., one month from the date of service of summons, an application under Section 9 will have to be filed by the tenant. Therefore, it is clear that the tenant will have to be vigilant, if he seeks claim to purchase the land from the landlord. We will now see in the forthcoming paragraphs as to whether the tenant has complied with the objectives of Section 9 of the Act by filing the application within a time stipulated under Section 9 of the Chennai City Tenants Protection Act, 1921.

18. In the case on hand, in the ejectment suit O.S.No.300 of 1974 filed by the plaintiff, an ex parte decree dated 30.10.1974 came to be passed against Natarajan and under the said decree, the said

Natarajan was directed to deliver vacant portion of the suit schedule property to the plaintiff therein. Thereafter, on 02.09.1985, an application under Section 9 of the Chennai City Tenants Protection Act, 1921 was filed by Natarajan before the learned District Munsif Court, Ponneri seeking for a direction from the Court to direct the plaintiff in O.S.No.300 of 1974 to sell the land detailed in the petition to him for a price that may be fixed by the Court. In the affidavit filed in support of the said application, Natarajan, the original defendant in the suit has stated that he came to know about the filing of the suit only on 03.08.1985 when he received notice in the execution petition E.P.No.119 of 1985.

19. On the same date, i.e., on 02.09.1985, along with the application under Section 9 of the Chennai City Tenants Protection Act, 1921, an application to set aside the ex parte decree dated 30.10.1974 was also filed. However, the said application was numbered only in the year 1988 as I.A.No.198 of 1988 and later renumbered as I.A.No.1817 of 1997 on account of the transfer of the suit. However, Section 9 application was not numbered along with the application to set aside the

ex parte decree. The application to set aside the ex parte decree dated 30.10.1974 namely I.A.No.1817 of 1997 came to be allowed on 17.08.2010. After the ex parte decree dated 30.10.1974 was set aside, the petitioners filed an application under Order VI Rule 17 CPC seeking amendment of the application under Section 9 of the Chennai City Tenants Protection Act, 1921 in I.A.SR.6503 of 1985 which was renumbered as I.A.SR.2490 of 2011 to include the names of the surviving legal heirs of the original plaintiff and the original defendant K.Natarajan.

20. The application under Section 9 of the Chennai City Tenants Protection Act, 1921 in unnumbered I.A.SR.2490 of 2011 was dismissed by the Trial Court on the ground that even though the said application was returned by the Court for compliance on 08.02.1988 itself, no reasons have been given by the petitioners for representing the said petition after 22 years. Further, it has been observed that no application has been filed to condone the delay in representation of the application. The application under Section 9 of the Chennai City Tenants Protection Act, 1921 was filed on 02.09.1985 and the said application was returned

by the Court on 08.02.1988 whereas the application was once again represented only on 14.11.2011.

21. Considering all these factors, the Trial Court has dismissed the application under Section 9 of the Chennai City Tenants Protection Act, 1921 filed by late Natarajan, the petitioners' father in unnumbered I.A.SR.6503 of 1985 which was renumbered as I.A.SR.2490 of 2011. Subsequent to the dismissal of Section 9 application, the amendment application filed under Order VI Rule 17 CPC was also rejected by the Trial Court on 09.04.2013.

22. Under Section 9 of the Chennai City Tenants Protection Act, 1921, the tenant is only given a privileged right and not a vested right. The Madras High Court in the decision rendered in ***Nagamanickam vs. M/s.Gopalakrishnan and Brothers*** reported in (1997) II MLJ 122, following the Judgment of the Hon'ble Supreme Court in the case of ***S.M.Transports (P) Ltd., vs. Sankaraswamigal Mutt*** (AIR 1963 SC 864) and ***Ananthakrishnan Nair vs. G.Radhakrishnan*** (1987) 2 SCC 429, held that the tenant's right to secure a portion of the building necessary for

his convenient enjoyment is equitable in nature. It was held that the statute may be a beneficial legislation but the benefit of purchase by the tenant must be only to the extent, he deserves and not beyond.

23. In the case on hand, in the ejectment suit, an ex parte decree came to be passed as early as on 30.10.1974, however, an application to set aside the ex parte decree along with Section 9 of the Chennai City Tenants Protection Act, 1921 application was filed only on 02.09.1985. The petitioners may state that they were aware of the ejectment suit only on 03.08.1985 when the defendant in the suit K.Natarajan received the notice in the execution petition E.P.No.119 of 1985, but in the affidavit filed in support of application to set aside the ex parte decree dated 30.10.1974, there is no disclosure as to whether the defendant K.Natarajan has been paying the rent regularly for the land to the plaintiff without committing default.

24. It is a categorical stand of the plaintiff, as seen from the plaint filed in the ejectment suit in the year 1974, that the defendant Natarajan is a willful defaulter in the payment of the rent. Neither in the

Section 9 application filed under the Chennai City Tenants Protection Act, 1921 nor in the affidavit filed in support of the application to set aside the ex parte decree, the details of the rent paid by the tenant is disclosed. The petitioners' father late Natarajan who filed Section 9 of the Chennai City Tenants protection Act, 1921 application has also not denied the allegations contained in the plaint that the original defendant Natarajan is a willful defaulter in the payment of the rent.

25. Before this Court, the learned counsel for the respondent submitted that for the past 30 years, no rent for the land has been received by the landlord, but, however, the tenant is unlawfully enjoying the possession of the building and collecting rents from their tenants amounting to more than Rs.50,000/- per month. For this submission, the learned counsel for the petitioners has not placed before this Court any evidence to show that the tenant has been paying the rent to the landlord ever since the inception of the tenancy.

26. It is also noticed that the application under Section 9 of the Chennai City Tenants Protection Act, 1921 even though filed on

02.09.1985 was returned by the Court for compliance on 08.02.1988. Even though the said application was returned as early as on 08.02.1988, the said application was once again represented only on 14.11.2011. It is argued before this Court by the learned counsel for the petitioners that since the ex parte decree dated 30.10.1974 was set aside by the Court on 17.08.2010, the application under Section 9 of the Chennai City Tenants Protection Act, could not be numbered, but as seen from the section, it is clear that an ex parte decree will not bar the tenant to file an application under Section 9 of the Chennai City Tenants Protection Act, 1921.

27. Admittedly, the defendant in the suit came to know about the ex parte decree on 03.08.1985, when he received the notice in the execution petition E.P.No.119 of 1985. On receipt of the notice in the execution petition, the defendant K.Natarajan could have filed Section 9 of the Chennai City Tenants Protection Act, 1921 application before the executing court. But instead, he chose to file an application in the suit proceeding. The application under Section 9 of the Chennai City Tenants Protection Act, 1921 ought to have been filed before the executing

court, since the execution proceedings were initiated by the plaintiff to execute the decree dated 30.10.1974.

28. In the judgment relied upon by the learned counsel for the respondent reported in **1983 (II) MLJ 300**, the Madras High Court lays down the law on this subject. The relevant portion of the said judgment is extracted hereunder:

“9. The question whether the application before the executing court was properly laid may now be adverted to. The objection raised by the petitioner on this score is that there is only one decree and that would be the decree in the Second appeal and therefore, the executing court, in the course of execution, if it should entertain the application under S. 9 of the Act, would be varying the decree passed by this court and therefore, the application under Sec. 9 of the Act, if at all, should have been filed only before this court. S. 9 of the Act has been made applicable to decrees in ejectment or orders, under S. 43 of the Presidency Small Cause Courts Act which have been executed before the date with effect from which the provisions of the Act are extended to such area, by S. 10 of the Act. There is no indication in the

section as to the court before which an application in such cases claiming the benefits of S. 9 of the Act can be filed. But even so, combined reading of Ss. 9 and 10 of Act would, indicate that it is the Court before which the execution proceedings are taken that has to consider the application under S. 9 of the Act and also give effect to the result of those proceedings in the decree as provided under S, 9 (3) (b) of the Act. It would also be useful in this connection to refer to the decision in *P. Kanniappa Chettiar V K. Ramachandraiya* (1924) 46 Mad LJ 407 (AIR 1924- Mad 731). There, after. the passing of the decree, in the suits, the provision, of Madras Act 3 of 1921 came. into operation, While the decree had remained uncured. in the applications in the appeals filed. under S. 9 of the Act, it was contended that that section has no application where a decree for ejectment had been made and this would be. so, despite the pendency of an appeal from the decree and irrespective of whether the decree had been executed or not. Schwabe C. J. speaking for the Bench, held after referring to the language of S. 9 (3) that the applications invoking S. 9 were properly made in the pending appeals and that if the appeals had not been pending, the applications could have been properly made before the City Civil

Court, as it was the intention of the Act that after the decree and before its execution, the application could be made to the Court having control of the suit. This view also stands to reason. In a case where a decree had remained unexecuted the court which finally passed the decree may not always be the court which is obliged to execute the decree and in such a case, difficulties may arise as to the court before which the application under S. 9 of the Act has to be filed. In cases where suits and proceedings in ejectment are instituted, those courts where the proceedings are so laid, would be the competent courts to entertain the applications under S. 9 of the Act. In other cases, where the decree already obtained, had remained unexecuted and execution proceedings are pending, the executing court would be the proper court to entertain such an application. As statutorily the responsibility of passing further consequential orders depending upon the result of the application under S. 9 of the Act has been entrusted to the court which deals with the application under S. 9 and such a course would be possible only if the application under S. 9 is laid before the same court, which is also the court which executes the decree. Having regard to these considerations, the objection that the application

should have been properly laid only before this court and not before the executions court. is without substance.”

29. The Division Bench Judgment of Madras High Court reported in **93 L.W. 411** has also held that the pendency of the first appeal or second appeal will be tantamount to the pendency of the suit itself and consequently, the petition can be filed under Section 9 of the Chennai City Tenants Protection Act, 1921 in the first appeal or in the second appeal provided that they satisfy the other statutory requirements. Therefore, it is clear that an ex parte decree is not a bar for entertainment of an application under Section 9 of the Chennai City Tenants Protection Act, 1921 as it is an independent remedy. The only condition is that there must be some proceedings initiated by the landlord which is pending.

30. In the case on hand, since the decree has already been passed and the proceeding pending is the execution petition, the tenant ought to have filed the application under Section 9 of the Chennai City Tenants Protection Act only before the executing court and not before the suit proceedings.

31. Admittedly, the application under Section 9 of the Chennai City Tenants Protection Act, filed by the defendant K.Natarajan was returned by the court on 08.02.1988. However, the same was represented only on 14.11.2011 and no reasons have been given for the inordinate delay in representation of the application under Section 9 of the Chennai City Tenants Protection Act, 1921. Even though Section 5 of the Limitation Act is applicable, no separate application has been filed by the petitioners to condone the delay in representation. Being an equitable and discretion remedy, the petitioners ought to have exercised due diligence, while processing the application under Section 9 of the Chennai City Tenants Protection Act, 1921.

32. In the case on hand, the defendant or his successors in interest have been lethargic and indifferent in processing the application filed under Section 9 of the Chennai City Tenants Protection Act, 1921. Further, it is also not disputed by them neither in the affidavit filed in support of application under Section 9 of the Chennai City Tenants Protection Act, 1921 nor in the application filed to set aside the ex parte

decree the allegations levelled by the plaintiff that the tenant namely, the defendant in the suit was a chronic defaulter in the payment of the rent.

33. The Single Bench Judgment of this Court reported in **2015 (2) MWN(Civil) 144** relied upon by the learned counsel for the respondent has held that a defaulter tenant is not entitled to purchase land under Section 9 of the Chennai City Tenants protection Act. Since there is no evidence on record to show that the petitioners or the predecessors have paid the rent to the respondent or his predecessors, it can now be inferred that the petitioners are not entitled to file an application under Section 9 of the Chennai City Tenants Protection Act, as they have not disclosed neither in the affidavit filed in the application to set aside the ex parte decree or in the Section 9 of the Chennai City Tenants Protection Act, 1921 application that they have paid the rents to the landlord without any arrears. This Court is also in agreement with the view taken by the learned Single Judge of this Court in the aforesaid reported decision.

34. It is an admitted fact that the Court returned the Section 9 of the Chennai City Tenants Protection Act, 1921 application to the petitioners for compliance of defects on 08.02.1988. However, the petitioners did not represent the petition in unnumbered I.A.SR 2490 of 2011 immediately, but instead chose to represent the same only on 14.11.2011.

35. Under Section 148 of the Code of Civil Procedure, the Court can enlarge time only for a maximum period of 30 days. Even though no time limit was fixed by the Court while returning the petition on 08.02.1988, the maximum time available to the petitioners to represent the said petition is within 30 days from the date of 08.02.1988. But in the instant case, the petitioners have chosen to represent the petition only on 14.11.2011, i.e., almost after a period of 22 years from the date of return. Further, no condone delay application has been filed by the petitioners to condone the inordinate delay in representation under Section 5 of the Limitation Act. Section 148 of the Code of Civil Procedure is squarely applicable for the instant case, as the petitioner

did not represent the petition under Section 9 of the Chennai City Tenants Protection Act, 1921 within 30 days from 08.02.1988.

36. It is also an admitted fact that the original defendant K.Natarajan, who filed the petition under Section 9 of the Chennai City Tenants Protection Act, 1921 on 02.09.1985 died subsequently, when the petition under section 9 of the Chennai City Tenants Protection Act, 1921 was returned by the Court on 08.02.1988.

37. Under Order XXII of the Code of Civil Procedure, the legal representatives of the deceased Natarajan were not brought on record. Whenever a party to the suit dies, the legal representatives of the said deceased party will have to be brought on record as per provisions of Order XXII of the Code of Civil Procedure.

38. In the instant case, the defendant having died, the application under Order XXII Rule 4 of the Code of Civil Procedure ought to have been filed to bring on record the legal representatives of the deceased defendant Natarajan. However, no such application was filed

but after a lapse of 22 years, the amendment application has been filed under Order VI Rule 17 CPC by the petitioners to amend the petition filed under Section 9 of the Chennai City Tenants Protection Act, 1921 in unnumbered I.A.SR2490 of 2011 and the amendment application includes to bring on record the legal representatives of the deceased K.Natarajan. Further on 08.02.1988, when the Court returned the petition under Section 9 Chennai City Tenants Protection Act, 1921 in unnumbered I.A.SR2490 of 2011, the defendant Natarajan was dead and therefore, without bringing on record his legal representatives in the Section 9 petition by filing an application under Order XXII Rule 4 CPC, the petition under Section 9 of the Chennai City Tenants Protection Act, 1921 could not be proceeded with. However, in the case on hand, the petitioners did not file any application under Order XXII Rule 4 CPC to bring on record the legal representatives of the deceased defendant K.Natarajan immediately, after the death of Natarajan, but has waited for almost 22 years in filing an application under Order VI Rule 17 CPC to amend the petition in unnumbered I.A.SR 2490 of 2011 filed under Section 9 of the Chennai City Tenants Protection Act, 1921.

39. Further as per Order XXII Rule 10-a CPC, the duty is cast upon the pleader to communicate the death of the party, on coming to know about the death of the said party. In the instant case, no such notice was given to the respondent by the pleader of the petitioners, even though the defendant Natarajan died as early as on 14.11.1986. Therefore, the pleader of the petitioners has not complied with the requirement under Order XXII Rule 4 CPC as rightly pointed out by the learned counsel for the respondent.

40. This Court has perused and examined the impugned orders. The Court below has rightly dismissed by order dated 30.04.2012, the application in I.A.SR.2490 of 2011 filed under Section 9 of the Chennai City Tenants Protection Act, 1921 on the ground that there is an inordinate delay of more than 22 years in representing the application and further, no application has been filed under Section 5 of the Limitation Act to condone the inordinate delay and also rejected the application in I.A.Sr.2491 of 2011 by a consequential order dated 30.04.2013.

41. This Court does not find any infirmity in the orders passed by the court below and there is no merit in these revisions. Accordingly, the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2019

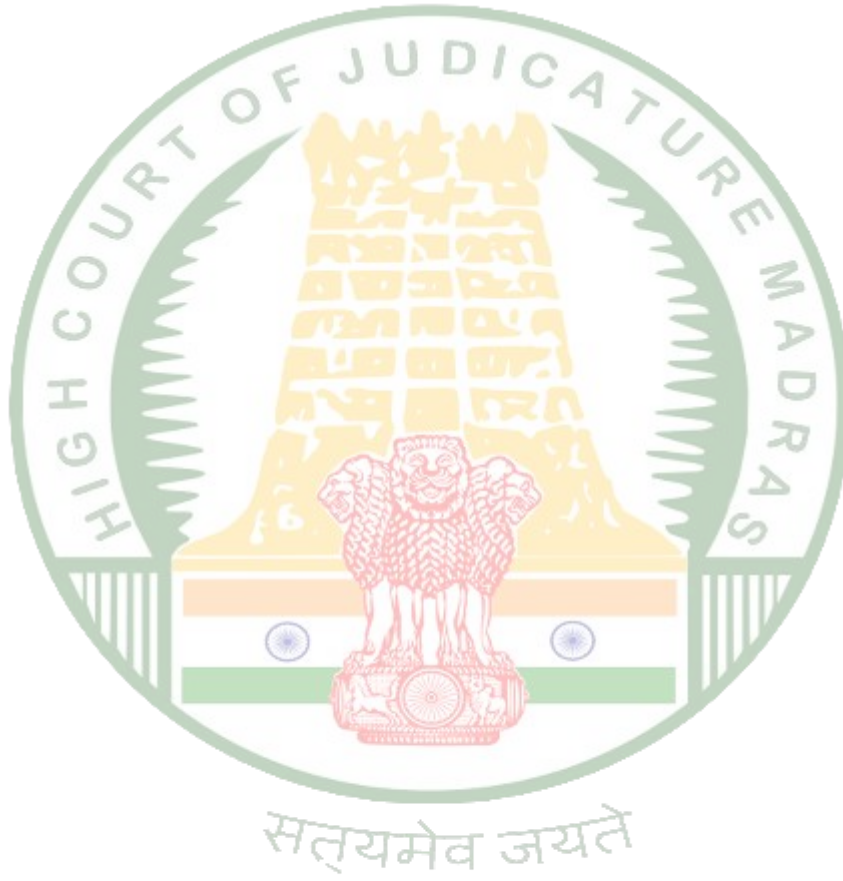
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To
The District Munsif Court, Thiruvottriur.



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ABDUL QUDDHOSE. J,

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Pre-Delivery order in
CRP (PD) Nos.4316 & 4317 of 2014

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23.07.2019