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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2019

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD).No.519 of 2019(NPD)
and
C.M.P.(MD).No.2574 of 2019

Udaysingh ... Revision Petitioner/Petitioner/Respondent

Vs.

M.Habeeb Rahman ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 19.12.2018 passed in I.A.No.36 of 2018 in R.C.O.P.No.5 of 2017 on the file of the District Munsif, Madurai and allow this civil revision petition.

For Petitioner : Mr.T.Selvam

For Respondent : Mr.A.Hajamohideen

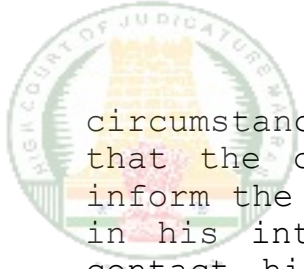
ORDER

This Civil Revision Petition has been preferred against the order dated 19.12.2018 passed in I.A.No.36 of 2018 in R.C.O.P.No.5 of 2017 on the file of the District Munsif, Madurai.

2.The revision petitioner as tenant has filed I.A.No.36 of 2018, to condone the delay of 272 days in filing the said petition to set aside the exparte order, dated 02.01.2018.

3.In the said I.A., the revision petitioner/tenant has stated that the landlord has filed R.C.O.P.No.5 of 2017 to vacate and hand over the vacant possession of the suit mentioned property, on the ground of wilful default and some other grounds. In the said R.C.O.P., the petitioner/landlord appeared through his counsel and also filed an application under Section 11(4) of the Rent Control Act and the same was posted on 13.11.2017 for filing counter.

4.The grievance of the revision petitioner/tenant is that due to his business purpose, he went to outstation. In such



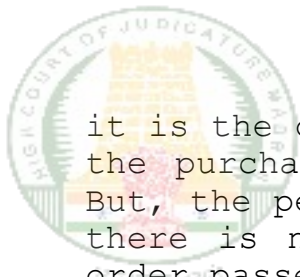
circumstances, when he contacted his previous counsel, he informed that the case is pending for further proceedings and he did not inform the actual status of the case. Apart from that, due to tumour in his intestine, the revision petitioner/tenant was not able to contact his counsel due to which, he was unable to file counter before the Rent Control Authority and hence, an ex-parte order was passed on 13.11.2017 in the application filed under Section 11(4) of the Rent Control Act and also directed the revision petitioner/tenant to deposit the arrears of rent. The said order was not complied with, and hence, the main eviction petition was called and the same was ordered on 02.01.2018. Even after that, he could not get all details from his present counsel. Further, he has valid defence in the said proceedings and his non appearance was neither wilful nor wanton, which had happened only due to the aforesaid bonafide reasons. Hence, the petition filed by the petitioner/tenant to condone the delay of 272 days to set aside the exparte order is to be allowed.

5.The respondent/landlord has filed his counter statement stating that the reasons stated by the petitioner were denied. It is further contended that he has filed a petition under Section 11(4) of the Rent Control Act, wherein, the reasons stated by the tenant is not a genuine one. Further, the tenant was not aware of the direction given by the Court for depositing the arrears of rent, as per the exparte order passed on 13.11.2017 and the non compliance of the said order, eviction was ordered and after his recovery of health, the tenant has got all the details with his present counsel, which is not correct. Further, it is stated that since the delay of 272 days has been occurred, the tenant has not successfully proved the delay of each and every day. Hence, the respondent/landlord sought for dismissal of the said petition.

6.The Rent Controller has observed the contentions raised by both sides regarding the delay in filing the I.A., and gave a finding that the reasons stated by the tenant for the abnormal delay of 272 days has not been proved and considering the attitude of the respondent/tenant, who has not complied with the conditional order, the Rent Controller dismissed the said application. Aggrieved against the said order, the present Civil Revision Petition has been filed.

7.In the grounds, the revision petitioner/tenant has stated that since he is not a tenant under the petitioner in R.C.O.P., without considering the said facts, the Rent Controller dismissed the I.A filed by the revision petitioner/tenant. Further, there are valid grounds to defend the case on the side of the revision petitioner and unless the order passed by the Rent Controller in I.A.No.36 of 2018, is set aside, he will lose fair chance for getting fair justice.

8.The other ground raised by the petitioner is that after purchasing the petition mentioned property in R.C.O.P.No.5 of 2017,



it is the duty of the petitioner/landlord to inform the tenant about the purchase of the property and the rent is to be given to him. But, the petitioner/landlord in R.C.O.P., has not done so and hence, there is no wilful default on the part of the tenant. Hence, the order passed in I.A.No.36 of 2018 is to be set aside.

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9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

10. The learned counsel appearing for the revision petitioner contended that the revision petitioner/tenant is not aware of the fact that the petitioner in R.C.O.P become the owner of the property and the status of the case was not informed to him in the main R.C.O.P as well as the present I.A. He further contended that due to his illness, he could not contact his counsel and get the details and hence, the delay has been occurred, which was neither wilful nor wanton. Therefore, the delay has to be condoned.

11. Per contra, the learned counsel appearing for the respondent contended that along with main petition, he has enclosed 9 documents, out of which, one sale agreement dated 28.01.2015 in favour of the petitioner and also the sale deed, dated 28.12.2016 in favour of the petitioner, who is the petitioner in R.C.O.P.No.5 of 2017, which would go to show that the petitioner in R.C.O.P is the owner of the property.

12. It is argued by the petitioner herein/tenant that the petitioner in R.C.O.P., has purchased the property only on 28.12.2016 and hence, the petitioner herein cannot claim himself as the owner of the suit property. It is the case of the petitioner herein that he has paid the rent till 2017 and hence, the documents, which are enclosed by the landlord are forged one. Further, legal notice, which was issued by the petitioner in R.C.O.P., on 07.04.2017 was not received by the tenant, whereas, the acknowledgment card for the receipt of the said legal notice was filed by the petitioner/landlord before the Rent Controller. Hence, the respondent, who also claim himself as the owner of the suit property and the rent agreement dated 20.08.2015, which was executed between the petitioner and the respondent was also filed before the Rent Controller and after the lease agreement, the revision petitioner/tenant filed a suit in O.S.No.658 of 2015 on 05.11.2015 for permanent injunction before the District Munsif, Madurai Town.

13. Hence, the attitude of the petitioner in ignoring the proceedings made in R.C.O.P and non compliance of the order by stating that his counsel has not informed about the status of the case and exparte order was passed and based on the said order, E.P proceedings were initiated by the respondent/landlord herein and in the E.P., delivery was ordered on 24.10.2018, this Court is of the view that the order passed by the Rent Controller is very much reasonable, which does not require any interference.



14. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AE)

/ True Copy /

Sub Assistant Registrar (CS)

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To

1. The District Munsif,
Madurai.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai **(2 copies)**.

+1 CC to M/s. A. HAJA MOHIDEEN, Advocate
(SR-55468[F] dated 20/03/2019)

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and

C.M.P. (MD) .No. 2574 of 2019

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ES/KK/02.05.2019/4P/5C