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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.04.2019

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (MD) .No.658 of 2019 (NPD)

and

C.M.P. (MD) .Nos.3495 and 3640 of 2019

V.Bhaskar ... Petitioner/Petitioner/Tenant

Vs.

Narayanasam ... Respondent/Respondent/Landlord

PRAYER: Civil Revision Petition filed under Section 25 of the Rent Control Act, to set aside the fair and executable order in R.C.A.No.2 of 2017 dated 02.03.2019 on the file of the Subordinate Judge, Thuraiyur, Trichy District.

For Petitioner : Mr.A.Haja Mohideen
For Respondent : Mr.A.Arumugam
for Mr.Muthumalai

O R D E R

This Civil Revision Petition has been preferred against the executable order in R.C.A.No.2 of 2017, dated 02.03.2019 on the file of the Subordinate Judge, Thuraiyur, Trichy District.

2.The revision petitioner, who is the tenant, has filed R.C.A.No.2 of 2017 and the respondent, who is the landlord, has filed R.C.O.P.No.1 of 2017 for delivery of the petition mentioned property on the ground of demolition and reconstruction of the building.

3.In the said R.C.O.P., the respondent/landlord stated that the revision petitioner/tenant was set exparte and eviction order was passed on 18.07.2017. Against the said exparte order, the revision petitioner/tenant herein has preferred an I.A.No.19 of 2017 in R.C.O.P.No.1 of 2017 to set aside the exparte order passed on 18.07.2017, stating that the revision petitioner/tenant was suffering from jaundice and he was not in a position to give instruction to his Advocate to file counter statement on his side.

4.The respondent/landlord has filed a counter statement denying the facts stated by the revision petitioner/tenant by explaining the status of the case regarding the rental agreement and the required particulars.



5.The Rent Controller/Principal District Munsif, Thuraiyur, Trichy District, after verifying the contentions raised by the petitioner, gave a finding that the revision petitioner/tenant is not in a position to give instruction to his Advocate to file counter statement, since he was suffering jaundice and sufficient opportunities were given to the revision petitioner/tenant to file his counter statement, when the matter was taken up finally on 13.04.2017, there was no representation by the revision petitioner/tenant. Hence, I.A.No.19 of 2017 was dismissed on 18.07.2017.

6.The grievance of the respondent/landlord is that the said I.A., was filed only to delay the proceedings of the R.C.O.P and further, the respondent/landlord is 90 years old man.

7.The Rent Controller has observed the contentions raised by the petitioner as well as the respondent that since the tenant has not filed necessary documents for his illness and also the treatment taken, the said reason was not considered and dismissed the said I.A.. Aggrieved over the same, the revision petitioner/tenant has preferred an appeal on the ground that without giving an opportunity to contest the main R.C.O.P, the said I.A.No.19 of 2017 was dismissed. The said order of the Rent Controller is untenable and allowing of the R.C.O.P., is very much erroneous and the tenant is doing Electrical business in the petition mentioned property and he has lot of customers in the said locality.

8.The other grievance raised by the revision petitioner/tenant in the appeal is that though he is regular in making payment of rent to the landlord, sufficient opportunity was not given to contest the case. The Rent Control Appellate Authority has also verified the contentions raised by the tenant as well as the landlord, in filing the said petition for eviction on the ground of wilful default and also for demolition and reconstruction of the building, dismissed the appeal.

9.It is contended by the learned counsel appearing for the respondent/landlord that already the lease agreement was expired and the advance paid by the revision petitioner/tenant herein was also returned by the landlord. The Rent Control Appellate Authority has considered the requirements of the petition mentioned property to the landlord and also the nature of the building and the arrears of rent committed by the tenant and also the non-appearance of the tenant before the Rent Controller for filing the counter statement, dismissed the R.C.A.

10.The Rent Control, by verifying the status of the case, wherein the petitioner/tenant was given sufficient opportunity to file his counter statement and the reason stated by the petitioner/tenant for his non-appearance was also not proved before the Rent Control Appellate Authority and the same facts also very



much discussed by the Rent Control Authority and also considering the age of the landlord, who is 92 years old man, was expecting a speedy disposal of the case, the said R.C.A., was dismissed by confirming the order of the Rent Controller. The Rent Controller has already granted three months time for eviction of the petition mentioned premises. In the mean while, the petitioner herein/tenant preferred C.R.P.No.1175 of 2018 against the fair and decreetal order passed in E.P.No.44 of 2017. In the said C.R.P., the petitioner/tenant stated that I.A.No.19 of 2017 was filed for setting aside the decree passed against him and this Court on 16.11.2018 has dismissed the revision petition. The relevant portion runs as follows:

"absolutely there is no oral or documentary evidence produced by the revision petitioner to substantiate his defense that he suffered jaundice. No doubt if infected by jaundice the petitioner would have taken treatment in hospital and will be in a position to produce medical evidence, but there is nothing on record to show such alleged illness. Hence, this Court has passed on order that each and every delay has to be substantiated before the Court by proper evidence, whereas the petitioner has not placed any evidence before the Court and hence, there was no valid ground observed by this Court and the civil revision petition was dismissed by confirming the order passed in E.P, and also gave a direction to the petitioner to vacate the premises within a period of three months from the date of receipt of a copy of this order. The said order was passed on 16.11.2018 by granting three months time to vacate the petition mentioned property.

11.Now, the grievance of the petitioner/tenant is that he was not given an opportunity to contest the case and the reason which was stated by him was not considered.

12.The other grievance of the petitioner/tenant is that the Executing Court without hearing the order passed by this Court for staying the proceedings, has proceeded without realising the pendency of the civil revision petition. Hence, the said order passed by the Executing Court is erroneous, when there is a stay order.

13.On the other hand, the respondent/landlord contended that the R.C.O.P.No.1 of 2017 was filed for eviction of the petition mentioned property on the ground of wilful default as well as on the ground of demolition and reconstruction, since the building was very old. Since the tenant was given sufficient opportunity to file his counter statement, he was not filed counter statement to contest the case. Considering the non-appearance of the petitioner/tenant, the Rent Control Authority has passed an exparte decree and thereafter, the tenant has filed I.A.No.19 of 2017 to set aside the said exparte order, which was also dismissed by the Rent Control Authority. Against the said dismissal order, the



tenant has filed an appeal in R.C.A.No.2 of 2017 before the Rent Control Appellate Authority and the appellate authority has also dismissed the same, by observing that the attitude of the petitioner/tenant in not proving his non-appearance and no supporting evidence and document placed for his illness. The petitioner/tenant herein also preferred C.R.P.No.2636 of 2018 to stay the proceedings in E.P.No.44 of 2017 and an order of interim stay was also passed by this Court on 27.11.2018 and E.P., was filed in C.R.P.No.2636 of 2018 was dismissed on 15.03.2019, giving direction to the Execution Court to dispose of the E.P.No.44 of 2017, within a period of one month from the date of receipt of a copy of this order.

14.It is seen that though the petitioner received the stay order in time, he has not mentioned the same or produced the copy of the same before the Court. Further, the Rent Control Authority very well observed the attitude of the tenant and the Appellate Authority also observed the contention, this Court observed the attitude of the petitioner in not proceeding with the case and no genuine reason or any supporting document has been filed in his counter inspite of sufficient given to him. The civil revision petition in C.R.P.No.1175 of 2018 also dismissed by granting three months time. In the order passed by the Executing Court and the earlier order passed in Civil Revision Petition, properly observed, for dismissing the both petitions, once again he has filed the present civil revision petition against the order passed in R.C.A.No.2 of 2017. Hence, this Civil revision petition is not maintainable. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Thuraiyur, Trichy District.

2.The Section Officer,The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.K.MUTHUMALAI, Advocate Sr. No.58993

+1CC TO MR.A.HAJA MOHIDEEN, Advocate Sr. No. 59009

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