



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.06.2019

DELIVERED ON : 16.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.P. (MD) No. 7751 of 2018

in

C.R.P. (MD) No. 614 of 2008

and

M.P. (MD) No. 1 of 2008

1. Vijayalakshmi
2. Mahendran
3. Thiagarajan
4. Venkatesan

.... Petitioners/Petitioners

Vs.

1. Aravindan Reddiar
2. Krishnan
3. Paranjothi
4. Rajam

.... Respondents/Respondents

Prayer in C.M.P. (MD) No. 7751 of 2018:- Petition is filed under Section 5 of Limitation Act, to condone the delay of 527 days in filing the application to restore the C.R.P.

Prayer in C.R.P. (MD) No. 614 of 2008:- This Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and 1 of 1980, to set aside the order of the learned Rent Control Appellate Authority, Thanjavur, made in R.C.A.No.3 of 2005 dated 20.12.2007 and to restore the order of the learned Rent Controller, Thanjavur, made in R.C.O.P.No.10 of 2000 dated 19.07.2004.

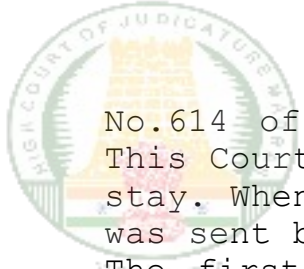
For Petitioners : Mr.N.Sivakumar
For 1st Respondent : Mr.T.R.Rajaraman

ORDER

Heard the learned counsel appearing for both the sides.

2. This petition has been filed to condone the delay of 527 days in filing the application to restore the Civil Revision Petition.

<https://hcservices.ecourts.gov.in/hcservices> 3. On the side of the petitioners, it is stated that the first petitioner is the mother and the petitioners 2 to 4 are the sons of the first petitioner. The petitioners filed C.R.P.(MD)

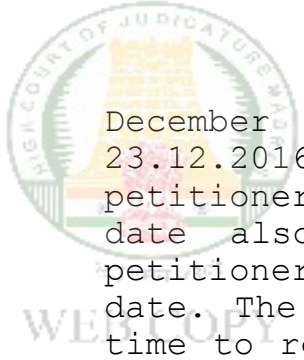


No.614 of 2008 against the order passed in R.C.A.No.10 of 2000. This Court has already admitted the C.R.P., and has granted interim stay. When the case was listed for final hearing, the communication was sent by the High Court Advocate to the District Court Advocate. The first petitioner is aged about 74 years and she is a heart patient and the petitioners 2 to 4 were away for their work. The first petitioner due to her ill health was not able to move from the bed and therefore, the first petitioner could not contact the High Court Advocate for prosecuting the case. The petitioners are having a chance for succeeding in the Civil Revision Petition and the delay is to be condoned.

4.On the side of the first respondent, it is stated that it is wrong to state that the first petitioner was unable to contact her advocate due to ill health and heart ailment and no medical certificate was filed in support of the contention. When the case was listed on 23.12.2016 and again on 09.01.2017, there was no representation on the side of the petitioners. Even after the case was listed for final hearing, there was no representation and the Court ultimately dismissed the case for non prosecution. There was no reason for the petitioners 2 to 4 failure to contact the counsel. The delay is willful and wanton. Each day delay is to be sufficiently explained. There is no merit in the Civil Revision Petition. This revision petition has been filed in the year 2008 challenging the eviction order dated 20.12.2007 in R.C.A.No.3 of 2005 on the file of the learned Principal Subordinate Judge, Thanjavur. The first respondent is aged about 83 years and he filed R.C.O.P. Petition against the petitioners for eviction on the ground of willful denial of title and for willful default as early as in the year 2000 and even after the lapse of 18 years, the first respondent is unable to get back his property due to the prolonged litigation process.

5.It is stated that after the Civil Revision Petition was dismissed for default on 09.01.2017, the respondents have filed an execution petition in E.P.No.7 of 2018 before the learned District Munsif, Thanjavur and in that petition, the petitioners entered appearance on 28.12.2018 and they were aware of the proceedings before this Court but failed to file this petition within the time limit. Only to avoid the eviction, this delay excuse petition was filed by the petitioners. None of the petitioners are residing in the suit property and they sub-leased the property to third parties and are collecting rent from them and they wanted to prolong the litigation as long as possible and prayed the delay excuse petition to be dismissed.

6.It is seen that this civil revision petition is of the year 2008. M.P.(MD)No.1 of 2008 was filed to fix a date for final disposal and the petition was allowed by this Court on 17.04.2012. The first respondent filed a petition in C.M.P.(MD)No.9176 of 2016 for fixing an early date for the final hearing and the same was allowed on 04.10.2016 fixing the date of hearing in the month of



December 2016. When the matter was listed for final hearing on 23.12.2016, there was no representation on behalf of the petitioners. Then the matter was listed on 05.01.2017 and on that date also, there was no representation on the side of the petitioners. The civil revision petition was dismissed on that date. The petitioners failed to take action within the stipulated time to restore the civil revision petition. There was a delay of 574 days in filing the restore petition and this petition is filed to condone the delay of 574 days.

7.The reasons stated by the petitioners are that the first petitioner due to her ill health was not able to contact their counsel. No supporting documents is filed by the first petitioner to prove that she had physical ailment at the time of disposal of the civil revision petition. Another reason stated by the petitioners is that the petitioners 2 to 4 were working out of station. There is no documents to show the non availability of the petitioners 2 to 4 in station. In the counter it was stated that the first respondent filed E.P. before the trial Court and the petitioners made representation in the E.P. proceedings through their counsel. This statement was not denied by the petitioners. It is seen that the petitioners made their presence in the trial Court in the E.P. proceedings on 28.02.2018. But the petitioners filed these C.M.Ps., only on 07.08.2018 after a lapse of six months. The allegation put forth by the first respondent in the counter is that the petitioners sub leased the premises to some other persons and they are receiving the rent. R.C.O.P.No.10 of 2000 was filed in the year 2000 itself. This litigation is pending for the past 19 years. The reasons stated in the affidavit are not satisfactory. Each day delay is not duly explained by the petitioners and allowing the petition will cause further delay in the proceedings.

8.In the above circumstances, this petition is dismissed and the Civil Revision Petition in C.R.P.(MD)No.614 of 2008 is rejected. No Costs. Consequently, M.P.(MD)No.1 of 2008 is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

mrn

To

1.The Rent Control Appellate Authority cum Principal Subordinate Judge,
Thanjavur.



2.The Rent Control Authority cum District Munsif,
Thanjavur.

+1CC TO MR.T.R.RAJARAMAN, Advocate Sr. No.75853

+1CC TO MR.N.SIVAKUMAR, Advocate Sr. No. 75646

C.M.P. (MD) No. 7751 of 2018

in

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