

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(NPD) Nos.2278 and 2279 of 2015
and M.P.No.1 of 2015

1. Mrs.Kalpana Krishnaji Reddy
2. Mr.R.Krishnaji Reddy ... Petitioners/Petitioners/Defendants 2 & 3
in both petitions

1. Mrs.K.Kasthuri ... Respondent/Respondent/Plaintiff
in both petitions

2. M/s.Krishka Academic Trust\
Old No.2A, New No.5, 4th Street,
Abiramapuum, Chennai-18. ... Respondent/2nd Respondent/1st Defendant
in both petitions

PRAYER IN CRP 2278/2015: Petition is filed under Section 115 of C.P.C. to set aside the Order and Decretal Order dated 29.10.2014 passed by the learned III Additional City Civil Judge, Chennai, dismissing I.A.No.16510 of 2014 in O.S.No.3659 of 2001 and allow the above I.A.No.16510 of 2014 by allowing this Civil Revision Petition.

PRAYER IN CRP 2279/2015: Petition is filed under Section 115 of C.P.C. to set aside the Order and Decretal Order dated 29.10.2014 passed by the learned III Additional City Civil Judge, Chennai, dismissing I.A.No.10033 of 2014 in O.S.No.3659 of 2001 and allow the above I.A.No.10033 of 2014 by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Nagu Sah

For R1 : Mr.V.Manohar

COMMON ORDER

The petitioners herein, who were the tenants under the plaintiff, had suffered an exparte order in O.S.No.3659 of 2001 and therefore, they filed I.A.Nos.16510 of 2014 and 10033 of 2014 for condonation of delay of 52 days in filing the petition to set aside the exparte decree dated 08.04.2003 and for setting aside the order of exparte decree dated 08.04.2003 respectively and both the applications came to be dismissed by the III Additional City Civil Court, Chennai. Aggrieved by the same, the petitioners are before this Court.

2. The 1st respondent / plaintiff, who is the owner of the suit schedule property, rented out her property to the petitioners herein on 01.08.1998 for a monthly rent of Rs.13,000/- and also received Rs.60,000/- towards advance. Since the petitioners had defaulted in payment of rent, the 1st respondent filed RCOP and obtained a favourable order. Subsequently, the 1st respondent filed O.S.No.3659 of 2001 against the petitioners for payment of Rs.3,25,150/- for the damages caused to the suit property. In the said suit, the petitioners were set exparte pursuant to their non appearance and a judgment and decree was passed in favour of the plaintiff. Thereafter, the property of the petitioners was attached in pursuant of the attachment warrant issued in E.P.No.560 of 2004.

3. It is the case of the petitioners that when they applied for encumbrance certificate in respect of their property, the factum of attachment was known to them and on enquiry, they came to know that the plaintiff had obtained such an order behind their

back, as they were not aware about the institution of the suit by the plaintiff and in the interregnum period, there occurred a delay of 52 days. Hence, they sought for condonation of the said delay and also to set aside the exparte order. According to them, they handed over the vacant possession of the property as early as in 2001 itself.

4. A perusal of the order of the III Additional City Civil Court, Chennai, especially Paragraph No.10 unfolds the fact that there is a delay of 4085 days and the delay has not been explained properly. Even assuming for the sake of argument that the delay is only 52 days and not 4085, still the said delay of 52 days has not been explained properly. A Division Bench of this Court in B. Dhanalakshmi vs M. Shajahan and Others, reported in AIR 2004 Madras 512, has opined that each day delay should be explained. Hence, this Court is of the view that the order passed by the III Additional Judge, City Civil Court, Chennai is perfectly in order and the same does not warrant any interference by this Court. Since the delay has not been explained properly and is not condoned, the question of restoration of the exparte decree does not arise at all.

5. Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.03.2020

Index: Yes / No
Internet: Yes / No
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S.VAIDYANATHAN,J.
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To:

The III Additional Judge,
City Civil Court,
Chennai.



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