



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 05.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD) (MD)No.2075 of 2019

and

CMP(MD)Nos.10776 of 2019 & 978 of 2020

Navaneethakrishnan @ Kannan ... Petitioner/Petitioner/
Respondent
Vs.

K.Soundararajan ... Respondent/Respondent/
Petitioner

Prayer : This Civil revision petition is filed under section 115 of C.P.C, to set aside the fair and decretal order dated 17.07.2019 passed in I.A.No.53 of 2018 in R.C.O.P.No.18 of 2016 on the file of the I Additional District Munsif Court, Tirunelveli and to allow the present Civil Revision Petition.

For Petitioner : Mr.S.P.Maharajan

For Respondent : Mr.M.P.Senthil

ORDER

This petition has been filed against the order dated 17.07.2019 passed in I.A.No.53 of 2018 in R.C.O.P.No.18 of 2016 on the file of the I Additional District Munsif Court, Tirunelveli.

2.The petitioner herein is the respondent and the respondent herein is the petitioner in R.C.O.P.No.18 of 2016.

3.The respondent has filed R.C.O.P.No.18 of 2016 for a prayer of eviction on the ground of willful default. After filing the counter statement, the petitioner remains *ex-parte* and an *ex-parte* decree was passed by the Rent Controller. The petitioner herein filed a petition to set aside the *ex-parte* decree with a delay excuse petition and that delay excuse petition was dismissed by the Rent Controller. Against which, the petitioner preferred this revision petition.

4.Brief substance of the petition in I.A.No.53 of 2018 is as follows:-

The petitioner is the respondent in the original petition. The petitioner was set as *ex-parte* on 22.03.2018 and an *ex-parte* decree was passed on 05.04.2018. The petitioner is a lorry driver and due to his work, he went to Coimbatore during the month of



February and he stayed there for two months. The petitioner was suffering from diabetic for the past 10 years and due to some infection in the leg, he was not able to walk and the doctor at Tirunelveli advised him to take rest in the house to save his leg from amputation. As per the advise of the doctor, he took rest in his house. Hence, he was not able to contact his advocate and there was a delay of 108 days in filing the petition and pray the delay is to be condoned.

5. Brief substance of the counter in I.A.No.53 of 2018 is as follows:-

The petitioner wantonly absent from appearing before the Trial Court. The petitioner has never paid any rent to the respondent. As per the agreement, rent is to be enhanced by Rs.50 per month in every April. There is a arrear of Rs.71,310/-. The previous counsel of the petitioner refused to take notice. In the original petition itself, even after sufficient opportunities were given to the petitioner, he failed to file a counter in time. Therefore, the petitioner was set as *ex-parte* and the petition to set aside the order was filed by the petitioner in I.A.No.12 of 2017 and that petition was allowed on 23.02.2018. Even after sufficient opportunities were given to the petitioner, he did not cross examine the respondent and on 05.04.2018, the petitioner herein was again set as *ex-parte*. Till July 2018, the petitioner did not take any action. The petitioner is residing in the house of the respondent without paying any rent and contesting the case without handing over the possession. The reasons stated in the petition are false.

6. The Rent Controller after hearing both sides, dismissed the petition. Against which, the revision petitioner preferred this revision on the following grounds:-

The petitioner has given plausible explanation for the delay of 108 days in filing application. The petitioner being a diabetic patient, due to the advise of the doctor took rest in his house and he was not able to contact his advocate. In the interest of justice, the delay has to be condoned. The petitioner has to be given an opportunity to contest the case on merits and the Court must have liberal approach in the petition filed under Section 5 of the Limitation Act.

7. On the side of the petitioner, it is stated that there is no arrears of rent as he undertook repair works with the consent of the landlord and the land lord has to pay the balance amount to the petitioner. The petitioner was not able to contact his advocate, due to his ill health. Therefore, the learned counsel for the advocate reported 'no instructions' on 16.02.2018. Since, the petitioner was absent on 23.02.2018 and 02.03.2018, an *ex-parte* decree was passed on 05.04.2018. It is stated that the petitioner is a lorry driver, he went to Coimbatore and he has to stay there during the month of February. The petitioner being a diabetic patient, due to some wound



on his leg, his doctor advised him not to move away from the house to save his leg from amputation.

8.The Rent Controller had dismissed the petition on two grounds. One is that in the earlier occasion, the petitioner has not filed his counter in time and he was set as *ex-parte* and subsequently a set aside petition was allowed. The second ground is that the petitioner was available at Tirunelveli during April 2018. Hence, he could have contacted his advocate.

9.On the side of the respondent, it is stated that there is arrear of rent from 22.03.2011 till 16.04.2015. The notice sent by the respondent was refused by the petitioner. The R.C.O.P was filed in the year 11.09.2015. Even after filing of the petition, the revision petitioner did not take any steps to pay the rent. Even after a lapse of several months, the petitioner failed to file a counter and hence, the petitioner was set as *ex-parte* on 05.12.2016. The petitioner filed a petition in I.A.No.2 of 2017 to set aside the *ex-parte* order and the same was allowed on 16.12.2017. This is the second time, the petitioner was set as *ex-parte*. Only after filing of the Execution Petition, the petitioner has come forward with this petition. The arrears is now accumulated to the tune of Rs.93,510/-. The land lord is a 70 years old man and hence, he wanted to take possession of the property before his life time. The petitioner used to abuse the land lord when ever he entered the premises for collecting rent. The petitioner is residing in the suit property without paying any rent to the respondent. The contact of the parties has to be taken into account. No medical certificate was produced. There is willful default on the part of the petitioner. As there is no possibility of his successes in the main petition, the petitioner want to drag on the case.

10.On the side of the petitioner, a judgment of the Hon'ble Supreme Court published in **2011-5-L.W.606** is cited wherein it is decided the following issues:-

"The past conduct of a party in the conduct of the proceedings is an important circumstances which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooper - ate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed"

11.The petitioner is a tenant and the respondent is the landlord. The original petition was filed for eviction. The petitioner was set as *ex-parte* on 05.04.2018 and there is a delay of 108 days in filing the revision petition. The reason for the delay



as stated by the petitioner is that he was held up in Coimbatore for two months and that he was advised by the doctor to take rest for three months due to some wound in his leg. In the petition itself, it is stated that the petitioner was advised by the doctor at Tirunelveli to take bed rest. Which clearly reveals that the petitioner was available at Tirunelveli. No medical certificate was filed on behalf of the petitioner to prove that the petitioner is a chronic diabetic patient. The claim of the petitioner is that from April first week onwards, the petitioner was not able to walk. Even prior to that date, the petitioner was absent. Trip sheet was not filed to prove that the petitioner was out of station and he went to Coimbatore during the month of February. It is seen that earlier the petitioner was set as ex-parte in the year 2017. So the contact of the petitioner reveals that he is in habit of absenting himself from appearing before the Court. If the petitioner could not contact his advocate in person, he could have contacted the advocate over phone.

12. In the above circumstances, there is no merits in the petition filed by the petitioner. Hence, the order passed in I.A.No.53 of 2018 in R.C.O.P.No.18 of 2016, on the file of the I Additional District Munsif Court, Tirunelveli is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

dss
To

The I Additional District Munsif,
Tirunelveli.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-5031[F] dated 06/02/2020)

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-5172[F] dated 07/02/2020)

**C.R.P. (PD) (MD)No.2075 of 2018
and**

**CMP (MD) Nos.10776 of 2019 & 978 of 2020
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KK/11.03.2020/ 4P- 4C