

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD) No.88 of 2021

M/s. Ramani Hotels and Resorts Pvt. Ltd.

Represented by its Managing Director,

Mr. P. R. Shanmugam,

IIIrd Floor, West Care Towers,

No.16, Cenotaph Road, Teynampet,

Chennai - 600 018.

and at Old No.42, New No.8, Plot No.24,

MaharajaSurya Rao Road, Alwarpet,

Chennai - 600 108.

.... Petitioner

Vs.

1. Mrs. R. Vasanthalakshmi,

2. Ms. R. Deepika

... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India against order dated 22.12.2020 passed in M.P. No.2 of 2020 in M.P.No.1 of 2020 in R.C.A. No.113 of 2020 by the Hon'ble VIII Court of Small Causes, Chennai, in so far as it relates to refusal to

enlarge the time for compliance of the order dated 07.11.2020 passed in M.P. No.1 of 2020 by 4 more months.

For Petitioner ... Mr.R. Venkatraman

For Respondents ... No Appearance

ORDER

The Civil Revision Petition has been filed against the order dated 22.12.2020 passed in M.P. No.2 of 2020 in M.P.No.1 of 2020 in R.C.A. No.113 of 2020 by the Hon'ble VIII Court of Small Causes, Chennai, in so far as it relates to refusal to enlarge the time for compliance of the order dated 07.11.2020 passed in M.P. No.1 of 2020 by 4 more months.

2. The case of the petitioner is that the petitioner being a Hotel and Resorts having registered as a private limited company, as its Managing Director Mr.P.R. Shanmugam, entered into a Lease Deed dated 01.07.2011, with Late Mr.M.S. Rajaram whose wife and daughter are respondents herein 1 and 2 respectively as landlords, in respect of the commercial space measuring approx. 10,000 Sq. Ft. situated at 8/42,

Maharaja Surya Rao Road, Alwarpet, Chennai - 600 018, for an initial monthly rent of Rs.2,50,000/- for running Restaurant and serviced Apartments in the said property. Since the aforesaid 10,000 Sq.ft is not belonged to Late Mr.M.S. Rajaram, to meet its growing space, the petitioner is compelled to enter into a lease Rental Agreement dated 16.03.2013, with Mr. SP.ST.Palaniappan, in respect of 1200 Sq.ft. in the southern wing of the Basement Floor of the building situated at the aforesaid address. Due to the urgent financial requirements, the said late M.S.Rajaram had proposed to sell the aforesaid property in favour of the petitioner herein for a total consideration of Rs.7.5 Crores out of which 3.5 Crore was also paid to him by cash under Oral agreement. In view of the aforesaid part payment, the petitioner was allowed to continue to occupy the said property as its agreement holder and as a Tenant. In the meantime, Mr.M.S. Rajaram passed away on 13.05.2014 and he is survived by his wife and a daughter. The respondents herein being legal heirs of Late M.S. Rajaram had entered into an Agreement for sale dated 27.12.2014 agreeing to sell the said property for a total consideration of Rs.7.5 Crores in favour of the petitioner herein. By way of the sale agreement, the petitioner herein had paid a sum of Rs.1 Crore to the

respondents herein. Pursuant to the receipt of the aforesaid amount, the respondents herein agreed to extend by an additional period of three months for performance by way of an Extension of Agreement for sale dated 23.03.2019, under the Agreement for Sale dated 27.12.2014. In the meanwhile, the respondents herein had filed RCOP No.565 of 2016 on the file of the XII Small Causes Court, Chennai, to evict the petitioner herein from the schedule property on the ground of wilful default in paying the rent of Rs.1,16,30,162/- for 47 months viz., the period commencing from May 2012 to March 2016. Under such situation, the respondents herein had filed the Miscellaneous Petition in M.P. No.45 of 2019 in RCOP No.565 of 2016, under Section 11(3) 11(4) of the Rent Control Act, on the file of the XII Small Causes Court, Chennai, seeking to direct the petitioner herein to deposit the alleged rental arrears of Rs.2,45,18,662/- for the period from May, 2012 to February, 2019. The same was allowed by order dated 08.09.2020 directing the petitioner herein as follows:

".....to pay a sum of Rs.2,45,18,662/- being the arrears of rent from July 2011 to February, 2019 at the admitted rate of Rs.2.50 Lakhs per month with increased

rate of rent on or before 18.11.2020, failing which further proceedings will be stopped in the main RCOP and eviction will be ordered and further directed to pay the subsequent future rents at the increasing rate of rent on or before 5th day of every succeeding English calendar month. For reporting compliance, call on 19.11.2020."

3. Being aggrieved over the aforesaid order, the petitioner had filed the appeal in R.C.A. No.113 of 2020 before the Rent Control Appellate Authority and thereon, the petitioner had filed Miscellaneous Petition in M.P. No.1 of 2020 seeking for a interim stay on the aforesaid order. The Rent Control Appellate Authority granted interim stay of all further proceedings in pursuance of the Fair and Decretal order dated 08.09.2020 passed in M.P. No.45 of 2019 in RCOP No.565 of 2016, subject to deposit of 50% of the rental arrears viz., Rs.1,22,59,331/- by the petitioner on or before 02.12.2020 and posted the matter on 03.12.2020 for reporting compliance. Due to worst health condition and pandemic of Covid 19, the business has been affected and came down at loss. Hence, the petitioner has filed a petition in M.P. No.2 of 2020 under Section 148 of Code of Civil Procedure, seeking to enlarge the time granted to the petitioner to deposit the aforesaid arrears of rent in part by

a period of 6 months. The same was allowed partly by granting 2 months time to comply the order dated 07.11.2020 in M.P. No.1 of 2020 in R.C.A. No.113 of 2020 on or before 01.02.2021 failing which the interim stay shall be vacated without any reference. Aggrieved by the aforesaid order, the petitioner has filed the present Civil Revision petition.

4. The learned counsel for the petitioner submitted that the Managing Director of the Petitioner, was diagnosed with Chronic Kidney Disease patient, wherein his Rental Angiogram showed Multiple Cortical Cysts in both the kidneys. In view thereof, he is undergoing Hemodialysis process thrice a week. Further it has been submitted that the petitioner was informed by the MGM Hospital, Aminjikarai, Chennai, as he was placed 5th in list of patients awaiting Kidney Transplant. In view of the above, the petitioner was advised to undergo multiple tests and provide Fitness Certificate as a prerequisite to undergo the Rental Transplantation Surgery. It has been further submitted by the learned counsel for the petitioner that the petitioner was advised to undergo Coronary Artery Bypass Graft in view of the 98% blockage in the Arteries. On the basis of the above report, the petitioner was admitted

in SIMS Hospital, Vadapalani, on 31.10.2020 for High Risk CABG surgery and underwent Off Beating Heart Coronary Artery Bypass Grafting X 4 Grafts on 02.11.2020 and was discharged only on 09.11.2020. In view of the above health situation and financial crises, the petitioner could not comply the order dated 07.11.2020 made in M.P.No.1 of 2020. Without considering the aforesaid critical situation facing by the petitioner in health wise and financial wise, the Appellate authority has granted only two months time to comply the aforesaid order. Hence, this Court may consider the above situation of the petitioner herein and pass orders accordingly.

5. In support of his arguments, the learned counsel for the petitioner has relied on the following Judgments in "***Salem Bar Association, T.N. Vs. Union of India,***" reported in 2005 (6) SCC 344, wherein the Hon'ble Supreme Court had held as follows:

" The amendment made in Section 148 affects the power of the Court to enlarge time that may have been fixed or granted by the Court for doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before

amendment, there was no such restriction of time. Whether the Court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the Court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the Court. The rigid operation of the Section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the Court for performance of an act prescribed or allowed by the Court.

and in the case of "**Chinnamarkthian Vs. Ayyavo reported in [1982 (1) SCC 159]**", the Supreme Court held as follows:

" It is well accepted principle statutorily recognized in Section 148 of the Code of Civil procedure that where a period is fixed or granted by the Court for doing any act prescribed or allowed by the Code, the Court may in its

discretion from time enlarge such period even though the period originally fixed or granted may expire. If a Court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in the while granting time simultaneously the Court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time."

and further reliance has been placed in the case of "**Mahanth Ram Das Vs. Ganga Das reported in [AIR 1961 SC 882]** wherein the Apex Court had observed as follows:

"Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and Section 149 is equally liberal. A fortiori, those Sections could be invoked by the applicant, when the time had not

actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on 13.07.1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the Original Judgment, would have operated from 8.7.1954. How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but set upon and robbed by thieves the day previous, he could not ask for extension of time or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceedings even though a final order had been passed."

6. On a perusal of the record, it is seen that at the out set, the petitioner herein is said to have entered oral agreement for sale with erstwhile landlord late Mr.M.S. Rajaram for which he had paid Rs.3.5 Crore by cash to him. In this regard, the petitioner has not produced any documentary evidence and oral evidence to prove on his side. Whereas the same is not established by way of proper evidence before this Court and the Court below, the contention of the petitioner on the aforesaid aspect is not acceptable. Further, pending RCOP No.565 of 2016, by order dated 08.09.2020 in M.P. No.45 of 2019 the petitioner was directed to pay a sum of Rs.2,45,18,662/- being the arrears rent from July, 2011 to February, 2019 on or before 18.11.2020. Without complying the aforesaid order, the petitioner has filed a petition in M.P. No.1 of 2020 before the Rent Control Appellate Authority, seeking for interim stay on the aforesaid order after making his worst health and financial situations thereon wherein the petition was allowed subject to deposit of 50% of Rental Arrears viz., Rs.1,22,59,331/- on or before 02.12.2020. Thereafter also, the petitioner has not complied with the aforesaid order and filed another M.P. No.2 of 2020 to grant six months time to pay 50% arrears of rent wherein the petitioner was granted two months time to

comply the aforesaid order. ie. on or before 01.02.2021. In spite of the petitioner was directed to pay the arrears of rent granting sufficient time on three occasions on sympathetic ground, without paying any amount to the respondents and evading to pay the rent for having run business and occupying in the said property, the petitioner has been filing the petitions to enlarge time to pay the aforesaid amount. Further, the contention of the petitioner is that the petitioner will pay the arrears of rent after undergoing the surgery and recovery from his illness and seeks for Six month time to deposit the aforesaid amount payable to the respondents herein. This Court is of the view that despite the petitioner has been given time to pay the aforesaid arrears of rent on three occasions, till date he has not paid any amount towards rent payable to the respondents whereas how the learned counsel for the petitioner can give assurance before this Court that the payment would be made after enlarging time by six months to the petitioner to deposit the aforesaid amount. Hence, the aforesaid contention raised by the learned counsel for the petitioner cannot be accepted. Under these circumstances, the cases cited by the learned counsel for the petitioner will have no application to the facts and circumstances of this case since the petitioner was already granted time to

pay the arrears of rent on three petitions on the sympathetic ground and the petitioner has not paid any part amount on arrears of rent so far. Hence, in the instant case, the reliance placed by the petitioner cannot be compared with it while the facts and circumstances of the case will differ in each of the cases in proving the evidence let in by both parties. It is evident that the petitioner, while seeking for six month of time to pay the arrears of rent, is accepting himself for having defaulted in paying the rent as stated above in occupying the premises for the business purpose under Lease rental agreement. It is settled law that it is the duty of the tenant to pay the rent regularly every month as enjoined in the statute without expecting any demand from the landlord in that regard. Further, the respondents/the landlords of the schedule property, are left without a breadwinner and having source of income from the rent of the said premises only.

7. Having considered the aforesaid facts and circumstances of the case, this Court is inclined to grant one month time to deposit the amount of Rs.1,22,59,331/- to the Landlord's account/respondents herein on or before 26.02.2021. If the aforesaid amount has not been paid by the petitioner herein within the

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stipulated time, as directed by this Court, interim stay granted by the Court below shall stand vacated automatically and the respondents are at liberty to proceed against the petitioner herein in accordance with law.

8. With the above directions, the Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed if any. No costs.

27.01.2021

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

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To:

The VIII Court of Small Causes,

Chennai

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