

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.3755 of 2015
and M.P.No.1 of 2015

P.Vanitha Chidambaram
Rep. by her husband and
Power of Attorney Holder
R.S.Chidambaram

... Petitioner

Vs.

S.Manickam

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order of the Rent Controller and District Munsif, Tiruppur in I.A.No.14 of 2014 in R.C.O.P.No.11 of 2012 dated 06.01.2015.

For Petitioner : Mr.Mukunth
for M/s.Sarvabhuman Associates

For Respondent : Mr.S.Manoharan

ORDER

This revision petition is arising out of fair and decreetal order dated 06.01.2015 made in I.A.No.14 of 2014 in R.C.O.P.No.11 of 2012 passed by the learned District Munsif, Tiruppur, thereby allowing the petition filed by the respondent/tenant, to condone the delay in filing the petition to set aside the exparte order.

2. The learned counsel appearing for the petitioner would submit that the petitioner is a landlady and the respondent is a tenant. The petitioner filed petition for eviction on the ground of willful default in payment of rent. The respondent was having been appeared before the learned Rent Controller and filed petition under Order 17 Rule 1 of C.P.C., for some documents. Thereafter, he also filed application under Order 9 Rule 7 of C.P.C., without even filing counter statement. Thereafter, he wantonly failed to appear before the Rent controller, that too without filing any counter. The learned Rent Controller passed exparte order in the petition for eviction on the ground of willful default in payment of rent.

3. Thereafter, the petitioner/landlady filed execution petition in E.P.No.5 of 2014. On receipt of the notice from the execution proceedings, the respondent/tenant come forward with the petition to set aside the exparte order along with the condone delay petition with the delay of 55 days in filing the petition to set aside exparte order. In the affidavit filed in support of the condone delay petition, the respondent/tenant stated that he is a heart patient and for the past more than eight months he was ailing by nervous problem. Therefore, he was not able to move out and contact his counsel to know about the status of the case. He also could not be able to inform about the illness to the counsel on record. The learned Rent Controller though recorded all the objections raised by the petitioner herein, allowed the petition for condoning the delay of 55 days in filing the petition to be set aside exparte order. He further stated that even till today, the respondent did not pay single piasa as rent to the petitioner herein. The subject premises was rented out to the respondent for the monthly rent of Rs 2,000/- and he was inducted as tenant on 27.05.2008. Therefore the learned Rent Controller ought not to have allowed the petition to condone the delay.

4. Heard Mr.Mukunth, learned counsel appearing for the petitioner/landlady and Mr.S.Manoharan, learned counsel appearing for the respondent/tenant.

5. The petitioner is the landlord. He filed the petition for eviction on the ground of willful default in payment of rent. According to the petitioner, he rented out the premises to the respondent for the monthly rent of Rs.2,000/- and it is a residential premises. After receipt of the notice in the rent control proceeding, the respondent appeared and also engaged counsel to represent on behalf of him.

6. On perusal of the records, he also filed petition under Order 17 Rule 1 of C.P.C., for seeking certain documents in RCOP proceedings. Thereafter he also file another application under Order 9 Rule 7 of C.P.C., to set aside the exparte order without filing any counter statement. Therefore, the said application was dismissed by an order dated 20.12.2013. Even thereafter, the respondent did not take any steps to file any counter in the RCOP proceeding and therefore the order dated 20.12.2013 become

final. On the strength of the order of eviction the petitioner filed execution petition in E.P.No.5 of 2014 in which notice was ordered. On receipt of the notice, the respondent filed petition to set aside the exparte order with the delay of 55 days in filing the petition to set aside the exparte order. In the affidavit filed in support of the condone delay petition, the respondent has stated that, he was fell ill due to heart ailments and also ailing by nervous problem as such he was not able to move about. He could not inform about his illness to his counsel.

7. When the respondent was able to file petitions under Order 17 Rule 1 of C.P.C., and also under Order 9 Rule 7 of C.P.C., the reasons stated in the affidavit is completely false. Therefore, the respondent is failed to explain the cause for the delay of each and every day. Without considering the above, the learned Rent Controller, Tirupur, allowed the petition for condone the delay in set aside the exparte order.

8. In view of the above discussions, the order of the learned Rent Controller, Tirupur is perverse and liable to be set aside. Accordingly, the

order dated 06.01.2015 passed by the learned District Munsif, Tiruppur, in I.A.No.14 of 2014 in R.C.O.P.No.11 of 2012, is hereby set aside. The petitioner/landlady is directed to proceed with the execution petition as against the respondent in the manner known to law.

9. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

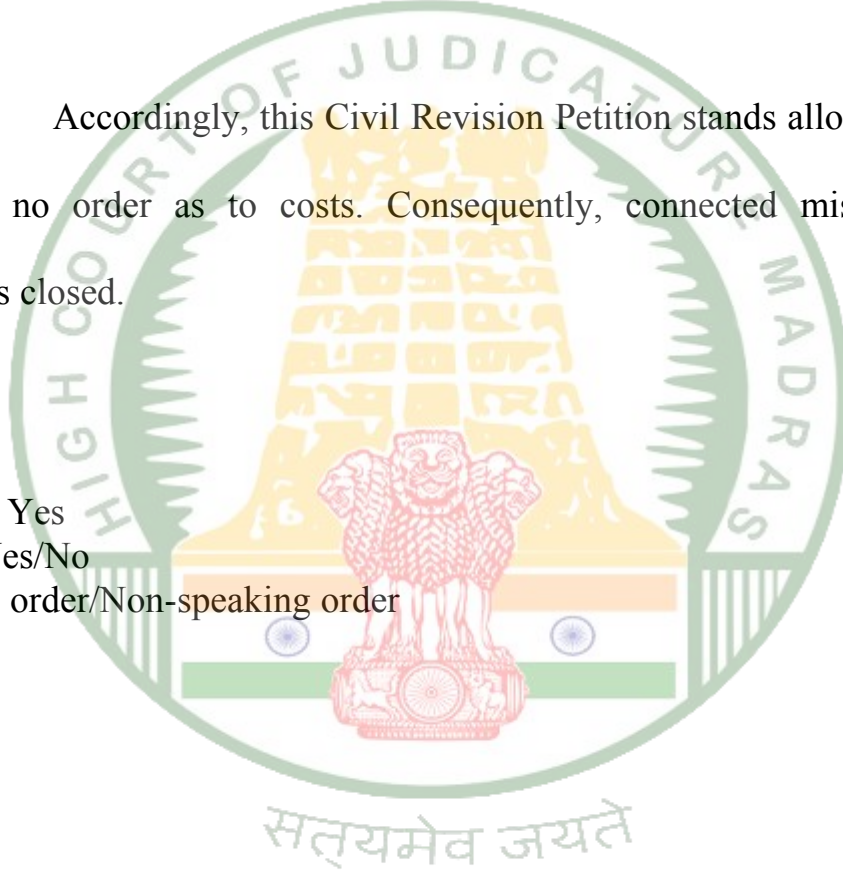
08.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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To

1. The Rent Controller and
District Munsif,
Tiruppur.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

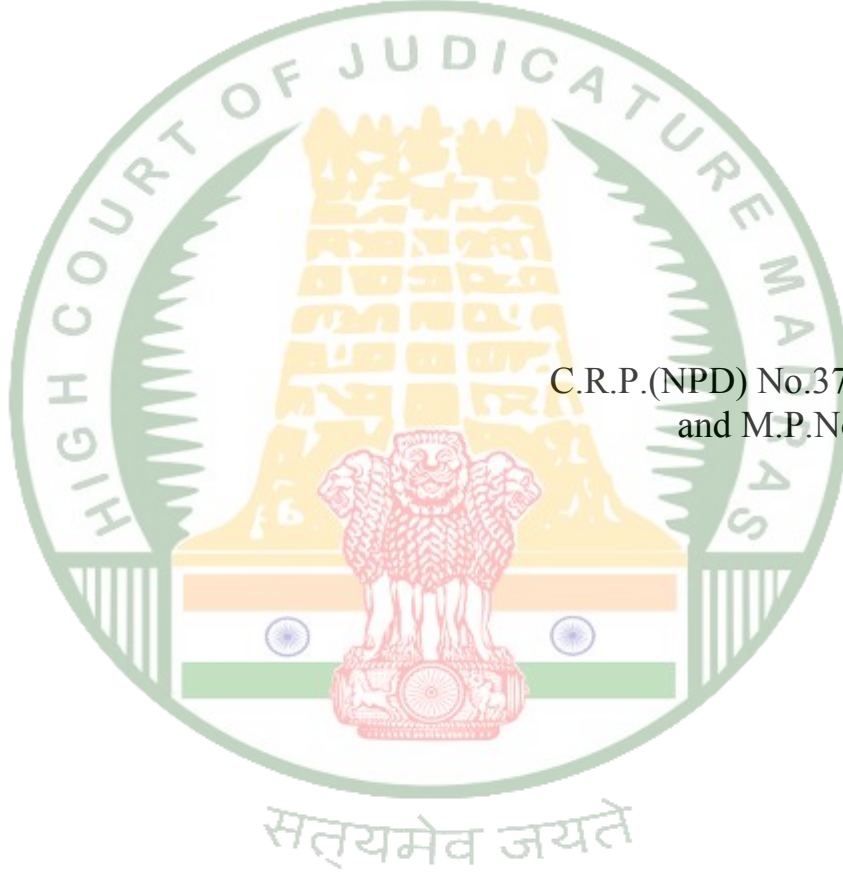


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