

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

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

CRP.NPD.Nos.2723 & 2724 of 2013 and
CRP.PD.Nos.3361 & 3362 of 2015 and
MP.Nos.1 & 1 of 2013, 1 & 1 of 2015 &
CMP.No.13743 of 2016

CRP.NPD.No.2723 of 2013

Dinesh Kumar Jain

..Petitioner

Vs.

N.Ramesh

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order of delivery of possession passed in EP.No.73 of 2011 in RCOP.No.22 of 2010 dated 28.06.2013 on the file of the Additional District Munsif at Vellore allowing the petition filed under Order XXI, Rule 35 of CPC and under Section 18 of TNC Act, 1960.

For Petitioner

: Mr.E.Om Prakash,
Senior Counsel
Assisted by
Mr.P.Elayarajkumar
for M/s.Ramalingam Associates
For Respondent : M/s.R.T.Sundari
for M/s.D.Malarvizhi

CRP.NPD.No.2724 of 2013

Dinesh Kumar Jain

..Petitioner

Vs.

N.Ramesh

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order of delivery of possession passed in EP.No.74 of 2011 in RCOP.No.23 of 2010 dated 28.06.2013 on the file of the Additional District Munsif at Vellore allowing the petition filed under Order XXI, Rule 35 of CPC and under Section 18 of TNC Act, 1960.

For Petitioner : Mr.E.Om Prakash,
Senior Counsel
Assisted by
Mr.P.Elayarajkumar
for M/s.Ramalingam Associates

For Respondent : M/s.R.T.Sundari
for M/s.D.Malarvizhi

CRP.PD.No.3361 of 2015

Dinesh Kumar Jain

..Petitioner

Vs.

N.Ramesh

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated

23.06.2015 passed in IA.No.53 of 2013 in RCOP.No.22 of 2010 on the
file of the Principal District Munsif, Vellore.

For Petitioner : Mr.E.Om Prakash,
Senior Counsel
Assisted by
Mr.P.Elayarajkumar
for M/s.Ramalingam Associates

For Respondent : Mr.V.R.Kamalanathan
for Mr.G.Shivasurya

CRP.PD.No.3362 of 2015

S.Dinesh Kumar Jain

Vs.

..Petitioner

N.Ramesh

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decreetal order dated
23.06.2015 passed in IA.No.54 of 2013 in RCOP.No.23 of 2010 on the
file of the Principal District Munsif, Vellore.

For Petitioner : Mr.E.Om Prakash,
Senior Counsel
Assisted by
Mr.P.Elayarajkumar
for M/s.Ramalingam Associates

For Respondent : Mr.V.R.Kamalanathan
for Mr.G.Shivasurya

COMMON ORDER

The civil revision petitions in CRP.PD.No.2723 & 2724 of 2013 have been filed against the order of delivery of possession passed in EP.Nos.73 & 74 of 2011 in RCOP.Nos.22 & 23 of 2010 dated 28.06.2013 on the file of the Additional District Munsif at Vellore thereby allowing the petitions for delivery of possession. The civil revision petitions in CRP.PD.Nos.3361 & 3362 of 2015 have been filed against the fair and decreetal order dated 23.06.2015 passed in IA.Nos.53 & 54 of 2013 in RCOP.Nos.22 & 23 of 2010 on the file of the Principal District Munsif, Vellore thereby dismissing the petitions to condone the delay in filing the set aside the exparte order passed in Rent Control proceedings.

2. In all the civil revision petitions, the petitioner is the tenant and the respondent is the landlord. The respondent filed eviction petition on the ground of wilful default, acts of waste and owner's occupation. The case of the respondent is that the petitioner was inducted as tenant for non residential shop premises by unregistered agreement dated 01.08.1999 between the petitioner and the erstwhile owner's wife of the

petition premises. On 18.06.2003, the respondent purchased petition premises for valid sale consideration and after the date of purchase of the petition premises, the respondent became absolute owner of the petition premises. Thereafter, the petitioner paid rent regularly to the respondent and from the month of April 2008, the petitioner failed to pay the rent. Further he also caused damages to the floors, doors and halls of the petition premises and not maintained properly. Since the respondent is carrying the business of beedi threads at large scale, he needs the petition premises for his own occupation to develop his business. On receipt of the notice from the learned Rent Controller, the petitioner failed to appear before the learned Rent Controller and as such he was set exparte and ordered eviction dated 07.10.2010.

3. Mr.E.Om Prakash, Senior counsel appearing for the petitioner submitted that the petitioner is the absolute owner of the petition premises having been purchased the same in auction sale under the SARFAESI Act. Sale was brought by the Indian Bank, Vellore under the SARFAESI Act. The petitioner was originally inducted as tenant by the erstwhile owner of the petition premises on 01.05.2000 and also entered

into sale agreement. The erstwhile owner of the petition premises borrowed loan with the Indian Bank and thereafter he committed default. Therefore, the Indian Bank has initiated proceedings under the SARFAESI Act by issuing demand notice. Thereafter, the petition premises were brought for auction sale, in which the petitioner purchased the petition premises which was mortgaged with Indian Bank by the registered sale deed dated 13.05.2008 which was registered as document No.5380 of 2008 on the file of the Joint Registrar-I, Vellore. While being so, the respondent issued notice on 27.05.2008 to the petitioner stating that he had purchased the petition premises under the registered sale deed dated 18.06.2003 vide document No.3888 & 3890 of 2003 on the file of the Joint Sub Registrar, Vellore and demanded rent for the petition premises. Immediately, the petitioner informed that he is not the tenant under him and he is the tenant under the borrower and subsequently the petition premises was brought for sale and the same was purchased by him under SARFAESI Act proceedings. In fact, the petitioner paid rents to the erstwhile landlord till August 2008.

3.1 He further submitted that the respondent filed suit in

OS.No.242 of 2010 for declaration in respect of the petition premises. In the meanwhile, the respondent also filed the present rent control proceedings for eviction on the ground of wilful default, acts of waste and owner's occupation. Due to wrong advice, the petitioner failed to contest the rent control proceedings. Therefore, by order dated 07.10.2010, exparte order of eviction was passed by the learned Rent Controller. In pursuant to the order of eviction, the respondent also filed execution petition in EP.Nos.73 and 74 of 2011. The petitioner filed his counter in the execution petition and both the execution petitions ordered by order dated 28.06.2013. Therefore, the petitioner filed petitions to set aside the exparte order with the delay of 978 days to set aside the exparte order. In the execution proceedings, though the petitioner filed detailed counter stating the above facts, the execution court ordered delivery of possession. The condone delay petition in both the RCOP was dismissed and delivery was also ordered in the execution proceedings. As against all the orders, the present civil revision petitions are filed.

3.2 He further submitted that in the suit filed by the respondent in OS.No.242 of 2010, the petitioner filed written statement along with

counter claim for declaration in respect of schedule mentioned property. While pending the counter claim, the respondent filed petition to withdraw the suit. However, it was dismissed and aggrieved by the same, the respondent filed civil revision petition before this Court in CRP.No.3134 of 2018. This Court by order dated 19.02.2021 permitted the respondent to withdraw his claim in OS.No.242 of 2010 and shall continue the suit in respect of counter claim made by the petitioner herein. He further submitted that already the petition premises was mortgaged with the Indian Bank and as such the sale deed executed in favour of the respondent is invalid and declared to be null and void. In the meanwhile, in the short cut method, the respondent filed petition for eviction and unfortunately the petitioner failed to appear before the learned Rent Controller and the same was ordered. Now delivery of possession ordered, not yet recorded in the execution court and execution petition also not terminated.

4. Per contra, M/s.R.T.Sundari, learned counsel appearing for the respondent in CRP.Nos.2723 and 2724 of 2013 submitted that the respondent purchased the petition premises for valid sale consideration

from the erstwhile owner of the premises by the sale deed dated 18.06.2003 registered vide document Nos.3887 of 2003 and 3890 of 2003. Admittedly, the petitioner was inducted as tenant by the erstwhile owner of the building premises and thereafter attornment of tenancy effected and the petitioner is liable to pay rent to the respondent herein. From the month of April 2008, he failed to pay rent and as such the respondent filed petition for eviction on the ground of wilful default, act of waste and owner's occupation. Notice in the eviction petition was duly served to the petitioner and thereafter the petitioner wantonly failed to appear before the learned Rent Controller and made him ex parte and allowed the learned Rent Controller to pass ex parte eviction order. On the strength of the order of eviction, the execution court ordered eviction. In fact, possession of petition premises also effected and as such nothing survives in the civil revision petitions and prayed for dismissal of the same.

5. Mr.V.R.Kamalanathan, the learned counsel appearing for the respondent in CRP.PD.3361 & 3362 of 2015 would submit that the petitioner did not state any sufficient and valid reason to condone the

delay of 978 days in filing the set aside the exparte order. The only reason stated by the petitioner is that he was under bonafide belief that rent control proceedings will not stand since the respondent has no any kind of right, title or interest over the petition premises. Further, he was misguided by erstwhile counsel that he no need to appear before the learned Rent Controller since already the suit filed by the respondent for declaration of title is pending in OS.No.242 of 2010 on the file of the Sub Court, Vellore. Therefore, the court below rightly dismissed the petition to condone the delay of 978 days in filing the set aside the petition. In support of his contention he relied upon the following judgments:

- (i) M.Muthu Vs. A.Mohamed Yusuf Khan & Others
reported in CDJ 2007 MHC 989
- (ii) S.M.Chandrasekaran Vs. S.S.Jayamani & Others
reported in CDJ 2007 MHC 3213
- (iii) A.Abitha Nachi & Others Vs. K.S.Saroja & Others
reported in CDJ 2016 MHC 5617
- (iv) S.Leelavathi Vs. K.Subramaniam
reported in CDJ 2016 MHC 5624
- (v) S.Muthu Narayanan and others Vs. Paulraj Naicker

in CRP.NPD.(MD).No.885 of 2013 dated 12.09.2018

(vi) M/s.Kirubasanam Kiruthuvin Saba Rep. by its

President Dasayya Vs. T.Ramanathan & Another

reported in CDJ 2019 MHC 834

6. Heard, Mr.E.Om Prakash, Senior counsel appearing for the petitioner, M/s.R.T.Sundari, learned counsel appearing for the respondent in CRP.Nos.2723 & 2724 of 2013, and Mr.V.R.Kamalanathan, the learned counsel appearing for the respondent in CRP.Nos.3361 & 3362 of 2015.

7. In all the civil revision petitions, the petitioner is the tenant according to the respondent herein. The respondent filed petition for eviction on the ground of wilful default, acts of waste and owner's occupation as against the petitioner herein for the petition premises. Notice was duly served to the petitioner in both the RCOP's. After receipt of the same, the petitioner failed to appear before the learned Rent Controller as such they were set exparte and exparte decree was passed on 07.10.2010. In pursuant to the eviction order, the respondent filed execution petition. In the execution petition, the petitioner was served notice and he appeared before the execution court and also filed counter. Simultaneously, he filed petition to set aside the exparte order in the

RCOP with the delay of 978 days.

8. On perusal of the affidavit filed in support of the condone delay petition revealed that the petitioner was originally inducted as tenant of the petition premises by the agreement dated 01.08.1999 by the erstwhile owner of the building premises. The erstwhile owner borrowed loan from the Indian Bank. While borrowing the loan, the petition premises was mortgaged with the Indian Bank and on default of payment of loan, the Indian Bank brought the property for auction sale under the SARFAESI Act. In the auction sale, the petitioner participated and purchased the petition premises under court auction sale on 13.08.2004. Subsequently, the petitioner was issued sale certificate and the same was registered vide document No.5380 of 2008 on the file of the Joint Registrar-I, Vellore. In fact, the said auction sale was challenged by the petitioner before this Court in WP.No.2815 of 2014 and the same attained finality by order dated 23.07.2015. In fact, the petitioner also paid rent to the erstwhile owner till his purchase of the petition premises. While being so, the respondent filed suit in OS.No.69 of 2008 and subsequently transferred to the file of the Sub Court, Vellore and renumbered as

OS.No.242 of 2010 as against the petitioner as well as the Indian Bank for declaration in respect of the petition premises. After receipt of the notice, the petitioner filed written statement with counter claim for declaration in respect of suit property.

9. Thereafter, the respondent filed the present eviction petition on the ground of wilful default, acts of waste and owner's occupation for the petition premises. Therefore, the petitioner on bonafide reason, failed to appear before the learned Rent Controller, since he purchased the petition premises through court auction under the SARFAESI Act proceedings initiated by the Indian Bank as against the erstwhile owner of the premises. In fact, the respondent also filed suit, in which the petitioner filed his counter claim. Thereafter the petitioner filed application to withdraw the suit and the same was rejected. Aggrieved by the same, the respondent filed civil revision petition before this Court and this Court allowed him to withdraw the suit and ordered to continue the suit in respect of the counter claim made by the petitioner herein in CRP.No.3134 of 2018 dated 19.02.2021.

10. The learned counsel for the respondent in CRP.Nos.3361 and 3362 of 2015 submitted that already delivery of possession ordered and the petition premises is not under possession of respondent herein as such nothing survives in the present civil revision petitions.

11. Though delivery of possession taken by the respondent, it is not yet recorded in the execution court. At that juncture, the petitioner preferred the present civil revision petition and obtained order of stay. The learned counsel for the respondent in CRP.Nos.3361 & 3362 of 2015 relied upon the judgment in the case of **M.Muthu Vs. A.Mohamed Yusuf Khan & Others** reported in **CDJ 2007 MHC 989**, wherein it is held as follows:

17... Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims

and fancies of the opponent?

12. In view of the above facts and circumstances of the case, the above judgment is not helpful to the case on hand. Therefore, the petitioner may be given one more opportunity to defend the rent control proceedings on merits.

13. In view of the above discussion, all the civil revision petitions are allowed and the orders passed in EP.Nos.73 & 74 of 2011 in RCOP.Nos.22 & 23 of 2010 dated 28.06.2013 on the file of the Additional District Munsif at Vellore and the orders dated 23.06.2015 passed in IA.Nos.53 & 54 of 2013 in RCOP.Nos.22 & 23 of 2010 on the file of the Principal District Munsif, Vellore are set aside. Further, the Principal District Munsif, Vellore is directed to dispose of the rent control proceedings in RCOP.Nos.22 & 23 of 2010 on merits and in accordance with law within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. No order as to costs.

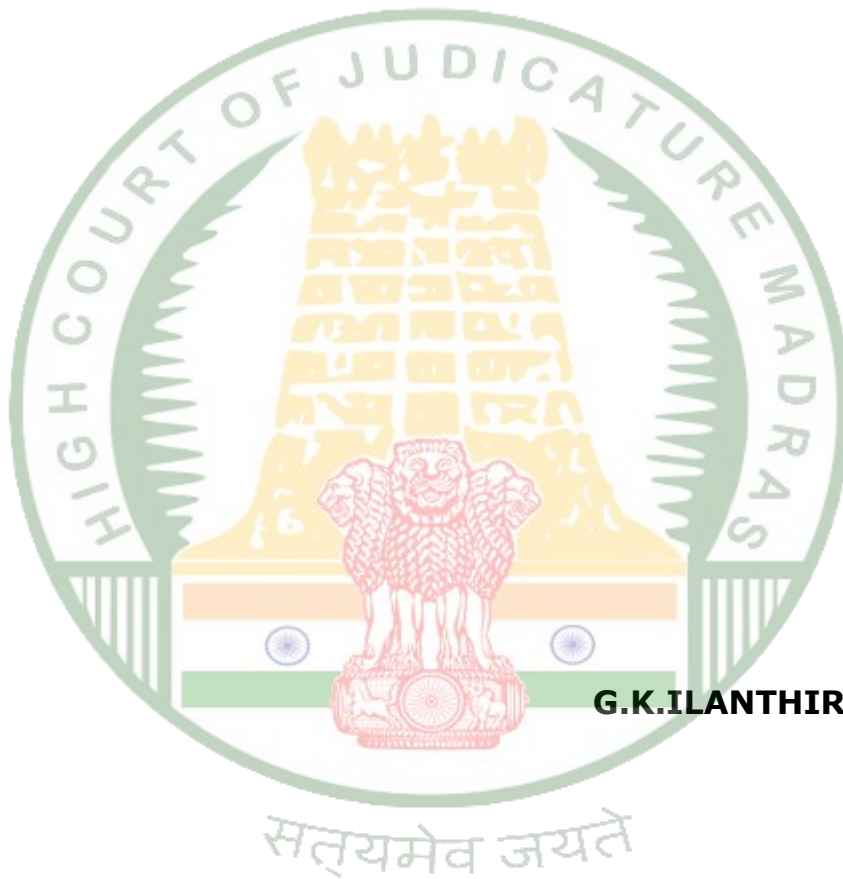
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

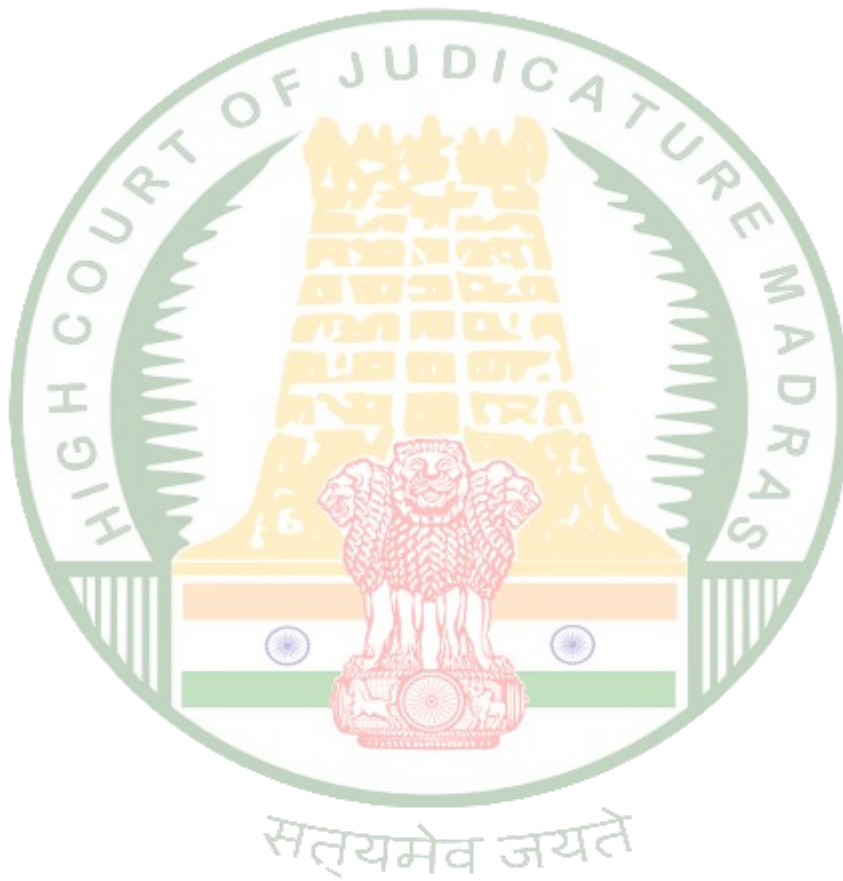
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To

- 1.The Principal District Munsif,
Vellore
2. The Additional District Munsif,
Vellore

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CRP.NPD.Nos.2723 & 2724 of 2013 and
CRP.PD.Nos.3361 & 3362 of 2015



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