

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

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

C.R.P.(NPD) No.2109 of 2018
and
CMP No.12803 of 2018

Ameerunnissa Begum Sahiba Endowment
rep. by its President : Jalal Ameenur Rahaman ... Petitioner

Vs

1. M.A.Majid @ Saleem
2. M.A.Iqbal ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.04.2018 made in I.A.No.3284 of 2017 in O.S.No.4131 of 2011 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.A.Nissar Ahmed
For Respondents : Mr.B.Radhakrishnan
for Mr.R.Narendran

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 05.04.2018 made in I.A.No.3284 of 2017 in O.S.No.4131 of

2011 on the file of the I Assistant Judge, City Civil Court, Chennai, thereby allowing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for ejectment and also prayed for arrears of rent for the period from July, 2003 to October, 2009. The suit was filed in the year 2009. After receipt of the summons, the respondents failed to appear before the Court below. Therefore, they were set ex-parte and ex-parte decree was passed on 12.09.2011. The respondents filed a petition to set aside the ex-parte decree with a delay of 1959 days in filing the petition to set aside the ex-parte decree.

3. On perusal of the affidavit filed in support of the condone delay petition revealed that the respondents came to know about the ex-parte decree only after receipt of the summons from the Execution Court. The record shows that the execution petition was filed in the year 2013 in E.P.No.1139 of 2013 on the file of the IX Assistant Judge, City Civil Court,

Chennai. In the execution petition, the respondents were duly served notice. In fact, they also appeared through their counsel in the month of July 2014 itself. Whereas, the petition to set aside the ex-parte filed only in the month of July 2017, after a period of four years before the Execution Court. There is absolutely no explanation for the huge delay of 1959 days in filing the petition to set aside the ex-parte decree.

4. In fact, the petitioner filed a counter and categorically averred that the respondents appeared in the Execution Court through their counsel in the month of July 2014 itself. Thereafter, deliberately failed to file any petition to set aside the ex-parte decree. That apart, the respondents being the tenants, they failed to pay the rent from the year 2003 onwards. They occupied the residential premises ad-measuring 826 sq.ft situated in the heart of the city i.e., No.15, Maroof Sahib Street, Mount Road, Chennai. They were inducted as tenant for very meagre amount of Rs.172/- per month as rent. Even then, the respondents failed to pay the rent from the month of July 2003 onwards. When the respondents were able to engage their counsel to appear before the Execution Court in the month of July 2014,

they ought to have filed a petition to set aside the ex-parte decree immediately after receipt of the notice from the Execution Court. But they deliberately failed to file any petition to set aside the ex-parte decree immediately. The Court below without even any discussion about the counter filed by the petitioner and mechanically allowed the petition with cost of Rs.5,000/- . Therefore, the order passed by the trial Court is perverse and illegal.

5. Accordingly, the order dated 05.04.2018 made in I.A.No.3284 of 2017 in O.S.No.4131 of 2011 on the file of the I Assistant Judge, City Civil Court, Chennai, is hereby set aside and the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

30.06.2021

lpp

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

WEB COPY

To

The I Assistant Judge,
City Civil Court, Chennai.



WEB COPY

C.R.P.(N.P.D).No.2109 of 2018

G.K.ILANTHIRAIYAN,J.

lpp



C.R.P.(NPD) No.2109 of 2018
and CMP No.12803 of 2018

WEB COPY

30.06.2021