

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2021

Pronounced on : 06.07.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD).No.1046 of 2021

and

C.M.P.No.8349 of 2021

1.K.Mohamed Nayeem

2.K.Zaiullah

... Petitioners/Petitioners/Respondents/Respondent

Vs.

M/s.Ismail Musa Wakf,
Represented by its Muthavalli,
Aejaz Sait

... Respondent/Respondent/Petitioner/Petitioner

Prayer:- This petition filed under Article 227 of Constitution of India to set aside the dismissal order dated 01.03.2021 passed in M.P.No.491 of 2018 filed in M.P.No.364 of 2017 in R.C.O.P.No.1698 of 2016 by the XVI Small Causes Court, Chennai.

For Petitioners : Mr.L.Gavaskar

For Respondent : No appearance

ORDER

This Revision Petition has been filed questioning the order dated 01.03.2021 in M.P.No.491 of 2018 which Miscellaneous Petition was filed in M.P.No.364 of 2017 in R.C.O.P.No.1698 of 2016 now pending on the file of the XVI Small Causes Court, Chennai.

2.R.C.O.P.No.1698 of 2016 had been filed by the respondent herein under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 seeking an order of eviction of the petitioners herein from the suit schedule property. It had been stated that there had been wilful default in payment of rents from December 2014 till December 2016. The suit schedule property is Shop No.4, in the ground floor of premises of Old Door No.14, New Door No.20, Venkatesan II Street, Anna Salai, Chennai-600002.

3.Counter had also been filed on behalf of the revision petitioner / respondent in the Rent Control proceedings. In the said Rent Control Proceedings, since the rents were not paid during the pendency of the Rent Control Proceedings, the respondent herein filed M.P.No.364 of

2017 under Sections 11(3) and 11(4) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 18 of 1960 Act. In that petition, the revision petitioners herein chose to remain absent and they were set exparte. Thereafter, an order was passed on 20.10.2017 and a direction had been given that the revision petitioners should pay the rental arrears from December 2014 to September 2017 at the rate of Rs.2,200/- per month totally amounting to Rs.63,800/- after deducting a sum of Rs.11,000/- which had already been paid on 25.07.2017. The time limit given for effecting payment of Rs.63,800/- was 17.11.2017. A further direction was also given that the revision petitioners herein should pay the monthly rents without default in the succeeding months. The said order was not complied. Therefore, the respondent herein had filed E.P.No.217 of 2018 seeking eviction.

4. Notice was served and at that stage, the revision petitioners filed M.P.No.491 of 2018 under Section 5 of the Limitation Act, seeking to condone the delay of 365 days in filing the application to set aside the exparte decree passed in R.C.O.P.No.1698 of 2016. In the affidavit filed in support of the said application, it had been stated that the 2nd revision petitioner herein had suffered from jaundice fever and went to his native

place in Karnataka. It was stated that he was staying in Karnataka from the 4th week of August 2017 to May 2018. He took Country medicine for jaundice fever. He was not be able to contact his counsel. Notice was served in the Execution Petition. After receiving notice he contacted his counsel on 20.06.2018. He was then informed that he had been set exparte in the Rent Control proceedings. It had been stated that in the meanwhile, there was negotiations going on between him and the respondent / Wakf. He again went to his native place in Karnataka for the treatment of jaundice fever and stayed there from August 2018 to October 2018. Later, he recovered from jaundice fever and in the first week of November 2018, he contacted his counsel. At that time, he was informed that delivery was ordered in the Execution Petition. He therefore sought for condoning the delay in filing the application to set aside the exparte decree claiming that the delay should be condoned on the basis of the reasons stated above.

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5.This application came up for consideration on 01.03.2021 and by order of even date the learned Rent Controller had rejected the reasons given therein. The learned Rent Controller had pointed out that the revision petitioners herein had entered appearance through their counsel

and had also filed their counter statement. Thereafter, they did not choose to participate in M.P.No.364 of 2017 and had also not even filed their counter affidavit. It was also stated that the said Miscellaneous Petition was allowed by imposing a condition to deposit the arrears of rental amount. That was not complied with and therefore, the order of eviction was passed.

6.The learned Rent Controller held that there were two petitioners and they were brothers and no reasons had been advanced as to why the 1st petitioner had not filed his counter and had not appeared before the Court. It was also pointed out that a perusal of the docket sheet showed that more than sufficient opportunity had been granted to the revision petitioners herein, but they deliberately, chose not to appear before the Court. Finally, the learned Rent Controller had dismissed the Miscellaneous Petition.

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7.Mr.L.Gavaskar, learned counsel for the petitioners, in the first instance stated that as against the said order only an appeal would lie and therefore, sought permission of the Court to withdraw the Revision Petition. Later the learned counsel stated that he would advance

arguments. The learned counsel pointed out that the revision petitioner herein had taken treatment for jaundice fever and had taken Country medicine and there were no records for the same. He pointed out that records could not be produced.

8. In this connection, the learned counsel has also relied on a judgment of a learned Single Judge of this Court in ***Mayee @ Maya Thevar Vs. Solai Sethuramalingam*** reported in ***2013 (2-3) C.L.T.281***, wherein, a learned Single Judge of this court held that for jaundice, normally persons who are taking Country treatment would not be able to get medical records. The learned Single Judge therefore stated that when such reasons are advanced, the Court should examine it quite graciously.

9. The learned counsel also relied on another judgment of the learned Single Judge of this Court in ***Mallika Vs. The Salem Highways Officials, Co.op. House Building Society Ltd., Nedunchalai Nagar, Salem - 5 and others*** reported in ***2013 (2-3) C.L.T.296***, wherein also a learned Single Judge of this Court had stated that with respect to condonation of delay the Court should apply the principle “*liberal approach*”.

10.The learned counsel therefore stated that the Court can impose any costs and permit the petitioners to participate in the proceedings.

11.I have carefully considered the arguments advanced.

12.The Rent Control proceedings in R.C.O.P.No.1698 of 2016 had been filed by M/s.Ismail Musa Wakf represented by its Muthavalli seeking eviction of the respondents therein / petitioners herein from Shop No.4, in the ground floor of premises of Old Door No.14, New Door No.20, Venkatesan II Street, Anna Salai, Chennai-600002, on the ground that they had not paid the rent from December 2014 till December 2016. It is seen from a reading of the Rent Control Petition, that there was an earlier occasion to file an earlier R.C.O.P.No.1978 of 2013 on the ground of demolition and reconstruction and also for wilful default in payment of rents for the months of June 2013 and July 2013 and that the said Rent Control Petition is still pending. It is thus seen that the revision petitioners are chronic defaulters in the payment of rents. It is also to be noted that the respondent / Waqf, is a Waqf represented by its Muthavalli. It is a common knowledge that the rental income is a major source of income for the Waqf and it is very vital for the running of the Waqf. Therefore, when the revision petitioners herein had opted to become the tenants under the Waqf they were under an obligation to pay

the monthly rents and any default in payment of rents has to be viewed stringently.

13.The revision petitioners filed their counter which indicates that they had also engaged a counsel. There was no reason advanced in the affidavit filed as to why their counsel did not appear before the Court when M.P.No.364 of 2017 had been called for hearing. The contention of the 2nd revision petitioner that he suffered from jaundice fever during various phases stated by him and that he took Country medicine cannot be taken on its face value since the said revision petitioner did not graze the witness box to state on oath the said facts and subject himself for cross-examination. That should have been a logical step taken when any reason to condone the delay is advanced. A primary duty is cast to tender evidence with respect to the reasons for delay particularly when there are no documents to substantiate the said reasons.

14.The two judgments relied will not advance the case of the revision petitioners since, each case is based on its respective facts. The revision petitioners herein, having not taken up the opportunity to lead evidence, cannot build a case based on the precedents. The law should follow the facts and not otherwise. The learned Rent Controller had very specifically stated that only when notice had been served in the

Execution Petition, were the applications filed seeking to condone the delay in filing application to set aside the exparte decree. A valuable right has accrued to the respondent. It is a lawful right granted by the competent Court. That cannot be simply washed away by a frivolous petition and by stating that treatment had been taken for jaundice fever and that Country medicines had been taken and that there were no medical reports. This cannot be believed and atleast could have been acknowledged had the petitioners herein taken up on themselves to state that fact on oath in the witness box. They had taken a conscious decision not to do so. It is not their case that they wanted to tender evidence but were prevented by the learned Judge to tender evidence.

15.I find not reasons to interfere with the order dated 01.03.2021 under revision in M.P.No.491 of 2018 filed in M.P.No.364 of 2017 in R.C.O.P.No.1698 of 2016. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

06.07.2021

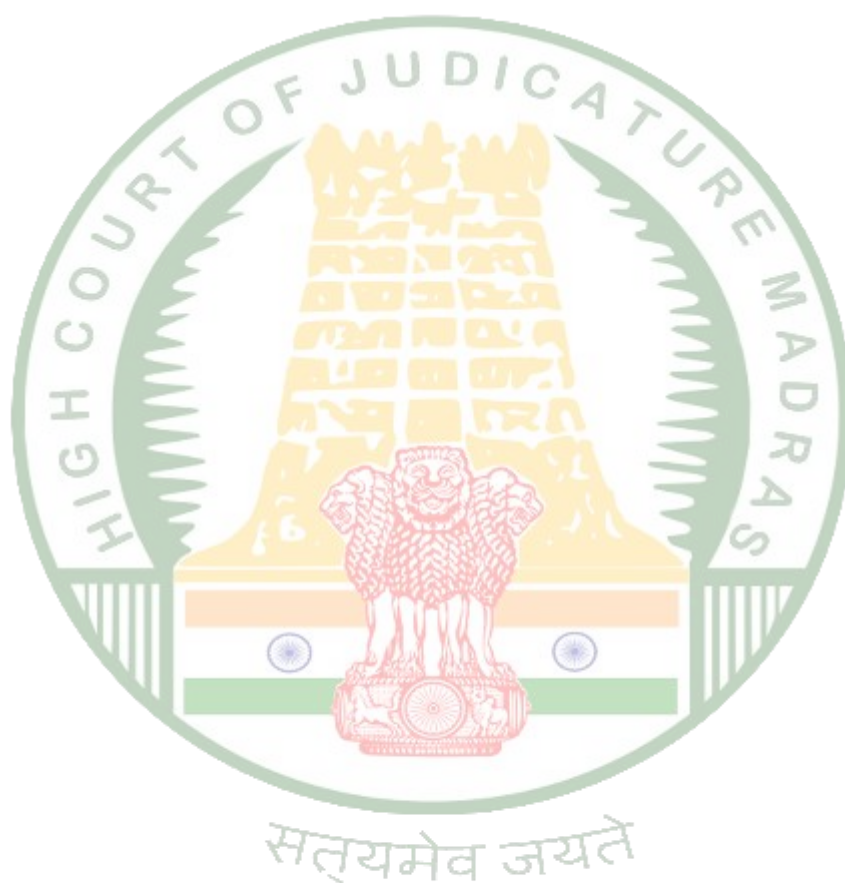
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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

To,
The XVI Small Causes Court, Chennai.



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C.V.KARTHIKEYAN, J.,

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Pre-Delivery Order made in
C.R.P.(NPD).No.1046 of 2021

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