

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.09.2021

Coram::

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P(NPD).No.1812 of 2021
& C.M.P.No.14068 of 2021

Mrs.Rajathi,
W/o.K.Sekar,
No.66, M.C.Road, Old Washermanpet,
Chennai – 600 002. ... Petitioner

/versus/

D.Rajaram alias Rajaraman,
No.66, M.C.Road, Old Washermanpet,
Chennai – 600 002. ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the Hon'ble XVI Small Causes Court, Chennai, made in M.P.No.194 of 2019 in R.C.O.P.No.978 of 2017 against the petitioner.

For Petitioner

: Ms.V.Keerthana

For Respondent

: Ms.S.Shyamala

ORDER

This Petition is filed to challenge the order passed by the Learned XVI Small Causes Judge, Chennai, in M.P.No.194 of 2019 in R.C.O.P.No.978 of 2017, dated 10.03.2021.

2. The Learned Counsel for the petitioner would submit that, the respondent filed a petition on the ground of wilful default for eviction.

3. The case of the petitioner is that, she was a tenant under one Mrs.Saraswathi Ammal, who is the owner of the property from the year 2000. Initially, the rent was fixed as Rs.4,000/-. The respondent is the son of Mrs.Saraswathi ammal. After the demise of Mrs.Saraswathi Ammal in the year 2014, the respondent claims himself as owner of the property and forceably collecting rent from the premises. He started demanding Rs.16,000/- as a monthly rent. The respondent filed R.C.O.P.No.1653 of 2015 and allowed it to be dismissed for default.

4. Again, the petitioner has filed a petition in R.C.O.P.No.978 of

2017, to evict him from the premises on the ground of wilful default. Counter was not filed in this petition and therefore, the petitioner was set *exparte* on 20.12.2017 for non-appearance of the Counsel. This has come to the light to the petitioner only now. Therefore, she filed a petition in M.P.No.194 of 2019 to set aside the *exparte* order along with a petition to condone delay of 588 days in filing the petition. This petition was contested by the respondent claiming that, the reasons stated for not filing counter and non-appearance of the petitioner and filing *exparte* order set aside petition with delay of 588 days cannot be accepted. The petitioner did not pay rent for more than 5 years and squatting on the property without paying the rent and arrears comes to more than Rs.7,00,000/-.

5. The Learned XVI Small Causes Judge, Chennai, considering the rival submissions and found that, the reason stated by the petitioner for not filing the *exparte* order set aside petition filed in time cannot be accepted. There is no material produced to show that the petitioner was affected physically and mentally for more than one year and therefore, she could not contact the Counsel and file the *exparte* order set aside petition in time. On this reasoning, the Learned XVI Small Causes Judge, Chennai, has dismissed the petition.

6. Against the dismissal of the order, the present Civil Revision

Petition is preferred.

7. The Learned Counsel for the petitioner submitted that the delay in filing *exparte* order set aside petition is neither wilful nor wanton. Petitioner was suffering from physical and mental ailments for more than one year and she could not meet her counsel and the Counsel also not informed about the *exparte* order passed. She came to know about the *exparte* order only after receipt of the notice in execution petition. It was disputed by the Learned Counsel for the respondent and submitted that the petitioner was well aware of the proceedings pending in the Court and it is yet another attempt to protract the proceedings.

8. Admittedly, R.C.O.P.No.978 of 2017 was filed on the ground of wilful default claiming that, the petitioner has not paid the rent from 01.05.2015 to 31.01.2017 and there was an arrears of Rs.3,36,000/- at the time of filing petition.

9. This Court enquired about the payment of rent. The Learned Counsel for the respondent said that, the rent was not paid. The reason, according to the Learned Counsel for the petitioner, is that, the bother of the respondent has also claimed rent from her and therefore, she did not pay the rent. In case of rival

claim for the rent and when the tenant is in doubt as to who is the landlord, the tenant is expected to file petition under Section 8(5) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, to deposit the rent in the Court. The petitioner has not paid rent either to this respondent or his brother, who claimed rent from the petitioner. No steps have been taken for depositing the rent in the Court. There is a rental arrears from 01.05.2015 to 30.09.2016. It is submitted by the Learned Counsel for the respondent, that even a single paise is not paid as rent. Therefore, the conduct of the petitioner in not paying the rent cannot be appreciated. When there is a proceeding for wilful default, the petitioner is expected to be vigilant in prosecuting the case. She cannot just say that she was not aware of the *exparte* order passed by this Court.

10. As rightly pointed out by the Learned XVI Small Causes Judge, Chennai, no documents filed to show that she was suffering from any kind of illness physically or mentally and therefore, the submission in this regard made by the petitioner was rejected by the Learned XVI Small Causes Judge, Chennai. It is also observed that, the petitioner has not filed the petition to condone the delay in filing the *exparte* order set aside petition, immediately after notice in the execution petition was received on 22.04.2019. Petition to condone the delay in

filing the *exparte* order set aside petition was filed only on 08.08.2019. The petitioner has not satisfactorily explained for the delay of 588 days in filing the *exparte* order set aside petition. She has not paid rent from 01.05.2015 to 30.09.2016. Therefore, this Court finds no reason to interfere with the order passed by the Learned XVI Small Causes Judge, Chennai. The order passed by the Learned XVI Small Causes Judge, Chennai, in M.P.Nos.194, 195 of 2019 in R.C.O.P.No.978 of 2017 is confirmed. Accordingly, the ***Civil Revision Petition is dismissed***. No costs. Consequently, connected Miscellaneous Petition is closed.

16.09.2021

Index :Yes/No
Speaking order/Non-speaking order.

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To:-

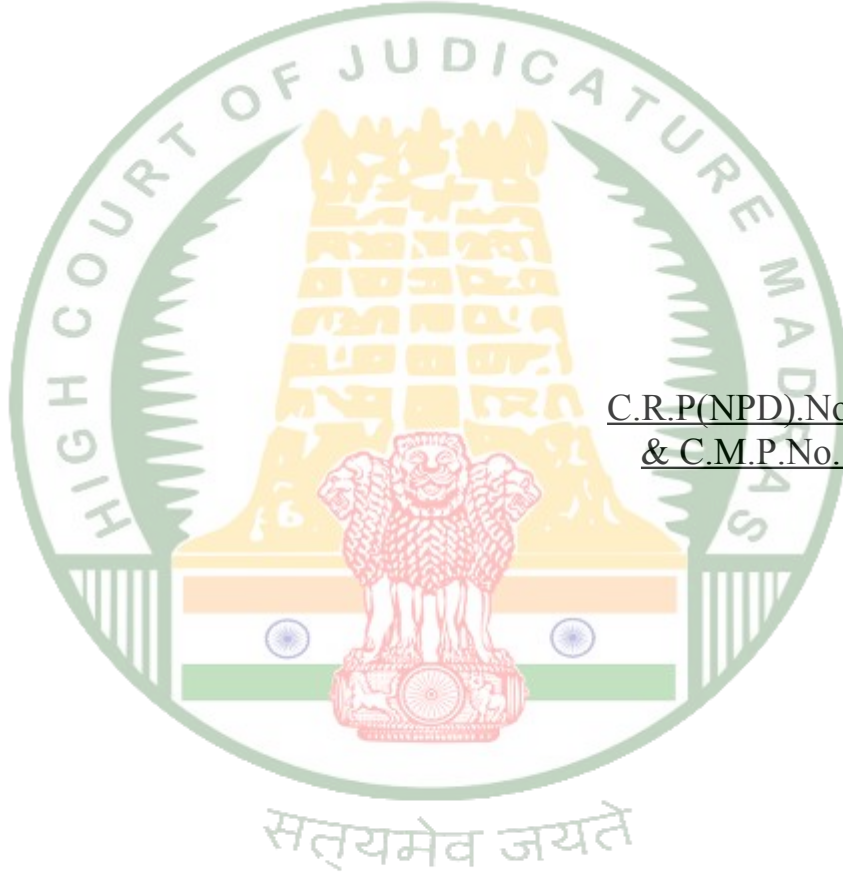
1. The XVI Small Causes Court, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.

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