

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2571 of 2017
and C.M.P.No.12280 of 2017

A.Parasuraman

.. Petitioner

Vs.

M.K.Muthurajan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.04.2017 made in I.A.No.106 of 2017 in I.A.No.159 of 2014 in O.S.No.18 of 2014 on the file of the Sub-Court, Kancheepuram.

For Petitioner : Mr.B.Dayalan

For Respondent : Mr.T.Sundar Rajan

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 04.04.2017 made in I.A.No.106 of 2017 in I.A.No.159 of 2014 in O.S.No.18 of 2014 on the file of the Sub-Court, Kancheepuram.

2.The petitioner is plaintiff and respondent is defendant in O.S.No.18 of 2014 on the file of the Sub-Court, Kancheepuram. The petitioner filed the said suit for declaration, ejectment of the respondent from the suit property, arrears of rent and arrears of other charges. The respondent filed I.A.No.159 of 2014 under Section 9 of the City Tenants Protection Act (hereinafter referred to as “the Act”) for a direction to the petitioner to sell the suit property after deducting the compensation, which the petitioner is liable to pay to the respondent. According to the respondent, the petitioner has let out the vacant land and the respondent has put up the superstructure. The petitioner filed counter affidavit and denied the various averments made in the said petition. The petitioner in

the counter affidavit took a stand that the petition filed under Section 9 of the Act is not maintainable, as it is barred by limitation. The learned Judge heard the said petition and posted the same for orders. At that time, the respondent filed I.A.No.105 of 2017 to re-open I.A.No.159 of 2014 for arguments of the respondent and filed I.A.No.106 of 2017 in I.A.No.159 of 2014 to condone the delay of 5 days in filing the petition under Section 9 of the Act in I.A.No.159 of 2014.

3. According to the respondent, the suit summon was served on his nephew namely, Satishwaran and the Bailiff forced his nephew to sign the respondent's name in the receipt. The respondent came from his native place on 10.02.2014, engaged an Advocate on 24.02.2014 and filed the petition under Section 9 of the Act, on 06.03.2014. The respondent ought to have filed the petition under Section 9 of the Act on or before 01.03.2014. Hence, there was a delay of 5 days in filing the petition. The delay is neither wilful nor wanton and prayed for allowing the I.A.

4.The petitioner filed counter affidavit in I.A.No.106 of 2017 and submitted that he has filed counter affidavit in I.A.No.159 of 2014 on 12.06.2014 stating that I.A.No.159 of 2014 is not maintainable and barred by limitation. The respondent is not interested in conducting enquiry and is getting adjournment for the past three years. The petitioner filed C.R.P.(PD)No.3454 of 2016 to expedite the enquiry in I.A.No.159 of 2014 in O.S.No.18 of 2014. This Court by the order dated 28.11.2016 disposed of the said C.R.P. and directed the learned Subordinate Judge, Kancheepuram, to dispose of I.A.No.159 of 2014 on or before 31.01.2017. Even after the order of this Court, I.A. has been adjourned on various dates for orders. The respondent is trying to drag on the proceedings. The present petition is filed by the respondent with the delay of 1053 days and prayed for dismissal of I.A.No.106 of 2017.

5.The learned Judge considering the averments made in the affidavit and counter affidavit, held that Section 5 of the Limitation Act is

applicable to I.A.No.159 of 2014 filed under Section 9 of the Act and unless the delay is condoned, the respondent will be put to great loss and allowed I.A.No.106 of 2017.

6. Against the said fair and decretal order dated 04.04.2017 made in I.A.No.106 of 2017 in I.A.No.159 of 2014 in O.S.No.18 of 2014 on the file of the Sub-Court, Kancheepuram, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner contended that it is not the case of the petitioner that Section 5 of the Limitation Act is not applicable to the petition filed under Section 9 of the Act. On the other hand, it is the case of the petitioner that Section 3 of Limitation Act controls Section 5 of Limitation Act and I.A.No.159 of 2014 filed under Section 9 of the Act ought to have been accompanied with an application filed under Section 5 of the Limitation Act to condone the delay in filing the petition. The learned Judge failed to see that signatures of the

respondent in vakalat and affidavit are different. In such case, the signature either in vakalat or affidavit is forged. The learned Judge ought to have examined the Bailiff with regard to service of summons. Without doing so, the learned Judge erroneously held that signature in the suit summon is not that of the respondent. By allowing I.A. to condone the delay, great injustice has been caused to the petitioner and prayed for allowing the Civil Revision Petition.

8. The learned counsel appearing for the respondent reiterated the averments made in the affidavit filed in support of the I.A. and submitted that the learned Judge considering the entire materials, held that delay is only 5 days, the respondent has explained the reason for delay and allowed I.A. on the ground that unless the delay is condoned, great loss would be caused to the respondent. The petitioner has not made out any case for interference by this Court. The petition for condoning the delay must be considered liberally and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

10. From the materials available on record, it is seen that the respondent filed I.A.No.159 of 2014 under Section 9 of the Act. The suit summon was served on the respondent on 31.01.2014. According to the respondent, the suit summons was served on his nephew, when he was out of station. After coming from his native place and coming to know about the suit, the respondent engaged an Advocate on 24.02.2014 and filed I.A.No.159 of 2014 under Section 9 of the Act on 06.03.2014. As per the provisions of the City Tenants Protection Act, the respondent ought to have filed the said I.A. on or before 01.03.2014. The said petition was filed on 06.03.2014 after a delay of 5 days and the Court without properly verifying the delay, has numbered the I.A. When there is a delay in filing the said petition, the Court ought to have returned the

I.A. pointing out the delay. Had the Court acted properly, the respondent would have filed I.A. to condone the delay and represented the petition filed under Section 9 of the Act. For the mistake committed by the Court, the respondent cannot be penalised.

11. At the same time, the contention of the petitioner in the counter affidavit filed in I.A.No.159 of 2014 on 12.06.2014 has to be taken note, wherein the petitioner has taken a specific stand that I.A.No.159 of 2014 is barred by limitation and is not maintainable. The respondent ought to have taken steps to file an application to condone the delay at that time itself. But the respondent has filed the present I.A. only in the year 2017. The contention of the learned counsel for the petitioner that delay in filing petition under Section 9 of the Act is not 5 days, but 1053 days, is not acceptable. Once the application is filed, the period of limitation starts and it cannot be contended that the delay continued till the application filed to condone the delay. Whether the delay is 5 days or 1053 days, the Court has to consider whether the respondent has given valid and

sufficient reason to condone the delay and intention of the parties is bonafide.

12. In the present case, it is seen from the counter affidavit of the petitioner filed in I.A.No.159 of 2014 on 12.06.2014 that the petitioner has taken a specific stand that I.A.No.159 of 2014 filed under Section 9 of the Act is barred by limitation and is not maintainable. In spite of the same, the respondent has not taken immediate steps to file the petition to condone the delay, but filed only in the year 2017, when I.A.No.159 of 2014 filed under Section 9 of the Act was posted for orders.

13.It is well settled that in the petition filed to condone the delay, the parties must be given opportunity to put forth their case on merits, but at the same time, no prejudice should be caused to the other side. If any prejudice is caused, it must be compensated by imposing cost.

14.Considering all the above materials on record, the respondent is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as cost

to the counsel for the petitioner on or before 08.09.2021. On such payment, the impugned order of the learned Judge dated 04.04.2017 made in I.A.No.106 of 2017 in I.A.No.159 of 2014 in O.S.No.18 of 2014 will be confirmed. If the respondent fails to pay the cost within the time limit fixed by this Court, the impugned order of the learned Judge will be automatically set aside.

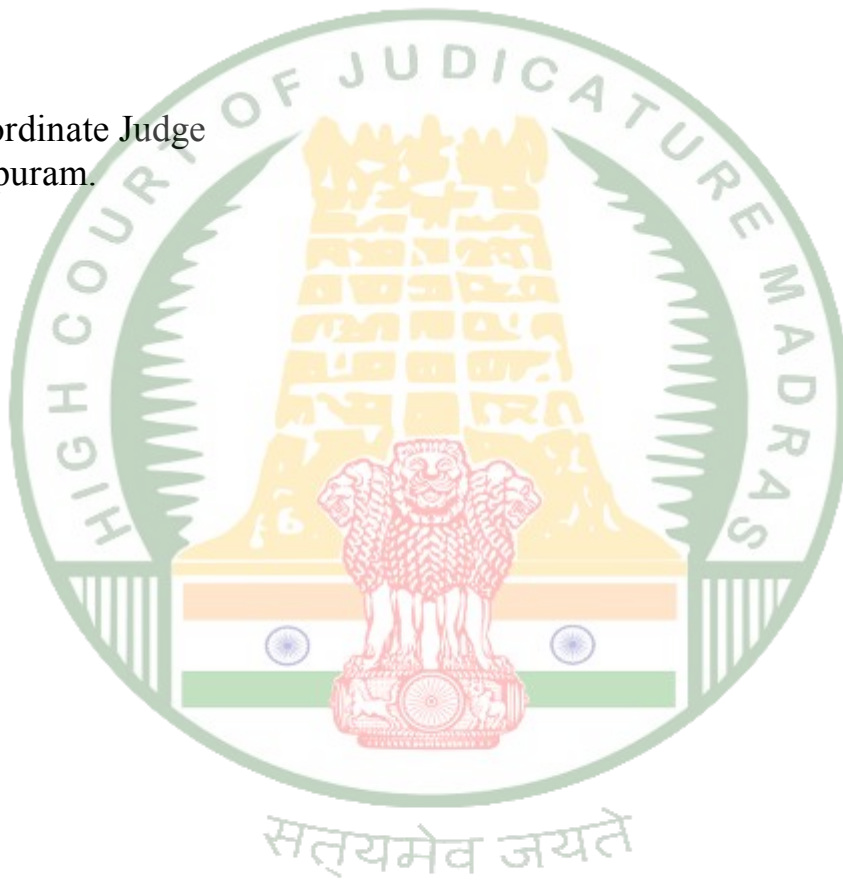
15.The learned counsel appearing for the petitioner submitted that this Court by the order dated 28.11.2016 in C.R.P.(PD)No.3454 of 2016 directed the learned Judge to dispose of I.A.No.159 of 2014 in O.S.No.18 of 2014 on or before 31.01.2017 and prayed for a direction to the learned Judge to dispose of I.A.No.159 of 2014 in O.S.No.18 of 2014 within the time limit fixed by this Court. Considering the above, the learned Judge is directed to dispose of I.A.No.159 of 2014 in O.S.No.18 of 2014 as expeditiously as possible, in any event, on or before 30.11.2021.

16.With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
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To
The Subordinate Judge
Kancheepuram.

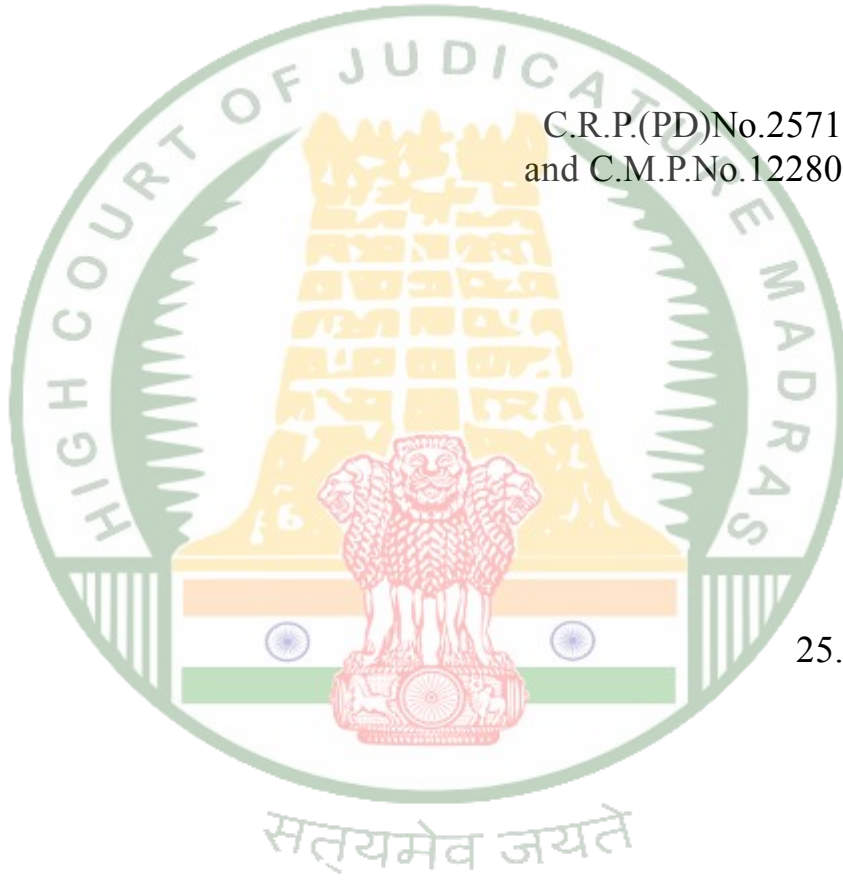


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V.M.VELUMANI,J.

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