

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD)Nos.3966 and 3967 of 2017
and CMP.Nos.18517 and 18518 of 2017
CMP Nos.5803, 5804 of 2018

Basheer Ahmed Meer ... petitioner in both cases

Vs.

Deepak.S.Vora ... Respondent in both cases

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 03.10.2017 in MP.Nos.335 and 371 of 2017 respectively in RCOP.No.117 of 2016 on the file of the XI Small Causes Court, Chennai.

For Petitioner : Mr.S.Ramachandran
For Respondent : Mr.C.Muruganandam

COMMON ORDER

(This case has been heard through video conference)

Both the civil revision petitions are filed against the dismissal of the petition seeking to reopen and recall PW1 for cross examination.

2. When the matter was listed on 23.06.2021, there was no representation for the petitioner and thereby directed the matter to be listed under the caption for dismissal.

3. These revisions are filed against the orders dated 03.10.2017 in MP.Nos.335 and 371 of 2017 respectively in RCOP.No.117 of 2016 on the file of the XI Small Causes Court, Chennai seeking to reopen the evidence and to recall PW1 for cross examination.

4. The revision petitioner is the respondent/tenant in RCOP. The RCOP has been filed by the respondent/Landlord herein seeking to evict the revision petitioner/tenant on the ground of wilful default in payment of monthly rents from 01.02.2015 to 31.12.2015. The petition was taken up for trial and the respondent/Landlord was examined in Chief as PW1. The case was posted for cross examination of PW1 on 23.03.2017, since, the revision petitioner/tenant did not cross examine PW1, the evidence of PW1 was closed. Thereby, the revision petitioner/tenant filed MP.Nos.335 and 371 of 2017 to reopen and recall PW1.

5. The respondent had filed counter. In which he had stated that the petition was filed with false averments, it was averred in the counter RCOP.No.117 of 2016 was filed in the year 2016 and counsel for the revision petitioner entered appearance on 03.03.2016 and despite several chances given to the revision petitioner/tenant he had not chosen to file counter thereby the case was posted for exparte evidence on 01.06.2016 and eviction was ordered on 03.06.2016. Thereafter, the revision petitioner had filed application in MP.No.674 of 2016 seeking to set aside the exparte order and the same was allowed with cost. Subsequently, the case was posted for cross examination of PW1 on 08.02.2017, however, since there was no representation on the side of the petitioner, the case was posted on 20.02.2017 and thereafter adjourned to 28.02.2017, 08.03.2017 and finally posted on 23.03.2017. The revision petitioner/tenant was not present and there was no representation on his behalf, thereby the evidence of PW1 was closed. Even thereafter, the case had been posted for respondent side evidence on 04.04.2017, 11.04.2017, 18.04.2017, 26.04.2017, 05.06.2017, 13.06.2017 and 21.06.2017. In all those dates revision petitioner/tenant was not present and there was no positive efforts on the part of the revision petitioner to

lead evidence. It was further contended that the petition was filed with an intention to delay and protract the matter. As on 12.07.2017, there was arrears of rent for a sum of Rs.5,20,000/- and it was only an intention of the revision petitioner/tenant to protract the proceedings.

6. The trial Court finding that the petition was filed only to protract the proceedings and that the reasons stated for non cross examination of PW1 was not genuine had dismissed the petitions to reopen and recall PW1, against which the present revisions have been filed.

7. When the matter was listed on 23.06.2021 there was no representation and thereby this Court directed to list the revision under the caption for dismissal, even today the petitioner is not present. The learned counsel for the respondent/landlord is present.

8. The learned counsel for the respondent would submit that the revision petitioner is the tenant, the rented portion is for commercial purpose, the monthly rent was fixed at Rs.23,000/-p.m. the

petitioner/tenant entered into tenancy in the year 1999 at the time of tenancy a sum of Rs.2,30,000/- was given as advance. Thereafter, the petitioner/tenant had failed to pay rent from the month of February 2015 and as on today, an amount of Rs.25,00,000/- is outstanding towards rental arrears.

9. The learned counsel for the respondent/landlord would further submit the RCOP was filed during the year 2016 to evict the tenant on the ground of wilful default. After service of appearance, the revision petitioner/tenant entered appearance in RCOP on 03.03.2016. However, despite several chances given to him, he did not file the counter and thereby he was set exparte and the case was posted for exparte evidence on 01.06.2016 and since the revision petitioner/tenant did not appeared exparte eviction was ordered on 03.06.2016. After the exparte order of eviction, the revision petitioner/tenant filed MP.No.334 of 2016 to set aside the exparte order and the same was allowed with costs. Subsequently, the case was taken up for trial and the case was posted for cross examination of landlord/PW1 on 08.02.2017. Even thereafter, the revision petitioner/tenant failed to cross examine PW1 and

the case was posted finally on 23.03.2017, on that day, the counsel for the revision petitioner/tenant appeared on the morning and asked for pass over and the respondent/landlord/PW1 was waiting in the Court and thereafter neither the revision petitioner/tenant nor his counsel appeared. The rent controller closed the evidence and posted the same for evidence on the side of the respondent/landlord. Thereafter, several opportunities were given to the revision petitioner/tenant to let in evidence on his side and after protracting the proceedings the petition to reopen had been filed. The trial Court finding that there was no bonafides in the petition and that the petition had been filed only to drag on the proceedings had dismissed the petition. The learned counsel would submit that there is no infirmity in the order passed by the trial Court and even before this Court the revision petitioner/tenant is trying to delay the process by not appearing.

10. Heard the learned counsel for the respondent and perused the materials available on record.

11. It is seen that originally, the revision petitioner/tenant had set exparte on 01.06.2016 and eviction was ordered on 03.06.2016. Thereafter, the revision petitioner/tenant had filed application to set aside the exparte decree along with petition to condone the delay, both the petitions were taken up together and they were ordered on 25.01.2017 with cost of Rs.2,000/-. Thereafter, the case had been posted for cross examination of PW1 on 08.03.2017 and 15.03.2017 and on the petitions filed by the counsel for the revision petitioner cross examination of PW1 was adjourned to 15.03.2017. On 15.03.2017, PW1 was present and his counsel were present and the matter was passed over and again the matter had been taken at 3.00pm. PW1 was present and the revision petitioner/tenant counsel had filed petition for adjournment, hence it has been adjourned to 23.03.2017 for cross examination and the trial Court had stated that there is no further adjournment. When the matter had come up on 23.03.2017, the learned counsel for the revision petitioner/tenant had appeared in the morning and the case had been taken up again at 11.15am, the respondent/landlord/PW1 was present and the case was once again passed over and again taken up at 2.15pm. The respondent/landlord/PW1 was present and there was no representation on

the side of the revision petitioner/tenant and again the case was taken up at 4.05pm, the respondent/landlord/PW1 was present alongwith his counsel and there was no representation for the revision petitioner/tenant and the Court had passed the following order :-

“PW1 not present. Respondent counsel present. Pass over. Again taken up 11.15. PW1 present, petitioner counsel present, pass over. Again taken up 2.15p.m. PW1 present, respondent side no representation, pass over. Again taken up 4.05pm PW1 present along with his counsel. Respondent side no representation. Respondent called absent. Already sufficient time granted. Hence PW1 evidence is closed. Petitioner side evidence closed. For evidence of respondent side by 4.4.2017.”

12. Even thereafter, the case had been posted for evidence of revision petitioner/tenant on 04.04.2017, 11.04.2017, 18.04.2017, 26.04.2017, 05.06.2017 and 13.06.2017 and the revision petitioner/tenant had not let in evidence, whereas he had filed petitions to reopen and recall PW1. On perusal of the records, discloses that the trial Court had found that on 23.03.2017, the counsel for the revision petitioner had made his appearance in the morning. The same had also been marked in the adjudication. Subsequently, the trial Court finding that neither the

revision petitioner/tenant nor his counsel were present in the afternoon had closed the evidence. The trial Court finding that the intention of the revision petitioner/tenant was only to drag on the proceedings had dismissed the petition to reopen and recall PW1.

13. This Court is of the opinion that the conduct of the revision petitioner/tenant is not bonafide and his intention had been only to protract and delay the proceedings. I do not find any infirmity in the order passed by the trial Court.

14. In the result, both the civil revision petitions stand dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

23.06.2021.

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To

The XI Judge, Court of Small Causes, Chennai.

A.D. JAGADISH CHANDIRA, J.,

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