



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Wednesday, the Thirtieth day of June Two Thousand and Twenty One

WEB COPY

PRESENT

The Hon'ble Mr. Justice K. MURALI SHANKAR

CMP(MD). No.2660 of 2021

in

CRP(MD). No.592 of 2019

M. Packiam

...Petitioner/Petitioner

Vs

D. Gomathiammal

...Respondent/Respondent

Prayer in CMP(MD). No.2660 of 2021 :-

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court praying this Hon'ble Court to Condone the delay of 100 days in filing the restoration petition before this Honourable Court in the present Civil Revision Petition in C.R.P.(MD).No.592 of 2019 which was dismissed for non prosecution on 21.09.2020.

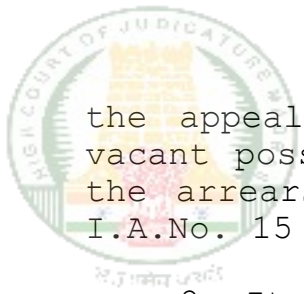
Prayer in CRP(MD).No.592 of 2019 :

Civil Revision filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the decree and judgment dated 08.10.2018 made in R.C.A.No.13 of 2017 on the file of the Rent Control Appellate Tribunal - cum - Subordinated Judge, Tirunelveli, confirming the fair and decreetal order dated 06.10.2017 made in R.C.O.P.No.14 of 2015 on the file of the Rent Controller / I Additional District Munsif, Tirunelveli.

ORDER:-

Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.C.Gangai Amaran, Advocate for the Petitioner and of Mr.S.Velrajan, Advocate for the respondent, this Court made the following order:

This petition has been filed to condone the delay of 100 days in filing the petition to restore the revision petition in CRP(MD). No.592 of 2019, which was dismissed for non prosecution on 21.09.2020. The civil revision petition is directed to against the order dated 08.10.2018 passed in R.C.A.No.13 of 2017, on the file of the Rent Control Appellate Tribunal - cum - Subordinated Judge, Tirunelveli, stopping the further proceedings in



the appeal and directing the appellant / tenant to handover the vacant possession to the landlord within a period of one month, as the arrears of rent was not deposited as per the passed order in I.A.No. 15 of 2018, dated 06.09.2018.

2. It is evident from the records that the landlord has filed an application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act for recovery of the arrears of rent and the learned Rent Control Appellate Authority, after enquiry has passed the order on 06.09.2018 allowing the application and directed the tenant to pay the rent to the landlord or to deposit a sum of Rs.57,000/- within one month. Since the tenant has not paid / deposited the said amount, the impugned order stopping further proceedings in the appeal came to be passed on 08.10.2018.

3. It is further evident that the present revision has been filed with a delay of 14 days and the same was subsequently condoned. It is further evident that this Court by observing that the revision petitioner has not paid the admitted arrears despite the observation of the Court, that the tenant's conduct would be treated as wilful if not deposited the amount of arrears within the time and that the counsel appearing for the revision petitioner has reported no instructions, passed an order directing the Registry to post the matter either "for dismissal or for disposal on merits" on 21.09.2020 vide order dated 16.09.2020.

4. It is necessary to refer the order of this Court dated 21.09.2020 while dismissing the CRP(MD).No. 592 of 2019 for non prosecution.

"5. Even today, despite the revision petition is posted under the caption "either for dismissal or for disposal on merits", there is no representation for the revision petitioner. In a Rent Control Proceedings, the tenant is liable to be evicted on the ground of wilful default, even if his conduct during the pendency of the proceedings shows that the tenant has no inclination for prompt payment of rent during the proceedings. The learned counsel for the petitioner reported no instruction specifically knowing that this Court may dismiss this revision petition, in case, the tenant does not pay the admitted rent. The tenant cannot be allowed to take advantage of the proceedings to the inconvenience of the respondent / landlady. The Act enables the landlord to get an order of eviction for non-payment of rent during the pendency of the proceedings. The conduct of the tenant has strengthened the case of landlady and there no valid reason for adjourning the revision petition giving further hope to the revision petitioner / tenant."



5. The contention of the revision petitioner is that since she was bed ridden suddenly, she was unable to move and could not appear before this Court and she could not even contact his counsel during the month of September 2020, that she was fully confined in the house due to sudden outbreak of Covid - 19, that when the matter was posted on 21.09.2020 for hearing through Video Conferencing her counsel could not be able to present in a proper perspective due to technical defect, that subsequently, she came to know that the revision was dismissed for default, that the delay in filing the restoration petition is neither wilful nor wanton and that therefore, the delay of 100 days in filing the restoration petition is to be condoned.

6. As already pointed out, this Court has specifically observed in the order dated 16.09.2020 itself, that the petitioner's counsel had represented that he had no instructions from the petitioner and this Court in the order passed on 21.09.2020 has specifically observed that the petitioner's counsel reported no instructions specifically knowing that the revision petition may be dismissed as the tenant has not paid the admitted rent. As rightly pointed out by the learned counsel for the respondent, the petitioner has not furnished any particulars in her affidavit as to when she came to know about the dismissal of the revision and the reasons or explanation for the delay of 100 days occurred in filing the restoration petition.

7. Admittedly, the petitioner has not assigned any reason for the delay occurred. The learned counsel for the respondent would submit that the delivery was already ordered and due to the Covid - 19 Pandemic situation and consequent closing of the Courts, the delivery warrant is yet to be executed and that the petitioner after delivery order, as usual has come with the present application with the delay purposely and wantonly to protract the proceedings.

8. Considering the above facts and circumstances and on perusal of the petitioner's affidavit, this Court is of the view that the petitioner has been attempting to protract the proceedings. Hence, this Court concludes that the above petition for condonation of the delay is absolutely devoid of merits and the same is liable to be dismissed.

9. In the result, the CMP is dismissed.

Sd/-

Assistant Registrar(CO)

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/ /2021

Sub Assistant Registrar(CS)



To

1.The Supordinate Judge,
(Rent Control Appellate Tribunal),
Tirunelveli.

2. The I Additional District Munsif,
(Rent Controller),
Tirunelveli.

ORDER DATED : 30/06/2021

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ORDER

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CMP(MD) . No.2660 of 2021

in

CRP(MD) .No.592 of 2019

Giving direction and etc.
as stated within.

ns (CO)

TR(06.07.2021) 4P 3C