



C.R.P.No.165 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2022

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.165 of 2021 &
C.M.P. No.1562 of 2021

A.S.Abbas Khan

... Petitioner

Vs.

M.D.Gajarajkumar

... Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India to order of delivery passed in E.P.No.89 of 2020 in R.C.O.P.No.1466 of 2018 dated 14.12.2020 on the file of X Small Causes Court, Madras.

For Petitioner : Mr.V.Lakshminarayanan for
Mr.Avinash Wadhwani

For Respondent : Mr.V.Deenadayalan

ORDER

The present Civil Revision Petition has been filed under Article 227



C.R.P.No.165 of 2021

of Constitution of India to order the delivery passed in E.P.No.89 of 2020 in R.C.O.P.No.1466 of 2018 dated 14.12.2020 on the file of X Small Causes Court, Madras.

2. The case of the petitioner in brief is as follows:-

(i) The petitioner is the tenant on a monthly rent of Rs.65,000/- and the respondent is landlord of the subject property mentioned in R.C.O.P. No.1466 of 2018. As there was a default in payment of rent from 01.07.2017 to 30.11.2018, the respondent sent a legal notice. Though the notice was duly served on the petitioner, he failed to settle the dues. Hence the respondent/owner filed Original Petition before the Rent Controller in R.C.O.P.No.1466 of 2018 seeking for orders of eviction under Section 10 (2) (i) of the Tamilnadu Buildings [Lease and Rent] Control Act 18 of 1960 Act and the petitioner herein did not appear. Therefore, the petitioner herein, was set ex-parte in the said R.C.O.P., subsequent to which, the petitioner filed a M.P. No. 139 of 2019, seeking to set aside the said ex-parte order, again the same was dismissed for non-prosecution and R.C.O.P was allowed on 22.10.2019. Based on the said ex-parte decree, the respondent had filed Execution Petition in E.P. 89 of 2020. In the said Execution Petition also, notice was served on the petitioner, due to Covid



C.R.P.No.165 of 2021

Pandemic, neither the petitioner nor his counsel who is also aged person did not appear before the court below. Owing to the same, the petitioner was set exparte in the Execution Petition and exparte order of delivery was passed in E.P. 89 of 2020 on 14-12-2020.

(ii) Immediately on noticing the same, the petitioner had moved an application before the court below in E.A.Sr. Nos. 27914 and 27916 seeking to set aside the exparte order in E.P. 89 of 2020. The said application was not taken on file by the court below and rejected on 21-01-2021. The petitioner had filed applications vide M.P.Sr. 3553 of 2021 & M.P.Sr. 3554 of 2021 in R.C.O.P. 1466 of 2018 to set aside the exparte decree dated 22-10-2019 together with the application to condone the delay in filing the exparte decree and also filed applications in E.A.Sr. 3550 of 2021 and E.A.Sr. 3551 of 2021 seeking for Ad-Interim Stay of Execution pending Set Aside Petition. The court below had returned the petition on 23-01-2020 stating that the petition to set aside exparte decree is not Maintainable as it had passed delivery orders in Execution Petition. Hence this petition.

3. The learned counsel for the petitioner contends that when Rule 12



C.R.P.No.165 of 2021

(3) of the Tamil Nadu Buildings Lease and Rent Control Rules 1974 explicitly confers right on the petitioner to file application to Set Aside the Exparte Decree and when Third Proviso to the aforesaid Rule explicitly makes it clear that upon filing of such application there shall be an automatic stay of the Execution, the proceedings of the court below in contrary to the aforesaid provision reveals total non application of mind. Hence the petitioner had filed the Civil Revision Petition as against the order of delivery passed in EP. 89 of 2020 in R.C.O.P. 1466 of 2018 dated 14-12-2020 on the file of the X Small Causes Court, Chennai.

4. On the other hand, the learned counsel for the respondent has filed a detailed counter denying the allegations contained in the petition and contended that the learned Rent Controller granted nearly 20 hearings before deciding the RCOP. Even on 22.10.2019, when the exparte order came to be passed, the learned Rent Controller waited till 4.30 p.m., but since the petitioner/tenant did not turn up nor any representation was made on his behalf, he was set exparte. The petitioner committed default in payment of rents from 01.07.2017 to 30.11.2018, i.e., for a period of 17 months, which led to the filing of the RCOP.



C.R.P.No.165 of 2021

WEB COPY

5. Further, the learned counsel for the respondent also contends that the Execution Petition filed by the respondent, i.e., E.P. No.89 of 2020 was also pending for nearly 12 months and only thereafter, eviction was ordered on 14.12.2020. Also, the petitioner has filed appeal against the fair and decreetal order dated 06.03.2021 passed by the Rent Controller / X Judge, Court of Small Causes, in M.P.No.1 of 2021 in R.C.O.P.No.1466 of 2018. The learned Rent Control Appellate Authority upon analysing the documents as well as the contentions, dismissed the said R.C.A.No.64 of 2021 on 29.11.2022. Hence the present petition filed against the order passed in E.P.No.89 of 2020 become infructuous and the same has to be dismissed as infructuous.

6. In reply, the learned counsel for the petitioners pleaded to stay the order passed in E.P.No.89 of 2020 in RCOP No.1466 of 2018 dated 14.12.2020 till the petitioner obtains the certified copy of the Judgment passed in R.C.A. No.64 of 2021 and challenges the same.

7. Heard the learned counsel on either side and perused the documents placed on record.



C.R.P.No.165 of 2021

WEB COPY

8. It is important to note that R.C.O.P was filed on 06.12.2018 by the respondent / landlord. Despite of granting several adjournments to file the counter, the same was not filed by the petitioner / tenant. Therefore, the petitioner was called absent and was set Ex-parte on 25.03.2019. Thereafter, petition to set a side the exparte order was filed by the petitioner / tenant in M.P.No.139 of 2019 and the same was not contested, thereby, the same was dismissed for non prosecution and an order of Eviction was passed on 22-10-2019. Further, the Execution Petition in E.P. 89 of 2020 was filed on 06.01.2020. Though the petitioner entered appearance and filed counter, he has not proceeded further and hence he was set Ex- parte in E.P proceedings also and an order of delivery was passed in E.P. 89 of 2020 on 14-12-2020.

8. It is relevant to note that this Court by order dated 02.02.2021 had granted an Interim stay of the order passed in EP. 89 of 2020 dated 14.12.2020 on payment of Rs.5 lakhs to the respondent / landlord, the same was complied with by the petitioner. The application to set aside the Exparte decree along with an application of delay was filed by the petitioner / tenant before the lower Court and the same was dismissed on



C.R.P.No.165 of 2021

06.03.2021. The petitioner / tenant has further filed an R.C.A. No.64 of 2021 to condone the delay of 428 days in filing the application to set aside the exparte decree dated 22.10.2019 passed in R.C.O.P.No.1466 of 2018. The said R.C.A. was also dismissed by order dated 29.11.2022.

9. From the above said facts, it is evident that though the Petitioner / tenant was given a fair opportunity before the lower Court, he has not putforth his case. That apart, the R.C.A. filed by the petitioner / tenant was also dismissed and hence as per Law, there cannot be any such stay of order of delivery till the revision petitioner obtains certified copy of the Judgment passed in R.C.A. In order to challenge the same. That apart, there is no sufficient cause to keep to the E.P. Proceedings pending, therefore, this Court is not inclined to accept the prayer made by the petitioner / tenant and the present Civil Revision Petition is liable to be dismissed.

10. Accordingly, the present Civil Revision Petition is dismissed and it is left open to the parties to proceed as per law, if they are advised so. Consequently, connected miscellaneous petition is closed. No costs.

13.12.2022

Index : Yes/No
Internet : Yes/No



C.R.P.No.165 of 2021

Speaking /Non-Speaking Order
ssd

WEB COPY

V.BHAVANI SUBBAROYAN, J.,

ssd

To

The X Small Causes Court,
Madras.

**C.R.P.No.165 of 2021 &
C.M.P. No.1562 of 2021**

8/9



WEB COPY



C.R.P.No.165 of 2021

13.12.2022