



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYANC.R.P. No. 1009 of 2020andCMP.Nos.5543 and 14257 of 2020 and 21701 of 2022

Jacob @ Yakkan

.. Petitioner

Versus

A. Naseema Begum

..Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 20.12.2019 made in M.P. No.434 of 2018 in RCOP No.582 of 2017 on the file of XIII Judge, (FAC), Small Causes Court, Chennai.

For Petitioner : Mr. Niranjana Rajagopal
(For M/s.Meghna Kumar)

For Respondent : Mr. S. Vidya

ORDER

This Civil Revision Petition has been filed by the petitioner herein to set aside the fair and decretal order dated 20.12.2019 made in M.P.



No.434 of 2018 in RCOP No.582 of 2017 on the file of XIII Judge, (FAC),

Small Causes Court, Chennai.

2. The case of the petitioner herein is that the petitioner herein is the tenant and the respondent herein is the landlady of the premises. The landlady had filed the RCOP No.582 of 2017 under Section 10(2)(i) of Tamilnadu Building and Lease Rent Control Act, before the XIII Court of Small Causes, Chennai seeking for eviction on the ground of wilful default against the petitioner herein. As the petitioner herein was set exparte, the learned Judge/Rent Control Authority passed an exparte order dated 22.01.2018 against the petitioner herein. On knowledge of the aforesaid ex-parte order, the petitioner has filed the M.P. No.434 of 2018 under Section 5 of limitation Act seeking for condonation the delay of 222 days in filing the petition to set aside the ex-parte decree dated 22.01.2018. After hearing both sides and perusing the records, the Trial Court dismissed the aforesaid Miscellaneous Petition by order dated 20.12.2019 holding that while burden is upon the petitioner, sufficient cause has not been shown by him as contemplated under Section 5 of the Limitation Act. Being aggrieved by the aforesaid dismissal order, the



tenant/petitioner has filed the present Civil Revision Petition to set aside the same.

3.The learned counsel for the petitioner would submit that due to illness of the petitioner's wife and subsequent to her death, the petitioner could not proceed the said case for which he has marked Ex.P1 to Ex.P3 as evidence to prove his contention for non appearance before the Court below. Subsequent to the death of his wife, the petitioner was forced to look after his children and as he could not maintain them, he was frequently attending his native village. That was the bonafide reason for the absence of the petitioner herein. Only after receipt of the notice in the Execution Proceeding in E.P. No.508 of 2018 initiated by the landlady/respondent herein, the petitioner has immediately filed the petition in M.P. No.434 of 2018 in R.C.O.P. No.582 of 2017 before the Court below to condone the delay of filing the said application to set aside the exparte decree dated 22.01.2018. However, the Court below has not considered the aforesaid factual aspects and bonafide reasons stated by the tenant/petitioner herein and dismissed the aforesaid petition by order dated 20.12.2019.



4. It has been further submitted that as per the order of this Court dated 06.07.2021, the petitioner has deposited arrears of rent of Rs.8,25,000/- (ie. From February 2016 to July 2021 totally 66 months by way of Demand Drafts dated 16.08.2021 and 17.08.2021, 28.10.2021 drawn on State Bank of India, CCPC Branch, Chennai to the credit of RCOP No.582 of 2017 on the file of XIII Judge, Small Causes Court, Chennai and thereafter, the petitioner has filed a compliance affidavit on 18.08.2021 before this Court.

5.The learned counsel for the petitioner would further submit that the respondent landlady claiming ownership over Ground and 2nd Floor of the front portion of the property, the front portion consists of 3 dwelling units, the rear portion consists of 6 dwelling units. The total land area of the property is about 2625 Sq.ft, comprised in Old S.No.267, R.S.No.167/1, C.C. No.2768 and 2769. While being so, the petitioner's dwelling portion was unlawfully constructed on the common area where metro water sump and parking area are situated by violating Section 10 and 11 of the Tamilnadu Apartment Ownership Act, 1994. Since the petitioner's dwelling unit constructed on the common area of the apartment



other co-owners are creating trouble to the petitioner over the rental payment.

6.The learned counsel for the petitioner would further submit that a proceeding with respect to the fraudulent transaction and valid title is also pending before the District Registrar, Chennai Central No.9115/A1/2012, dated 10.08.2012 to cancel the Document No.286/1998 and 1228/1999 by virtue of which the respondent claiming title over the property. While there is unlawful construction in the building, the respondent/landlady herein has filed the eviction petition in RCOP No.582 of 2017 against the tenant/petitioner herein and the Trial Judge without hearing other side passed an ex parte decree dated 22.01.2018 without discussing the case on merit. While being so, the Trial Court has not considered the application for condoning the delay of 222 days to grant an opportunity to the petitioner to raise his contention before the Trial Court and to dispose of the case on merit and per contra, dismissed the same under the ground of the reasons stated by the tenant/petitioner were not coupled with the evidence to the satisfaction of the Court. Hence, it is unsustainable and liable to be set aside.



7. On contrary, the learned counsel for the respondent would submit that the petitioner had willfully defaulted in paying the rent of Rs.12,500/- per month from the month of October 2015 to December 2015 to the previous owner and thereafter from January 2016 to the respondent herein who is present owner of the premises and the petitioner never paid the rent until the intervention of this Hon'ble Court. Since there were arrears of rent from October 2015, the respondent herein filed the RCOP No.582 of 2017 to evict the petitioner herein and deliver the schedule mentioned premises to the respondent herein. However, the tenant /petitioner herein has deposited the rental arrears from October 2016 to July 2021 for 58 months at Rs.12,500/- per month totalling a sum of Rs.7,25,000/- as per the direction of this Court by order dated 06.07.2021. Subsequently, the respondent/landlady has filed CMP No.14257 of 2021 before this Court seeking to modify the order dated 06.07.2021 to the extent of date of arrears as from October 2015 instead of October 2016. Since the rent from October 2015 to January 2016 is alleged to have been paid to the previous owner of the building and the petitioner was allowed to pay the rent from February 2016 to September 2016 by order dated 16.09.2021 of this Court.



8. It has been further submitted that the respondent herein had purchased the said property on 18.01.2016 itself before filing the suit in O.S. No.559 of 2016. The Tenant/petitioner herein was aware of the fact the respondent herein is the owner of the schedule mentioned premises, the tenant/petitioner herein has wantonly and purposely filed the suit in O.S. No.559 of 2016 against the previous landlord namely Mr.Syed Sanayulla Bahamani, seeking injunction restraining the aforesaid previous landlord from interfering with his possession stating concocted story. The respondent/landlady has also filed a impleading petition in O.S. No.559 of 2016 on 16.03.2017. It is also submitted that the petitioner herein was regularly present and representing in O.S. No.559 of 2016 filed by him and he has wantonly not represented in the present RCOP. The suit has been filed by the petitioner in order to cheat the payment of rent to the landlady/respondent herein taking advantage of her age and helplessness, and set up his own friend as 2nd Defendant in the suit claiming that he is the owner of the property. After knowing this, the respondent had filed an Impleading petition in O.S. No.559 of 2016 on 16.03.2017 itself. After impleading the name of the respondent, the suit was dismissed on 20.10.2021.



9.The learned counsel for the respondent would further submit that the petitioner being the tenant was set ex-parte on 15.09.2017 itself in RCOP No.582 of 2017, there is a delay of 455 days and not 222 days as stated by the tenant/petitioner herein. The delay has to be calculated from the date of the petitioner being set exparte and not from the date of passing of exparte decree. While the petitioner's wife died on 23.07.2016 itself, the petitioner was summoned only after 10 months ie. in May 2017 and even after receiving the notice, the petitioner did not choose to appear before the Trial Court. After a lapse of one year, the petitioner has filed the M.P No.434 of 2018 for condoning the delay in filing the petition to set aside the the aforesaid ex-parte decree. As the petitioner has not stated bonafide reasons to the satisfaction of the Trial Court and produced any documents to that effect, the Trail Court, after having considered facts and circumstances of the case and oral and documentary evidence, has rightly dismissed the M.P. No.434 of 2018 being dissatisfied with the reasons stated by the petitioner herein. Hence, this Civil Revision Petition is liable to be dismissed.



10. Heard, the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the materials available on record.

11. Having considered the facts and circumstances of the case and submissions of the learned counsel on either side, it is seen that in the first instance, the petitioner had denied the landlord relationship with the respondent herein and however, the respondent herein had purchased the suit schedule property on 18.01.2016 itself whereas the petitioner had filed the Civil Suit in O.S. No.559 of 2016 on 28.01.2016 without impleading the respondent herein who is the original owner of the suit property. Further, in the plaint in O.S. No.559 of 2016, it has been stated that the petitioner was instructed not to pay the rent to the 1st defendant and insisted to pay rent to the 2nd defendant only, otherwise civil and criminal action would be taken against him. It has been clearly mentioned in the plaint in O.S. No.559 of 2016 that the petitioner had entered into an agreement with the 1st defendant on 21.08.2004 fixing the Rental Advance of Rs.40,000/- and monthly rent of Rs.5,500/- where he has been in possession for more than 12 years. However, on contrary, in RCOP



No.582 of 2017, the rental advance was mentioned as Rs.50,000/- and monthly rent as Rs.12,500/-. Further, It was averred in the plaint that the petitioner was ready to deposit the rent till the defendants prove their right over the schedule mentioned property, but the rent of the premises was not deposited before the Court below. If the petitioner is bonafide person, he would have paid the arrears of rent before the Trial Court. But, he has not done the same.

12. Further, the petitioner has produced the evidence of Ex.P1 to Ex.P3 to prove the delay in filing the petition before the Court below. As per Ex.P1 to Ex.P3, the petitioner's wife underwent treatment for cancer during the year 2013 to 2016 and died on 23.07.2016. Whereas the respondent herein has filed the RCOP No.582 of 2017 after 10 months of her demise and notice was served on the petitioner in May 2017, even after receiving notice, he did not choose to appear before the Trial Court either in person or through counsel on the date of hearing ie.15.09.2017 and hence he was set ex-parte on the same day. However, after one year of passing the aforesaid order, the petitioner has filed M.P. No.434 of 2018 stating the reasons for non appearance before the Trial Court by marking



Ex.P1 to Ex.P3 that his wife was affected by cancer during the period of 2013 and 2016 and died on 23.07.2016 and hence he maintained his children by going to his native frequently which was not proved by the petitioner. Hence the reasons stated by the petitioner herein are unsustainable and liable to be rejected. As the petitioner herein has not cited any valid reasons before the Trial Court to set aside ex-parte decree in RCOP No.582 of 2017 by producing valid documents, the Trial Court has rightly rejected the petitioner's application and hence, this Court is not inclined to interfere with the order dated 20.12.2019 passed by the Court below and hence, the Civil Revision Petition fails and is liable to be dismissed.

13. Further, the petitioner herein cannot question unlawful construction without letting in oral and documentary evidence to prove the same. The petitioner himself who has not contested the RCOP for one year without bonafide reasons cannot question the title of the respondent herein. Hence, the respondent herein is entitled to receive the rent deposited by the petitioner by filing an appropriate application before the Court below. The Court below is hereby directed to pass an appropriate



order in E.P. No.508 of 2018 in RCOP No.582 of 2017 within a period of two weeks from the date of receipt of copy of this order.

14. With the aforesaid directions, the Civil Revision Petition stands dismissed and consequently, connected miscellaneous petitions are closed if any. No costs.

21.12.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To:

1. The learned XIII Judge, (FAC),
Small Causes Court, Chennai.
2. The Section Officer, V.R.Section
High Court, Madras.

V. BHAVANI SUBBAROYAN, J.,



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CRP.No.1009 of 2020

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and
CMP.Nos.5543 and 14257 of 2020 and 21701 of 2022

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