



C.R.P.(NPD).Nos.1414 & 1700 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).Nos.1414 & 1700 of 2021

&

C.M.P.Nos.11021, 11022 & 13179 of 2021

1.Devaraj

2.K.Ramesh

...Petitioners

Vs

1.Susheela Rajasekaran

2.A.S.Damodharan (Died)

... Respondents

Prayer in CRP.No.1414 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in M.P.No.218 of 2018 in R.C.A.Sr.No.4386 of 2015 dated 11.01.2019 on the file of the Hon'ble VII Small Causes Court Judge.

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Prayer in CRP.No.1700 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside execution proceedings in E.P.No.241 of 2020 in R.C.O.P.No.1549 of 2010 dated 09.08.2021 on the file of the Hon'ble XIV Small Causes Court Judge.

For Petitioners : Mr.T.Surendran

For Respondent : Mrs.A.Sumathy

ORDER

The tenant and the Sub tenant are the revision petitioners before this Court. The above Civil Revision Petitions have been filed against the following orders:

I. **C.R.P.No.1414 of 2021** is filed challenging the order passed in M.P.No.218 of 2018 in R.C.A.Sr.No.4386 of 2015, which is a petition filed for condoning the delay of 304 days in representing the appeal



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II. C.R.P.No.1700 of 2021 is filed challenging the order passed in E.P.No.241 of 2020 in R.C.O.P.No.1549 of 2010, in and by which delivery has been ordered against the revision petitioners herein.

2. Before proceeding to discuss the controversy on hand, it is necessary to briefly set out the chronology of dates and events that are culled out from the records before this Court:

* The demised premises which is a residential accommodation measuring 570 Sq ft. situate at No.24 (Old NO.22) R.R.Chetty Street, Saidapet, Chennai, belonged to one Mangayarkarasi, who is the paternal grand mother of the respondent herein and the mother of the deceased Damodharan.

* **1964 -** The said Mangayarkarasi inducts Vishwanathan and Devaraj as tenants. On the death of Mangayarkarasi the respondent and her paternal uncle Damodharan became entitled to the property.



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* **31.10.2009** Vishwanathan died and Devaraj has attorned tenancy

* **From October 2009** there has been no payments of rents. However, the revision petitioners filed O.S.No.1882 of 2010 on the file of the XIV City Civil Court, Chennai for an injunction not to evict them except by due process of law.

* **31.08.2010** - The respondent and Damodharan filed R.C.O.P.No.1549 of 2010 for eviction on the ground of wilful default.

* **05.11.2011** - Counter is filed by the revision petitioners denying the default and also contending that they are in occupation of the premises with the consent of the respondent herein.

* **09.07.2014** - M.P.No.342 of 2014 is filed under Section 11 (3) and 11 (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, (hereinafter called the Act) for a direction to the 1st petitioner herein to deposit the rent for the period of 21 months (September 2012 to May 2014) totalling a sum of Rs.25,200/- and on



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failure to pay the rents to stop further proceedings and make an order directing the 1st petitioner to put the respondent in possession.

Earlier a Section 11(4) application was filed and the tenant revision petitioner had deposited a sum of Rs.24,000/- on 07.07.2011 and Rs.18,000/- on 18.12.2012.

*** 01.08.2014** - The petitioners are directed to pay arrears on or before 26.08.2014.

*** 28.08.2014** - Since conditional order had not been complied with M.P.No.342 of 2014 was allowed and eviction was ordered in RCOP against the revision petitioners herein.

*** 03.12.2016** - R.C.A.Sr.No.4386 of 2015 filed against the order in M.P.No.342 of 2014 in R.C.O.P.No.1549 of 2010. M.P.No.58 of 2016 is filed for condoning the delay of 282 days in representing R.C.A.Sr.

*** 03.08.2016** - M.P.No.58 of 2016 was allowed with cost. However, no steps were taken to number the RCA.



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* **March 2018** - M.P.No.218 of 2018 was filed once again for condoning the delay of 304 days in representing the papers.

* **01.06.2018** - Damodharan, the 2nd petitioner in the Rent Control Proceedings died.

Meanwhile, the respondent landlord had filed a petition in R.C.O.P.No.1253 of 2011 for fixing fair rent and the same was also ordered and the fair rent was fixed at Rs.15,055/- per month.

* **11.01.2019** - M.P.No.218 of 2018 was dismissed, against which the revision petitioners have filed C.R.P.No.1414 of 2021.

* **22.04.2019** - E.P.No.241 of 2020 was filed.

* **09.08.2021**- Delivery was ordered in E.P.No.241 of 2020 in R.C.O.P.No.1549 of 2010, against which C.R.P.No.1700 of 2021 is filed.

3. The learned counsel appearing on behalf of the revision petitioners would make his primary submission that the respondent and



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the said Damodharan are not the owners of the property. He would submit that there was no arrears and that even now the tenants are ready to pay the arrears of rent, provided time is granted to the tenants to make the payment.

4. The learned counsel would submit that even before the time for making the deposit they had come forward with a petition for extending the time on 26.08.2014, which petition was not even taken on file and the order of eviction came to be passed in M.P.No.342 of 2014.

5. The learned counsel would further submit that the petitioners have given sufficient reasons for condoning the delay of 304 days, but however the Appellate Authority has failed to even refer to the same and has simply dismissed the said application. As regards the orders passed by the Executing Court, the learned counsel would submit that



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the execution petition has been initiated only on account of the orders in M.P.No.342 of 2014, against which the revision petitioners had filed an appeal. Since the appeal is yet to be numbered, the Executing Court ought not to have proceeded with the execution.

6. The learned counsel would therefore submit that the Civil Revision Petitions have to be allowed and the tenant be given a chance to proceed to make the payment and regularise tenancy. The learned counsel would also submit that the revision petitioners are ready and willing to give an enhanced rent.

7. Per contra, Mrs.A.Sumathy, learned counsel appearing on behalf of the respondent would set out the sequence of events which had led to the filing of the Civil Revision Petitions and would contend that from the conduct of the revision petitioners, it is evidently clear that the only intention is to protract the proceedings. Prior to the filing



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of M.P.No.218 of 2018, another petition for condoning the delay of 282 days in representing the appeal was filed in M.P.No.58 of 2016 and the same had been condoned on costs. However, the revision petitioners had not taken any steps, whatsoever to get the RCA numbered and has once again come forward with the impugned petition for condoning the delay of 304 days in representing the appeal.

8. The learned counsel would submit that a mere reading of the reasons given would clearly demonstrate the true intention of the revision petitioners. The revision petitioners would explain that the delay was on the ground that they have filed a petition for amending the decreetal order for correcting the word “*portian*” as “*portion*” and thereafter the 1st petitioner had fallen ill which had resulted in the delay. The reason given for condoning the delay in representation, particularly when it is the second of its kind and that too after having the earlier delay condoned on terms and not having complied with the



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said order, the present petition is a sheer abuse of process of Court and has been rightly dismissed by the Appellate Authority.

9. The learned counsel would further submit that from October 2009 there was a default in the payment of the rents and after the Rent Control Petition had been filed, the petitioner had moved an application earlier under Section 11 (4) after which payments had been made by the revision petitioners herein. Once again there was a default from September 2012 to May 2014 covering 21 months. Without complying with the conditional order in M.P.No.342 of 2014 directing the petitioners to pay up the entire arrears on or before 26.08.2014 the present petition has been rightly dismissed.

10. An order dated 28.08.2014 was passed allowing the R.C.O.P and ordering eviction. Even the appeal has been filed with a delay and the respondent had filed an execution proceedings in the year 2020

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which was allowed by order dated 09.08.2021 since there was no order of stay and the petitioners had not taken any steps to have the appeal numbered. In fact, the learned counsel would submit that an application was filed in E.A.No.1 of 2020 by the revision petitioners for rejecting the execution proceedings and this petition was rejected on 01.03.2021 as not maintainable, against which the revision petitioners had filed C.R.P.No.889 of 2021. This revision was dismissed on 20.04.2021 with cost of Rs.10,000/-. Since cost was paid, the Court had granted sufficient time for filing a counter. However, the revision petitioners had not come forward to file a counter and it was clearly a case of the revision petitioners dragging their feet on the matter. Therefore, the order directing the delivery cannot be called into question.

11. Heard the learned counsels and perused the records.



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12. A mere perusal of the chronology of the dates and events would clearly demonstrate to the Court, the intention of the revision petitioners to drag on the matter and to continue to squat on the property. Though the learned counsel for the petitioners had taken a plea that the said Damodharan was not their landlord, however, a perusal of the counter affidavit clearly disproves the above statement. In the counter at paragraph no.4, the petitioners have stated as follows:

“4. With regard to para 3 it is utterly false to state that we are in default of monthly rents from the month of October 2009 to July 2010. On the other hand we sent the monthly rent by way of cheque that too through courier service for which I have sufficient proof for the same. With regard to sub-let it an imaginary ground made out by the Petitioners in order to get sympathy from this Hon’ble Court and also evict us from the premises for higher rent. I



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submit that we are close relatives and occupied the premises with the consent and concurrence of the First Petitioner. Now the Petitioners raise the question of sub-let does not arise at all.”

This clearly shows that the revision petitioners have recognized the respondent and the said Damodharan as their landlord.

13. The records would further show that earlier an application had been filed under Section 11 (4) and thereafter the tenant has paid a sum of Rs.24,000/- on 07.07.2011 and another sum of Rs.18,000/- on 18.12.2012. The monthly rent for the demised premises was a sum of Rs.1,200/-. It is therefore clear that the revision petitioners even after the filing of the Rent Control Petition seeking eviction on the ground of wilful default had continued their default.

14. The landlord had filed an application once again under



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Section 11 (4) in M.P.No.342 of 2014 claiming arrears for a period of September 2012 to May 2014 spreading over a period of 21 months and claiming total arrears of Rs.25,200/-. This amount has not been paid despite the orders of the Court in M.P.No.342 of 2014. Therefore, the learned Rent Controller had passed the orders allowing the Rent Control Petition. This order came to be passed on 28.08.2014 and to date no amounts have been paid towards rent. Therefore, it is a clear case of the revision petitioners showing supine indifference in remitting the monthly rental and therefore the default is a wilful one.

15. Even after filing of the appeal in R.C.A.Sr.No.4386 of 2015, where the delay had been originally condoned by orders in M.P.No.58 of 2016, the revision petitioners have failed comply with the conditional order, as a result of which the order in M.P.No.58 of 2016 had worked itself out.



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16. Thereafter, once again the petitioners have come forward with the application in M.P.No.218 of 2018 to condone the delay of 304 days in representing R.C.A.Sr.No.4386 of 2015. The reasons given for the delay can by no stretch of imagination be considered as a sufficient reason for condoning the delay and the affidavit is totally bereft of any details for the delay and the failure to comply with the earlier order passed in M.P.No.58 of 2016. The learned Judge, VII Small Causes Court, Chennai has rightly dismissed the said M.P.No.218 of 2018 and no exception can be taken to the same. Therefore, I find no reason to allow the Civil Revision Petition in C.R.P.No.1414 of 2021.

17. The revision petitioners who have not paid the arrears of rent and who continued to not pay arrears of rent have also not got the appeal numbered, despite filing the same on 03.12.2016. The



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execution petition had been filed only in the year 2020, nearly four years after the filing of RCA and since no orders has been passed setting aside the order in M.P.No.342 of 2014 in R.C.O.P.No.1549 of 2010 dated 28.08.2014, the Executing Court has rightly ordered the delivery and the orders cannot be called into question.

18. In the result, the Civil Revision Petitions are dismissed. Consequently, connected Civil Miscellaneous Petitions are closed. No costs.

17.02.2022

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Index : Yes/No
Speaking order/non-speaking order

To
1.The VII Judge, Court of Small Causes,
Chennai.

2.The XIV Judge, Court of Small Causes,
Chennai.

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