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CRP(MD)No.1623 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1623 of 2022
and
CMP(MD)No.7061 of 2022

Natarajan

: Petitioner

Vs.

Gomathi

: Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to call for the records pertaining to the order dated 15.11.2021 made in RCA.No.47 of 2015 on the file of the Principal Sub Court, Tiruchirappalli and set aside the same.

For Petitioner : Mr.K.Baalasundharam

ORDER

This revision petition is filed as against the order passed by the Rent Control Appellate Authority / Principal Sub Court, Tiruchirappalli, in RCA.No.47 of 2015, dated 15.11.2021, confirming the order passed by the Rent Controller / Principal District Munsif Court, Tiruchirappalli, in IA.No.123 of 2014 in RCOP.No.1 of 2014, dated 09.04.2015.



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2.The respondent / landlord filed two petitions before the Rent Controller / District Munsif Court, Tiruchirappalli, as against the petitioner / tenant for eviction on the ground of wilful default in RCOP.No.139 of 2022 and for fixation of fair rent in RCOP.No.143 of 2002. The petition in RCOP.No.139 of 2022 for eviction was dismissed for default. The petition in RCOP.No.143 of 2002 was allowed by the Rent Controller on 22.11.2011, by fixing the rent as Rs.2000/-. The petitioner / tenant has not preferred any appeal as against that order and as such, it became final. However, he has not paid the revised rent. Thereafter, the respondent / landlord has again filed RCOP.No.1 of 2014 for eviction on the ground of wilful default, own occupation and demolition and reconstruction. The petitioner / tenant entered appearance through Counsel, but failed to file the counter statement, even after sufficient opportunity. Therefore, the Rent Controller set him *ex-parte* on 02.04.2014 for not filing the counter statement and thereafter, allowed RCOP.No.1 of 2014 on 16.06.2014.

3.The petitioner / tenant filed a petition in IA.No.123 of 2014 to condone the delay of 126 days in filing a petition to set aside the *ex-parte* order dated 16.06.2014. The reason for the delay, according to the petitioner, is that the



Counsel has not informed the date of hearing properly for filing the counter statement and therefore, he got back the case records from the previous Counsel and filed IA.No.123 of 2014 through another Counsel. The Rent Controller dismissed this interlocutory application in IA.No.123 of 2014 in RCOP.No.1 of 2014, by order dated 09.04.2015. Aggrieved over the same, the petitioner / tenant preferred an appeal before the Rent Control Appellate Authority / Principal Sub Court, Tiruchirappalli, in RCA.No.47 of 2015. The same was also dismissed by the Appellate Authority by order dated 15.11.2021. As against the concurrent findings of the Courts below, the petitioner / tenant moved the instant revision petition.

4.Learned Counsel for the petitioner submitted that the petitioner's previous Counsel has shifted her practice and as a result, she has not followed up the case and not informed the petitioner. The petitioner came to know about the *ex-parte* order belatedly and thereafter, filed the petition to set aside the *ex-parte* order, however, with a delay of 126 days. Though the delay is very minimum, the Rent Controller dismissed the application, depriving the petitioner's opportunity to defend the case. He further submitted that the petitioner is ready to abide by any conditions to be imposed by this Court and prayed for allowing this petition.



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5.This Court paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the materials placed on record.

6.The Rent Controller and the Rent Control Appellate Authority rejected the petitioner's plea to condone the delay of 126 days in filing a petition to set aside the *ex-parte* order dated 16.06.2014 passed in RCOP.No.1 of 2014, based on the ratios laid down by the Hon'ble Supreme Court as well as this Court. The only reason assigned by the petitioner is that the previous Counsel failed to inform him and therefore, he could not file the counter statement and the condone delay petition in time.

7.The Hon'ble Supreme Court in ***Salil Dutta v. T.M. and M.C. Private Ltd., [1993 SCC (2) 185]***, while dismissing the appeal to condone the delay in an *ex-parte* order, has held as follows:-

“8.The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, ie., the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the



negligence and / or misdemeanor of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized...”

8. In **Re Moddus Media Pvt Ltd. v. Scone Exhibition Pvt Ltd.**, [MANU/DE/1442/2017], the Delhi High Court has held as follows:-

“11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree...”

9. In **Kanta v. Manjulabi and Others** [MANU/MH/1801/2019], the Bombay High Court, while dismissing the condone delay petition, has held as follows:-

“7. It is very easy for a litigant to make allegations against an advocate behind his back. If the applicant wishes to make allegations against the advocate, the applicant should have a courage to join the advocate as a party and in his presence should make allegation against him. Here, the applicant wants to condemn the advocate behind his back. In my view, it is impermissible and unacceptable. Further, no steps



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are also being taken by the applicant against any advocate under the provisions of the Advocates Act.”

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10.It is a settled position of law that the litigant cannot be permitted to cast the entire blame on the Advocate. There is no such absolute rule that the party can disown his liability. Therefore, this Court is not inclined to interfere with the orders of the Courts below. Even otherwise, though the petitioner has raised allegations as against the previous Counsel, he has not added him as a party to this proceedings, nor, he has taken any steps as against the Counsel under the provisions of the Advocates Act.

In view of the foregoing discussions and the decisions cited supra, this revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
gk

02.12.2022

To

The Principal Subordinate Judge,
Tiruchirappalli.



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B.PUGALENDHI, J.

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