



CRP(MD)No.327 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.327 of 2020

and

CMP(MD)No.1859 of 2020

Viswanathan

... Petitioner

versus

Sivasubramanian

... Respondent

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, seeking to set aside the order dated 02.11.2019 passed in I.A.No.66 of 2019 in I.A.No.89 of 2018 in R.C.A.No.1 of 2016 by the Rent Control Appellate Authority (Principal Subordinate Judge), Karur.

For Petitioner : Mr.V.Sukumar

For Respondent : Mr. E.K.Kumaresan



CRP(MD)No.327 of 2020

ORDER

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This Civil Revision Petition is filed against the fair and decreetal dated 02.11.2019 passed in I.A.No.66 of 2019 in I.A.No.89 of 2018 in R.C.A.No.1 of 2016 by the Rent Control Appellate Authority (Principal Subordinate Judge), Karur.

2. The petitioner is the tenant. The respondent/landlord filed R.C.O.P.No.5 of 2014 before the Rent Controller (Principal District Munsif Court), Karur, under Section 10(2)(1) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for eviction. The said petition was allowed by the Rent Controller on 06.07.2016 with a direction to the tenant/petitioner herein to vacate the premises within a period of two months. Aggrieved over the same, the tenant/petitioner herein preferred an appeal before the Rent Control Appellate Authority (Principal Subordinate Judge), Karur, in R.C.A.No.1 of 2016 and the same was dismissed for default on 06.11.2017. Thereafter, the tenant/petitioner herein filed an application in I.A.No.89 of 2018 to re-



CRP(MD)No.327 of 2020

admit the appeal. The said application was also dismissed for default on 22.10.2018. After the lapse of 96 days from the dismissal of the said application in I.A.No.89 of 2018, the tenant/petitioner herein filed the present interlocutory application in I.A.No.66 of 2019 to condone the delay of 96 days in filing the petition to set aside the *ex pare* dismissal order dated 22.10.2018. Since the tenant/petitioner herein failed to appear before the Court due to ill-health, the said application was dismissed by the Rent Control Appellate Authority on 02.11.2019. Aggrieved over the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the petitioner submits that when an application under Section 5 of the Limitation Act is filed, in order to render substantial justice to the parties, the Court has to take a liberal view on the application by considering the reasons adduced for condonation of delay. But, in this case, though the petitioner had adduced sufficient cause for the delay, the learned Rent Control Appellate Authority failed to consider the same.



CRP(MD)No.327 of 2020

WEB COPY

4. The learned counsel appearing for the petitioner further submits that though the notice of hearing was ordered by the Court, due to oversight in the advocate office, notice of hearing was not given to the petitioner in time. Due to inaction of his counsel, the petitioner should not be allowed to suffer. The learned counsel for the petitioner further submits that the Hon'ble Supreme Court held that while considering an application for condonation of delay, no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not and each case has to be weighed from its facts and the circumstances in which the party acts and behaves. But, in this case, the Rent Control Appellate Authority failed to appreciate the same.

5. The learned counsel for the petitioner further submits that in this case, there is no willful default on the side of the petitioner and even now, the petitioner is ready and willing to deposit the arrears of



CRP(MD)No.327 of 2020

rent. He further submits that there are more than 12 shops situated in the petition mentioned property, however, due to vengeance, the respondent is intentionally disturbing the petitioner alone. Therefore, he prays for allowing this Civil Revision Petition.

6. The learned counsel appearing for the respondent submits that the petitioner is an Advocate and he is purposely dragging on the proceedings by allowing the application to be dismissed for default and filed the application to restore the same.

7. This Court considered the rival submissions made and perused the materials available on record.

8. The tenant/petitioner herein has already suffered an order of eviction passed by the Rent Controller in R.C.O.P.No.5 of 2014 on 06.07.2016, against which, he preferred appeal in the year 2016 in R.C.A.No.1 of 2016. When the appeal was posted for arguments on



CRP(MD)No.327 of 2020

06.11.2017, neither the petitioner nor his counsel appeared before the Court. Therefore, the appeal in R.C.A.No.1 of 2016 was dismissed for default on 06.11.2017. Thereafter, the petitioner filed I.A.No.89 of 2018 to restore the appeal in R.C.A.No.1 of 2016 and it was posted for hearing on 22.10.2018. Even this application, filed to restore the appeal in R.C.A.No.1 of 2016, was also allowed to be dismissed for default. Thereafter, the present interlocutory application in I.A.No.66 of 2019 was filed with a delay of 96 days in filing the application to set aside the *ex parte* dismissal order passed on 22.10.2018. In the meantime, it appears that the landlord/respondent herein filed E.P.No. 61 of 2019 for executing the eviction order passed in R.C.O.P.No.5 of 2014. The tenant/petitioner herein has also entered appearance in E.P.No.61 of 2019.

9. The reason, given by the petitioner for the delay in filing the application to set aside the *ex parte* dismissal order, is that he suffered with viral fever. The attitude of the petitioner in not appearing in



CRP(MD)No.327 of 2020

R.C.A.No.1 of 2016 on 06.11.2017 and not appearing in the application in I.A.No.89 of 2018 on 22.10.2018 and the delay of 96 days in filing the application clearly shows that the intention of the petitioner is to drag on the proceedings. Considering the same, the Rent Control Appellate Authority has rightly dismissed the condone delay application. Therefore, this Court is not inclined to interfere with the order of the Rent Control Appellate Authority.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2022

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To

The Rent Control Appellate Authority
(Principal Subordinate Judge), Karur.

7 / 8



WEB COPY



CRP(MD)No.327 of 2020

B.PUGALENDHI, J.

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CRP(MD)No.327 of 2020

02.09.2022