



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.04.2022
CORAM

THE HONOURABLE MRS.JUSTICE S. ANANTHI

WEB COPY

C.R.P (NPD) (MD) Nos.820, 821, 822, 823, 824 & 825 of 2022
and CMP (MD) Nos.3313, 3315, 3319, 3323, 3325, 3327 of 2022

K.P.Raja ... Petitioner/Respondent/Tenant
in CRP (NPD) (MD) . 820/ 2022

M. Abbas ... Petitioner/Respondent/Tenant
in CRP (NPD) (MD) . 821/ 2022

Ganesh ... Petitioner/Respondent/Tenant
in CRP (NPD) (MD) . 822/ 2022

Kamardeen ... Petitioner/Respondent/Tenant
in CRP (NPD) (MD) . 823/ 2022

A.Vasu ... Petitioner/Respondent/Tenant
in CRP (NPD) (MD) . 824/ 2022

T.R.Jahangir Badsha ... Petitioner/Respondent/Tenant
in CRP (NPD) (MD) . 825/ 2022

Vs

K. Amuthavalli

....Respondent in all petitions

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order 25.02.2022 made in E.P. No. 2 of 2017 in RCOP. No. 1 of 2015, E.P. No. 6 of 2017 in RCOP. No. 17 of 2015, E.P. No. 5 of 2017 in RCOP. No. 14 of 2015, E.P. No. 4 of 2017 in RCOP. No. 9 of 2015, E.P. No. 7 of 2017 in RCOP. No. 18 of 2015 and E.P. No. 3 of 2017 in RCOP. No. 3 of 2015 respectively, on the file of the District Munsif Cum Judicial Magistrate Court, Kodaikanal, by allowing these Civil Revision Petitions.

For Petitioner : Mr.K.Guhan

For Respondent : Mr.V.M.Balamohan Thampi



COMMON ORDER

These Civil Revision Petitions have been filed by the revision petitioner to set aside the fair and decretal orders dated 25.02.2022, made in E.P. No. 2 of 2017 in RCOP. No. 1 of 2015, E.P. No. 6 of 2017 in RCOP. No. 17 of 2015, E.P. No. 5 of 2017 in RCOP. No. 14 of 2015, E.P. No. 4 of 2017 in RCOP. No. 9 of 2015, E.P. No. 7 of 2017 in RCOP. No. 18 of 2015 and E.P. No. 3 of 2017 in RCOP. No. 3 of 2015 respectively, passed by the learned District Munsif Cum Judicial Magistrate, Kodaikanal, by allowing these Civil Revision Petitions.

2. Heard the learned counsel appearing for both sides and perused the materials available on record.

3. The revision petitioner has filed these revision petitions to set aside the orders, dated 25.02.2022 passed in E.P.Nos.2, 6, 5, 4, 7 and 3 of 2017. Already in the main R.C.O.P. Nos.1, 17, 14, 9, 18 and 3 of 2015, exparte decrees were passed on 09.02.2016 and connected EPs were also filed in the year 2017. The revision petitioner has also filed petitions to condone the delay and the same were allowed on 26.11.2018, on payment of cost. He also filed exparte decree set aside petitions and the same were allowed on 25.02.2022. On the same day, ie., on 25.02.2022 itself, all the above said E.P were allowed and delivery order were passed, on the basis of the exparte decree.

4. Against the delay condonation orders, the respondent has not preferred any revision. The respondent without questioning the delay condonation orders, filed revision petitions in CRP(MD)No.826 to 831 of 2022, only against the exparte set aside orders.

5. It is relevant to extract the proviso 12(3) of The Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 hereunder.

12. Procedure for the disposal of applications.-

(3) In any case in which an order passed ex-parte against a tenant or a landlord, or any order of dismissal for default is passed by the Controller, then, the party affected may, within thirty days from the date of the order or if he satisfies the Controller that he knew of the order only on a subsequent date, within thirty days from the date of such knowledge apply to the Controller by whom the ex-parte order or the order of dismissal was passed, for an order to set it aside; and if he satisfies the Controller that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the application was called on for hearing or that such default was occasioned due to circumstances beyond his control, the Controller shall make an order setting aside the ex-parte order or the



order of dismissal passed, as the case may be, upon such terms as to costs as the Controller thinks fit and shall appoint a day for proceeding with the application:

Provided that no order shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party:

Provided further that in computing the period of thirty days for the purpose of this sub-rule, the time requisite for obtaining a certified copy of the order shall be excluded:

Provided also that where an application for setting aside an ex-parte order or an order of dismissal for default has been received under this sub-rule for the first time, all execution proceedings in pursuance of the ex-parte order or the order of dismissal for default shall be stayed until the disposal of the application:

Provided also that in respect of a second or subsequent application to set aside an ex-parte order or an order of dismissal for default, the Controller shall have discretion to grant or refuse stay.

Even before passing orders in execution petitions, exparte decree set aside petitions, as per rule 12(3) proviso, EP proceedings has to be stayed. But without considering the pendency of exparte decree set aside petitions, the EP Court has passed orders on the ground that this Court on 21.01.2021, in CRP(MD)Nos.234 to 239 of 2020 directed the EP Court to dispose the connected E.Ps' within three months, from the date of receipt of a copy of the order. In the order made in CRP(MD)Nos.234 to 239 of 2020 dated 21.01.2021, in para 6, it is stated as follows:

"6. Considering the facts and circumstances of the case, without advertting to the merits of the case, this Court is of the view, ends of justice would be met if a direction is given to the Court below to dispose of condone delay petitions and the exparte set aside petitions within a time frame. Accordingly, the District Munsif Cum Judicial Magistrate, Kodaikanal, is directed to dispose the condone delay petitions in I.A.Nos.2, 4, 6, 7, 3 and 8 of 2018 and exparte set aside petitions in I.A.Nos.15, 17, 19, 20, 16 and 21 of 2018 in R.C.O.P.Nos.1, 9, 14,17, 3 and 18 of 2015, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The interim order granted in the above Execution Applications will be in force till three months. If the respondents/tenants are not co-operating in concluding the delay petition and exparte set aside petition, the petitioner is at liberty to proceed with the Execution petition."



6. Now at the time of passing delivery orders in EP petitions, delay condonation petitions were allowed, ex parte decree set aside petitions were also allowed. So the EP Court cannot pass any delivery orders, on the basis of the ex parte decree. Only after deciding the ex parte decree set aside petitions, the EP Court has to pass orders in E.P application. The orders passed by the trial Court cannot be sustained.

7. Accordingly, all the Civil Revision Petitions are allowed and the fair and decretal orders 25.02.2022 made in E.P. No. 2 of 2017 in RCOP. No. 1 of 2015, E.P. No. 6 of 2017 in RCOP. No. 17 of 2015, E.P. No. 5 of 2017 in RCOP. No. 14 of 2015, E.P. No. 4 of 2017 in RCOP. No. 9 of 2015, E.P. No. 7 of 2017 in RCOP. No. 18 of 2015 and E.P. No. 3 of 2017 in RCOP. No. 3 of 2015 respectively, passed by the learned District Munsif-Cum-Judicial Magistrate Court, Kodaikanal are set aside. Further, the revision petitioner is hereby directed to deposit the arrears of rent, to the credit of RCOPs within one month. If he has already not deposited the rent, the trial Court is directed to dispose of the matters within three months. If the petitioner fails to deposit the said amount within one month, in the second week of June, 2022 the orders passed in E.P.s are automatically confirmed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

PNM

To:

1. The District Munsif-cum-Judicial Magistrate, Kodaikanal

+1 CC to M/s.K. GUHAN, Advocate (SR-19856[F] dated 20/04/2022)

+1 CC to M/s.V.M. BALAMOHAN THAMBI, Advocate (SR-19851[F] dated 20/04/2022)

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