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C.R.P.No.231 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.231 of 2023

and

C.M.P.No.1935 of 2023

Zircon International Pvt Ltd.,
Rep. By its Managing Director,
Mr.Sheik Dawood
S/o Shahul Hameed
Plot No.6, Natarajan Street,
Door No.2, Thirumudi Vinayagar Koil Street,
Dr.Vasudeva Nagar, Chennai 600 041.

... Petitioner

Vs.

1.Syed Hameed Bilal

2.Syed Ahmed Harris

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 07.12.2022 in I.A.No.5 of 2022 in O.S.No.2331 of 2022 passed by the learned IV Additional City Civil Court, Chennai by directing the petitioner to deposit half of the suit claim in the above suit.

For Petitioner

: Mr.P.Mohamed Ahmed Ansare

For R1

: Mr.R.Naresh Kumar



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ORDER

The Civil Revision Petition is filed against the order and decree dated 07.12.2022 passed in I.A.No.5 of 2022 in O.S.No.2331 of 2022.

2. The revision petitioner is the defendant in O.S.No.2331 of 2022, instituted by the respondent for recovery of arrears of rent, as per the orders passed in R.C.O.P.No.504 of 2016, wherein, the Rent Controller fixed the fair rent in respect of the premises occupied by the petitioner till the year 2021 and thereafter, pursuant to the orders of the Court in the execution proceedings, the revision petitioner was evicted from the premises with the aid of the police.

3. The revision petitioner states that the respondents are not the landlords and some other person is the landlord and therefore, they are not liable to pay the rental arrears to the respondent.

4. The learned counsel for the revision petitioner states that the order of attachment was passed *ex-parte* and the petitioner filed Interlocutory Application in I.A.No.5 of 2022 in O.S.No.2331 of 2022 to set aside the *ex-parte* order passed on 07.07.2022 in O.S.No.2331 of 2022.



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5. The revision petitioner has filed another Interlocutory Application in I.A.No.4 of 2022 to set aside the *ex-parte* order passed in I.A.No.3 of 2022 in O.S.No.2331 of 2022, which was also dismissed. However, the present Civil Revision Petition is filed only against the order passed in I.A.No.5 of 2022, allowing the petitioner on condition to pay the deposit of 50% of the amount on or before 09.01.2023.

6. The learned counsel for the revision petitioner contended that the revision petitioner is not liable to pay the arrears of rent to the respondents and he has a fair success in the Suit and therefore, the condition imposed for allowing the Interlocutory Application is to be set aside.

7. Admittedly, the revision petitioner was set *ex-parte* and thus, an opportunity is to be provided to the revision petitioner to establish his case on merits. The petitioner is ready and willing to contest the Suit filed by the respondents and while, allowing the Interlocutory Application, the Trial Court erroneously imposed conditions, which is to be set aside.



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8. The learned counsel for the respondent opposed the said contention by stating that the respondents are the landlords, who instituted eviction proceedings against the revision petitioner in R.C.O.P.No.1716 of 2016, which was allowed and eviction order was ordered. The respondents filed execution petition, which was also allowed and with the assistance of the Court Bailiff and with the aid of police, the revision petitioner was evicted from the subject premises.

9. The respondent / landlord filed a Suit in O.S.No.5516 of 2018 for recovery of arrears of rent and the said Suit is also pending. As far as the present Civil Revision Petition is concerned, the Suit in O.S.No.2331 of 2022 is filed by the respondent for recovery of arrears of rent and the revision petitioner / defendant was set *ex-parte*. An order of attachment of the property owned by the revision petitioner is also in force. While dealing with the Interlocutory Application, the Trial Court considered the issues and made a categorical finding that the revision petitioner is in arrears of rent and he failed to say what is the admitted rent per month. Further, the revision petitioner did not say whether he preferred any appeal as against the fixation of fair rent. He did not filed any petition to set aside the *ex-parte* order fixing the fair rent. Unless, the order passed by the



XVI Small Causes Court is set aside, the order of that Court is valid and executable.

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10. Thus, the Trial Court made a finding that the revision petitioner has no defence in this aspect and even then in order to provide a chance, the petitioner was directed to deposit 50% of the Suit amount to show his *bonafide*.

11. Regarding the reasons stated to set aside the *ex-parte* order, the Trial Court made a finding that the petitioner has stated that he was affected by Heart Valve Replacement Surgery. However, the petitioner had failed to file the medical discharge summary and other relevant records.

12. May that as it be. This Court is of the considered opinion that the Trial Court considered the overall conduct of the revision petitioner in dealing with various litigations instituted by the respondents / landlords and the landlords also suffered for a considerable length of time for evicting the revision petitioner, who was a tenant in occupation of the subject premises.



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13. Considering the totality of the circumstances, the Trial Court formed an opinion that the condition is to be imposed for the purpose of providing an opportunity to the revision petitioner to contest the case.

14. Whenever any one of the party to the Suit proceedings are attempting to drag on the proceedings or allowing the Court to pass an *ex-parte* order and thereafter, filing a petition and keeping the proceedings pending for longer period, then the Courts are bound to deal with the circumstances strictly and no leniency can be shown. Ill-motives of the parties to prolong and protract the proceedings, at no circumstances, be encouraged. Whenever such Interlocutory Applications are filed, either seeking adjournment or to set aside the *ex-parte* orders and if the Court finds that an opportunity is to be granted to such parties, then conditions are undoubtedly warranted in order to establish the *bonafide* of the litigants, who are filing such petitions.

15. The idea of increasing the longevity of the litigations by anyone of the parties are to be thwarted and Court cannot aid such party by granting long adjournments or entertaining frivolous Interlocutory Applications or setting aside the *ex-parte* order without imposing stringent conditions.



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16. By imposing such conditions or costs, only the Court make the parties to conduct the judicial proceedings punctually and to respect the proceedings, so as to ensure the disposal of the cases by the Courts in a consistent manner.

17. In the present case, the revision petitioner was not vigilant enough in pursuing his case, allowing the Court to pass an *ex-parte* order and meanwhile, the property belongs to the revision petitioner was attached. He filed an Interlocutory Application to set aside the *ex-parte* order passed in O.S.No.2331 of 2022 and the Trial Court recording the reasons found that condition is to be imposed for the purpose of providing an opportunity to the revision petitioner to contest the case.

18. Accordingly, the Trial Court directed the revision petitioner to deposit 50% of the Suit amount on or before 09.01.2023 and on such deposit, *ex-parte* order passed on 07.07.2022 shall be set aside, failing which the Interlocutory Application shall stand dismissed.



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19. The order passed by the Trial Court is well reasoned and this Court do not find any infirmity or perversity as such and the condition as imposed cannot be said to be unreasonable. More so, the Rent Controller fixed the rent and in respect of the arrears of rent ordered, the said order is in force, starrng against the revision petitioner and thus, the petitioner has to comply with the condition as imposed by the Trial Courts, failing which the petitions are to be dismissed.

Accordingly, the Civil Revision Petition in C.R.P.No.231 of 2023 stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.02.2023

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Index : Yes

Speaking order

Neutral Citation : Yes



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To

The Judge,
IV Additional City Civil Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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