



CRP.No. 510 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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Shanthi

.. Petitioner

Versus

Namakkal Scans & Diagnostics
Represented by its Managing Partner
Dr.Ravi

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 03.09.2019 made in I.A.No. 3 of 2018 in RCOP.No. 1 of 2014 on the file of Rent Control Tribunal, Namakkal (Principal District Munsiff Court, Namakkal.

For Petitioner : Mr.T.L. Thirumalaisamy

For Respondent : Mr.S. Saravanakumar
for Mr.I. Abrar Md. Abdullah



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decretal order dated 03.09.2019 made in I.A.No. 3 of 2018 in RCOP.No. 1 of 2014 on the file of Rent Control Tribunal, Namakkal (Principal District Munsiff Court), Namakkal.

2. The revision petitioner herein is the second respondent and the respondent herein is the petitioner in the Rent Control Original Petition.

3. Heard both sides and perused the materials available on record.

4. On a perusal of the records, it is seen that the respondent/'petitioner has filed RCOP.No.1 of 2014 before the learned Rent Controller (District Munsif), Namakkal, seeking permission to deposit the rent as on date as well as the future rent accepting the Lodgement Schedule presented therewith for issue of a Challan for remittance of the amount and the Lodgement hereafter be presented before the Tribunal. After perusing the records, the trial Court passed ex-parte decree on 29.06.2015. Subsequently, the revision petitioner has filed



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I.A.No.3 of 2018 under Section 5 of the Limitation Act, seeking to condone the delay of 609 days in filing the petition to set aside the ex-parte decree dated 29.06.2015 in RCOP.No.1 of 2014 passed against the revision petitioner and two otherst. After perusing the relevant records, the trial Court dismissed the said application on 03.09.2019. Aggrieved by the said order, the petitioner has filed this revision petition.

5. The contention of the revision petitioner is that the trial Court passed ex-parte order on 29.06.2015 in the RCOP. At that time, she suffered a boil inside her stomach and had taken native treatment and hence, she was not able to walk outside as per the Doctor's advise. Therefore, she could not attend the Court proceedings on 29.06.2015 and was unable to contact her counsel. Thereafter, when she contacted her counsel, she came to know that the trial Court passed an ex-parte order on 29.06.2015 against her. Immediately, she filed has filed I.A.No.3 of 2018 seeking to condone the delay of 609 days in filing the petition to set aside the ex-parte decree dated 29.06.2015. The delay is neither willful nor wanton. Hence, she prays to set aside the findings of the trial Court.



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6. On the other hand, it is stated that the petition filed to set aside the exparte order under Order 9 Rule 13 CPC., is not maintainable and the same has to be eschewed. The two applications cannot be taken on file, as the Court fee paid in the petition is not correct. The petitioner filed a check application for getting back the amount of Rs.3,06,000/- from Court deposit. The check petition affidavit reads as "மனு கட்டிட வாடகை தொகையை டெபாசிட் செய்ய மேற்படி நெம்பரில் மனு தாக்கல் செய்து கடந்த 29.06.2015 தேதியில் மேற்படி மனு உத்தரவாகியுள்ளது." Therefore, it is clear that the petitioner was virtually aware about the order being passed in RCOP.No.1 of 2014 on 29.06.2015 and also the deposit of rent amount based upon which the cheque petition seems to have been filed. Therefore, the above Revision is liable to be dismissed.

7. On a further perusal of the records, it reveals that the Rent Control Original Petition was filed by the respondent in RCOP.No. 1 of 2014. After perusing the records, the trial Court dismissed the application filed under Section 5 of the Limitation Act, seeking to condone the delay of 609 days in filing the petition to set aside the ex-parte order is ex-facie



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erroneous. The trial Court has failed to take note of the fact that the respondent arrayed the petitioner, her mother and her brother as the respondents in the application and further admitted the fact that the respondent was inducted as tenant by the father of the petitioner and the respondents therein are his legal heirs. During the pendency of the RCOP proceedings, the mother of the petitioner died and the petitioner and her brother who are already on record, are recognized as legal heirs of the mother of the petitioner. But the trial Court erred in dismissing the application on the ground that the petitioner had already filed check petition on 17.08.2015 itself and therefore, the reasons stated in the present petition filed under Section 5 of the Limitation Act on 29.03.2017 is not correct, since the petitioner is already having knowledge about the ex-parte order dated 29.06.2015.

8. It appears that the trial Court has failed to appreciate the fact that the only contention of the respondent in the RCOP is that the respondent could not find out the true person competent to receive the rent and the petitioner was under the bona-fide impression that in view of the settlement deed dated 09.06.2008 executed by the father of the petitioner,



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she has become the owner of the property and therefore, it is suffice to file check petition to withdraw the amount. The learned trial Judge has failed to appreciate that the respondent would not be prejudiced in allowing the present application, since the only contention of the respondent in RCOP is that they could not know the correct owner, whereas the petitioner would be put to great hardship if the respondent is allowed to deposit the rent in the Court without rendering the same to the true owner. The petitioner filed check petition in the year 2015 but, however, the petition was taken up only on 20.07.2017 and the papers were returned without numbering on the ground that correct particulars are to be given. Again the check petition was returned on 04.11.2017, after it was represented and therefore, the petitioner has filed the present petition. Having brought to the notice of the trial Court and also the respondent herein about the settlement deed, the trial Court ought to have allowed the present application seeking to condone the delay in filing the petition to set aside the ex-parte order and the respondent also ought to have paid the rent to the petitioner. Further, the petitioner can substantiate her case that she is the present owner of the property only when she is permitted to file counter after setting aside the ex-parte order and contest the case on merits



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and therefore, the trial Court ought to have allowed the present petition.

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Hence, this Court is of the view that the civil revision petition has to be allowed.

9. Accordingly, this Civil Revision Petition is allowed by setting aside the order of the trial Court dated 03.09.2019 made in I.A.No. 3 of 2018 in RCOP.No. 1 of 2014 on the file of Rent Control Tribunal, Namakkal (Principal District Munsiff Court, Namakkal. Further, the revision petitioner is directed to file written statement before the Court below and the trial Court shall dispose of the RCOP on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking order / Non speaking order

Neutral citation : Yes/No

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To

1. The Rent Control Tribunal,
Principal District Munsiff Court, Namakkal.
2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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