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C.R.P.No.94 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.94 of 2023
and
C.M.P.Nos.695 & 697 of 2023

Clara

... Petitioner

Vs.

Vanitha

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 18.08.2022 in I.A.No.93 of 2018 in R.C.O.P.No.34 of 2015 in the Court of the Rent Controller & District Munsif at Ootacamund.

For Petitioner

: Mr.K.Rahul

For M/s.Raj and Raj Associates

ORDER

The Civil Revision Petition has been filed against the Fair and Decreetal Order dated 18.08.2022 in I.A.No.93 of 2018 in R.C.O.P.No.34 of 2015 in the Court of the Rent Controller & District Munsif at Ootacamund.



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2. The revision petitioner is the tenant and the respondent/landlord instituted a proceedings for eviction under the provisions of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960. The Rent Control Original Proceedings in R.C.O.P.No.34 of 2015 was filed by the respondent/landlord on the ground that the husband of the revision petitioner Late Mr.Munian was the tenant originally and he died on 20.04.2015, leaving behind the revision petitioner and her children. Thus, the revision petitioner inherited the tenancy through her husband Late Sri.Munian. The respondent/landlord purchased the Schedule property through Sale Deed dated 04.10.2013 from Mr.P.Singaram, S/o.Late P.Ponnabalam and Smt.Bagam, W/o.Late Ayyakannu and her sons and daughter. The revision petitioner / tenant was in possession at that point of time and oral tenancyship was agreed and accordingly, the revision petitioner was continued to be in possession.

3. The respondent/landlord issued a legal notice to the revision petitioner/tenant to pay the arrears of rent from 01.10.2013 onwards, since the revision petitioner had committed default in payment of rent. The



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respondent/landlord has stated that she is not owning any residential house building at Ootacamund Town and further, the building is also very old and constructed originally by mudwalls and roofed with low quality Zink sheet with Mangalore tiles. Thus, it was in a dilapidated condition.

4. The daughter of the respondent/landlord was residing at Coimbatore and the landlord wanted to demolish the entire building and reconstruct the same. For her family usage and for owner's occupation. The revision petitioner/tenant filed a Civil Suit in O.S.No.26 of 2014 on the file of the District Munsiff Court at Udagamandalam for permanent injunction. Even thereafter, the respondent/landlord issued a legal notice on 01.03.2014 to the revision petitioner to vacate the premises and handover vacant possession. The husband of the revision petitioner admitted the relationship of landlord-tenant and after his demise, the revision petitioner has refused to evict the premises.

5. The Rent Controller issued notice to the revision petitioner/tenant, but the revision petitioner failed to appear before the Rent Controller in



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RCOP Proceedings filed in R.C.O.P.No.34 of 2015. Consequently, the Rent Controller passed an order on 07.06.2016 and allowed the said R.C.O.P on merits. Eviction was ordered and time for eviction was granted two months from 07.06.2016. R.C.O.P.No.34 of 2015 was allowed on 07.06.2016 and even after two months, the revision petitioner/tenant had not vacated the premises. The respondent/landlord filed Execution Proceedings in E.P.No.6 of 2017. After filing of the Execution Petition, the revision petitioner/tenant filed I.A.No.93 of 2018 in R.C.O.P.No.34 of 2015 to set aside the *ex-parte* decree by condoning the delay of 854 days in filing the petition under Section 5 of the Limitation Act. The trial Court considered the application filed under Section 5 of the Limitation Act. The reason stated by the revision petitioner/tenant was that she suffered Jaundice and taking Ayurvedic treatment at Kerala and was in complete bed rest. Thus, she could not contact her counsel during the relevant point of time, when the RCOP Proceedings were pending. It is further contended that there was a misunderstanding between the revision petitioner and her counsel and thus, there was a communication gap and therefore, she could not able to file a petition to set aside the *ex-parte* order within the time limit.



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6. The trial Court considered the said application and made a finding that the revision petitioner has not produced any document to substantiate the reasons. In the absence of any sufficient reasons, enormous delay of 854 days in filing the petition to set aside the *ex-parte* order cannot be condoned. There was no supporting documents to establish that the revision petitioner/tenant was actually ill and was suffering from Jaundice. In the absence of any such document, the Court formed an opinion that the reason was not acceptable for the purpose of condoning the huge delay of 854 days. The R.C.O.P.No.34 of 2015 was allowed on merits on 07.06.2016. The Execution Petition was filed in the year 2017. Even after having knowledge about the Execution Proceedings, the revision petitioner/tenant had waited till delivery was ordered by the Execution Court and also Police Protection was ordered by the Execution Court. Only after passing an order of delivery with Police Protection, the revision petitioner/tenant has chosen to file the Interlocutory Application to condone the delay of 854 days in filing a petition to set aside the *ex-parte* order.



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7. Considering the facts and circumstances, the Rent Controller dismissed the Interlocutory Application filed in I.A.No.93 of 2018 on 18.08.2022 and therefore, the revision petitioner/tenant is before this Court.

8. Unconardonable delay cannot be condoned in a routine manner by the Courts. Reason for long delay must be acceptable and to be substantiated by the person, seeking condonation of delay under the provisions of the Limitation Act. Law of limitation is substantive. Rule is to file a petition within the time prescribed. Condonation of delay is an exception and the Court is expected to exercise the power of discretion judiciously and to ensure the judicial process has not been abused by the parties at their choice. A litigant slept over her right, cannot wake up and file a petition after a lapse of many months, pleading some flimsy reasons. Thus, the reasons must be acceptable and to be substantiated. Unexplained delay cannot be condoned.

9. In the present case, the husband of the revision petitioner was the



tenant and after his demise, the revision petitioner is continuing in the premises. The respondent/landlord found that the building was not only in a dilapidated condition and had taken a decision to demolish the building and reconstruct for owner's occupation. The respondent/landlord was repeatedly insisting the revision petitioner / tenant to vacate the premises and by filing a Civil Suit, the revision petitioner was prolonging the matter under one pretext or other, so as to continue in the premises without any authority. Admittedly, there is no extension of lease and the respondent/landlord is repeatedly insisting the revision petitioner / tenant to vacate the premises. The Rent Controller issued notice and the revision petitioner/tenant had not responded and therefore, the Rent Controller decided the matter on merits and ordered for eviction and time for eviction was granted two months. Even thereafter also, the revision petitioner/tenant had not taken any steps to vacate the premises.

10. When the Execution Petition was filed in the year 2017 by the landlord, which was allowed and the Court ordered Police Protection and only at that point of time, the revision petitioner / tenant filed the



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Interlocutory Application to condone the delay of 854 days. Thus, it is a classic case, where the revision petitioner / tenant has made an attempt to abuse the process and more so, continuing in the premises without any authority. Right of the tenants was restricted only with reference to the terms and conditions agreed between the parties. However, the right of property of a landlord is a Constitutional Right and the same cannot be deprived without any authority of law.

11. The fact remains that there is no lease agreement between the parties and the landlord repeatedly requested the tenant to vacate the premises for several years and the Rent Controller allowed the R.C.O.P. Thereafter, the Execution Petition was also allowed and the revision petitioner/tenant was directed to vacate and pertinently, Police Protection was also granted. This being the facts and circumstances, there is no reason to interfere with the order passed by the Rent Controller on 18.08.2022 in I.A.No.93 of 2018 in R.C.O.P.No.34 of 2015.

12. This being the factum established, the revision petitioner/tenant is



directed to vacate the premises and hand over vacant possession to the respondent/landlord within a period of two weeks from today, failing which, the respondent/landlord shall submit an application before the jurisdictional Police for protection, who in turn, shall assist the respondent/landlord along with the Court Bailiff and vacate the revision petitioner/tenant without any delay.

13. With these directions, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.01.2023

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Index : Yes
Speaking order
Neutral Citation : Yes

To

The Rent Controller and District Munsif,
Ootacamund.



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S.M.SUBRAMANIAM, J.

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