



CRP.Nos.4732 & 4784 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.4732 & 4784 of 2017 and
CMP.Nos.22283 of 2017, 4301 & 5048 of 2018 and
22493 of 2017

CRP.No.4732 of 2017

B.Vaithiyanathan

... Petitioner

Vs.

J.Ganesan

... Respondent

PRAYER: Civil Revision petition is filed under Section 115 of CPC to set aside the order dated 22.11.2017 made in unnumbered EA. of 2017 in RCEP No.5 of 2011 on the file of Principal District Munsif, Puducherry.

For Petitioner : Mr.D.Ravichander

For Respondent : Mr.J.Ganesan

CRP.No.4784 of 2017

B.Vaithiyanathan

... Petitioner

Vs.

J.Ganesan

... Respondent

PRAYER: Civil Revision petition is filed under Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act, 1960 to set aside the fair and decretal order dated 11.12.2017 made in RCA.No.15 of 2016 on the file of the Principal



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District Judge cum Rent Control Appellate Authority, Puducherry by allowing the civil revision petition.

For Petitioner : Mr.D.Ravichander

For Respondent : Mr.J.Ganesan

COMMON ORDER

The civil revision petition in CRP.No.4732 of 2017 has been filed to set aside the order dated 22.11.2017 made in unnumbered EA. of 2017 in RCEP No.5 of 2011 on the file of Principal District Munsif, Puducherry, thereby rejected the application filed under Section 47 of CPC. The civil revision petition in CRP.No.4784 of 2017 has been filed to set aside the fair and decretal order dated 11.12.2017 made in RCA.No.15 of 2016 on the file of the Principal District Judge cum Rent Control Appellate Authority, Puducherry, thereby dismissed the application to condone the delay in filing the application to set aside the exparte order.

2. The petitioner is the tenant and the respondent is the landlord. The respondent filed petition for eviction on the ground of wilful default and owner's occupation. The case of the respondent is that the respondent owned petition premises and the petitioner was inducted as tenant under the lease



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deed dated 26.10.2000. The petitioner also had paid a security deposit of Rs.1,000/- and the monthly rent was fixed at Rs.300/-. The petitioner was in default of payment of rent and also he was chronic defaulter in payment of rents. Since from the month of May 2008, he is in arrears of monthly rent for the total 22 months. Further, the respondent does not have a shelter to live in Puducherry except the petition premises. He is also living in a rented house and as such, he is in dire requirement of the petition premises in order to shift his residence from the rental premises. Therefore, the requirement is bonafide one and filed petition for eviction on the ground of wilful default and also owner's occupation.

3. On receipt of notice, the petitioner failed to appear before the learned Rent Controller and as such, considering the evidence of PW1 and documents i.e. Ex.P1 to Ex.P6, the learned Rent Controller allowed the petition for eviction on the ground of wilful default and also on the ground of owner's occupation. In pursuant to the order passed by the learned Rent Controller, the respondent filed execution petition in order to vacate the petition premises and hand over the same in favour of the respondent. In the execution petition, the petitioner was duly served and he also engaged counsel in the execution petition. The petitioner filed counter and resisted the execution petition. The



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petitioner also filed petition to set aside the *exparte* order of eviction with condone delay application in IA.No.32 of 2012 to condone the delay of 196 days. The respondent filed counter and it revealed that the petitioner had full knowledge about the pendency of the above petition on the ground of wilful default and owner's occupation since he never paid any rent. In fact, he deliberately refused the notice issued by the learned Rent Controller and as such, the learned Rent Controller satisfied with the sufficient service of notice and set him *exparte*. On perusal of the affidavit filed in support of the condone delay application, he had taken specific stand with regard to denial of title. Further on perusal of records, revealed that the bailiff endorsed on 23.09.2010, son of the petitioner refused to receive the notice and as such, it was affixed in the door. Therefore, the registered post was returned with endorsement as intimation served, not claimed, returned to sender. In fact, paper publication was also ordered and the same was duly effected on 03.11.2010. Only thereafter, he was set *exparte*.

4. Further, there is absolutely no reason stated by the petitioner in order to condone the delay of 196 days in filing the application to set aside the *exparte* order. That apart, even till today, the petitioner did not pay any rent



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and also arrears of rent so far for the petition premises. The eviction petition is of the year 2010 and the petitioner committed default from the month of May 2008 onwards. Therefore, the courts below rightly ordered for eviction and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.4784 of 2017 is liable to be dismissed.

5. Insofar as the civil revision petition in CRP.No.4732 of 2017, while pending the execution proceedings, the petitioner also filed application under Section 47 of CPC challenging the order passed by the learned Rent Controller questioning the validity of the order. Admittedly, the petitioner failed to file any appeal as against the order of eviction. He filed only application to set aside the *exparte* order with condone delay application, which was dismissed and confirmed by this Court in CRP.No.4784 of 2017. That apart, the petitioner also filed EA.No.176 of 2016 to stay all further proceedings of the execution petition till the disposal of the condone delay application in IA.No.32 of 2012. It was also dismissed and thereafter the petitioner filed the present application under Section 47 of CPC in order to nullify the order passed by the learned Rent Controller. Therefore, the Execution Court rightly rejected the same and this Court finds no infirmity or illegality in the order



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passed by the court below. Accordingly, the civil revision petition in

CRP.No.4732 of 2017 is also liable to be dismissed.

6. In the result, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

03.02.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To



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- 1.The Principal District Munsif,
Puducherry.
- 2.The Principal District Judge cum
Rent Control Appellate Authority,
Puducherry

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