



C.R.P(MD)No.2365 of 2014

WEB CO **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 03.03.2023

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.2365 of 2014

Thavamary

... Petitioner /
Petitioner / Appellant

Vs.

S.Muthusamy

... Respondent /
Respondent / Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 04.09.2014 made in I.A.No.74 of 2014 in unnumbered R.C.A. Of 2013 on the file of the Subordinate Judge, Ramanathapuram.

For Petitioner : M/s.Harish Vandana
for M/s.C.Arul Vadivel @ Sekar

For Respondent : No appearance



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ORDER

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When the case was called up for hearing, the learned Counsel for the petitioner appeared. However, there is only one respondent in this Civil Revision Petition, who died as early as 2014 and memo to that effect was filed on 01.12.2020 by the petitioner's Counsel after a period of six years from the date of death of the sole respondent.

2. This Civil Revision Petition has been preferred by the petitioner challenging the order passed by the Subordinate Court, Ramanathapuram in I.A.No.74 of 2014 in unnumbered R.C.A of the year 2013. Originally, the R.C.O.P No.29 of 2009 was challenged before the Rent Controller, Ramanathapuram to vacate the tenant, who is the petitioner herein. During the pendency of the same, the petitioner / respondent filed I.A.No.70 of 2009. While so, the petitioner filed in another I.A.No.103 of 2012 in I.A.No.70 of 2009 in the aforesaid R.C.O.P under Section 9 (a) of the Tamil Nadu City Tenants Protection Act seeking for an order directing the respondent / land-lord to sell the schedule mentioned



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property to the petitioner herself. However, that particular I.A.No.103 of 2012 was dismissed on 13.09.2013 on the ground that a petition under Section 9 (a) of the Tamil Nadu City Tenants Protection Act cannot be filed in a R.C.O.P which is filed under Rent Control Act. The petitioner is not entitled to the benefits under the Tamil Nadu City Tenants Protection Act as mandated under Section 9 (a) of the aforesaid Act. As against the same, the R.C.A was preferred before the Subordinate Court, Ramanathapuram. There was a delay of 74 days in filing the said R.C.A as against the order in I.A.No.103 of 2012 filed under Section 9 (a) of the Tamil Nadu City Tenants Protection Act. However, the Appellate Tribunal dismissed the I.A.No.74 of 2014 in the unnumbered R.C.A of 2013.

3. Though the sole respondent of this Civil Revision Petition died as early as 2014, memo was filed by the petitioner only on 01.12.2020 stating the factum of the death of the sole respondent. In view of the filing of memo after a period of six years from the date of death of the respondent and not taking steps to implead the legal heirs of the sole



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respondent, this Civil Revision Petition automatically stands abated as against the respondent due to the passage of time beyond the period prescribed by the Limitation Act. Moreover, this Petition is to condone the delay of 74 days in filing RCA against the order in I.A.No.103 of 2012 wherein the maintainability of the same itself is in question. However, Order XXII, Rule 4 (5) of the Code of Civil Procedure, 1908 reads as follows:

“(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,



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the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved.”

But in this case, no appropriate reason convincing this Court is substantiated by the Revision Petitioner.

4. Hence, this Court is of the considered view that this Civil Revision Petition is liable to be dismissed thereby confirming the order passed by the Appellate Tribunal. This Civil Revision Petition stands dismissed. There shall be no order as to costs.

03.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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L.VICTORIA GOWRI, J.

BTR

To

- 1.The Subordinate Judge,
Ramanathapuram.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P(MD)No.2365 of 2014

03.03.2023