



C.R.P.No.523 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.523 of 2022
and C.M.P.No.2778 of 2022

Rajah Annamalai Chettiar Trust,
Rep. By its Managing Trustee
A.C.Muthiah

... Petitioner

Vs.

K.Mahadevan

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, challenging the order and decreetal order dated 03.12.2021 made in I.A.No.442 of 2021 in I.A.No.287/2017 in O.S.No.19/2008 on the file of the Principal District Court, Chidambaram.

For Petitioner : M/s.S.Sithirai Anandam

For Respondents : No Appearance

ORDER

Challenging the decreetal order dated 03.12.2021 made in I.A.No.442 of 2021 in I.A.No.287/2017 in O.S.No.19/2008 on the file of the Principal



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District Court, Chidambaram, the petitioner has preferred the present civil revision petition.

2. The brief facts, that are required for the disposal of the civil revision petition are as follows:-

(i) The petitioner Trust had obtained lease of vacant lands measuring an extent of about 38,484 sq.ft. of land comprised in S.No.332.333.334/2 and 335 in South Car Street, Chidambaram from one Manali Lakshmana Mudaliar Endowment represented by its Hereditary Trustee and constructed buildings therein bearing Door Nos.55-B, 56, 57 for the purpose of its administration. Thereafter, the petitioner Trust found that the built up space available was in excess of the requirement and decided to lease out the excess space and augment the income for its activities. Accordingly, after retaining the required portion of the building, the other portions were leased to various persons for rent. The tenants are also regularly paying the rent.

(ii) The lessor of the Petitioner Trust had filed a suit in O.S.No.224/2001 against the Petitioner Trust for recovery of Possession



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before the Sub-Court, Chidambaram. The Petitioner Trust had defended the said suit by setting forth its legal rights to continue possession. When the said suit was pending, the lessor had issued notice to the tenants of the petitioner Trust, asking them to vacate and handover possession to them and threatened them with eviction on failure, with hidden agenda to turn them as their tenants and thereby indirectly take possession of the building and collect all the rents for the building put up by the petitioner.

(iii) In the above said circumstances, the petitioner Trust was constrained to file the suit in O.S.No.19/2008 on the file of the Principal District Munsif Court, Chidambaram against the petitioner's lessor and the petitioner's tenants for permanent injunction to restrain the petitioner's lessor from demanding or collecting rent from the tenants of the petitioner or taking possession from the tenants of the petitioner and other reliefs.

(iv) Subsequently, three of the tenants died and their legal heirs were impleaded as defendants 12 to 19 in above suit. The respondent herein is one of the tenants of the petitioner Trust and was arrayed as third defendant



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in the suit. As the respondent had been defaulting in payment of rent, the petitioner Trust was constrained to file another suit in O.S.No.120/2010 before the Additional District Munsif Court, Chidambaram for eviction of the respondent and for recovery of arrears of rent. Thereafter, in the year 2012, the respondent filed written statement in the earlier suit in O.S.No.19/2008 and claimed to be a tenant of the petitioner's Lessor/the first Defendant in the suit.

(v) During the course of the proceedings, defendants 2,3,7,and 12 remained ex-parte after filing their written statement, defendants 6,10 & 11 have died, defendants 12,16 and 19 were removed from the array of parties. The petitioner Trust had examined their witness and marked Exhibits A1 to A16. Finally, the suit was decreed against all the defendants on merits on the basis of evidence adduced vide Judgment and Decree dated 17.03.2017.

3. The learned counsel for the revision petitioner would point out that the respondent herein remained ex-parte in the earlier suit filed, i.e. O.S.No.19 of 2008, but has been contesting in O.S.No.120 of 2010 filed



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against him before the Additional District Munsif Court, situated in the same court building. Even though the other defendants have accepted the Decree, the respondent herein alone had filed I.A.No.287/2017 to set aside the Decree dated 17.03.2017. In the said I.A., the Petitioner Trust had also filed a detailed counter in the said application pointing out that the said petition was filed only to protract the proceedings. The said petition was also dismissed for non-prosecution on 19.08.2019. Thereafter, again the respondent herein had filed I.A.No.442/2021 to condone the delay of 584 days to restore the I.A.No.287/2017.

4. The learned counsel for the petitioner Trust would submit that the respondent herein was always represented by a counsel from Chidambaram. Later, though another advocate from Chennai appeared, along with him, another counsel from Chidambaram also represented the petitioner. After the matter was posted in the list for trial, PW1 was examined. All these facts were known to the respondent's counsel. But the respondent never evinced any interest in contesting the suit, or to cross examine P.W.1. In the other suit filed by the petitioner Trust in O.S.No.120 of 2010 for arrears for rent



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and for evicting the petitioner from the suit property, in I.A.No.189/2010, the Court below had directed the respondent to furnish security for arrears of rent to safeguard the arrears of rent due. The petitioner took the matter for revision before the High court and as per the orders of the Court, he also deposited rent arrears.

5. The main contention of the learned counsel for the revision petitioner is that in order to delay the trial further and to drag on the proceedings, the respondent has allowed the application to be dismissed for non-prosecution and feigning ignorance of the dismissal has filed the application for condoning the delay of 584 days to file the restoration application, wherein the respondent has stated Covid 19 pandemic lock down as the reason for not being present on the date of hearing. The trial Court, on an erroneous appreciation of facts has allowed the restoration application in I.A.No.442 of 2021 vide order dated 03.12.2021 without assigning proper reasons and failed to consider that the respondent has been contesting another suit filed against him by the petitioner Trust at the same time, whereas the respondent did not attend the hearing for I.A.No.287 of



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2017 and allowed the application to be dismissed. Hence, the learned counsel for the revision petitioner prayed for allowing the petition.

6. Heard the learned counsel for the petitioner and the perused the materials placed before this Court.

7. Perusal of records would go to show that the learned Judge had allowed the application in I.A.No.442/2021 for restoration of I.A.No.287/2017, which was filed to condone the delay of 584 days on payment of costs. The Court below ought not to have allowed the application since the respondent herein has not given any valuable reasons for the delay incurred in filing the application for restoration. Since the suit is of the year 2008, this Court is of the opinion that the respondent has followed dialectical tactics and has prolonged the court proceedings in order to drag on the case. The learned Judge, without adverting to the conduct of the party who remained ex parte and failed to cross examine P.W.1, filed condone delay petition with 584 days i.e. nearly after one and half year and tried to advance his case after much delay. The Court below without analysing the



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said facts has allowed the application, which warrants interference of this Court. This Court is of the considered opinion that such allowing of application will cause prejudice to the plaintiff as already in the Original suit, the original defendants died and their legal heirs are impleaded,

8. For the above reasonings, in the interest of justice, this Civil Revision Petition stands allowed. The impugned decretal order dated 03.12.2021 made in I.A.No.442 of 2021 in I.A.No.287/2017 in O.S.No.19/2008 on the file of the Principal District Court, Chidambaram is hereby set aside. No costs. Consequently, connected miscellaneous petition stands closed.

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1) The Rent Control Appellate Authority,

VII Small Causes Court, Chennai

2) The Registrar, Small Causes Court (Rent Controller)/ XVI Judge,
Chennai



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J.NISHA BANU,J.

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Order made in
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Dated:
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