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C.R.P.No.1675 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.1675 of 2024
and
C.M.P.No.8820 of 2024

Mohamed Arif .. Petitioner

VS

R.Balaji .. Respondent

Petition filed under Article 227 of the Constitution of India to set aside the order dated 28.03.2024 in E.A.No.3 of 2024 in E.P.No.1032 of 2023 on the file of XVI Small Causes Court, Chennai.

For Petitioner : Mr.R.N.Kasivishwanathan

ORDER

The tenant/judgment debtor is the revision petitioner. He filed E.A. No.3 of 2024 to stay the proceedings of eviction pending disposal of the unnumbered appeal. R.C.O.P. No.1754 of 2014 was filed for eviction.



C.R.P.No.1675 of 2024

2. The landlord was successful in obtaining eviction. The ground for eviction was wilful default and it stood proved. A petition for condonation of delay of 110 days in filing the appeal was preferred before the Rent Control Appellate Authority. As there was no stay of proceedings, the landlord filed E.P. No.1032 of 2023. In order to stay the eviction proceedings, E.A. No.3 of 2024 was filed.

3. Mr.R.N.Kasivishwanathan, learned counsel for the petitioner, by placing reliance upon the decision in ***S.V.M.Naravairavasundaram vs. Bageerathan, 1993-1-LW-331***, would state that the executing Court ought to have stayed the proceedings pending the disposal of the petition for condonation of delay by the Appellate Authority. The provision under Order XXI Rule 26 C.P.C. is not meant for the purpose of stay akin to Order XLI Rule 5 C.P.C. It is provided for enabling the judgment debtor to get some “breathing time” and to move the appellate authority and obtain stay. The appeal having been moved and the petitioner not being successful in obtaining stay of the order of eviction cannot substitute Order XLI Rule 5 C.P.C. with Order XXI Rule 26 C.P.C.

4. The order of the Trial Court specifically finds that lackadaisical attitude had been exhibited by the judgment debtor in



C.R.P.No.1675 of 2024

not presenting the appeal on time. Learned counsel for the petitioner submits that step has already been taken by the judgment debtor to that extent.

4. In the light of the above facts, I do not find any reason to differ from the view taken by the XVI Judge, Court of Small Causes, Chennai. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2024

Index:Yes/No
Neutral Citation:Yes/No
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To

The XVI Judge,
Court of Small Causes, Chennai.



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C.R.P.No.1675 of 2024

V. LAKSHMINARAYANAN,J.

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C.R.P.No.1675 of 2024

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