



WEB COPY



C.M.P.No.29092 of 2023 in C.R.P.SR.No.121162 of 2023

C.M.P.No.29092 of 2023 in
C.R.P.SR.No.121162 of 2023

M.NIRMAL KUMAR, J.

To condone the delay of 200 days in preferring civil revision petition against the order passed by the learned District Munsif, Mannargudi in EA.No.63 of 2022 in EP.No.47 of 2017 in RCOP.No.16 of 2012, dated 18.11.2022, this civil miscellaneous petition is filed by the petitioner.

2.The brief facts of the case is that the petitioner is a tenant and late Jagabar Nachiyar wife of Abdul Salam is a landlady. A shop of 235-2/3 sq.ft, door No.138 was given to the petitioner for tenancy. RCOP.No.16 of 2012 was filed by the late Jagabar Nachiyar for the reason that the petitioner became a defaulter and not paid the rent for the period from 01.04.2010 to 30.11.2013 for 44 months of Rs.28,600/-. In RCOP.No.16 of 2012, IA.No.75 of 2014 filed seeking time to deposit the said amount and sought for stay of proceedings. Finding that the petitioner not paid the amount, he was ordered to vacate the shop within two months from 17.04.2015. In the meanwhile, Jagabar Nachiyar passed away. Thereafter, the legal heirs of Jagabar Nachiyar filed execution petition in EP.No.47 of 2017, in which, the petitioner examined himself as DW1 and marked two documents. After



considering the submissions, the Execution Court by order, dated 21.03.2019 directed the respondents/landlords to seek delivery of the property by 16.04.2019. In the meanwhile, the petitioner also filed EA.No.46 of 2022 under Section 47 C.P.C. Thereafter, the petitioner filed CRP.No.2348 of 2022 filed before this Court and this Court by order, dated 01.11.2022 gave direction to dispose of EA.No.23 of 2019 within a period of four weeks. Thereafter, the petitioner filed EA.No.63 of 2022 to condone the delay of seven days in filing review application in EP.No.47 of 2017. The Lower Court recording that EA.No.46 of 2021 dismissed on 10.03.2022 and no reason given for delay of seven days, dismissed EA.No.63 of 2022 on 18.11.2022. To condone the delay of 200 days in preferring civil revision petition against the order, dated 18.11.2022 in EA.No.63 of 2022, this civil miscellaneous petition is filed.

3.The learned counsel for the petitioner submitted that the petitioner is a tenant for long time and he has been paying rent regularly. Initially, the rent was Rs.600/-. Rent raised to Rs.1,300/-, willful default petition filed projecting the petitioner is a defaulter. During pendency of RCOP.No.16 of 2012, understanding entered between the petitioner and Jagabar Nachiyar and it was decided that Jagabar Nachiyar's representative would collect the rent



and the rent paid regularly. After the death of the representative, no one came to collect the rent. During the tenancy period, the building not properly maintained and it was in a dilapidated condition. The building was repaired, restored, expenditure incurred was agreed to be adjusted in the rent. Such being the position, the question of any non payment of rent does not arise.

4.He further submitted that on 29.11.2021 the Advocate appearing for the petitioner before the Lower Court suffered severe cardiac attack, he was hospitalized, took treatment for four months in Meenakshi Hospital, Tanjore but the Lower Court failed to consider the same. The order passed in RCOP.No.16 of 2012 is apparently mistake of law and facts. The Lower Court failed to consider the reason given by the petitioner to condone seven days delay and dismissed EA.No.63 of 2022 mechanically. Presently before this Court, a delay of 200 days had occurred due to the above said reasons. Hence, 200 days is neither willful nor wanton which may be condoned.

5.The learned counsel for the respondents submitted that the Rent Control Court in RCOP.No.16 of 2012 directed the petitioner to vacate the shop and handover the vacant shop to the respondents. Thereafter, Interim



C.M.P.No.29092 of 2023 in C.R.P.SR.No.121162 of 2023

Application in I.A.No.74 of 2014 filed to deposit the rental dues and two months time granted, the petitioner not deposited the amount. The conditional order passed without further course of action, steps for eviction not carried out. During Annual Inspection, this mistake found and corrected on 27.01.2016. In the meanwhile, Jagabar Nachiyar passed away. The legal heirs/the respondents herein were impleaded and filed execution petition in EP.No.47 of 2017 and delivery of vacant possession by order, dated 21.03.2019 ordered. In the meanwhile, an application in EA.No.23 of 2019 under Section 47 C.P.C filed and this Court in CRP.No.2348 of 2022, by order, dated 01.11.2022 directed to complete EA.No.23 of 2019 within a period of four weeks. In the meanwhile, the petitioner filed application in EA.No.63 of 2022 to condone the delay in filing review application against the order, dated 10.03.2022 in E.A.No.46 of 2021. Finding dilatory tactics adopted by the petitioner and not giving sufficient reason, the Lower Court rightly dismissed the E.A.No.63 of 2022.

6.He further submitted that the chronology of the events would clearly show that the petitioner is adopting all means to somehow protract the execution proceedings. The petitioner is sitting in the property without payment of any rent from the year 2010 by filing one petition or other.



C.M.P.No.29092 of 2023 in C.R.P.SR.No.121162 of 2023

Neither the original tenancy amount nor the fair rent fixed in RCOP.No.3 of 2010 paid by the petitioner. Against the fixation of fair rent, RCA before the learned Subordinate Judge, Mannargudi filed and the same was dismissed.

7.It is further submitted that eviction ordered in I.A.No.74 of 2014 as per Section 11(4) of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The petitioner filed appeal with a delay of 145 days and the same was dismissed on 17.10.2016. Thereafter, EP.No.47 of 2017 filed by the respondents, delivery ordered on 21.03.2019 and Police protection also ordered on 24.04.2019. Section 47 C.P.C application in EA.No.46 of 2021 in EA.No.23 of 2019 filed questioning the legality for legal heirs getting impleaded and the same was dismissed on 09.03.2021. The petitioner filed transfer petition making allegation against the Presiding Officer. Thereafter, the petition for Amending Section 47 C.P.C application was dismissed on 29.09.2021. The petitioner filed another execution application for electricity connection and other amenities which was dismissed on 10.03.2022. Thereafter, EA.No.63 of 2022 filed to condone the delay of seven days in filing review application against the order passed in EA.No.46 of 2021 which was dismissed on 10.03.2021. I.A.No.1 of 2022 filed by the petitioner to condone the delay of 2418 days in filing second RCA against the eviction



which is pending. Finally, EA.No.63 of 2022 dismissed on 08.11.2022 for not giving proper reason for condonation of delay. In view of the above, he prays for dismissal of the present petition.

8.This Court considered the rival submissions and perused the materials available on record.

9.The petitioner was ordered eviction in RCOP.No.16 of 2012 on 17.04.2015. Against which no appeal filed by the petitioner. Eviction ordered in I.A.No.74 of 2014 directing the petitioner to deposit Rs.42,900/- which was not complied. Against which, appeal filed by the petitioner with a delay of 143 days and the same was dismissed. EP.No.43 of 2017 filed by the respondents and delivery was ordered on 21.03.2019 and Police protection ordered on 24.04.2019. Thereafter, application under Section 47 C.P.C filed in EA.No.46 of 2021 in EA.No.23 of 2019. EA.No.46 of 2021 dismissed on 10.03.2021. An attempt to do further delay made by the petitioner by filing transfer petition and the same not pursued. Thereafter, a petition for amending Section 47 C.P.C filed and it was dismissed on 29.09.2021. The petitioner also filed IA.No.1 of 2022 to condone of delay of 2418 days in filing second RCA against the eviction order is pending. In the



C.M.P.No.29092 of 2023 in C.R.P.SR.No.121162 of 2023

meanwhile, the petitioner again filed EA.No.63 of 2022 to condone the delay of seven days in filing review petition against the order, dated 10.03.2022 in EA.No.46 of 2021 and the same was dismissed by the Lower Court on 18.11.2022 finding the petitioner's intention to drag on the proceedings by filing one petition or other. The present petition is filed seeking condonation of delay of 200 days in preferring revision against the order, dated 18.11.2022 in EA.No.63 of 2022.

10.In view of the above, this Court is of the view that the petitioner by adopting dilatory tactics is filing one petition or other and successfully draggin on the proceedings and sitting over the respondents' property from the year 2010 without paying any rent. Added to it, no proper and plausible explanation given by the petitioner to condone the delay of 200 days. Hence, there is no valid acceptable reason to consider the condonation.

11.In the result, this civil miscellaneous petition stands dismissed.

22.07.2024
(1/2)

vv2



WEB COPY



C.M.P.No.29092 of 2023 in C.R.P.SR.No.121162 of 2023



WEB COPY



C.M.P.No.29092 of 2023 in C.R.P.SR.No.121162 of 2023

M.NIRMAL KUMAR, J.

vv2

C.M.P.No.29092 of 2023 in
C.R.P.SR.No.121162 of 2023

22.07.2024
($\frac{1}{2}$)