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C.R.P.No.2845 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.No.2845 of 2024
and C.M.P.No.15126 of 2024

K.P.Purachidasan .. Petitioner
Vs.

K.Krishnaswamy .. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code to allow this Civil Revision Petition and set aside the order of the Learned Principal District Munsif Court, Poonamallee passed in I.A.No.1 of 2022 in R.C.O.P No.34 of 2016 dated 18.07.2023.

For Petitioner : Mr.Fazululhaq
for Juris and Justia
For Sole Respondent : Mr.C.Iyyappa Raj

ORDER

This Civil Revision Petition has been filed challenging the order of the Learned Principal District Munsif Court, Poonamallee passed in I.A.No.1 of 2022 in R.C.O.P No.34 of 2016 dated 18.07.2023, rejecting the application filed by the revision petitioner to condone the delay of 1751 days in filing the petition to set aside the exparte order in R.C.O.P.No.34 of 2016.



2. The brief background of the case as follows:-

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The respondent initiated eviction proceedings against the revision petitioner in R.C.O.P.No.34 of 2016. It is the case of the respondent that the revision petitioner was inducted as a tenant in the month of May, 2011 on monthly rent of Rs.800/-. As the revision petitioner failed to pay the rent from the year 2013 onwards, eviction proceedings were initiated on the ground of wilful default. The said RCOP has been ordered on 02.06.2017 and it is an exparte order. To set aside the said exparte order, an application has been filed to condone the delay of 1751 days. It is *inter alia* alleged in the affidavit that the premises is situated in Government Poramboke land. Therefore, a valid tenancy could not be created. The RCOP was filed by suppressing the material facts. Further, it is specifically contented that the revision petitioner came to know about the RCOP proceedings only during the execution proceedings. Notice was never served to the revision petitioner in the RCOP proceedings and due to the circumstances arising from the COVID-19 pandemic, he could not file the necessary application on time. Therefore, there was delay of 1751 days.

3. The counter has been filed opposing the said application, contending that the revision petitioner is an Advocate and is now a Public Prosecutor. It is stated that he entered into an agreement in the year 2011 but defaulted in



payment of rent from May, 2013. Notice was duly served on the petitioner and had appeared through counsel. However, as he did not file a counter on time, an exparte order was passed on 02.06.2017. Even in the Execution Petition in E.P.No.72 of 2017, notice was served, but he was also set exparte therein. Hence, he filed an application.

4. The Trial Court, after considering the affidavit of the petitioner and on verification of the Court records, found that the reason assigned for the condonation of huge delay were not properly explained and were based on falsehoods. The contention that the notice was not served in RCOP proceedings have been negatived upon verification of the Court bundle and the application was rejected. Challenging the same, the revision has been filed.

5. The main contention of the revision petitioner before this Court is that the land in which the building is situated is Government Poramboke land. Therefore, there cannot be any valid tenancy. Yet another submission that the respondent also entered into un-registered sale deed in respect of the premises, which has been suppressed in RCOP proceedings. Hence, it is the contention that he should be given a proper opportunity to defend RCOP proceedings.



6. I have perused the entire materials. The point that arises for consideration is whether the petitioner has satisfied the word 'sufficient cause' to extend any benefit?

7. The petitioner is not an ordinary person or illiterate. He is a practicing Advocate. Now, it appears that he also became a Public Prosecutor of Additional District Court, Poonamallee, last year. Therefore, when a person having legal knowledge and aware of the consequences of the Court proceedings should come to the Court with clean hands to canvass his case. It is the specific case of the petitioner that no notice was served on him in RCOP proceedings. He came to know about the exparte order passed in RCOP proceedings only during the execution proceedings.

8. It is relevant to note that such a contention raised in the affidavit for condoning the huge delay is, in the opinion of this Court, an after thought. The Trial court has verified the case bundles and found that notice was duly served on the revision petitioner and the revision petitioner had engaged an Advocate viz., one Ravikumar and the matter has been adjourned periodically on 04.11.2016, 03.12.2016, 03.01.2017, 03.02.2017 and 03.03.2017 for filing counter on behalf of the revision petitioner. The matter was posted on



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01.06.2016 for evidence on the side of the landlord. Finally, as no counter was filed, he was set exparte on 03.03.2017. Thereafter, a fair and final order was passed on 02.06.2017. Therefore, the contention that no notice has been served cannot be countenanced as it has been pressed into service only for the sake of filing this application.

9. The Trial Court also recorded the fact that the execution proceedings is also filed in E.P.No.72 of 2017. The revision petitioner remained exparte in the execution petition also. Thereafter, he filed an application in EA.No.20 of 2018 and the same was dismissed. Now the application has been filed to condone the delay citing Covid-19 pandemic circumstances.

10. It is relevant to note that Covid-19 lockdown was imposed only in the year 2020. From 2017 when the exparte decree was passed till the Covid-19 lockdown was imposed, no action has been taken by the petitioner being an Advocate. Therefore, the delay cannot be condoned as a matter of right. Another submission now put forth by the learned counsel for the petitioners to the effect that the land where the premises is situated is a Government Poromboke land. Therefore, there cannot be any valid tenancy in the eye of law. Such a contention has no legal ground for the simple reason that to be a landlord, one



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need not be the owner of the property. Once the person is inducted as a tenant, he is estopped from denying the title of the landlord under Section 116 of Indian Evidence Act, 1872 and Section 122 of Bharatiya Sakshya Adhiniyam, 2023.

11. Further contention is also raised that the respondent had entered into an un-registered sale deed in favour of the petitioner for sale of the property. The said submission is totally contradictory to the contention that the landlord has not title to the property. Being a person of legal knowledge, entering into the property knowing well that the property is a Poromboke also appears to be artificial in nature.

12. Considering the above provisions, submissions and the reasons assigned, this Court is of the view that it is yet another attempt made by the petitioners to prevent the execution proceedings and I do not find merits in this petition and this civil revision petition is liable to be dismissed.

13. Accordingly, this Civil Revision Petition is dismissed. Consequently,



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connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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N.SATHISH KUMAR, J.

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To

The Principal District Munsif Court, Poonamallee.

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