



CRP No.5042 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.5042 of 2023
and CMP.Nos.29338 of 2023 and 3830 and 1936 of 2024

B.Sarala

... Petitioner

Vs.

Dr.Kanchana

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 24.11.2023 made in IA.No.7 of 2023 in RLTOP No.3 of 2021 on the file of Rent Court (Principal District Munsif), Cuddalore.

For Petitioner : Mr.R.Rajavelavan

For Respondent : Mr.R.Parthasaray, Senior Counsel
for Mr.P.Muthukumarasamy



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ORDER

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This petition has been filed challenging the fair and decretal order dated 24.11.2023 made in IA.No.7 of 2023 in RLTOP No.3 of 2021 on the file of Rent Court (Principal District Munsif), Cuddalore.

2. The brief facts that are necessary for disposal of this Civil Revision Petition are as follows:

i) The petitioner herein is a tenant under the respondent. As the petitioner failed to pay his rent regularly, the respondent herein instituted RLTOP No.3 of 2021 against the petitioner before the Principal District Munsif, Cuddalore, seeking eviction on the ground of wilful default in payment of rent and for requirement of building by the respondent for carrying out repairs and alteration work. Since there was no appearance for the petitioner, he was set ex-parte and subsequently, eviction order was passed on 24.02.2022, directing the petitioner to vacate the subject property. Pursuant to the above order, an execution petition in EP.No.100 of 2022 was filed on 10.09.2022. Even after service of summons in the above EP, the petitioner failed to enter appearance and hence he was set ex-parte on 18.11.2022. The petitioner later filed an application in E.A.No.54 of 2023 for setting aside the ex-parte order made on 18.11.2022. The Executing Court



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allowed the said EA on payment of costs. Subsequently, by order dated 27.04.2023, the ex-parte order made on 18.11.2022 was set aside and posted for arguments.

ii) In the above circumstances, the petitioner filed IA.No.7 of 2023 in RLTOP No.3 of 2021 under Section 5 of the Limitation Act, 1963 to condone the delay of 436 days in filing an application to set aside the ex-parte order of eviction passed on 24.02.2022. The said application was dismissed by order dated 24.11.2023. Challenging the same, the present CRP is filed.

3. The learned counsel for the petitioner herein submitted that though the learned counsel for the petitioner before the Court below, obtained instructions from the petitioner, he failed to file an application to set aside the ex-parte decree of eviction while filing an application in EA.No.54 of 2023 to set aside the ex-parte order. Therefore, there was a delay in filing the said application.

4. The learned counsel for the petitioner, in support of his arguments, relied upon the following judgments:

i) *N.Balakrishnan vs. M.Krishnamurthy* reported in AIR 1998



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- ii) ***S.Muruganandam vs. J.Joseph*** reported in 2022 (2) MWN
(Civil) 311
- iii) ***Balakrishnan vs. Ramasamy Chettiar*** reported in 2019 (2)
MWN (Civil) 63

5. The learned counsel for the petitioner further submitted that if the order of delivery is made, it would greatly affect the functioning of the School for this Academic year and the students will be put in immense trouble. Hence, he seeks to condone the delay and give a chance to the petitioner/tenant to put forth his case.

6. The learned counsel appearing for the respondent/landlady objected the Civil Revision Petition on the ground that in view of Section 38 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, the order passed by the Rent Court is an appealable order and hence the present Civil Revision Petition is not maintainable.

7. The learned counsel for the respondent further contended that there is no bona-fide on the part of the petitioner, as in the condone delay petition, the petitioner did not disclose any valid reason for not filing the application in



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time to set aside the ex-parte order. The petitioner on receiving the summons in EP.No.100 of 2022 on 31.10.2022, had obtained knowledge about the ex-parte decree and immediately filed E.A.No.54 of 2023 for setting aside the ex-parte order dated 18.11.2022, but he failed to file any application to set aside the ex-parte decree dated 24.02.2022 passed in RLTOP No.3 of 2021. The same came to be filed only on 05.06.2023. However, the petitioner has not stated any valid reason for not filing the condone delay petition immediately on the date of filing of EA.No.54 of 2023. Therefore, there is no bona-fide on the part of the petitioner in filing the condone delay application belatedly. Thus, this Revision Petition is not maintainable and hence, the same may be dismissed on merits.

8. In support of his arguments, the learned counsel for the respondent relied on the judgments of the Supreme Court in ***Basawaraj and another vs. Special Land Acquisition Officer*** reported in 2013 (14) SCC 81 and ***Koushik Mutually Aided Cooperative Housing Society vs. Ameena begum and another*** reported in 2023 SCC OnLine SC 162.

9. The learned counsel for the respondent, by relying upon the



judgment of the Supreme Court in **Basawaraj case** (referred to supra), submitted that the applicant must satisfy the Court that he was prevented by sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. He further submitted that, even if the limitation harshly affects the right of a party, it has to be applied with all its rigour when prescribed by a Statue. The relevant paragraph of the said judgment reads as follows:

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffers to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to



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enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he has prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bonafide or was merely a device to cover an ulterior purpose.

....

....

*12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*



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10. When an application filed under Section 5 of the Limitation Act is dismissed, there is a provision to file appeal under Sections 37(9) and 38 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, which reads as follows:

"37. Powers of Rent Court and Rent Tribunal.-

.....

(9) Save as otherwise expressly provided in this Act, every order made by the Rent Court shall, subject to decision in appeal, be final and shall not be called in question in any original suit, application or executing proceedings.

38. Appeal to Rent Tribunal.-

- (1) From every final order passed by the Rent Court, an appeal shall lie to the Rent Tribunal, within the local limits of whose jurisdiction the premises is situated and such an appeal shall be filed within a period of thirty days from the date of final order along with a copy of such final order.*
- (2) The Rent Tribunal, upon filing an appeal under sub-section (1) shall serve notice, accompanied by copy of appeal to the respondent and fix a hearing not later than thirty days from the date of service of notice of appeal on the respondent and the appeal shall be disposed of within a period of one hundred and twenty days from the date of service of notice of appeal on the respondent.*



- (3) *Where the Rent Tribunal considers it necessary in the interest of arriving at a just and proper decision, it may allow documents at any stage of the proceedings in appeal, however, this facility would be available to the applicants only once during the hearing.*
- (4) *The Rent Tribunal may, in its discretion, pass such interlocutory order during the pendency of the appeal, as it may deem fit.*
- (5) (a) *While deciding the appeal, the Rent Tribunal, after recording reasons therefor, confirm, set aside or modify the order passed by a Rent Court;*
- (b) *The decision of the Rent Tribunal shall be final and no further appeal or revision shall lie against the order.*
- (6) *On application of any of the parties and after notice to the parties and after hearing such of them as have desired to be heard, or of its own motion without such notice, the Principal Rent Tribunal may, at any stage, transfer any case from one Rent Court to any other Rent Court for disposal.*
- (7) *Where any case has been transferred under sub-section (6), the Rent Court to whom the case has been transferred subject to any special direction in the order of transfer, proceed from the stage at which it was transferred."*

11. A conjoint reading of Sections 37(9) and 38 shows that the order



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dismissing an application filed under Section 5 of the Limitation Act being a final order, is an appealable order. Further, if it is an appealable order, the revision petition is not maintainable.

12. In the judgment relied on by the learned counsel for the respondent in ***Koushik Mutually Aided Cooperative Housing Society case***, it is held by the Supreme Court that the Civil Revision Petition is not maintainable against an order passed by the Trial Court dismissing the application filed seeking condonation of delay. The relevant portion of the said judgment reads as follows:

"6. Being aggrieved, the first respondent herein filed a Civil Revision Petition under Section 115 of the CPC before the High Court contending that Trial Court was not right in dismissing the application seeking condonation of delay of 5767 days in filing the petition to set aside the ex-parte decree dated 15.02.1999.

7. By the impugned order dated 08.01.2021, the High Court has set aside order dated 07.06.2018 passed in IA.No.30/2016 in OS.No.1144/1988, which also implies that the petition filed under Order IX Rule 13 CPC which had also stood dismissed has been allowed. In the Civil Revision Petition, the High Court condoned the delay of 5767 days in filing the petition filed under Order IX Rule 13 CPC seeking



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setting aside the ex-parte decree dated 15.02.1999 by directing the Trial Court to dispose of the petition filed under Order IX Rule 13 CPC and to complete the trial of the suit expeditiously, within a period of four months from the date of receipt of certified copy of this order.

...

10. At the outset, this Court queried as to how a Civil Revision Petition was maintainable against an order passed by the Trial Court dismissing the application filed seeking condonation of delay in filing the petition under Order IX Rule 13 CPC and consequently rejecting or dismissing the said petition also."

13. In the above decision, the Hon'ble Supreme Court has further held that when there is an appeal remedy, the same has to be exhausted and revision petition is not maintainable. Therefore, on that ground, this order, being an appealable order, revision is not permissible. Therefore, this Civil Revision Petition is liable to be dismissed.

14. Further, the citations relied on by the learned counsel for the petitioner, are distinguishable on facts and hence they are not applicable to the facts of the present case.

15. Even on merits, it is seen that the petitioner was set ex-parte on



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02.12.2021 in RLTOP No.3 of 2021 and eviction order was passed on 24.02.2022. The petitioner came to know about the ex-parte eviction order when he received summons on 31.10.2022 in the execution proceedings in EP.No.100 of 2022. Therefore, it is clear that the petitioner had knowledge about the ex-parte order of eviction. However, in the EP proceedings also, the petitioner remained absent and he was set ex-parte. Thereafter, he filed EA.No.54 of 2023 to set aside the ex-parte order dated 18.11.2022, but even at that time, he failed to file any application to set aside the eviction order. Subsequently, he filed IA.No.7 of 2023 to set aside the exparte decree passed in RLTOP.No.3 of 2021 belatedly. It reflects negligence on the part of the petitioner/tenant in prosecuting the case.

16. Therefore there is no bona-fide on the part of the petitioner. Hence, the Civil Revision Petition is not maintainable and the same is dismissed, with liberty to the petitioner/tenant to file an appeal. The observations made about the merits of the case will not bind while considering the appeal. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No



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pvs

To

1. The Rent Court (Principal District Munsif),
Cuddalore
2. Section Officer,
V.R.Section High Court, Madras



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V.SIVAGNANAM, J.

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