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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No. 1971 of 2024

and

C.M.P(MD)No.11238 of 2024

MKG Raja S/o. M.K.Govindarajulu,
Proprietor of MKG Traders.

... Petitioner

Vs.

Mahendra Kumar M.Vora

... Respondent

PRAYER: Civil Revision Petition filed under Article 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 05.06.2024 in I.A No.1 of 2024 in R.L.T.O.P No.5 of 2023 on the file of the Learned Rent Court (I Additional District Munsif Court), Tiruchirappalli.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.K.R.Kishore Ram, for
M/s.R.B. Law Associates

JUDGEMENT

This Civil Revision Petition is filed to set aside the Fair and Decreetal order dated 05.06.2024 passed in I.A No.1 of 2024 in R.L.T.O.P No.5 of 2023 on the file of the Learned Rent Court (I Additional District Munsif Court), Tiruchirappalli.



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2. This Civil Revision Petition has been filed against the dismissal of application filed Section 5 of Limitation Act. The revision petitioner is the tenant and the respondent the landlord. The landlord had filed RLTOP to evict the revision petitioner on the ground of default in payment of rent. The tenant had received the notice but did not appear since the landlord said he is going to withdraw the petition. But the landlord proceeded with the petition and had obtained an exparte decree dated 23.03.2023. Aggrieved over the same, the tenant has preferred IA No.1 of 2024 to set aside the exparte decree along with condone delay application to condone the delay of 256 days. In the meanwhile, the Landlord had preferred E.P No.109 of 2023 to execute the exparte decree. In the said EP the tenant had received the notice and contested the EP. In the meanwhile, he has filed the present IA to condone the delay in filing of application to set aside the exparte decree dated 23.03.2023. Since there is no stay from any courts, the Court had proceeded with the execution petition. Hence the tenant is before this Court.

3. The contention of the landlord is that the rental agreement dated 01.08.2021 was for the period from 01.08.2021 to 30.06.2022 and a monthly rent was fixed for Rs.10,000/- with advance of Rs.1,00,000/-. The tenant had not paid the rent from June 2022, hence legal notice dated 01.11.2022 was issued, but the tenant had not replied to the said notice. Hence the landlord had



filed RLTOP No.5 of 2023 to vacate the tenant, inspite of notice the tenant failed to appear, hence an exparte order was passed. Hence the landlord had filed E.P.No.101 of 2023, in which the tenant had entered appearance, filed counter, wherein it is stated after receipt of notice in EP alone the tenant came to know about the exparte order. But contrary to the said statement, the tenant had taken a plea in the Civil Revision Petition that the landlord had asked the tenant not to appear in the RLTOP petition. Hence the tenant had not come with clean hands. The tenant is aware of the exparte decree since the tenant was contesting the EP but failed to file any petition to set aside the exparte decree. The tenant with ill motive and in order to scuttle the fruits of the decree to evict the tenant had filed the petition to drag on the proceedings. Hence the landlord prayed to dismiss the condone delay application.

4. The Court below had held that the tenant was set exparte on 08.02.2023 and posted the case for exparte enquiry on 14.02.2023. On the same day enquiry was heard, Ex.P1 to P3 was marked, evidence was closed and posted the case for arguments on 17.02.2023, 02.03.2023, 14.03.2023. On 14.03.2023 the arguments were heard and orders were passed on 23.03.2023. Then the E.P.No.101 of 2023 was filed, notice was served to the tenant on 20.09.2023 and tenant had entered appearance on 16.10.2023. And the case was



posted for hearing on various dates i.e. on 06.11.2023, 22.11.2023, 07.12.2023, 13.12.2023, 21.12.2023 and 03.01.2024 for more than six times. On 03.01.2024 the tenant had filed counter, then the case was posted on 06.01.2024, the landlord had completed the arguments and the case was posted for tenant side arguments. When the tenant had knowledge about the eviction petition, but did not appear for the reason that the landlord had informed not to appear and the landlord is going to withdraw the eviction petition and held the said reason is not acceptable and dismissed the condone delay application.

5. After hearing the arguments this Court considered the plea of the revision petition. It is seen that the exparte order was passed on 23.03.2023. The tenant had received the notice in EP and appeared on 06.10.2023. The I.A No.1 of 2024 was filed on 02.01.2024. When the tenant had appeared in EP on 06.10.2023, atleast the tenant ought to have filed a petition to set aside the exparte decree on 06.10.2023. Further the tenant is aware of the RLTOP and the reason for not appearing in the said proceedings is unbelievable and unacceptable. Therefore, this Court is of the considered opinion that the tenant in order to drag on the proceedings had filed the petition to set aside the exparte decree belatedly and hence this Court is not inclined to entertain this Civil Revision Petition.



6. Accordingly, this Civil Revision Petition stands dismissed. No

Costs. Consequently, connected miscellaneous petition is also closed.

19.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1. The Rent Court (I Additional District Munsif Court),
Tiruchirappalli.

2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
C.R.P(MD)No.1971 of 2024

19.09.2024