



C.R.P.(MD)No.3306 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3306 of 2023

and

CMP (MD) No.17027 of 2023

P.Krishnan,
S/o.K.Parthasarathy,
Proprietor of Sri Krishna Jewellery House,
No.399, Big Bazaar Street,
Trichy-8,
Trichy District. : Petitioner/Respondent/
Respondent-Tenant

Vs.

M.Habibullah : Respondent/Petitioner/
Petitioner-Land Lord

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decree order made in EP No.46 of 2022 in RCOP No.100 of 2015 on the file of the 1st Additional District Munsif, Trichy, dated 30/10/2023.

For Petitioner : Mr.R.Sundar

For Respondent : Mr.M.Saravanan

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decree order made in EP No.46 of 2022 in RCOP No.100 of 2015 on the file of the 1st Additional District Munsif, Trichy, dated 30/10/2023.



2. The facts in brief:-

RCOP No.100 of 2015 was filed by the respondent herein seeking an order of eviction against the petitioner herein on the ground of willful default. But the respondent failed to appear and did not file any counter. So he was set *ex-parte*. To set aside the *ex-parte* order, he filed IA No.541 of 2016. That came to be allowed by imposing costs upon the petitioner. The cost was ordered to be paid, on 19/01/2017. The cost was not paid in time. So it was dismissed, on 20/01/2017. Against which, CRP(MD)No.1187 of 2018 was preferred by this petitioner. That came to be dismissed stating that the revision is not maintainable, but the cost was enhanced to Rs.2,000/- and ordered to be paid by extending time with a direction to the District Munsif, Trichy, to dispose the RCOP No.100 of 2015 within the time stipulated. That order was passed, on 20/07/2018. The order was dispatched, on 17/09/2018 by the Registry. This petitioner filed a memo stating that cost was paid; learned counsel for the respondent also received the cost of Rs.2,000/- and made an endorsement in the memo itself to that effect; and that memo as well as endorsement is, dated 20/10/2018. Another memo dated 13/07/2021 stating that the original RCOP must be taken on file. But that memo was returned stating that the time stipulated



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expired, the petition is not maintainable, since the order was not complied in time. In the meantime, EP No.46 of 2022 was filed by the respondent seeking an order to execute the order seeking delivery of possession.

3.The present petitioner appeared and filed his counter narrating the above said facts. The contention raised by the petitioner was rejected by the court on the ground that there is violation of the conditional order. So delivery was ordered.

4.Against which, this civil revision petition has been preferred.

5.Heard both sides.

6.As narrated in the preamble portion of the order, CRP(MD)No.1187 of 2018 was disposed of, on 20/07/2018 with a direction to the petitioner to pay the enhanced cost of Rs.2,000/-. The time limit was fixed two weeks from the date of receipt of a copy of the order. As stated above, the order was dispatched, on 18/09/2018. So the time must be calculated, from 18/09/2018. The order ought to have been complied, on or before 02/10/2018.



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7.Now we will go to the memo filed by the petitioner. The cost was paid only, on 20/02/2018. But the learned counsel appearing for the petitioner would submit that even though, the copy was dispatched by the Registry, on 17/09/2018, it was received by the petitioner belatedly. Only from the date of receipt of the order, he paid the costs, on 22/10/2019.

8.The learned counsel appearing for the petitioner is not able to inform the court as to the date of receipt of the copy of the order. So on which date, the copy was received is the point to be looked into.

9.But before the executing court, absolutely the parties were not examined with regard to the above said crucial issue. Without examining the parties, it came to be rejected.

10.In my considered view that the matter must be remitted back to the executing court to record a finding on that specific issue. On that ground, the civil revision stands allowed and the impugned order passed by the trial court is set aside. The matter is remitted back to the trial court. Let the above said process be decided within 15 days from the date of receipt of a copy of this order and proceed in accordance with law.



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11.In the result, this civil revision petition stands **allowed** as indicated above. No costs. Consequently, connected CMP is closed.

07/02/2024

Index:Yes/No
Internet:Yes/No
er

To,

The 1st Additional District Munsif,
Trichy.



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G.ILANGO VAN, J

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