



C.R.P(NPD)(MD)No.2618 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.2618 of 2024
and C.M.P(MD)No.15091 of 2024

Mrs.S.Mytheen Beevi

... Petitioner

Vs

1.Mrs.Rasiya Begum

2.Mr.Arif

3.Mrs.M.V.S.Shafvana

... Respondents

(Notice to R2 & R3 is dispensed with
as they were set exparte before the Tribunal
vide Court order dated 18.12.2024 made in
C.R.P.(MD)No.2618/2024)

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records and to set aside the order passed in I.A.No. 2 of 2021 in RCOP No.2 of 2019 on the file of the Rent Controller's Tribunal Court/1st Additional District Munsiff, at Nagercoil, Kanyakumari District.

For petitioner : Mr.G.Anto Prince

For Respondents : Mr.R.Maheswaran for R1
R2 & R3-dispensed with



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ORDER

This Civil Revision Petition is filed to call for the records and to set aside the order passed in I.A.No.2 of 2021 in RCOP No.2 of 2019 on the file of the Rent Controller's Tribunal Court/1st Additional District Munsiff, at Nagercoil, Kanyakumar District.

2. The facts in brief:

R.C.O.P.No.2 of 2019 was filed by the revision petitioner herein against the respondents for eviction, wherein, the respondents remained *ex parte* on 31.01.2020. To set aside the *ex parte* order, there is a delay of 390 days. To condone the delay, a petition under Section 5 of the Limitation Act was filed by the first respondent herein. That came to be allowed by the trial Court with a condition to pay a cost of Rs.1,000/- to the revision petitioner on or before a particular date. Against which, this revision is preferred by the revision petitioner.

3. The reasons set out in I.A.No.2 of 2021 in RCOP No.2 of 2019 are that only after receiving the notice in E.P.No.19 of 2020, she came to



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know that R.C.O.P.No.2 of 2019 was filed by the revision petitioner.

Certified copy was served to her only on 20.03.2021. For about 14 days, she was sick and she could not contact her advocate in the main RCOP. No notice was served upon her, but, instead paper publication was ordered and it was effected. She went to New Zealand and stayed at New Zealand till 25.05.2019. Her date of visit to the New Zealand is 02.09.2018. Therefore, during that period, she was not available in India. Hence, notice could not be served upon her. There was no landlord and tenant relationship between them.

4. That petition was resisted by the revision petitioner stating that there is huge arrears of amount and the reasons set out by the first respondent were not proper.

5. Heard both sides.

6. The learned counsel for the revision petitioner would submit that as on date, several lakhs of arrears of rent to be paid by the respondents herein. That was not properly appreciated by the trial Court.



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In support of his submissions, he was relied upon the following judgments:

1. ***Sunil Kumar Vs. Shri Kapoor Chandra Agarwal*** reported in ***AIR ONLINE 2019***;

2. ***E.Palanisamy Vs. Palanisamy (Died), By LRs & Ors*** reported in ***AIR 2003 SCC 153***; and

3. ***Bimar Chand Jain Vs. Sri Gopal Agarwal*** reported in ***1981 AIR 1657***

7. The only point which arise for consideration is whether proper notice was served upon the respondents in the main RCOP. We will straight away go to the findings rendered by the trial Court. RCOP was ordered *ex parte* on 31.01.2020. To execute the decree, E.P.No.19 of 2020 was filed, in which the the first respondent received the notice and entered appearance through her advocate on 10.02.201. Further, in the main RCOP, in spite of repeated notices, respondents could not served. Later, substitute of service in issue of Malaimalar or Thinmalar was ordered and was effected on 09.08.2019. So that also there was no appearance. Hence, she was set *ex parte*. The first respondent produced



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her passport to show that between 01.09.2018 and 26.05.2019, she was in New Zealand and not available in India. Finding that since she was in abroad, she has no knowledge about the notices and pendency of the main petition. Based upon the above said documentary evidence, the trial Court thought it fit to allow the petition on payment of costs. Aggrieved over the same, this revision is preferred by the revision petitioner stating that there is a heavy due of arrears of rent running to several lakhs. Therefore, if at all, the trial Court ought to have directed the respondents herein to pay the rent arrears, apart from the factual ground.

8. Regarding the ground mentioned by the first respondent herein of her non-availability in India, the same is borne out by records. Therefore, as stated above, it is clear on record that she was not available in India. Hence, the finding of the trial Court on the basis of the documentary evidence cannot be found fault with. Regarding payment of arrears of the rent, the respondents submitted that there is no landlord and tenant relationship between them. Unless the revision petitioner is able to establish the same, she is not permitted to take this plea.



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9. As mentioned above, according to the revision petitioner, the rent for the period from 01.06.2015 to 01.11.2018 comes around Rs.6.15 lakhs. But, the revision petitioner has to establish the fundamental fact of relationship. Unless those facts are prima facie brought on record, she is not entitled to take any plea before this Court. If at all, she can make an appropriate application before the trial Court, after the petition is restored to its file. When such an alternative relief is available, this revision petition cannot be decided on the above said point.

10. But, however, considering the onus of the matter, the payment of cost of Rs.1,000/- is liable to be enhanced to Rs.5,000/-. Let the enhanced costs of Rs.5,000/- be paid by the first respondent herein within 15 days from the date of receipt of a copy of this order. On payment of the enhanced costs, the trial Court may restore the same to its file. If the revision petitioner refuses to receive the cost, it may be deposited to the credit of this number before the trial Court.



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11. With the above observation, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

No costs.

27.01.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
vsm

To

- 1.The Rent Controller's Tribunal Court/
1st Additional District Munsiff,
Nagercoil, Kanyakumari District.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai



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G.ILANGO VAN, J.

vsm

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