N. Gopalakrishnan Vs. N. Babu

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Court : Chennai

Decided On : Oct-20-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD).Nos. 4491 & 4492 of 2015 & M.P.No. 1 of 2015

Appellant : N. Gopalakrishnan

Respondent : N. Babu

Judgement :

(Prayer: Civil Revision Petitions under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act as amended by Act 23 of 1973 and by Act 1 of 1980 against the judgment and decree dated 28.11.2014 passed by the VII Judge, Court of Small Causes, Chennai (Appellate Authority) in R.C.A.Nos.306 and 307 of 2012 confirming the fair and decreetal order dated 16.03.2011 passed by the XI Judge, (Incharge of X Court), Court of Small Causes, Chennai (Rent Controller) in M.P.Nos.376 and 377 of 2010 in R.C.O.P.No.1301 of 2009.)

Common Order

1. Challenging the judgment and decree passed in R.C.A.Nos.306 and 307 of 2012 on the file of the VII Judge, Court of Small Causes, (Appellate Authority), Chennai, confirming the fair order passed in M.P.Nos.376 and 377 of 2010 in R.C.O.P.No.1301 of 2009 on the file of the XI Judge, Court of Small Causes, (Rent Controller), Chennai, the tenant has filed the above Civil Revision Petitions.

2. The respondent/landlord filed R.C.O.P.No.1301 of 2009 for eviction on the ground of willful default, denial of title and own use and occupation.

3. The brief case of the landlord is as follows:

According to the landlord, the tenant is his brother. The property originally belonged to one K.Subbaiah, who died intestate on 14.05.1976, leaving behind his wife and children. Subsequently, the landlord purchased the property from them on 09.05.1983 and also constructed a house therein. Subsequently, based on an oral Agreement on 01.01.1988, the property was leased out to the tenant on a monthly rent of Rs.1,800/-. Subsequently, the rent was increased to Rs.2,800/-. On 31.12.1997, the landlord called upon the tenant to pay Rs.2,16,000/- towards arrears of rent. During that period, the landlord's wife joined Stanley Medical College to pursue her Post Graduation and hence, she was in need of a house. Immediately, the landlord approached the tenant for the requirement of his wife and also requested the tenant to pay the arrears of rent. Subsequently, the landlord sent another letter to the tenant to vacate the premises and to pay arrears of rent on or before 15.11.2006. However, the tenant failed to pay the arrears of rent and also did not vacate the premises. On 22.03.2009, the landlord issued another notice to the tenant demanding arrears of rent of Rs.5,96,800/-. On receipt of the notice, the tenant sent a reply stating that he had purchased the property and disputed the title of the landlord. The landlord filed Rent Control Original Petition for eviction on the ground of willful default, denial of title and own use and occupation.

4. The brief case of the tenant is as follows:

According to the tenant, he has not paid a single pie towards rent to the landlord for the reason that he has no title over the property. The tenant has stated that the purchase made by the landlord on 09.05.1983 was not out of his own funds and only he has paid the amount for the purchase of the property. The respondent put up construction in the vacant site and occupied the same in the year 1985. All the taxes and other public outgoings for the property were paid only by him for the past 25 years. Since the alleged landlord is not the owner of the property, the tenant has not paid any rent to him. In these circumstances, the tenant prayed for

dismissal of the petition.

5. Subsequently, the tenant remained absent before the Rent Controller and hence, he was set exparte and an exparte order of eviction was passed on 26.02.2010. Thereafter, the tenant filed an application in M.P.No.376 of 2010 in R.C.O.P.No.1301 of 2009 to condone the delay of 139 days in filing the petition to set aside the exparte order dated 26.02.2010. The tenant also filed a petition in M.P.No.377 of 2010 to set aside the exparte order dated 26.02.2010.

6. In the affidavit filed in support of the petition, the tenant has stated that he entered appearance through his counsel at Chennai in Rent Control Original Petition and immediately thereafter, he left to Kerala to retrieve the papers connected with the said house property and in Kerala, it took lot of time for searching for the papers and in the meanwhile, he fell sick and therefore, could not contact his counsel. Further, he has stated that he came to know about the exparte order only when he received the summons in the execution proceedings. In paragraph-4 of the affidavit, the tenant has stated that he came to know that one of his counsel S.Hariharan was admitted in a hospital in the month of October 2009 due to rat fever (Leptospirosis) and he came back to work only in the last week of July 2010. The other counsel on record was also out of station for more than a year and for that reason also he could not contact the counsel. In paragraph-5 of the affidavit, the tenant has stated that after receiving the summons in the execution proceedings he contacted his counsel and on verification, they informed him that the RCOP was decreed exparte. Hence, there is a delay of 139 days in filing the petition to set aside the exparte decree dated 26.02.2010 passed in the R.C.O.P.No.1301 of 2009.

7. The landlord, in his counter, while denying the averments stated in the affidavit filed in support of the petition, also stated that the tenant has not explained the reasons for condoning the delay of 139 days. The landlord has also stated that even after filing Vakalat in the Execution Petition, the tenant has not opted to file counter in the Execution Petition. In these circumstances, the landlord prayed for dismissal of the applications.

8. The Rent Controller, taking into consideration the case of both parties, dismissed both the applications. Aggrieved over the same, the tenant preferred appeals in R.C.A.Nos.306 and 307 of 2012 and the Lower Appellate Court also confirmed the orders passed by the Rent Controller and dismissed the appeals. Aggrieved over the same, the tenant has filed the above Civil Revision Petitions.

9. Heard Mr.Ashok Menon, learned counsel appearing for the petitioner and Mr.V.Lakshminarayanan, learned counsel appearing for the respondent.

10. Mr.Ashok Menon, learned counsel appearing for the petitioner submitted that the petitioner/tenant has satisfactorily explained the reasons for the delay in the affidavit filed in support of the petition. In such circumstances, the Courts below should have condoned the delay and given an opportunity to the tenant to contest the Rent Control Original Petition on merits. Further, the learned counsel submitted that the Courts below have erroneously dismissed the applications finding that the tenant has not explained the reasons for the delay in a proper manner.

11. In support of his contentions, the learned counsel appearing for the petitioner relied upon the following judgments:

(i) (2010) 6 Supreme Court Cases 786 [Improvement Trust, Ludhiana vs. Ujagar Singh and others] wherein the Hon'ble Supreme Court of India held that for condonation of delay, no straitjacket formula can be prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which he party acts and behaves.

(ii) 2012-2-L.W. 37 [Tamil Nadu Defence Officers Co-operative Housing Society Ltd., rep by its Secretary, Office at Defence Officers Colony, Chennai - 600 032 Vs. R.Sakkubai @ Chokkammal] wherein this Court held as follows:

...

6. In this case, it is seen from paras 3 to 5 of the affidavit filed in support of the application it has been stated, in detail, various steps taken by the counsel who

was engaged by the revision petitioner to trace the bundle for ascertaining the reason for passing the ex parte decree and according to the revision petitioner, only on 13.10.2008, they were able to get the certified copies of the ex parte decree and thereafter, the application was filed to condone the delay. Further, the learned counsel for the revision petitioner also, in all fairness, admitted that the application could not be filed immediately on receipt of the notice in E.P.No.28 of 2008 as he was not sure about the reason for passing the ex parte decree and therefore, he took steps to get the certified copy of the order and only thereafter, he filed the application.

7. Therefore, considering the submission of the learned counsel for the revision petitioner that because of his advice, the application was not filed immediately on receipt of notice in the execution proceedings, in my opinion, the party should not suffer for the inaction on the part of the counsel. Hence, I am inclined to set aside the order of the court below on condition of payment of Rs.3000/= to the respondent herein by the revision petitioner within a period of two weeks from the date of receipt of copy of this order. The Court below is directed to consider the application to set aside the ex parte within a period of one month from the date of receipt of copy of this order and in the event of such petition being allowed, the court is directed to dispose of the main suit within two months thereafter. The revision petition is ordered accordingly. The connected miscellaneous petition is closed.

(iii) 2007-3-L.W. 690 [The Secretary, Madras Race Club, Chennai Vs. 1.Saraswathy Kailasam and others] wherein this Court held that an application under Section 5 of the Limitation Act is to be construed liberally so as to do substantial justice to the parties. Further, the provision contemplates that the Court has to go into the position of the person concerned and find out if the delay can be said to have been resulted from the cause which the petitioner had adduced and whether the cause stated in the circumstances of the case is sufficient. Further, this Court held that the Court must satisfy itself as to whether there was sufficient cause for exercising the discretion and condoning the delay.

(iv) 1999 M.L.J. (Supp) 409 [Amir Jan Sahib Vs. Janab K.Mohamed Sulaiman] wherein this Court held as follows:

...

12. One other infirmity in the order of the authorities below and in particular the order of the Rent Controller is that the tenant has not substantiated by production of evidence that he met the landlord soon after receipt of the summons in the eviction proceedings, that the landlord advised him to pay up the arrears and if the arrears were cleared he would not pursue the eviction proceedings. It is seen that the order of eviction was passed on 29.01.1992. The case in the eviction petition is that the tenant had committed default in the payment of rent in a sum of Rs.1,500 from March, 1991 to July, 1991. The petition for eviction was filed in September, 1991. Possibly the tenant had received the notice in the eviction proceedings sometime in October to November, 1991. Soon thereafter he had met the landlord and on 22.01.1992 he was set exparte and the order of eviction was passed on 29.01.1992. In July, 1992 the tenant sent a sum of Rs.5,100 representing rent for 17 months from March, 1991 to July, 1992 and the receipt of this pay order is accepted by the landlord. In fact, from the counter of the landlord it is seen that there was a further payment of a month's rent by money order by the tenant. Apparently, the tenant did not pay further rent and the landlord wanted to take advantage of the ex parte order of eviction and only thereafter, he filed the execution petition in which the tenant received the notice in March, 1992. The stand of the tenant is reinforced by the fact that the landlord though had obtained an exparte decree on 20.01.1992 did not put it into execution till January or February, 1993. When the tenant's version that he come to know about the eviction order only in March, 1993 is not true and if he had known about the passing of the exparte eviction order, possibly he would not have even sent the arrears of rent.

(v) AIR 1972 Supreme Court 749 [The State of West Bengal Vs. The Administrator, Howrah Municipality and others] wherein the Hon'ble Supreme Court held that the expression sufficient cause should receive a liberal construction so as to advance substantial justice when no negligence or inaction

or want of bona fide is imputable to a party.

(vi) (1979) 4 Supreme Court Cases 365 [M/s.Concord of India Insurance Co. Ltd. Vs. Smt.Nirmala Devi and others] wherein the Hon'ble Supreme Court held as follows:

...

5. The Accident Claims Tribunal pronounced its award on September, 15, 1976, after making the necessary computations and deductions. The appeal had to be filed on or before January 19, 1977 but was actually filed 30 days later. Counsel for the petitioner is stated to have made the mistake in the calculation of the period of limitation. He had intimated the parties accordingly with the result that the petitioner was misled into instituting appeal late. The High Court took the view that the lawyer's ignorance about the law was no ground for condonation of delay. Reliance was placed on some decisions of the Punjab High Court and there was reference also to a ruling of the Supreme Court in State of W.B. Vs. Administrator, Howrah Municipality, AIR 1972 SC 749. The conclusion was couched in these words:

"The Assistant Divisional Manager of the Company appellant is not an illiterate or so ignorant person who could not calculate the period of limitation. Such like appeals are filed by such companies daily. The facts of this case clearly show, as observed earlier, that the mistake is not bonafide and the appellant has failed to show sufficient cause to condone the delay."

(vii) AIR 1981 Supreme Court 1400 [Rafiq and another Vs. Munshilal and another] wherein the Hon'ble Supreme Court held that party should not suffer for misdemeanour or inaction of his counsel.

(viii) AIR 1998 Supreme Court 258 [Malkiat Singh and another Vs. Joginder Singh and others] wherein the Hon'ble Supreme Court held as follows:

...

7. The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon as they learnt about the ex-parte decree dated 8.2.1992 and the order dated 18.11.1991, they filed the application to set aside the order and ex-parte decree. A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. they had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when t he counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer. In taking this view, we are fortified by a judgment of this Court in Tahil Ram Issardas Sadarangani and Ors. Vs. Ramchand Issardas Sadarangani and Anr. (1993 (Supp.) 3 SCC 256) : (1992 AIR SCW 3445) wherein the bench opined:-

"It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. we are of the view, when Mr. Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that t he party in person was not at fault and as such should not be made to suffer."

12. Countering the submissions made by the learned counsel for the petitioner, Mr.V.Lakshminarayanan, learned counsel appearing for the respondent submitted that the Courts below have rightly rejected the application filed by the tenant seeking for condonation of delay since he has not given sufficient cause for the delay in filing the application and the petitions are rightly dismissed by the Courts below.

13. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel for the petitioner, the issue that has to be

decided in these Civil Revision Petitions is whether the tenant has shown sufficient cause for condoning the delay of 139 days in filing the application to set aside the exparte order of eviction.

14. It is pertinent to note that though the tenant entered appearance before the Rent Controller in R.C.O.P.No.1301 of 2009, subsequently, he remained absent and an exparte decree was passed on 26.02.2010. The tenant has not filed his counter in the Rent Control Original Petition. The counter annexed in the typed set of papers was produced by the tenant only along with the petition in M.P.No.377 of 2010. Therefore, the contents of the counter filed along with the petition in M.P.No.377 of 2010 cannot be gone into by this Court. In the affidavit filed in support of the petition, the tenant has stated that he is the owner of the premises and the respondent has no title over the same. Further, he has stated that in order to contest the case, he went to Kerala to search for the relevant papers and in the meanwhile, he fell sick and therefore, he was unable to contact his counsel. Further, he has stated that his counsel S.Hariharan was admitted in a hospital in the month of October 2009 due to rat fever (Leptospirosis) and he came back to work only in the last week of July 2010. He has also stated that the other counsel on record was out of station for more than a year and therefore, he was unaware of the proceedings in R.C.O.P.No.1301 of 2009. The tenant has also stated that he came to know about the exparte decree dated 26.02.2010 only when he received summons in the execution proceedings. In these circumstances, the tenant filed the application in M.P.No.376 of 2010 to condone the delay of 139 days in filing the application to set aside the exparte order of eviction.

15. It is settled position that unless the party seeking for condonation of delay shows sufficient cause for the delay, the delay should not be condoned.

16. On a reading of the affidavit so far as the averments with regard to going to Kerala and falling sick are concerned, the tenant has not established the same by any means. The averments are bald and bereft of details. When he went to Kerala? when he fell sick?, all these details were not given in the affidavit. So far as the other contention is concerned (i.e.) his counsel fell sick due to Leptospirosis and was hospitalised is concerned, except the averment stated in the affidavit, he

has not produced any records to prove the said contention. At least, the tenant could have produced an affidavit from the counsel to establish the said contention. Even that was not done by the tenant. The other averment is that the other counsel on record had gone out of station for one year, therefore, he could not be contacted. Even this averment was also not established by any means by the tenant. The tenant could have proved those contentions by adducing proper evidence before the Rent Controller.

17. When the tenant had engaged a counsel to appear on his behalf before the Rent Controller and they also entered appearance in the Rent Control Original Petition, the contention of the tenant that he was not aware of the Rent Control Original Petition number cannot be believed. The tenant received the summons in the Execution Petition on 15.06.2010 and filed the application to set aside the exparte order of eviction on 13.08.2010. When the tenant had entered appearance in the Execution Petition as early as on 15.06.2010, he has not given any reason for not filing an application at least immediately after 15.06.2010. The delay between 15.06.2010 and 13.08.2010 stands unexplained by the tenant. When the settled position is that the petitioner seeking for condonation of the delay should give sufficient cause for the delay, in the absence of any acceptable reason given by the petitioner, the delay cannot be condoned.

18. The ratio laid down by the Hon'ble Supreme Court in (2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another] squarely applies to the facts and circumstances of the present case.

19. Since the petitioner has not given sufficient cause for condonation of the delay, the judgments relied upon by the learned counsel for the petitioner are not applicable to the present case. The Courts below have rightly declined to condone the delay and set aside the exparte decree.

20. In these circumstances, I do not find any ground to interfere with the concurrent findings of the Courts below. The Civil Revision Petitions are devoid of merits and are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is

closed.