

Thangamani Vs. Krishnan

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Court : Chennai

Decided On : Feb-08-1999

Reported in : 1999(2)CTC247; (1999)IIMLJ165

Judge : A. Ramamurthi, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 -- Sections 10(3); Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 -- Rule 16(3) and 22; [Code of Civil Procedure \(CPC\), 1908](#) -- Order 9, Rule 13 -- Order 27 and Rule 3

Appeal No. : C.R.P.No. 3790 of 1998 and C.M.P.No. 19161 of 1998

Appellant : Thangamani

Respondent : Krishnan

Advocate for Def. : Mr. J.R.K. Bhavanandan for ;Mr. P.B. Ramanujam, Adv.

Advocate for Pet/Ap. : Mr. R. Muthukumaraswamy, Adv.

Judgement :

ORDER

1. The unsuccessful tenant is the revision petitioner before this Court and she has filed the revision aggrieved against the order of dismissal dated 30.11.1998 in M.P.No.43 of 1998 in R.C.A.No.1513 of 1996 on the file of VII Small Causes Court, Madras.

2. The facts in brief is as follows: The respondent/landlord filed petitions under Sec. 10(3)(a)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as Rent Control Act as R.C.O.P.No.1256 of 1995 on the ground of willful default and R.C.O.P.No.1257 of 1995 on the ground of own occupation. The learned Rent Controller dismissed both applications on merits on 10.10.96. The Court Officer came to the residence of the petitioner and informed on 12.12.1997 that E.P.No.506 of 1997 for execution of the eviction order in the rent control petition had been filed. She came to know that E.P.No.506 of 1997 was posted for appearance on 15.12.1997 and on enquiry through counsel, she came to know that the respondent preferred an appeal and the appeal was allowed ex parte. She never received any notice and unless the exparte order is set aside, she would be put to much loss and hardship. She did not receive any notice in the appeal. Hence, she filed M.P.No.43 of 1998 to set aside the ex parte order passed in R.C.A.No.1513 of 1996, dated 11.9.1997.

3. The respondent filed counter stating that notice was sent to the same address given in the rent control petition. No petition to condone the delay has been filed by the petitioner. Now, it is not open to the petitioner to state that because of the wrong address, notice was not served. To the same address only, the notice in execution petition was also sent and it has been duly served. The appeal was also allowed on merit and the petitioner cannot now seek to set aside the same and the remedy is only by way of revision. There is no merit and the petition lacks in bona fide.

4. The learned Rent Control Appellate Authority after hearing both sides, dismissed the application and aggrieved against this, the revision petitioner/tenant has come forward with the revision.

5. The point for consideration is whether the order passed by the appellate authority is proper and correct?

6. Point: It is admitted that the respondent/landlord filed two rent control petition against the petitioner for eviction and both petitions were dismissed on 10.10.1996 on merit. It is also stated that the petitioner has already filed caveat also. However it may be, the learned counsel for petitioner stated that no notice was received

relating to the appeal said to have been filed by the respondent and only when the court officer came and informed about E.P.No.506 of 1997, on verification they came to know that notice was not served on petitioner. But, however, the appeal was allowed ex parte and in the circumstance, an opportunity has to be given to the petitioner to contest the appeal, as otherwise the tenant would be put to much loss and hardship.

7. The learned counsel for the respondent stated that notice was sent to the same address to which the notice in rent control petition was also sent. However, the notice has been returned and subsequently, the notice was sent by registered post and the same was also returned 'unserved'. Thereupon, publication was ordered in a vernacular paper and thereafter only, the petitioner was set ex parte and after hearing the learned counsel for the respondent, on merit the appeal was allowed. In the circumstances, the only course open to the petitioner is to file a revision aggrieved against the order as if it was passed ex parte. But, on the other hand, since the order was passed on merit, it cannot be set aside by the same appellate authority. The learned counsel for the petitioner stated that the earlier notice in rent control petition was, no doubt, served, but the court officer was also brought by the respondent and on identity, the notice was served. Similarly, no court officer came to serve the notice from the appellant authority. The address given in the notice is also not correct since even in the counter, it is clearly stated that the property is in Masilamani Road, Balaji Nagar, Madras -14, whereas in rent control petition, it is stated as Lloyds Road First Street. It is admitted that the property is situate only in Masilamani Road, Balaji Nagar and in spite of pointing out in the counter, the landlord has not thought it fit to send it to that address and deliberately kept quiet without sending to the correct address.

8. The learned counsel for the petitioner, tenant relied upon Rule 22 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, relating to service of notice, which reads as follows:

A notice under the Act issued by the controller or the appellate authority and any order passed by the appellate authority, if not pronounced in open court shall be served on the person concerned.

(a) by giving or tendering it to such person; or

(b) if such person is not found, by leaving it at his last known place of abode or business or by giving or tendering it to some adult member of his family; or

(c) if the address of such person is known to the controller or the appellate authority by sending it to him by registered post acknowledgment due; or

(d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business'

9. It is clear from the aforesaid Rule (d) that if none of the means aforesaid is available, the notice has to be affixed in some conspicuous part of the last known place of residence of business. The learned counsel for the respondent attempted to state that notice was also affixed, but no record has been filed to support and substantiate the same. However, service of notice through publication is not contemplated under these rules. The Rent Control Act is a special enactment and it has got separate rules to be followed. This being so, the notice has to be sent in accordance with the prescribed rules and if the notice was sent in any other manner, it cannot be deemed to be a proper service under law. Considering the fact that publication is not one of the modes provided under Rule 22, I am of the view that the service is not a proper one so far as the petitioner is concerned. Moreover, when the party has already filed a caveat, after the dismissal of both the rent control petitions, he would not have evaded service of notice if sent to the proper address.

10. The learned counsel for the revision petitioner also brought to the notice, Rule 16(3) relating to passing of an ex parte order. The appellate authority shall make an order setting aside the ex parte order upon such terms as to costs as the appellate authority thinks fit and shall appoint a day for proceeding with the appeal. The learned counsel for the respondent stated that the matter was disposed of under Order 27, Rule 3 Code of Civil Procedure and, as such, it cannot be set aside by the appellate authority. There is nothing under the rent control rules, enabling the appellate Authority to invoke Order 27, Rule 3, Civil Procedure Code, for disposal of the appeal on merit and there is also nothing in

the rules, to show that the appellate authority has no power to set aside the ex parte order. If a person is able to establish that there was sufficient cause preventing him from appearing before the appellate authority, then the appellate authority is bound to set aside and give an opportunity to the concerned person to contest the case. The entire approach made by the appellate authority is not proper and correct and although the application was filed by the tenant, it is unfortunate that the appellate authority has not allowed the application and given opportunity to argue the appeal. It is nothing but preventing the party from getting justice in a court of law. The petitioner has given valid and cogent reasons for not appearing and as adverted to, it cannot be said that there was proper service of notice on the petitioner/tenant. Hence, I am of the view that the order passed by the appellate authority is liable to be set aside.

11. For the reasons stated above, the revision is allowed and the order passed by the appellate authority in M.P.No.43 of 1998 is set aside and the petition is allowed. The appellate authority is directed to restore R.C.A.No.1513 of 1996 to its file and dispose of the same, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, C.M.P.No.19161 of 1998 is closed.

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