

IN THE COURT OF DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L.(Hons.),
DISTRICT MUNSIF, AMBATTUR.

Thursday, the 23rd day of June 2022.

MISCELLANEOUS PETITION NO.31 OF 2020
IN
RENT CONTROL ORIGINAL PETITION NO.40 OF 2017

M/s Appollo Corrugators PVT LTD., by
its Managing Director, Mr.S.Umedraj Jain.

.....Petitioner/Respondent

Versus

C.Sadasivam

.....Respondent/Petitioner

This petition having coming on 14.06.2022 before me for final hearing in the presence of Shri.D.Inbaraj, learned counsel for the petitioner and Shri.S.Krishnamoorthy,, learned counsel for the Respondent, upon hearing the submissions made by the learned counsel for the petitioner and the respondent and on perusal of the records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order 12 Rule 3 of the Tamilnadu Buildings Act to set aside the Ex-parte order passed in RCOP No.40 of 2017 dated 07.03.2018.

2. **CONCISE STATEMENT OF THE PETITIONER:**

2.1. The petitioner has averred that he is the Managing Director of the petitioner company and the respondent in the main petition. An expare order has been passed against the petitioner and the petition is posted for orders on 16.12.2020. As the

petitioner was suffering massive cardiac arrest and undergoing bypass surgery, he was unable to conduct his advocate for filing this Counter. He was set exparte on 07.03.2018 for non filing of counter. The absence was neither willful nor wanton.

2.2. While so the respondent had executed a sale agreement in the Petitioner's favour on 25.03.1997 and a suit for execution in OS.No.90/2004 was filed. Against the dismissal, he had filed A.S.No.95/2013 which was also dismissed. Hence, he has preferred a SLP before the Hon'ble Supreme Court. The petitioner had filed his counter with this petition and is willing to co-operate with early enquiry. The respondents herein are attempting to grab the property through illegal means. Hence, the petitioner has come up with this petition.

CONCISE STATEMENT OF THE RESPONDENT AS PER THE COUNTER AFFIDAVIT:

3. The respondent had submitted that there are no sufficient records to set aside the exparte order and denied that the petitioner Managing Director suffered Heart Attack. In O.S.No.90/2004 the petitioner has been declared as a tenant and appeals have already been dismissed. Whiles, the SLP file before Hon'ble Supreme Court was also dismissed on 26.07.2021. The petitioner has to pay a sum of Rs.60,79,945/- towards arrears of rent till date. Hence, the eviction petition need not be set-aside the petition has to be dismissed with cost.

4. **POINT FOR CONSIDERATION:** Whether the petitioner is entitled for the relief of set aside the Ex-parte order passed in RCOP No.40 of 2017?

Discussion and Findings:

5. This Court heard the submissions of both the learned counsels and perused the materials on record. This Court finds that both the parties have not let in any oral or documentary evidence to substantiate their claims. Before proceeding to the merits of the case, this court finds that the Petition has been filed under Section 12(3) of the Tamilnadu Buildings Act, instead of Rule 12(3) of Tamilnadu Buildings (Lease and Rent Control) Rules. However, the relief sought is clear, this court finds that as per the well established principle of law, the wrong mentioning of provision does not vitiate the parties from obtaining the relief sought. Hence, this petition is taken on merits based on the relief sought.

6. This Court finds it necessary to take judicial note of the ratio decidendi of the Hon'ble Supreme Court in various cases that the word "sufficient cause" under should receive a liberal construction so as to advance substantial justice and followed by the Hon'ble High Court of Madras in plethora judgments. This Court also takes judicial note of the law laid down by the Hon'ble Supreme Court in *N. Balakrishnan v. M.Krishnamurthy* [1998 (7) SCC 123] that ***"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor."***

7. In view of the above said propositions, this Court finds that a liberal approach can be adopted in the case of the Petitioner. On thorough perusal of the records, this

Court finds that the Petitioner was set exparte in the RCOP No.40/2017 on 07.03.2018, for non filing of counter. Thereafter, the instant petition to set aside the exparte order was filed 01.12.2020.

8. This Court finds that the reason quoted by the Petitioner for delay and non appearance is that he suffered Cardiac Arrest, underwent Bypass surgery and unable to contact his counsel. This Court finds that irrespective of the averment, no document has been produced or marked in this Petition to explain the nature of illness. However, this Court is of the considered view that the non filing of the medical certificate is alone not sufficient to hold that the reasons quoted by the Petitioner as unacceptable. Further, this Court finds that the reasons cited for non appearance is very vague and requires more specific details regarding the alleged treatment and the day to day delay has not be explained.

9. It is a well settled principle of Law by the Hon'ble Apex Court and Hon'ble Madras High Court in a pleathora of Judgments that the Courts shall always endeavour to adjudicate and decide the suits on merits and provide sufficient opportunity to the litigants for the same. Whiles, upon perusal of the records, this courts finds that there are no materials on record to substantiate that the absence and delay or lack of diligent follow ups on the part of the Petitioner was deliberate and covered with malafide. Though the reason stated is vague without any proper details, upon perusal of the records, this courts finds that there are no materials on record to substantiate that the absence and delay on the part of the Petitioner was deliberate and covered with malafide to abuse the process of law. However, no oral or material

evidence has been let in or pointed to substantiate the said contention of the Respondent. Further, there is no material on record to show that there was any malafide or dilatory tactics on the part of the Petitioner in filing this Petition. This court also finds that the suit against the parties have attained finality and now this RCOP is to identify if the Petitioner is a tenant and liable to be evicted. This court also finds that the counter is filed alongwith this Petition to show bonafides.

10. Hence, this Courts considers that this Court shall adopt a liberal approach and finds that the vague reason quoted by the Petitioner are considered attributable as sufficient cause to set aside the exparte order dated 07.03.2018. Further, another opportunity shall be provided to the Petitioner to contest the case on merits in the interest of justice.

11. Though this Court finds that the Petition can be allowed for the above stated reasons, this Court takes note of the fact that the Petitioner set exparte on 07.03.2018, the set aside petition was filed on 01.12.2020. As such, the instant petition having been filed at this stage has caused inconvenience to the Respondent/Landlord herein. Further, he also claims that the Petitioner company is due to pay Rs.60,79,945/- towards arrears of rent. Though the actual rental arrear amount payable is a matter of trial; The claim of arrears of rent appears reasonable to decide the nature of inconvenience caused to the respondent. Considering the said fact that this Court finds it reasonable to order a sum of Rs.3000/- to be paid by the Petitioner to the Respondent for the inconvenience caused.

12. RESULT :-

In the result, this Petition is allowed and the exparte order dated 07.03.2018 against this Petitioner in RCOP No.40 of 2017 is set aside subject to the condition that the Petitioner shall pay a sum of Rs.3000/- (Rupees Three Thousand only) to the Respondent on or before 29.06.2022. Call on 29.06.2022.

Dictated to the steno-typist, typed directly by her in the desktop, corrected and pronounced by me in the open Court on this the 23rd day of June 2022.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONER AND RESPONDENT SIDE WITNESSES AND EXHIBITS: NIL

DISTRICT MUNSIF,
AMBATTUR.
