
(2017) 08 MAD CK 0015

MADRAS HIGH COURT

Case No: 1115 of 2017 and C M P (MD) Nos 5043 & 6110 of 2017

Pooranam

APPELLANT

Vs

Durgeswari

RESPONDENT

Date of Decision: Aug. 22, 2017

Hon'ble Judges: T.Ravindran

Bench: SINGLE BENCH

Advocate: T.Ravindran

Final Decision: Dismissed

Judgement

1. The respondent, on the basis of the order obtained by her in R.C.O.P.No. 166 of 2013 against the revision petitioner, levied execution proceedings in E.P.No.101 of 2015. It is also found that the respondent had obtained ex parte order in the above said rent control original petition. Be that as it may, the ex parte order also being a valid order in the eyes of law till it is set aside, it is found that the respondent levied the above said execution proceedings against the revision petitioner. It is found from the materials placed that the revision petitioner has also entered appearance in the execution proceedings above mentioned through her Advocate and at one stage of the matter, inasmuch as the revision petitioner remained absent and did not contest the execution proceedings, an ex parte order has been passed against her in the said execution petition. It is found that the ex parte order in the execution petition has been passed against the revision petitioner on 28.03.2016. As seen above, when the revision petitioner has entered appearance in the execution petition through her Advocate and been aware of the execution proceedings levied

against her by the respondent, it is found that as rightly determined by the Court below, the revision petitioner is aware of the ex parte order also passed against her in the execution petition. While so, when the respondent sought for recovery of the possession of the property through the above said execution proceedings through Amin, it is found that at that stage of the matter, the revision petitioner has come forward with an application in E.A.No.142 of 2016 to set aside the ex parte order passed against her in the execution petition claiming that already steps have been taken to set aside the ex parte order passed against her in the rent control original petition and the same is pending and she had also paid rent upto a particular point of time and believing that the respondent would withdraw the execution petition, she had not filed counter in the execution petition and ultimately, she having been set aside in the execution petition and the said fact having come to her knowledge only on the date of the visiting of the Amin for taking possession of the property from her pursuant to the order passed in the execution petition, according to her, she has been necessitated to lay the application.

2. Stiffly resisting the above said application preferred by the revision petitioner, it is contended by the respondent that it is false to state that the revision petitioner had paid the rent for the property upto a particular point of time as put forth by her in the application. The rent had been paid without prejudice to the eviction proceedings and further, according to her, the revision petitioner has not adduced any cause muchless sufficient cause to set aside the ex parte order passed against her in the execution petition and that apart, according to the respondent, it is false to state that the revision petitioner has become aware of the ex parte order passed in the execution petition only on the date of the Amin visiting the property and on the other hand, the revision petitioner is well aware of the ex parte order passed against her in the execution petition as she had entered appearance in the execution proceedings through her Advocate and in such view of the matter, it is stated that the present application preferred by the revision petitioner to set aside the ex parte order, dated 28.03.2016, very belatedly and not within the time allowed by law is hit by the law of

limitation and hence, the application preferred by the revision petitioner should be rejected on merits as well as on the footing that she has not preferred any application to condone the delay in filing the application to set aside the ex parte order.

3. The Court below, on a consideration of the rival contentions and the materials put forth by the respective parties, found that the ex parte order

having been passed against the revision petitioner in the execution petition on 28.03.2016, the application levied by her to set aside the same

beyond the period allowed by law on 17.06.2006 is not within the stipulated time and therefore, the application is liable to be dismissed on that

score alone. Further, the Court below also found that the revision petitioner has not given any cause whatsoever worth acceptable to set aside the

ex parte order passed against her in the execution petition and the revision petitioner having been aware of the execution petition should have taken

due steps by filing counter to resist the execution petition and in particular, seeing the conduct of the revision petitioner in not even contesting the

main rent control original petition and leaving the same to go for ex parte and further also leaving the execution petition to go for ex parte, found

that the present application has been preferred by the revision petitioner only to procrastinate the delivery of the possession of the property to

which the respondent is entitled to and hence, dismissed the application. Impugning the same, the present civil revision petition has been preferred.

4. Considering the above said facts and materials in toto and also the impugned order passed by the Court below, it is rightly held by the Court

below that no cause whatsoever worth acceptable has been given by the revision petitioner to set aside the ex parte order passed against her in the

execution petition. The revision petitioner having been made aware or put on notice about the execution petition by sending a notice and also the

fact remaining that she had appeared in the execution petition through her Advocate, if really the respondent is not entitled to execute the order

obtained by her in the rent control original petition as per law, as a prudent person, the revision petitioner should have taken diligent steps to

contest the execution petition on merits. However, she has left the execution petition to go for ex parte deliberately by not filing the counter in the

execution petition and accordingly, she has been duly set ex parte. That apart, when from the above facts, it is found that the revision petitioner is very well aware of the execution proceedings initiated against her by the respondent, the inevitable conclusion that could be drawn is that she is also aware of the ex parte order passed against her in the execution petition on 28.03.2016 and therefore, the present plea now put forth by the revision petitioner that she had become aware of the ex parte order passed in the execution petition only on the date of the visiting of the Amin to the suit property and not earlier to the same as such cannot be accepted and the Court has rightly declined the case of the revision petitioner on the above aspect. It is, therefore, found that even the application preferred by the revision petitioner to set aside the ex parte order has not been filed within the time allowed by law. Therefore, on that score alone, as rightly determined by the Court below, the application preferred by the revision petitioner deserves rejection. Absolutely no valid reason has been adduced by the revision petition as to why she had not chosen to prefer the application in time and also a petition to condone the delay in filing the application to set aside the ex parte order. Considering the position that the revision petitioner has left the matter to go for ex parte in the main rent control original petition itself and in the light of the discussions made above, it is evident that the sole aim of the revision petitioner is only to delay the proceedings endlessly so as to resist the respondent one way or the other from claiming the recovery of the possession of the property pursuant to the order obtained by her in the rent control original petition. This attitude and conduct of the revision petitioner cannot be appreciated and encouraged. I, therefore, hold that the Court below has rightly rejected the application preferred by the revision petitioner taking into consideration all the materials placed before it in the right perspective both factually as well as legally and hence, the impugned order of the Court below does not warrant any interference from this Court.

5. Resultantly, the civil revision petition is dismissed with costs.

Consequently, connected miscellaneous petitions are closed.