

(1995) 12 MAD CK 0016
In the Madras High Court

Devarajan and Others

APPELLANT

Vs

Lingaiyan

RESPONDENT

Date of Decision : 11-12-1995

Acts Referred:

Limitation Act, 1963 — Section 5

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14(1)(b)

Citation : (1996) 1 MLJ 370

Hon'ble Judges : Jagadeesan, J

Bench : Division Bench

Judgement

Jagadeesan, J.—The tenants are the petitioners. The respondent-landlord filed eviction petitions in R.C.O.P. Nos. 21 of 1994, 15 of 1994

and 18 of 1994 respectively before the Rent Controller, Chengalpattu for evicting the petitioner u/s 14(1)(b) of the Tamil Nadu Buildings (Lease

and Rent Control) Act. The petitioners have received the summons in the R.C.O.Ps. and they engaged counsel and filed a memo to the effect that

the petitions may be allowed without costs by granting six months time to the petitioners for vacating the premises. On the basis of the memo, the

Rent Controller has passed order of eviction on 9.1.1995. After the six months period lapsed, the respondent has taken out E.P., proceedings to

recover possession. At this stage, the petitioners have filed the applications I.A. Nos. 644,642 and 646 of 1995 respectively for condoning the

delay in filing the appeal against the order in R.C.O.Ps.

2. The petitioners' averment in the affidavit filed in support of the petitions for condoning the delay is that after receipt of the notice in the R.C.O.P.

proceedings, the respondent-landlord approached them for settlement and in order to enter into the settlement, for withdrawing the R.C.O.Ps the

respondent requested the petitioners to sign the vakalat and the blank papers. Believing the words of the respondent, the petitioners handed over

the blank papers signed by them along with vakalat and the respondent had played a fraud by engaging the counsel of his choice and made use of

the blank papers signed by them for the purpose of memo and obtained order of eviction. The petitioners had never consented for such order.

Only on receipt of the notice in the E.P., they come to know about the eviction order and hence they filed the appeal with the petitions for

condonation of the delay. The lower appellate court has dismissed the petitions, against which the present revisions have been filed.

3. The contention of the learned Counsel for the petitioners is that the respondent had played a fraud on the petitioners and even assuming that the

matter had been compromised, the Rent Control Authority has to examine the petitioners as well as the respondent to find out the genuineness of

the compromise and without doing so, the order of eviction has been passed. Hence, the order is bad. When the order of the Rent Controller

cannot be sustained under law the court should be lenient in exercising their power u/s 5 of the Limitation Act, because, if the delay is not

condoned, an illegal order is allowed to be sustained. During the argument, the learned Counsel for the petitioner further advanced an argument

that the petitioners had not been served with the notice in the R.C.O.Ps. and only on the oral request of the landlord, the vakalat as well as the

blank signed papers had been handed over.

4. After hearing the learned Counsel for the petitioner, I called for the original records from the lower court. I found that the petitioners had been

served with the notice in the R.C.O.Ps. Hence, the plea of non-service of the notice in the R.C.O.Ps cannot be entertained. With regard to the

contention of the learned Counsel for the petitioner that Rent Controller ought to have examined the parties to find out the genuineness of the

compromise is concerned, I am of the view that the same cannot be entertained. When once the version of the petitioners is disbelieved and that

they had engaged their own counsel and voluntarily filed the memo stating that the R.C.O.Ps., may be ordered by granting six months time, there is

nothing wrong in the Rent Controller in ordering the petitions. While ordering the petitions the Rent Controller had taken into consideration the

memo filed by the petitioners. The Rent Controller has ordered eviction on the basis of the memo. When the authority had acted upon the memo

filed by the petitioners, then it will amount to implied application of mind of the Rent Controller in accepting the memo. I am fortified with two

judgments in this view reported in Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs., and Kemi Khaja Mohideen v.

Sumen Holife (1995) 1 L.W. 207.

5. Now the question is whether the plea of the petitioners that they handed over the vakalat as well as the blank papers signed by them to the

landlord can be accepted in order to find out the genuineness on their part in filing the petitions u/s 5 of the Limitation Act to condone the delay of

266 days in filing the appeal. I am of the view that the petitioners had come with a cock and bull story to explain the delay. When the landlord had

filed the petition for eviction and the tenant had received the notice in the said eviction petition, I do not think any tenant would believe the words of

the landlord that too to withdraw the R.C.O.P. proceedings, the tenant's signatures are necessary. Even assuming that the landlord had asked for

any signature, normally, the tenants would have consulted either the advocate or atleast their own friends before ever they give the vakalat as well

as the signed blank papers. Hence the plea of the petitioners that the respondent had played a fraud cannot be accepted.

6. Moreover, when the fraud has been pleaded, it is for the petitioners to get into the box and explain the circumstances under which the signed

blank papers were handed over to the landlord. The petitioners refrained themselves from entering into the witness box, especially, when the plea

of fraud is pleaded. Hence the petitioners have totally failed to substantiate their plea in order to explain the delay in filing the appeal. The order of

the appellate authority is confirmed and the civil revision petition are dismissed. No costs.