

(1996) 01 MAD CK 0001
In the Madras High Court
Case No : C.R.P. No. 1586 of 1995

Sri Pillaiyarpatti Karpaga Vinayagar Koil Nagarathar Trust APPELLANT
Vs
R.M. Sevagan Chettiar RESPONDENT

Date of Decision : 25-01-1996

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25
Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 — Rule 12(3)

Citation : (1996) 2 CivCC 425 : (1996) 1 CTC 717 : (1996) 1 LW 432 : (1996) 1 MLJ 368

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : V. Krishnan, for the Appellant; P. Ananthakrishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—The revision petition is filed by the Trust, which is the landlord. The petition for eviction has been filed on the ground of wilful

default in payment of rent. The matter was posted for trial to 14.12.1993. The tenant did not appear, nor did his counsel appear in Court. The

Rent Controller passed an order of eviction after recording the evidence of the landlord. The tenant filed I.A. No. 145 of 1994 for setting aside the said order.

2. In the affidavit filed in support of the application, the reason given by him for non-appearance on 14.12.1993 is that he was suffering from acid

peptic disease and taking treatment under a doctor K.P. Kannappan from 12.12.1993 to 19.12.1993. It is further stated that he was bed ridden

and could not move about. Consequently, he could not appear in Court nor instruct his counsel. The application was filed on 3.1.1994. The

application was contested by the petitioner herein. In the counter affidavit, it was clearly stated that the case of illness put forward by the tenant

was false and the medical certificate produced by the tenant along with this application should be proved by examining the doctor.

3. The Rent Controller found that the tenant has failed to prove his illness or his inability to attend court on 14.12.1993. The Rent Controller also

pointed out that even the counsel for the tenant did not appear before the Court, and that there was an earlier occasion in which also, the tenant

allowed the proceeding to be decided ex parte. The Rent Controller further pointed out that the tenant did not enter the witness box to speak in

support of his alleged illness. Consequently, the petition was dismissed.

4. The tenant filed appeal in R.C.A. No. 8, of 1995, Appellate Authority held that there was no necessity to examine the doctor to prove the

medical certificate and it can be used as evidence without any oral evidence whatever. For that, the Appellate Authority placed reliance on a

Judgment of this Court in Lakshmanan v. Ellammal, 1978 (91) L.W. 486. Further, the Appellate Authority held that whatever may be the number

of occasions on which the tenant remained ex parte, the only question to be considered by the Court was whether he satisfied the Court as to the

sufficiency of the cause for his non-appearance on the particular date. In that view, the Appellate-Authority allowed the appeal and set aside the ex

parte order. Aggrieved thereby, the trust has preferred this revision petition.

5. Learned counsel for the petitioner rightly points out that there is absolutely no evidence on record to prove that the tenant was suffering from

illness and he could not attend court on 14.12.1993. If at least the tenant had entered the witness box and spoken about his illness, the Court could

have considered the same and taken into account the medical certificate as corroborating the version of the tenant. Without any oral evidence, the

Court cannot accept the medical certificate as evidence by itself and proceed to pass orders on that footing.

6. The ruling in Lakshmanan v. Ellammal, 1978 (91) L.W.486 has no application to the facts of this case. That arose under Order 26 of the Code

of Civil Procedure, in which an application was filed for the appointment of a Commissioner to record the evidence of the plaintiff therein. The

plaintiff stated that he was aged 76 and on account of illness he was unable to

attend Court. He produced a medical certificate from a registered Medical Practitioner to support his version. That application was dismissed by the trial court and the order of the trial court was challenged before this Court. The Court referred to the provisions of Order 26, Rule 1, C.P.C. and the Explanation thereto. The Proviso and the Explanation to the Rule were introduced by CPC Amending Act 104 of 1976. Under the Explanation, the Court is enabled for the purpose of that Rule to accept a certificate purporting to be signed by a registered Medical Practitioner, as evidence of sickness or infirmity for that person, without calling the Medical Practitioner as a witness. As the Explanation itself makes it clear, the provisions contained therein can be utilised only for the purpose of that Rule viz. Order 25, Rule 1, C.P.C., when the party applies to the Court and the Court can direct the party to be examined by a Commissioner. Relying on the said provision, this Court held that there was no necessity, in that case to examine the medical practitioner as a witness in order that the Court may accept the certificate of the medical practitioner, as evidence. That ruling cannot help the tenant in this case.

7. It has been repeatedly held by this Court that *ex parte* decrees cannot be set aside on vague allegations that the defendant was ill. It is for the defendant to prove that he was so ill on the particular day that he could not attend Court. Until then, it could not be said that there was sufficient cause for his non-appearance. Without proving the sufficient cause to the satisfaction of the Court, no person can claim to have the *ex parte* decree set aside. In this connection, the ruling of this Court in *Selvakumar Rice and Oil Mills Vs. Tamil Nadu Electricity Board and Another*, can be looked into. The learned Chief Justice has laid down the proposition that *ex parte* decrees cannot be set aside on vague allegations of illness.

8. In this case, the Rent Controller was not satisfied with the fact that the tenant was so ill as to disable him from attending Court on 14.12.1993. That conclusion is correctly taken, in view of the fact that there is absolutely no evidence on record to prove the alleged illness of the tenant. The Appellate Authority is, therefore, in error in reversing the conclusion of the trial court without properly appreciating the reasoning of the trial Court. The Appellate Authority has proceeded on a wrong impression that the trial court has dismissed the application only because it was a second

application on the part of the tenant to set aside the ex parte decree. The Appellate Court has failed to note that the mere production of the certificate alleged to have been issued by a doctor, will not prove the illness of the party, unless the party himself gets into the witness box and speak about the same.

9. In the circumstances, the order of the Appellate Authority deserves to be set aside. Consequently, the Civil Revision is allowed, the order in

R.C.A, No. 8 of 1995 is set aside and the order of the Rent Controller I.A. No. 145 of 1994 in R.C.O.P. No. 363 of 1987 is restored. There will

be no order as to costs.