

(1990) 04 MAD CK 0009
In the Madras High Court

A.E.M Usoof and Sons

APPELLANT

Vs

O.M. Mohammed Ibrahim represented by G.P. of Attorney
Agent N.K. Mohammed Mustafa

RESPONDENT

Date of Decision : 23-04-1990

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(2)(i), 10(2)(ii), 11, 11(1)

Citation : (1990) 1 LW 484 : (1990) 1 MLJ 486

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

V. Ratnam, J.—The tenant is the petitioner in these Civil Revision petitions. The respondent-landlord filed R.C.O.P.No. 4192 of 1982

against the petitioner u/s 10(2)(i) and 10(2)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amended by Act 23 of

1973 (hereinafter referred to as "the Act"), praying for an order of eviction against the petitioner. Though the tenant appears to have initially

contested the eviction proceedings so initiated by the landlord, on 2-3-1983, an ex parte order of eviction was passed against the tenant. In

M.P.No. 339 of 1983, the tenant filed an application to set aside the ex parte order of eviction and on 11-3-1983, that application was dismissed,

against which the petitioner preferred an appeal in R.C.A.No. 1141 of 1983 before the Appellate Authority (VII Judge, Court of Small Causes),

Madras. During the pendency of that appeal, the landlord filed M.P.Nos. 364 and 365 of 1983 purporting to be u/s 11(3) and (4) of the Act

praying that the quantum of total arrears for rent payable by the tenant from September, 1982 should be determined and for a direction to the

tenant to pay all the arrears and in default to step further proceedings and pass an order directing the tenant to put the landlord in possession of the premises in the occupation of the tenant. Amongst others, the tenant, in paragraphs 3 and 7 of the counter filed, raised an objection regarding the maintainability of the applications in M.P.Nos. 364 and 365 of 1983 on the ground that the appeal in R.C.A.No. 1141 of 1983 was not against an order for eviction passed u/s 10 of the Act and therefore, Sections 11(3) and (4) of the Act could not be invoked by the landlord. The Appellate Authority in a common order, overruled the objection so raised by the tenant on the ground that the landlord has a right to invoke Section 11 (3) and (4) of the Act and that in the interests of justice, the landlord could maintain the applications. So holding, the Appellate Authority proceeded to determine the quantum of arrears of rent payable by the tenant at Rs. 7,950 and directed the tenant to deposit in Court or pay to the landlord that amount on or before 21-2-1984, failing which, the court directed that the main R.C.A.No. 1141 of 1983 shall stand dismissed. It is the correctness of this order that is challenged by the tenant in these Civil Revision petition.

2. Learned Counsel for the petitioner contended that the appeal preferred by the tenant in R.C.A.No. 1141 of 1983 was against the order

dismissing the application filed by him to set aside the ex parte order of eviction and that cannot be in any manner considered to be an order

passed on an application u/s 10 of the Act or even render the appeal in R.C.A.No. 1141 of 1983 as one against an order passed u/s 10 of the Act

and, therefore, the provisions of Section 11 (1), (3) and (4) of the Act could not be invoked by the landlord and the applications filed in M.P.Nos.

364 and 365 of 1983 could not have been entertained at all by the Appellate Authority, Reliance in this connection was placed upon the decisions

reported in R. Radha v. C.R. Govindarajulu 91 LW 443 and Murugaiya Konar and Others Vs. Daniel Nursing Home, . On the other hand,

learned Counsel for the respondent, referring to Rules 11 and 12 of the Rules framed under the Act and Section 23 of the Act, submitted that since

u/s 23 of the Act an appeal would lie against, any order of the Controller, that would also include an appeal against the order dismissing the

application to set aside the ex parte order of eviction and that such an order declining to set aside the ex parte order of eviction should also be

construed as one passed u/s 10 of the Act.

3. There is no dispute that against the tenant, an ex parte order for eviction was passed in R.C.O.P.No. 4192 on 2-3-1983 and the application

filed by the tenant to set aside that order in M.P.No. 339 of 1983 was also dismissed on 11-8-1983 and against the order in G.P.No. 339 of

1983, the tenant had preferred R.C.A.No. 1141 of 1983. It was in that appeal that the landlord by filing M.P.Nos. 364 and 365 of 1983

purported to invoke the powers of the Appellate Authority u/s 11 of the Act. It may be immediately pointed out that the maintainability or

otherwise of the applications filed by the landlord in M.P.Nos. 364 and 365 of 1983 has to be decided with reference to the provisions of the Act

and not on grounds of reasonableness and interests of justice, as done by the Appellate Authority in paragraph 7 of the its common order. Under

Rule 11 of the Rules framed under the Act, the requirements of every application under the Act have been set out. Rule 12 (2) outlines the

procedure to be adopted by the Controller in dealing with and passing orders on the application. With reference to the setting aside of ex parte

orders or orders of dismissal for default passed either against the tenant or the landlord under Rule 12 (3) the affected party is provided with a

remedy in that he can file an application to the Controller to set aside such an order and if the Controller is satisfied that the tenant or the landlord,

as the case may be, has made out a case for setting aside the order by establishing that he had fulfilled the requirements of the latter part of Rule

12(3) then, he can proceed to set aside the ex parte order or the order of dismissal for default and he shall also appoint a day for proceeding with

the application. It is thus seen that Rule 11 and in particular Rule 12 (3) provide the machinery for the purpose of setting aside either the ex parte

orders of eviction or orders of dismissal for default, as the case may be. In a case like this, where an ex parte order of eviction had been passed,

the effect of dealing with an application under Rule 12 (3) of the Rules and the passing of orders thereon, would only be either to maintain the

order of eviction already passed on the application u/s 10 of the Act or to set, aside the ex parte order of eviction, again already passed, which

would have the effect of restoring the application filed u/s 10 of the Act. In either event, the order passed under Rule 12(3) of the Rules cannot be

equated to an order passed u/s 10 of the Act. The reliance placed by learned Counsel for the landlord on Rules 11 and 12 (2) and (3) of the Rules

cannot, therefore, be of any avail.

4. It would be necessary at this stage to notice the provisions of Section 11 as well as Section 23 of the Act. u/s 11 (1) of the Act in a case where

an application for eviction has been filed by a landlord u/s 10 of the Act, the tenant is precluded from contesting the application before the

Controller, unless he has paid or pays to the landlord, or deposits with the Controller, as the case may be, all arrears of rent due in respect of the

building upto the date of payment or deposit, and continues to pay or deposit the subsequent rents falling due in respect of building, until the

termination of the proceedings before the Controller. Section 11 (3) of the Act enables the Controller to decide summarily the rent payable or to

be deposited, "in case there is any dispute regarding that. The consequences flowing from a failure on the part of the tenant to pay or deposit the

rent, is provided u/s 11 (4) of the Act, wherein provisions are made enabling the Controller to stop all further proceedings and direct the tenant to

put the landlord in possession of the building. By Section 11 (1); (3) and (4) of the Act, the same provisions are made applicable to the Appellate

Authority as well. However, it is seen that the scheme of Section 11(1) (3) and (4) of the Act is that in a case where the application for eviction

had been made by the landlord u/s 10 of the Act, the tenant shall not be entitled to contest the application before the Rent Controller, unless the

arrears of rent are either paid or deposited. Likewise, the tenant cannot also prefer an appeal, u/s 23 of the Act against any order made by the

Controller on the application, unless the arrears of rent are either paid to the landlord or deposited before the appellate or another authority. The

avowed object of the aforesaid provision u/s 11 (1) of the Act is that under advantage of the pendency of the proceedings u/s 10 of the Act should

not be taken by the tenant with a view to not pay the arrears of rent or the rents as and when they fall due, be it in the course of the proceedings

before the Controller or the Appellate Authority, as the case may be. The phraseology employed in Section 11 of the Act is not without

significance in that a specific reference is made to an application for eviction u/s 10 of the Act. It is such an application that the tenant is precluded

from contesting before the Controller, unless the arrears of rent or subsequent rents are either paid or deposited. The reference to the appeal u/s

23 of the Act, is against any order made by the Controller on the application. Obviously, the reference to an appeal u/s 23 of the Act against any

order made by the Controller on the application, can have reference only to an appeal preferred before the Appellate Authority, with reference to

an order passed by the Controller u/s 10 of the Act. The content of the expression, "any order made by the Controller on the application" cannot

therefore, be enlarged and extended to include an order dismissing an application to set aside the ex parte order of eviction, against which an

appeal had been preferred u/s 23, of the Act in this case. Bearing in mind the object as well as the scheme of Section 11 (1) of the Act, it is at

once obvious that in cases where an application for eviction is filed by the landlord against a tenant u/s 10 of the Act, the tenant will be entitled to

contest the application before the Rent Controller only on payment or deposit of the arrears of rent and subsequent rents and likewise, he can also

prefer an appeal against the order of eviction passed by the Controller u/s 10 of the Act, only if he pays or deposits the arrears of rent in respect of

the building and continues to pay or to deposit the subsequent rents till the termination of the proceedings before the Appellate Authority, To

include within Section 11 (1) of the Act, appeals u/s 23 of the Act, arising out of orders passed other than on an application u/s 10 of the Act,

would be to virtually enlarge the scope of Section 11 (1) of the Act and also to confer on landlords a benefit not at all intended to be so conferred

on them nor even warranted by the actual language employed u/s 11 (1) of the Act. It is true that u/s 23 (1) (b) of the Act, any person aggrieved

by an order passed by the Controller may prefer an appeal in writing to the Appellate Authority having jurisdiction, within fifteen days from the

date of such order, the time taken to obtain a certified copy of the order appealed against being excluded. Though the right of appeal conferred u/s

23 (1) (b) of the Act may be wide in the sense that an order passed by the Controller may form the subject-matter of an appeal before the

Appellate Authority yet, with reference to Section 11 (1) of the Act, the appeal contemplated therein is one u/s 23 of the Act against any order

made by the Controller on the application and the application referred to in the first part of Section 11 (1) of the Act, is one u/s 10 of the Act. It is

difficult to accept that with reference to the Controller, Section 11 (1) had contemplated, in its opening part, Section of the Act, and that with reference to the Appellate Authority any appeal u/s 23 of the Act, irrespective of whether it arose u/s 10 or not had been contemplated. The use of the expression, ""the application"" with reference to the appeal u/s 23 of the Act has to be understood as having a reference only to Section 10 of the Act, and if so done, it follows that whether the proceeding be before the Controller or the Appellate Authority, in a case arising u/s 10 of the Act or an appeal passed u/s 23 of the Act arising out of an order passed u/s 10 of the Act, the tenant cannot Contest unless the arrears or subsequent rents are either paid or deposited. Thus, on a consideration of the relevant provisions in the Act as well as the Rules, the conclusion is inescapable that the appeal under Act 23 of the Act, contemplated u/s 11 (1) of the Act must arise out of an order for eviction passed u/s 10 of the Act and only in such an event, the provisions of Section 11 (1) (3) and (4) of the Act could be invoked by the landlord.

5. A reference may now be made to the decisions to which attention was drawn by learned Counsel for the petitioner. In *K. Radha. v. C.R.*

Govindarajulu 91 L.W. 443 the question arose whether in a pending Civil Revision petition u/s 25 of the Act, an application made Section 11 (4)

of the Act would lie. In construing the provisions of Section 10 and the sub-sections of Section 11 of the Act, it was pointed out that Section 11(4)

will apply only to the cases covered by Section 11 (1) and those cases were two, viz., the application for eviction made by the landlord u/s 10

before the Rent Controller and the appeal preferred by the tenant u/s 23 of the Act to the Appellate Authority against an order made against him

on the application made by the landlord u/s 10 of the Act and that a reading of Section 11 (1) and (4) together will exclude all other cases, except

those two from the scope of the operation of the provisions of the Section. Again, in *Murugaiya Konar v. Daniel Nursing Home* (1988) I L.W.

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of the Act calling upon the tenant to deposit the rent and that application was allowed, the correctness of which was questioned on the ground that

there was no application for eviction which was pending before the Controller, as an eviction order had already been passed in the eviction

application and the Rent Controller had been moved only for setting aside the eviction order passed ex parte. While accepting the contention regarding the non-maintainability of such an application u/s 11 of the Act filed by the landlord, when the application for setting aside the ex parte order of eviction was pending before the Controller, it was pointed out that the consent had been given a quietus by the orders of eviction passed ex parte and only after the ex parte orders are set aside, there is a possibility of the tenant contesting the application, when the contingency for invoking Section 11 would arise and under those circumstances, the application filed by the landlord u/s 11 of the Act was not competent. The principles of the aforesaid decisions would also fully fortify the earlier interpretation of Section 11 (1), (3) and (4) and Section 23 of the Act, as well as Rules 11 and 12 (3) of the Rules framed under the Act. In view of the undisputed fact that the appeal in R.C.A.No. 1141 of 1983 had been preferred by the tenant only against the dismissal of his application to set aside the ex parte order of eviction, that cannot be construed to be an appeal against an order passed u/s 10 of the Act, so as to enable the landlord to invoke Section 11 (3) and (4) of the Act and the Appellate Authority was, therefore, in error in having entertained those applications. The Civil Revision petitions are, therefore, allowed and the order of the Appellate Authority in M.P.Nos. 364 and 365 of 19083 are set aside and R.C.A.No. 1141 of 1983 will be dealt with and disposed of on or before 31-7-1990, on the merits. There will be no order as to costs.