

(1996) 12 MAD CK 0011

In the Madras High Court

Case No : C.R.P. No. 1456 of 1994 and C.M.P. No. 7225 of 1994

Anganeeswaran

APPELLANT

Vs

Michcel Raj and another

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Citation : (1996) 12 MAD CK 0011

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : P. Bagyalakshmi for M/s. P. Mani and J. Pothiraj, for the Appellant;
T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

Jagadeesan, J.—The petitioner who is the landlord has filed this revision challenging the order of the Revenue Court, Tiruchirapalli dated

29.11.1993 extending the time for the respondent to deposit the second instalment of the arrears of rent. It is the case of the petitioner herein that

the respondent was in arrears for the period from 83-84 to 89-90 to the tune of Rs. 26,496/- and as per the Tamil Nadu Cultivating Tenants

Protection Act 38 of 1990 the respondent paid a sum of Rs. 6,182-40 and the balance has to be deposited as provided under S. 7(2) of the said

Act. The respondent did not deposit the second instalment as per the provisions of the said Act, and sought for extension of time and the Revenue

Court has extended the time. As against the order of the Revenue Court, the present revision has been filed by the landlord.

2. Mrs. Bagyalakshmi learned counsel for the petitioner contended that S. 7(2) (b) of the said Act prescribes the period for the deposit of arrears

of rent. When the statute prescribes the specific date for deposit of the arrears of rent, it is not open to the court to extend such period especially in

the absence of any power conferred on the court under the statute for extension of the period. Further, the reason given by the respondent for non-

deposit of second instalment within the stipulated period that the office of RDO is vacant, is also not made out as no evidence has been let in. The

other reason relied upon by the respondent is that the matter in question has been transferred to the Revenue Court, Tiruchirapalli from the

Revenue Court, Salem and the concerned papers have been transferred to the file of Revenue Court, Tiruchirapalli on 31.3.1992 by which date the

deposit ought to have been made as per S. 7(2)(b) of the said Act. Hence, the order of the Revenue Court cannot be sustained.

3. On the contrary, Mr. Rajaraman, learned, counsel for the respondent contended that there was no Presiding Officer during the relevant period

at Salem and subsequently the proceeding has been transferred to the Revenue Court, Tiruchirapalli along with the application. The respondent has

deposited all the other instalments as stipulated under the statute. Hence, the revenue authority has taken into consideration the fact that the second

instalment was not deposited by the respondent only due to the Government Administration and it is not the fault on the part of the respondent.

4. I have carefully considered the contentions of both the counsel. There is no dispute with regard to the arrears of the rent from the respondent

and the amount has to be deposited as provided under S. 7(2) of the said Act. In fact, the respondent has also in compliance of the said provision,

had deposited the entire amount except the second instalment which ought to have been deposited on or before 31.3.1992. Even the order of the

Court below reveals that the papers have been transferred from the Revenue Court, Salem to Revenue Court Trichy on 31.3.1992, the respondent

was not able to deposit the second instalment only due to the administration of the Government and because of the delay on the part of the

administration of the Government, either in filing up the post or to transfer the matter the respondent could not be made to suffer.

5. Learned counsel for the petitioner, however, vehemently contended that there is absolutely no evidence before the court to show that any

attempt has been made by the respondent to deposit the amount within the period stipulated under the statute. I am not able to agree with the

contention of the learned counsel for the petitioner since the lower court has made reference to the administration laches, and the respondent

should not suffer on that ground. Hence, time has been granted for the respondent and that, too, only seven days from the date of the order.

6. Learned counsel for the respondent also relied upon the judgment reported in Bhoop Vs. Matadin Bhardwaj, wherein it has been held that if

there is a delay in depositing the amount in view of the non-availability of the Presiding Officer, the party cannot be made to suffer because the fault

is not of his own. In the following passage, the Supreme Court has stated thus:-

The learned single judge who heard the revision application recorded a finding that the decree - holder had taken timely steps to deposit the

amount before November 18, 1968. He noticed that the Presiding Officer, i.e., the Subordinate Judge, First Class, Mahendragarh had relinquished

charge on transfer on October 30, 1968 and since no one had taken charge in his place she had preferred an application on November 13, 1968

accompanied by a Treasury Challan for depositing the amount but her application was not entertained. Thereupon she placed the said application

before the Senior Subordinate Judge, Narasul, on November 16, 1968, but unfortunately the same was rejected for want of jurisdiction. The

decree-holder then moved the learned District Judge, Gurgaon, on November 18, 1968. The learned District Judge passed an order authorising

the Senior Subordinate Judge, Mahendragarh, to accept the amount, Accordingly the amount was deposited on November 19, 1968. The learned

single judge in the High Court rightly held that a party cannot be made to suffer for no fault of her own. He, therefore, held that there was no delay

on the part of the decree-holder to deposit the amount and hence the amount must be taken to have been deposited within the time allowed by the

decree and so the decree-holder was competent to assign it and the assignee was entitled to execute the same. He, therefore, allowed the revision

application and directed the execution to proceed.

Following the same principle the court below has rightly extended the period for seven days to deposit the second instalment by the respondent.

7. The contention of the learned counsel for the petitioner that the court has no power to extend the time when the period has been fixed under the

statute cannot also be accepted because as observed by the Supreme Court if

the default is not due to the conduct of the parties and they should not be made to suffer and in such cases the court will necessarily have the power to extend the time in the interest in justice. In the result, the Civil Revision Petition is, accordingly, dismissed. Consequently, CMP No. 7225 of 1994 is also dismissed.