

(1952) 07 MAD CK 0007

In the Madras High Court

Case No : Civil Revision Petition No. 1577 of 1951

Aravamudha Chettiar

APPELLANT

Vs

M. Abdul Khader Rowther

RESPONDENT

Date of Decision : 18-07-1952

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 20, 7(2)

Citation : AIR 1953 Mad 268 : (1952) 2 MLJ 492

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : K. Raman and K.S. Desikan, for the Appellant;

Final Decision : Allowed

Judgement

Govinda Menon, J.—Both the lower courts have held that during the pendency of an appeal against an order made by the Rent Controller

for eviction as a result of non-payment of rent the appellate authority has no power to condone the non-payment by acceptance of rent. The

proviso added to Section 7, Sub-section (2) of the Madras Buildings (Lease and Rent Control) Act states that when an application for eviction is

made on the ground of the tenant's default to pay rent in time, if the Controller is satisfied that the default to pay rent was not wilful, the Controller

may give the tenant a reasonable time not exceeding 15 days to pay or tender the rent due by him to the landlord upto the date of such payment or

tender. This shows that the Controller has got to explain for the non-payment of rent and thereby condone the temporary default on the part of the

tenant. If such, condonation is made, then, the application by the landlord will be dismissed.

2. Mr. K. Raman relies upon Section 7 (A) introduced by Madras Act, VIII of 1951

for the contention that this power vested in the Controller can be exercised also by the appellate court in an appeal from the order of eviction made by the Controller. Thus, his argument is to the effect that even after an order for eviction has been made by the Controller for non-payment of rent, if the tenant is able to satisfy the appellate court that the non-payment was not due to any wilful neglect on his part, it is open to the appellate Court to con done the default and allow the tenant to pay the rent. For this purpose, he relies upon the decision -- Lakkaju Satyanarayana Vs. Majati Venkatarattamma and Another, . The facts of this case are somewhat similar to what we have to consider here and the question which was considered by the learned Chief Justice and Somasundaram J. was whether under the circum stances of that case, Section 20 of the Act applied and the learned Judges came to the conclusion that Section 20 applied. If Section 20 applied, it may be said that, during the pendency of the appeal, the order for eviction cannot be deemed to be final. It is common ground that an appeal is a continuation of the proceedings in the court of first I instance and I am of opinion that the proviso can be made applicable to the facts of the present case. I therefore set aside the order of the lower Court and direct that the default for non-payment of rent be condoned. There will be no order as to costs.