

(1995) 09 MAD CK 0019
In the Madras High Court

Azariah

APPELLANT

Vs

A.K.A. Mohammed Ismail Sahib

RESPONDENT

Date of Decision : 10-09-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1995) 2 MLJ 648

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The petitioner herein is the tenant, against whom, petition for eviction was filed by the respondent under Sections 10(2)(i)

and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, (Act 18 of 1960 as amended by Act 23 of 1973). The petitioner

disputed the relationship of landlord and tenant between the respondent and himself. The Rent Controller, while expressing a doubt as to whether

the petition for eviction was maintainable, in view of the fact that the title of the respondent to the property, was in dispute and pending decision by

this Court in a first appeal, as between the respondent and his vendor, passed an order dismissing the eviction petition on merits, after holding

against the respondent with regard to the grounds urged for eviction.

2. The respondent filed R.C.A. No. 13 of 1985 on the file of Appellate Authority (Sub Court), Tirunelveli, Pending that appeal, the respondent

filed LA. No. 146 of 1986 u/s 11(4) of the Act praying for an order directing the petitioner herein to put the respondent in possession of the

schedule premises by ordering the stopping of all further proceedings in the appeal. The said petition was posted to 8.12.1987 for counter. The

petitioner herein did not file a counter. His counsel reported no instructions. The subordinate Judge allowed the petition and straightway passed an

order directing the petitioner herein to put the respondent in possession of the premises on the same day, the Sub Court passed an order in the

appeal as follows:

I.A. No. 146 of 1986 is allowed the defence of the respondent is struck off. Appeal is allowed, decree and judgment of the lower court is set

aside. Petition is allowed with costs. Time for eviction two months.

The petitioner has preferred this revision petition against the order in R.C.A. No. 113 of 1995.

3. Learned Counsel for the respondent contends that there is no revision preferred against the order passed in I.A. No. 146 of 1986 and so, the

present revision is not maintainable.

4. I am unable to accept this contention. Learned Counsel for the petitioner questions the applicability of Section 11 to the present proceedings

when the respondents herein is the appellant before the Subordinate Judge R.C.A. No. 13 of 1985. It is not necessary for me to decide that

question at this stage. Even if Section 11 applies, the learned subordinate Judge has not chosen to follow the procedure prescribed in the said

section. u/s 11 (3), the court has to first determine summarily the rent to be so paid or deposited. That means, the court has to decide that is the

amount to be paid by the tenant or deposited by him under that section. Without deciding that amount, the court cannot straightway pass an order

directing the tenant to put the landlord in possession of the premises. In this case, as already pointed out, the Rent Controller held against the

respondent herein on both the grounds i.e., wilful default in payment of rent and requirement for owner's occupation. When that is the case, it was

the duty of the Subordinate Judge to have fixed the amount, which, according to him, was payable by the tenant to the landlord. After fixing such

amount, he should have given direction to the petitioner herein to deposit the amount or pay the same to the respondent. Without doing so, the

learned Subordinate Judge has erred in passing an order directing the petitioner herein to deliver possession of the property to the respondent.

Hence, the order passed in I.A. No. 146 of 1986 is a nullity, as it runs counter to the provisions of Section 11(3) of the Act and no consequential

order could be passed in the appeal by the subordinate Judge based on the order in I.A. No. 146 of 1986.

5. Even otherwise, the order in I.A. No. 146 of 1986 is a clear illegality and I exercise my powers under Article 227 of the Constitution of India

I.A. No. 146 of 1986. The order in R.C.A. No. 13 of 1985 dated 8.12.1987 is dependent on the order in I.A. No. 146 of 1986 and is liable to

be set aside and it is hereby set aside.

6. In the result, the civil revision petition is allowed, the order passed in R.C.A. No. 13 of 1985 is set aside and that appeal is remitted back to the

file of the Subordinate Judge, Tirunelveli, who is directed to take up I.A. No. 146 of 1986 and dispose of the same in accordance with law. He

shall give an opportunity to the petitioner herein to file a counter in I. A. No. 146 of 1986 before disposing of the said application. No costs.