

(1992) 11 MAD CK 0018
In the Madras High Court

Bhavunambal and Others

APPELLANT

Vs

N. Selvam Ammal

RESPONDENT

Date of Decision : 13-11-1992

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 11(4)

Citation : (1993) 1 MLJ 479

Hon'ble Judges : K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—These two revisions are directed by the unsuccessful tenants before both the forums below against the order passed

u/s 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act") to stop proceedings and also the

consequential order of eviction passed in the main R.C.O.P.

2. The brief facts which are necessary for the disposal of these two revisions are as follows: The respondent herein (Landlord) filed R.C.O.P. No.

10 of 1987 against the tenant Sankar Chettiar (who died and whose legal representatives are the revision-petitioners) under Sections 10(2)(i) and

14(1)(b) of the Act on the ground that tenant committed wilful default in payment of rent from August, 1986 till December, 1986, for 5 months and

also for demolition and reconstruction on the ground that the building is aged about 80 years and requires demolition and reconstruction. The said

petition was resisted by the tenant. When the enquiry was pending, the respondent-landlord filed a petition, I.A. No. 137 of 1987 u/s 11(4) of the

Act alleging that the tenant has not paid the rents for the subsequent period. The tenant paid a sum of Rs. 1500 and the said petition was

terminated. Again another petition was filed in I.A. No. 88 of 1989 u/s 11(4) of the Act alleging that the tenant has not paid the rent for the period

from January, 1987 to January, 1989 to the extent of Rs. 3,750 and out of the sum, Rs. 2,500 alone was paid and the balance of Rs. 1,250 is

payable. Hence the respondent-landlord prayed for a direction not to permit the tenant to take part in the eviction proceedings and allow the

petition. The said application was resisted by the tenant. While denying the said allegations, it is stated that these applications were filed in order to

evict the tenant from the premises with mala fide intention. The respondent-landlord was not in the habit of issuing receipts. The tenant has paid the

rent for the month of January, 1987 to the respondent directly, and for the months of February and March, 1987, he paid the rent on 5.4.1987 to

the mother-in-law of the respondent, one Yasodai Ammal. She also received the rent for April, 1987 on 21.5.1987 on behalf of the respondent.

He also sent a sum of Rs. 750 by money order being the rent up to the period of September, 1987. After the filing of the petition, he paid Rs.

1,500 and he is not liable to pay any rent. He has already narrated all the facts in I.A. No. 137 of 1987. He has to pay rent for a period of six

months upto March, 1989. Since the respondent was in the habit of receiving rent in lump sums and not in the habit of receiving rent every month,

he would pay the rent to him. The allegation that the tenant was in arrears of rent of Rs. 1,750 is false. After the filing of the petition, the Rent

Controller directed the tenant to pay a sum of Rs. 1,950 on or before 22.8.1989, after deducting a sum of Rs. 750 only, in his order dated

8.8.1989. The tenant paid a sum of Rs. 500 on 22.8.1989 towards arrears of rent before the Rent Controller, to the respondent-landlord, and

another sum of Rs. 300 on 11.9.1989. After deducting the said sum of Rs. 800, it was found that the balance of 1,150 was not paid. Hence, I.A.

No. 88 of 1989 u/s 11(4) of the Act was allowed on 3.10.1989 and on the same day the consequent order of eviction was passed in the main

petition, R.C.O.P. No. 10 of 1987. Challenging the said order, the tenant preferred appeals before the appellate authority and he was

unsuccessful. In the meantime, the tenant died and his legal representatives were added and they are the revision-petitioners herein.

3. The learned Counsel for the revision-petitioner-tenants submits that the tenants filed a petition I.A. No. 5 of 1992 before the appellate authority,

wherein they produced two money order acknowledgements in respect of the payment of Rs. 300 on 7.6.1989 and Rs. 150 on 13.11.1987 and

the court did not receive the same on the ground that only a xerox copy of the acknowledgement was produced and further the tenant has not

stated in the counter-affidavit filed in the petition 88 of 1989. The learned Counsel would submit that the petitioners were not given an opportunity

to prove the same by adducing necessary evidence and the court straightway allowed the application and ordered eviction and that it is not

sustainable. He would submit that even as per the orders passed by the Appellate Authority as well as the Rent Controller, the revision-

petitioner/tenants were in the habit of sending rent by money orders, as even according to the Appellate Authority on 6.2.1987 a sum of Rs. 300

was received by the respondent-landlord by money order and another sum of Rs. 750 was received by money order on 26.10.1987. A sum of

Rs. 1,500 was paid during the pendency of the application, I.A. No. 137 of 1987. The learned Counsel would submit that the court below did not

hold any enquiry for ascertaining the arrears of rent. Even though the revision-petitioners filed the petition I. A. No. 302 of 1989 for granting

sufficient time to pay the arrears as determined by court, the court has not given sufficient opportunity to pay the arrears. Both the courts below

erred in presuming that the petitioners admitted the amount of Rs. 1,950 as arrears upto the filing of the petition for extension of time. The learned

Counsel also vehemently argued that as on to-day there is no arrears payable and the entire amount has been paid to the landlord respondent

herein. He has filed a statement of rental payments upto August, 1992. The learned Counsel for the respondent also filed a statement of rental

payments, wherein he has stated that upto the end of August, 1992, there is a balance of Rs. 650. According to the learned Counsel for the

petitioners, the tenants have paid an excess of Rs. 50 while according to the learned Counsel for the respondent, the balance payable to the

landlord is Rs. 650. The petitioners-tenants have filed a petition in this Court, C.M.P. No. 8403 of 1992 to receive additional evidence to establish

that during the pendency of the proceedings, Sankar Chettiar, tenant, who is the husband of the deponent of the affidavit, was affected by several

diseases like giddiness and urinal and eye problems and he was undergoing treatment in the Christian Medical College Hospital from 30.10.1987

to 5.4.1990 and to prove the bona fide treatment, they produced number of documents. Subsequently the diseases developed into high pitch and

Sankar Chettiar died on 22.7.1990. Subsequent to his death, his son met with an accident on 20.9.1990. The petitioners were attending to their

needs till their death, besides attending to the court proceedings. Subsequent to their deaths, they were grief-stricken and they were unable to bear

their loss. The circumstances caused were beyond their control and it is neither wilful nor wanton but due to the above just cause. Further, they

have produced medical certificate for the period Sankar Chettiar suffered, in the lower appellate court. According to them there was no arrears.

The learned Counsel contended that the court ought to have given sufficient opportunity to establish the circumstances under which they were

prevented from paying the rent. Further, the court failed to make an enquiry before ever the amount is determined. They produced 9 documents in

support of the same. Per contra the learned Counsel for the respondent submits that the application is not maintainable and the court cannot

entertain the documents. Even if those documents are admitted, they will only explain the wilful default committed by the tenant in payment of rent

for a long period prior to the filing of the petition u/s 11(4) of the Act. The respondent-landlord reserved his right to file additional counter as and

when copies are furnished to him.

4. The learned Counsel for the petitioners-tenants vehemently argued that this is a case where the court below straightway ordered eviction

consequent on allowing the petition u/s 11(4) which was also straightway allowed. The case of the petitioners is that when the court fixed the

quantum of arrears as Rs. 1,950 without holding any enquiry, when it was opposed the tenant should have been given an opportunity to show

cause why the court should not determine the quantum of arrears as Rs. 1,950. A further opportunity should also have been given to show cause

why they were not able to pay the amount. In the absence of enquiry, the order is vitiated. In this connection, the learned Counsel for the petitioner

relied on the decision reported in Abdul Wahab v. Doroiraj (1957)1 M.L.J. 33, wherein it was held that in cases where the Controller or the

Appellate Authority under the Madras Buildings (Lease and Rent Control) Act, 1949, acts under the provisions of Section 7-A(4) of the Act, the

procedure contemplated by the sub-section should be followed, viz., the tenant should be given an opportunity to show cause as to why he was

not able to deposit the arrears of rent. In the absence of any enquiry on that point, the order will be vitiated. The learned Counsel for the petitioner

would submit that Section 7-A(4) of the Madras Buildings (Lease and Rent Control) Act, 1949, is in pari materia with the present Section 11(4)

of the Act, and in view of the ratio laid down in the above quoted decision, since no opportunity was given to the petitioners to show cause as to

why they were not able to deposit the arrears of rent, the order of eviction is vitiated. In any event, the matter should be remitted back to the

Controller so as to enable the Controller to give an opportunity to the petitioners to explain the same. The learned Counsel for the petitioners relied

on another decision in Hyderabad Construction Company v. Major E. Hussain (1966) 2 A.W.R. 373, wherein while dealing with the provisions in

Section 11(1) and (4) of the Andhra Pradesh Buildings (Lease, Rent and Eviction Control) Act, 1960, it was held: ""In respect of each default,

unless the previous default is sufficient to order eviction, an opportunity should be given to the tenant to show cause as to why he has not been able

to pay the rent.

In the instant case, if the petitioner had explained the default committed in respect of payment of rent for December, 1964, it would not have been

necessary to refer to the default committed in January, 1965. But once the default in January, 1965, is taken as the basis for eviction, unless the

petitioner is given an opportunity to show sufficient cause for non-payment, an order u/s 11 (4) of the Act cannot be made.

In Mohd. Sabar Ali v. Mubarak Begum (1982)1 A.W.R. 195, it was held:

The petitioner-tenant disputed the arrears of rent claimed by the land-lady. Therefore, it is always safe to post the case of enquiry. It is necessary

that the learned Judge should have posted the case for enquiry so that there could have been no scope for passing such an order. The tenant could

have also an opportunity to state the facts in the enquiry in respect of the payment of rents whether they are due or not. So far as Sub-section (4)

of Section 11 of the Rent Control Act is concerned, it seems to have an important bearing on this case. It is quite evident that in this case, the

tenant has not deposited or paid the arrears of rent. Therefore, under the

provisions of Sub-section (4) of Section 11 of the Act, it was necessary for the Rent Controller to have issued a notice to the tenant as to why he has failed to pay or deposit the rents, as directed by him and if the tenant failed to show sufficient cause, then only further proceedings should have been stopped directing the tenant to put the landlady in possession. In the instant case, proceedings were not taken under Sub-section (4) of Section 11 of the Rent Control Act. It was necessary that the Rent Controller should have complied with this provision of the Act to find out as to why the amount was not deposited or paid. Therefore, the proceedings issued by the Rent Controller on 28th December, 1977 are vitiated on account of non-compliance of Sub-section (4) of Section 11 of the Rent Control Act. When the default for a particular month is sought to be pressed against the tenant, which is not pleaded in the petition, it becomes necessary for the court to bring it to the notice of the tenant and afford him an opportunity to explain and show sufficient cause as to why he committed default for that period, before an order is passed.

When the case was posted to 27th December, 1977, it was the duty of the court to ask the tenant to show cause as to why the amount was not deposited. If the tenant failed to show sufficient cause, then only the court could have passed the order stopping further proceedings and directing the tenant to put the landlady in possession of the property. This was not done, as contended by the learned Counsel for the petitioner, in the case on hand. Therefore the order of the Principal Rent Controller is vitiated.

5. The learned Counsel for the petitioners vehemently argued that in the instant case the petitioners opposed the application and filed a counter contending that the amount claimed by the respondent is not correct, that he has made certain payments, that it has to be determined and that he is to pay only a lesser sum. The court below did not hold an enquiry and did not reach any finding and simply accepted the case of the respondent-landlady and fixed the quantum of arrears as Rs. 1,150 and directed the petitioners to pay the amount. Further, even though the petitioners asked for time, sufficient opportunity was not given. The court below also refused to receive additional documents with regard to payment of rent made by money order and the court straightway ordered eviction without considering the question as to whether there is any wilful default and the

building requires immediate demolition in the main application. He would submit that the petitioners have filed additional documents and they may

be permitted to file the additional documents and the same may be received in the revision proceedings as they can be received in view of the

decision of this Court in S.K. Babu Syed and Another Vs. A. Zubaida Bee represented by her power Attorney Agent K.M. Syed Ahmed Sahib, ,

wherein it was held:

In view of the legal position it has to be held that the provisions of the CPC are applicable to the revision petition filed before this Court u/s 25 of

the Act. From this it follows that a petition filed under Order 41, Rule 27, C.P.C, to receive document as additional evidence in the revision

petition filed u/s 25 of the Act is maintainable and the documents can be received as additional evidence provided the requirements of Order 41,

Rule 27 of the CPC are satisfied. In this case, the documents are necessary for deciding the issue.

In the instant case, the documents sought to be filed as additional evidence show the illness of the tenant and his subsequent death and also the

death of his son due to accident. According to the learned Counsel for the petitioners these documents are necessary to decide the issue with

regard to the default in payment of rent which has been directed to be paid by the court below, On a careful consideration of the entire materials,

this Court feels that the orders passed by the courts below are not sustainable as they have not followed the procedure laid down with regard to

the dealing with the petition u/s 11 (4) of the Act and in view of the fact that the opportunity was given before fixing the quantum of arrears and no

opportunity was given for explaining the reason for not paying the rent within the time. In spite of the petition filed by the revision-petitioners for

extension of time, the court below allowed the petition for eviction holding that there was wilful default and eviction was necessary for demolition

and reconstruction. In view of the failure to receive the additional documents filed by the petitioners on erroneous reasons of the matter requires

reconsideration to prevent miscarriage of justice. It is further seen that as per the calculation statement produced before this Court by the

petitioners, they have paid an excess rent of Rs. 50 upto August, 1992. However, according to the statement produced by the respondent-

landlady, a sum of Rs. 650 is due as arrears. This also requires an enquiry at the hands of the Rent Controller. For all these reasons, this Court

feels that the matter should be remitted to the court below in order to give an opportunity to the revision-petitioners/tenants to substantiate their

case, by holding the necessary enquiry as contemplated u/s 11(4) of the Act.

6. In the result, both the revisions are allowed, the impugned orders passed by both the courts below are set aside and the matter is remitted to

the Rent Controller who is directed to restore both the petitions, namely, R.C.O.P. No. 10 of 1987 and I.A. No. 88 of 1989, and give

opportunity to both the parties to adduce necessary evidence and dispose of the same according to law as expeditiously as possible, in any event

within two months from the date of receipt of the order copy. The parties are directed to bear their costs in these proceedings. The parties are

directed to appear before the Rent Controller on 30.11.1992.