
(1993) 11 MAD CK 0040
In the Madras High Court

Habeeb Rahman	Vs	APPELLANT
Meenakshi and Others		RESPONDENT

Date of Decision : 18-11-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 11(4)

Citation : (1994) 1 MLJ 645

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The above civil revision petition has been filed under Article 227 of the Constitution of India, against the order dated 16.6.1993 in

I.A. No. 1195 of 1993 in C.M.A. No. 3 of 1993 on the file of the Principal Sub Court, Coimbatore. The respondents in the above revision

petition have obtained an order of eviction against the petitioner herein in R.C.O.P. No. 209 of 1982 on 10.2.1984. Since the petitioner did not

vacate the premises pursuant to the order of eviction, E.P. No. 114 of 1985 came to be filed to execute the order of eviction. From the copy of

the execution petition and the orders made available at the time of hearing, it is seen that in an earlier E.P., as per the joint endorsement made, the

petitioner was granted time till 31.12.1984 for delivering possession. It is only since the petitioner did not comply with the assurance made in the

earlier E.P., the present E.P., came to be filed. In the present E.P., the petitioner appears to have filed E.A. No. 1319 of 1985 u/s 47 read with

Section 451 of the CPC to set aside the execution proceedings. In the said proceedings, the petitioner herein has admitted that the petitioner was a

tenant on a monthly rent of Rs. 100 that he was regularly paying the rents and

that from 1982 onwards there was a revision of rent by increasing the monthly rent from Rs. 100 to Rs. 250 and inasmuch as the petitioner was assured in view of the revision and enhancement of the monthly rent that the R.C.O.P. could not be pursued, the petitioner did not take steps to effectively defend the eviction proceedings and that the petitioner has been remitting the revised enhanced rent regularly till 31.3.1985 and that therefore, the respondents have no right to initiate any execution proceedings to execute the order of eviction in question.

2. The respondents herein opposed the said applications and the claim made by the petitioner about the new tenancy coming into force was denied. The court below has chosen to accept the claim of the petitioner that a new tenancy came into existence with a revised and enhanced monthly rent of Rs. 250 and that, therefore, the execution cannot be pursued to evict the petitioner pursuant to the order of eviction. This order came to be passed on 1.9.1986. Thereupon, the respondents herein filed E.A. No. 1211 of 1966 to review the order and by an order dated 6.4.1987, the review application was allowed. Aggrieved against the order passed on review in E.A. No. 1211 of 1986, the petitioner herein filed C.M.A. No. 3 of 1990 on the file of the District Court, Coimbatore. This appeal is said to be since transferred to the Principal Sub Court, Coimbatore and entertained as C.M.A. No. 3 of 1990.

3. While the said appeal was pending, the respondents herein have taken out an application in I.A. No 1195 of 1993 in C.M.A. No. 3 of 1990 invoking the powers of Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 as well as Section 151 of the Code of Civil Procedure, seeking for a direction against the petitioner herein, who was the appellant before the said court, to deposit the arrears of rent of Rs. 8,300 into the said court and on failure to do so to stop all further proceedings and pass an order of eviction against the petitioner herein, who was the respondent in the said application in the court below in terms of Section 11(4) of the Act. The affidavit filed in support of the said application by the respondent disclosed, at paragraph 5, that he was in arrears of rent for 83 months from 1.5.1986 to 31.3.1993 amounting to Rs. 8,300 and it is this amount that is sought to be recovered during the pendency of the appeal. It may be noticed at this

stage that the respondents have not even claimed the arrears of rent at the so-called revised and enhanced rate, but they have claimed only the admitted and indisputable original rate of rent of Rs. 100 per month. The petitioners herein was directed to pay the amount and in spite of the initial time granted and further adjournments and extension of time, the petitioner does not appear to have complied with the directions and at that stage by the impugned order dated 16.6.1993, the court below has stated that as a last chance, time was extended by 15.7.1993 and that no further adjournments will be granted for payment and for filing counter. At that stage, the petitioner has come before this Court.

4. The main and only ground of challenge to the order of the court below is that the provisions of Section 11(4) of the Act has no application to the case on hand and that the impugned order purported to have been passed in exercise of the powers under the said provision cannot be sustained.

The learned Counsel for the petitioner, while raising the said point at the time of hearing, placed reliance upon a Division Bench of this Court

reported in *R. Radha v. C.R. Govindarajulu* 91 L.W. 443. That was a case wherein a Division Bench of this Court held that an application u/s

11(4) of the Act cannot be filed during the pendency of a civil revision petition in the High Court against the order of eviction. It was also clarified

that a reading of Section 11(1) and 11(4) of the Act together will exclude their applicability to all other cases except the cases where an application

for eviction is pending u/s 10 before the Rent Controller and the appeal preferred by tenant u/s 23 of the Act to the appellate authority is pending.

The C.M.A. No. 3 of 1990 in the court below was filed to the petitioner herein under Order 43, Rule 1 and Section 104 of the CPC and not u/s

23 of the Rent Control Act. That being the position having regard to the law declared by the Division Bench in the decision referred to supra, there

is no scope or right in the respondents to file an application u/s 11(4) of the Act, and the court below could not have validly passed an order

invoking the powers u/s 11(4) of the Act.

5. Mr. E. Padmanabhan, learned Counsel appearing for the respondents in this Court (the applicants in the court below which resulted in an order

culminating the filing of the C.M.A. No. 3 of 1993 and the above revision petition) contends that the application filed by the respondents in the

court below was not only u/s 11(4) of the Act, but also invoking the jurisdiction of the said court u/s 151 of the Civil Procedure Code. It is the contention of the learned Counsel for the respondents that the petitioner by filing the appeal in the court below, had the benefit of stay, and he had been continuing all along by virtue of such stay without paying the rents from 1.5.1966 onwards and that therefore, the respondents are entitled, at any rate, to move the court below, invoking the power u/s 151, C.P.C., in the interests of justice to issue suitable directions to the petitioner to pay the arrears of rent and that the order could be construed and sustained in that limited context and extent and justified as one passed u/s 151, C.P.C., without attracting or applying the penal consequences that follows if the provisions of Section 11(4) of the Act are applied. The learned Counsel for the respondents further brought to my notice a decision of a learned single Judge of this Court reported in *Gnanambal Vs. Perumal Pillai and Another*, whereunder it has been held that if the order of the court below challenged in a revision is ultimately found to be in the interest of justice, the court can refuse to interfere u/s 115, C.P.C., even if the court has no jurisdiction to pass such an order. The learned Judge, while coming to the said conclusion, has adverted to an earlier Division Bench judgment of this Court and the decisions of the Supreme Court in support of the view taken to come to such conclusion. If that be the position even in respect of an order of the court below, while exercising jurisdiction u/s 115 of the C.P.C., the position would be all the more still better in the case of a revision filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India, the object of the conferment of power under Article 227 of the Constitution of India being, only to prevent grave miscarriage of justice or injustice as to ensure that the Subordinate Courts and Tribunals act in furtherance of Justice, within their well defined jurisdiction.

6. After a careful consideration of the submission of the learned Counsel appearing on either side, I am of the view that the contentions on behalf of the petitioner could be sustained only partly to the extent that the order under challenge could not be treated as one having been passed in exercise of the powers of the court below u/s 11(4) of the Act. Consequently, the power and authority of the court below to strike off the defence of the

petitioner or order for summary eviction for nonpayment of the arrears available u/s 11(4) of the Act cannot be invoked. At the same time, the order having been passed also invoking and in exercise of the inherent powers of the court u/s 151, C.P.C., it is not only traceable but can be justified as one passed u/s 151, C.P.C., the petitioner having obtained the order of stay from that court and continuing under the protection of such orders of stay, to prevent abuse of the indulgence shown by the court of stay. Except clarifying the position that the penal consequences that would normally get attracted to an order passed u/s 11(4) of the Act, in cases of default of a direction would not be attracted to the present case, the order as such could be sustained and upheld, as one passed u/s 151, C.P.C. In my view thus construed the order under challenge really ensures and secures substantial justice to the parties. Consequently, nothing prevents this Court from containing the order as one passed under the powers otherwise available with the said court u/s 151, C.P.C., particularly when the application has been filed in the court below by the respondents herein invoking the said inherent powers of the Sub Court as an ordinary civil court exercising appellate jurisdiction. Mr. Sundaram, learned Counsel for the petitioner relied upon a decision of the Supreme Court reported in Ram Deo Vs. Umrao Singh, , to contend that the only right of the respondents is to file a suit for recovering the arrears of rent and not to invoke the jurisdiction of the Sub Court in the pending appeal proceedings. The case which was considered by the Supreme Court in the decision referred to above is one where the parties appear to have executed an agreement by which the past arrears were agreed to be paid in instalments. It was under such circumstances the court held that the arrears lost the character of arrears of rent and the agreement so entered between the parties created a new cause of action for the recovery of the said sum independent of the lease that is not the position in the present case. It is not even the case of the petitioner that the respondent is seeking to recover any amount which is not a rent or an arrears of rent. Even the case of the petitioner is that in the place of an earlier tenancy at a monthly rent of Rs. 100 a revised enhanced rent at Rs. 250 has been agreed to between parties resulting in a new tenancy. This issue about the subsequent new tenancy projected by the petitioner is the subject matter to be decided in the main appeal pending before the court below. That does not, in

any manner, alter the character or position of the petitioner as a tenant and absolve him of his liability so pay the arrears of rent or enable him to equal on the property without paying any rent whatever. In my view that is what the petitioner trying to do in this case in abuse of the orders of stay granted by the appellate court, and the order of the court below to the extent it had directed the remittance of a sum of Rs. 100 per month which is the rate of the rent admitted in the courts below as well as in the memorandum of grounds filed in this Court cannot therefore be said to be bad in law. If only such an order can be justified u/s 151, C.P.C., without getting the penal consequences u/s 11(4) of the Act attracted to the same, there is nothing wrong either in law or otherwise in upholding the same. As noticed already, the petitioner had the benefit of stay before the court below in his appeal and has been equating on the property pursuant to the order of the stay granted by the court without paying any rent and that being the position, there is no infirmity or illegality in the order of the court below directing the remittance of the indisputable rent due and payable. The vexatious claim of the petitioner is further highlighted by the plea raised in this Court that an enquiry is called for before the amount should be directed to be paid. I am really surprised to hear such submission which is directly contrary to the very stand taken by the petitioner before the executive court. It is never the case of the petitioner that the rate of rent claimed is on the higher side. On the other hand, even according to the petitioner Rs. 100 was the original rate of rent and that it has been subsequently revised and enhanced to Rs. 250 per month. The petitioner is not only taking inconsistent but opportunist stands, in gross abuse of the process of court. After all, the respondents have claimed the arrears only at the rate of Rs. 100, the original agreed rent which alone has been directed to be paid by the court below. Having regard to all these indisputable facts on records, I am of the view that the order is liable to be modified and declared to have been made in exercise of the powers of the court below u/s 11(4) of the Rent Control Act and Section 151, C.P.C., but only under and in exercise of the powers of the court below u/s 151, C.P.C. They very same order, passed by the court below, for the reasons slated supra is, therefore, justified and having been validly passed under the provision of Section 151, C.P.C., and to that extent the parties are entitled to work out their remedies and the court below is entitled to

enforce the order as one passed u/s 151, C.P.C. without applying the penal provisions of Section 11(4) of the Act to the situation in question. The revision shall stand partly allowed to the extent of modification indicated above. In other respects the revision shall stand dismissed, No costs.