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**(1997) 04 MAD CK 0125**

**In the Madras High Court**

Indian Organic Chemicals Limited — APPELLANT

Vs

Radha Venkataraman — RESPONDENT

**Date of Decision :** 12-04-1997

**Acts Referred:**

**Citation :** (1997) 2 LW 517 : (1997) 2 MLJ 431

**Hon'ble Judges :** S.S. Subramani, J

**Bench :** Single Bench

## Judgement

S.S. Subramani, J.—The respondent in R.C.O.P. No. 70 of 1992 on the file of the Court of Small Causes, Madras, is the revision petitioner.

2. The landlady sought eviction of the revision petitioner on two grounds viz., (1) default in payment of rent. It is said that rent for the months of July, 1991 to December, 1991 were defaulted; (2) The building is required bona fide for her own occupation. It is stated that the landlady and her family members are now living in New Delhi and they want to settle at Madras and the building in question is the only building owned by her at Madras and the landlady and her family members need the building for their own occupation.

3. In the counter statement, both these allegations are denied. The revision petitioner submitted that it had not committed any default, much less wilful default. It has also contended that the present claim is not in good faith and the intention of the landlady is to let out the building for a higher rent.

4. Both the authorities below found against the tenant on both the grounds and both the Authorities ordered eviction. The tenant was directed to surrender possession. The concurrent finding of the Authorities below is challenged in this revision petition.

5. Before going into the legal aspect of the matter, certain facts require consideration. The property originally belonged to late Padma Srinivasan and the revision petitioner took the same from her on lease from 1.7.1977. The agreed rent was Rs. 2,000 per month and Rs. 1,000 towards hire charges for fixtures

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and fittings. The initial lease was for a period of 9 1/2 years. After the expiry of the term of lease, the landlady, Padma Srinivasan, filed an application for fixation of fair rent in R.C.O.P. No. 974 of 1991 on the file of the X Judge, Court of Small Causes, Madras. Pending that proceeding, she died on 25.6.1991 at New Delhi. The landlady herein was impleaded as the legal representative of the deceased.

6. Immediately after the death of Padma Srinivasan, the respondent herein informed the tenant about the death of her mother as per a letter, which the petitioner received on 17.7.1991. In that letter, the landlady informed the tenant that she is the sole and only heir of Padma Srinivasan and she was the landlady. She also informed that Padma Srinivasan is dead and wanted the tenant to deposit the rent from July, 1991 onwards in her bank account with the Hongkong Bank, Rajaji Salai, Madras.

7. It is the case of the landlady that even though such a letter was sent and received by the tenant, they refused to pay the rent and continued to deposit the amount in the accounts of the deceased original owner, which is not ''payment'' to the landlady. Since the amount is deposited in dead person''s account, the same also could not be collected. The case that is further put forward is that the tenant knew that she was the sole heir and that she was impleaded as the legal heir of the deceased Padma Srinivasan in R.C.O.P. No. 974 of 1991. Even after she was made party to the proceeding, it did not agree to pay the rent in her account. This attitude of the tenant, according to the landlady, has only to be characterised as wilful default, the consequence of which is to direct eviction of the tenant from the building.

8. The tenant, which is a Public Limited Company, has taken a contention admitting the receipt of Ex. A-1 letter. But, it is its case that being a public limited company, it has to comply with certain legal formalities for remitting the rent in the account of the landlady. The mere asking by a party that she is the owner is not sufficient and the same has to be substantiated and only then the rent could be tendered in her favour. Only after compliance with the formalities, the rent could be credited to the account of the landlady. It is further stated that immediately after the respondent herein was recorded as the legal representative in the fair rent application, the tenant also recognised her as the landlady and the amount thereafter was deposited in her account. It is further said that the amount deposited in Padma Srinivasan''s account could be collected by the landlady as the sole heir of the deceased.

9. The receipt of Ex. P-1 is admitted by the tenant. In the counter statement, they have no case that they have sent any reply to Ex. A-1. But, during evidence, a case was put forward that after receipt of Ex. A-1, on 30th August, 1991 a reply was sent for the same informing the landlady that they cannot comply with the demand unless a legal heirship certificate is issued by the competent authority. Both the Courts have found that the case put forward during the evidence is a new case, which cannot be acted upon. It also took note of the fact that on 1.10.1991, as per Ex. P-4 letter the tenant again informed the

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original owner that the rent was credited only in Padma Srinivasan''s account and the letter was also sent to her only. Ex. P4 letter is addressed to Central Bank of India, Mylapore Branch with a copy marked to Padma Srinivasan, who was already dead. In that letter, which is marked Ex. P-4, they wanted the bank to give credit of the proceeds of the cheque in the account of Padma Srinivasan being the rent for October, 1991.

10. When no amount was remitted in the landlady''s account, she caused a lawyer''s notice under the original of Ex. P-2 to be sent on 2.11.1991 directing the tenant to vacate the premises for default in payment of rent. A reply was sent on the same lines as is made in the counter statement. In this connection, it is also to be noted that in spite of the suit notice, the tenant sent the rent for the month of January, 1992 on 4.2.1992 again to the bank to credit it into the accounts of Padma Srinivasan. In the letter, Ex. P-5, certain deductions are also claimed and an amount of Rs. 2,261 alone was sent and not the entire rent. This is only to show the conduct of the tenant that in spite of the suit notice and in spite of the fact that the landlady was already recognised as the legal representative of the original owner in fair rent fixation petition, the tenant continued to pay the rent only to the Credit of the original owner''s bank account.

11. Ex. R-7 is the letter from UCO Bank wherein they had informed that various amounts have been deposited in the account of Padma Srinivasan from July, 1991 to December, 1991.

12. The question that has to be considered is whether in spite of the fact that the landlady has informed the death of the original owner, the tenant continued to make payment in her bank account only, refusing to recognise the respondent herein as the landlady, will amount to wilful default. Both the Courts have held that the conduct of the tenant cannot be appreciated. I find justification in the findings of the Authorities below. Immediately after Ex. A-1, a duty was cast on the tenant to pay the amount or at least inform the landlady that several legal formalities are to be complied with before payment could be made. In the counter statement no such case was put forward and during the last stage of the evidence, a letter is alleged to have been sent to the landlady informing that they cannot comply with the demand unless a heir-ship certificate is filed. Reference to that letter is not made anywhere. But, when the landlady sent the suit notice, no reply was sent by the respondent alleging the same. It is only to wriggle out from the legal consequences, the sending of such a letter is made a mention of in the evidence. Both the courts below rightly concluded that the conduct of the tenant is only to be deprecated.

13. It is further admitted that during the relevant time, there was a pending proceeding between the landlord and the tenant, i.e., late Padma Srinivasan, filed a petition for fixation of fair rent. She died and the present landlady was impleaded as her legal representative. The order was made in September, 1991. But, to the notice issued to the revision petitioner to the impleading petition, no objection was raised by them and in fact, it was allowed by consent. At least

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thereafter, the tenant should have shown its anxiety to pay the rent to her. In spite of the impleading order and even after the court itself had recognised the respondent herein as the sole heir and the legal representative of the deceased, the tenant refused to pay the rent again upto 4.2.1992, and the rent was being paid only in the account of Padma Srinivasan. There is no explanation by the tenant as to why they continued to deposit the rent only in the account of the deceased original owner. The amount due from July, 1991 till December, 1991 was not paid to the respondent herein, in spite of the fact that the tenant recognised her as landlord. No legal heir certificate is necessary as demanded by the tenant, when she obtained an order recognising her as the legal representative of the original owner. Even after the required formalities are complied with by getting herself recognised as the legal representative of the original owner and if the rent was not paid into the account of the respondent herein, but the payment was made only in the account of the deceased person and the amount could not be made available to the landlady, it can only be termed as wilful default. There had been intentional refusal to pay rent by the tenant.

14. Counsel for the petitioner herein submitted that to hold that the tenant had committed default, instead of making payment, the amount must have been with held by the tenant. Such an argument will not help the tenant. The payment of rent to some other person knowingly or in the account of a dead person intentionally so that the landlady could not realise the same and not complying with the demand of the landlady will amount to wilful default.

15. The question to be considered is whether the landlady did received the rent which she was legally entitled to and whether there was a proper tender to her. These two conditions are not fulfilled in this case and, therefore, the finding that the tenant is a defaulter, is to be confirmed.

16. The other ground for eviction is the requirement of the building for own occupation. The landlady has said that the landlady''s husband is about to retire from service and they have no other building of their own in Madras and they intend to settle down herein with their only daughter. The fact that the landlady had no other building in Madras is admitted. learned Counsel for the petitioner herein argues that at the time when the eviction petition was filed, her husband has not actually retired and as such, there was no cause of action. It is also submitted that whether he has actually retired is also not in evidence. Anticipating a thing to happen in future, no eviction should have been ordered. It is further contended that on an earlier occasion also, the original owner has filed a similar petition and the same was dismissed and the daughter is also repeating the same and harassing the tenant. As I have already stated, the landlady has no building of her own is not in dispute. The landlady has spoken that in Delhi, she is occupying a rented building and during the time of her examination, her husband had already retired from service. She has also spoken that there is no useful a purpose to continue in Delhi, since their only daughter has also

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completed her education and they want to have a retired life at Madras.

17. The argument of the counsel that the future need to occupy the building should not be taken note of by the Rent Controller, cannot be accepted. In this case, the landlady has also spoken about the retirement of her husband during evidence and that is an event which has already happened during the course of the proceeding. The landlady even at the time of filing the eviction. Petition had completed 57 years and in the normal circumstance, the husband also would have retired by that time. In fact, there is no effective cross-examination on this point. Even if the contention of the counsel that the land lady''s husband has not retired at that time, there is a ground to discard the same.

18. According to law, it is against the contention put forward by the tenant. Law does not say that there should be a current and urgent need. It is enough if it is reasonably likely to arise in the future. V.R. Krishna Iyer, J. as he then was, in the decision in Madhavan v. Ramachandran ILR (1970) 2 Ker. 101 has held thus:

However, respondent''s counsel has argued that, since on the date of the institution of the petition the landlord was a teacher in Perinthalmanna and not at Pathirippala, he had set up only a future and not a present need in his eviction petition and this was fatal. I must point out that the consent of need cannot be narrowly understood or pedantically interpreted but applied in a pragmatic way. The petitioner has really been transferred to Pathirippala, even as he had alleged in his petition.

He must have reasonably expected a transfer and it might well be said that a need had arisen then. It is not necessary that there should be a current, urgent need. It is enough if it is reasonably likely to arise in the near future. Knowing that between the institution of the petition and the ultimate order from the apex court years pass, it will be as good as repealing the provision for eviction on the ground of bona fide, if courts insist on landlords proving a present need as against a prospective but certain need. Else, when the need confronts him, the building will be years away from him. Proceedings in court should not become tantalising tricks.

Similar is the case in Secretary, Thevara Co-op Consumer Stores Limited v. Jose 1984 K.L.T. 290. In that case, a young man, who intended to marry, wanted possession of the building for his own occupation. Marriage did not take place and it was only being thought of. The question was whether such a person can claim eviction on the ground of bona fide own occupation on the ground of future need. His Lordship held as follows:

No person, even when he is a landlord could be found fault with for ordaining his affairs in a proper or planned manner. Planning is, in a sense, a part of regulated modern life. It is, therefore, unjust to suggest that the landlord could seek eviction of a building, for him to live with his spouse, only after undergoing the marriage nuptials. He is justifiably entitled to foresee things and plan his life. The tribunal or court would not sit in judgment over his honest or bona fide decision

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in that regard.

The contention of the counsel on the basis of the above legal position is to be rejected.

19. Counsel further contended that the landlady''s mother has filed earlier an eviction petition and got defeated. It is only a continuation of the harassment. The said submission is also without any basis. The present need of the landlord is independent of the requirement of deceased landlady. The question to be considered here is whether the present requirement pleaded is a genuine requirement. The landlady has proved the same beyond in this case. Merely because her mother also filed an eviction petition earlier but failed could not be a ground to reject a bona fide claim. If the landlady during the fag end of her life wants to reside in her own building, the said claim can never be said to be lacking in good faith. The contention is, therefore, rejected. The concurrent findings are, therefore, confirmed The civil revision petition has to be dismissed.

20. Counsel for the petitioner at the fag end of his arguments pleaded that if this Court is going to confirm the order of eviction, sufficient time may be given to the tenant to give vacant possession. Counsel submitted that the petitioner is a public limited company and, therefore, it is difficult to shift its premises to some other building. In this case, even though the tenant, is a public limited company, the purpose of letting out is only to make use of the same as a guest house. It is not an office premises. Further, counsel for the respondent herein submitted that the tenant is already in occupation of three or four other guest houses within the same city and, therefore, this premises is not required for it. This is only a ground to continue in possession without any legal right.

21. The litigation started in 1992 and being a public limited company it should not have allowed the litigation to continue at least when the two authorities have, held against it. It should not be understood that I am not saying that the company should not enforce its legal rights. But, when a finding is there that the landlady requires the building for her own occupation, a public limited company should not resort to challenge the concurrent finding as an ordinary litigant. Further, the company has also other accommodation available for it and it will not be put to any hardship. In those circumstances, lam not acceding to the request of the revision petitioner''s counsel seeking time to surrender vacant possession of the building. The petitioner is directed to hand over possession of the building without any further delay.

22. The revision petition is dismissed with costs.

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