
(1988) 08 MAD CK 0004
In the Madras High Court
Case No : C.R.P. 202 and 203 of 1988

K. Gopalaswami Chetti and Others

APPELLANT

Vs

Unnamalai Ammal and Another

RESPONDENT

Date of Decision : 03-08-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : (1988) 08 MAD CK 0004

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : R. Balakrishnan, for the Appellant; P.V. Marthandan, for the Respondent

Judgement

Srinivasan, J.—The owners of the land, who are aggrieved by an order of the Third Assistant Judge, City Civil Court, Madras, extending the

time for depositing the value of the land given to the tenant, pursuant to the decree in O.S. 1369 of 1977, has filed the present revision petition.

The necessary facts are briefly as follows: On 11.8.1978, the City Civil Court, Madras, passed a decree in the said suit, directing the

defendants to pay the plaintiffs a sum of Rs. 6703 being the value of the land of an extent of 1287 sq.ft. and the decree provided for payment in 36

equal monthly installments at the rate of Rs. 186.20 each. According to the decree, on payment of the entire decree amount the plaintiff shall

execute and register a deed of sale in respect of the land in favour of the defendants conveying the land at the cost of defendants.

2. The defendants were making payments regularly for 23 instalments amounting to Rs. 3703. Thereafter, there was default in the payment of

monthly instalments and on 24.7.1981, the defendants filed an application for

excusing the default in making monthly instalments and for permitting them to pay the entire balance of the decree amount. Admittedly the period of 36 instalments ended later on 20-9-1981. In the affidavit filed in support of the application filed by defendants it was stated that the defendants were forced to commit default on account of circumstances beyond their control. The affidavit was sworn to by the 3rd defendant in the suit. According to the third defendant the amount of Rs. 3705 representing 23 instalments was paid from and out of his salary, as he was employed in railways, and his sisters and brothers or the other defendants could not contribute any amount. It is further stated in the said affidavit that the father of the defendants died and one of his brothers also died and he had to meet the expenses relating to funerals of the said persons and that apart, he also fell ill and he had to incur heavy expenses for his treatment. In paragraph 5 of the said affidavit, the 3rd defendant has stated that½
....With great difficulty I managed to borrow from various persons the balance of Rs. 2666 payable by me and I am ready to deposit the same into court.

It was further stated that for the prior three months he could not deposit the instalments, though he was ready because the counsel for plaintiffs refused to sign in the petition for lodging and without his signature the office could not issue the necessary chalan for payment. Though this application was opposed by the plaintiffs, the City Civil Court passed an order on 9-8-1982 accepting the truth of the averments made in the affidavit and permitted the third defendant to deposit the entire balance by 20-8-1982. It is this order which is challenged in this revision petition.

3. Learned counsel for the petitioners in C.R.P. 202 of 1988 urges that the order passed by the City Civil Court is one beyond the jurisdiction of that Court as under S.9 (2) of the Tamil Nadu City Tenants Protection Act, the Court has no power to extend the time beyond 36 months. The relevant portion of S.9 (2) of the Act runs as follows½

In default of payment by the tenant of any instalment, the application under Cl.(a) of sub-S.(1) shall stand dismissed, provided that on sufficient cause being shown the court may excuse the delay and pass such orders as it may think fit but not so extend the time for payment beyond the three years above mentioned.

Learned counsel also places reliance on *Music Academy v. Raman Nair* (1980) 93 L.W. 365= 1980-2-M.L.J. 331. In that case, an order was

passed under S.9 of the Act on 31.7.1961 directing the tenant to pay the amount specified therein in 20 equal instalments and the first of such

instalments was to be paid on or before 10th September 1961. The tenant failed to make the deposit excepting for one instalment and he filed an

application on 27.9.1968 purporting to be under S.151 C.P.C. for condonation of delay in paying the amount. The learned Judge has held that the

maximum period for which the court could extend the time for payment of the amount or to condone the delay in paying the amount was only 36

months as prescribed under S.9 of the Act.

4. In the present case, the application was filed on 24-7-1981, and on the date of the application the period of 36 months had not expired and still

two months time was left and if the applicant had been permitted on that date to deposit the balance the objection that the court had no jurisdiction

to condone the delay or extend the time could not have been raised. The application itself was for permission to deposit the entire balance of the

decree amount into court immediately and not for extension of time beyond the period of 36 months. The mere fact that the application filed by the

tenant was pending for more than a year in that court from accepting the deposit. In this case the deposit was so offered on 24.7.1981, well within

the time prescribed under the Act. It is well known that no party can suffer by an act of the Court as summed up by the Latin Maxim "Actus curial

neminam gravabit". The decision of Justice Ratnam referred to above will not apply to this case as in the present case the application was filed by

the tenant well within the period of 36 months.

5. The next contention urged by learned counsel is that there is no proof that there were debts in the family of the tenant and he had to spend huge

money in connection with the funeral expenses of his father and brother, in the counter filed by the first plaintiff there was no denial of the averments

made in the affidavit of the third defendant. The counter affidavit only stated that the reasons given by the third defendant in his affidavit filed in

support of the application I.A. 11938 of 1981, were not sufficient for granting the prayer made by him. Therefore, in the absence of any denial on

the part of the first plaintiff the Court below was right in accepting the statement

contained in the affidavit filed by the third defendant. The Court below has come to the conclusion that there were valid reasons for the default in paying the monthly instalments. Consequently, I am of the view that the order passed by the Court below is one which is certainly in the interests of justice. Under such circumstances, I do not think that it is a case to interfere with under S. 115, C.P.C.

6. C.R.P. 202 of 1988--The facts in this case are almost identical with the facts of the other case excepting that the tenant in this case is only one person, viz., the respondent herein. The entire reasoning of mine found above will apply to this case also. In the result, both the revision petitions fail and are dismissed. There will be no order as to costs.