

(2002) 04 MAD CK 0172

In the Madras High Court

Case No : C.R.P. No. 3484 of 2001 C.M.P. No. 18522 of 2001

Kamal Kanwar Bafna and Premchand Bafna

APPELLANT

Vs

R.G. Trading Co.

RESPONDENT

Date of Decision : 25-04-2002

Acts Referred:

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

Citation : (2002) 2 MLJ 514

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : P. Kandavelu, for the Appellant; Narottam Jain and V. Ragavachari, for the Respondent

Judgement

E. Padmanabhan, J.—The two petitioners have joined together and filed the above revision petition invoking the jurisdiction of this Court

under Article 227 of The Constitution of India against the order dated 18.9.2001 and the subsequent adjournments in in M.P. No.519 of 2001 in

RCA No.566 of 2000 on the file of the 8th Small Causes Court, Chennai.

2. This Court admitted the revision and ordered notice on 19.11.2001. The contesting respondent entered appearance. The revision petition itself

is taken up for hearing with the consent of counsel for either side.

3. Heard Mr. P.Kandavelu, learned counsel appearing for the petitioners, Mr. V.Ragavachari and Mr. Narottam Jain for the respondent.

4. The petitioners are the landlords, while the respondent is the tenant. The petitioners instituted RCOP No.1415 of 1999 seeking for an order or

eviction on the ground that the respondent committed wilful default in payment of rent. Pending the eviction petition, the petitioners moved a

miscellaneous petition invoking Section 11(4) of The Tamil Nadu Buildings (Lease

and Rent Control) Act, 1960, and the Rent Controller, by order

dated 25.4.2000 directed deposit of the arrears of Rs.32,000/= on or before 6.6.2000. Being aggrieved, the respondent preferred RCA No.566

of 2000 on the file of the Rent Control Appellate Authority. Pending the appeal, certain interim order was passed.

5. Pending the Rent Control Appeal, the appellate authority directed the respondent to comply with conditions detailed in the order on or before

11.6.2001. In the miscellaneous petition, common order was passed by the appellate authority. Being aggrieved, the respondent preferred Civil

Revision Petition, which was dismissed by this Court. Thereafter, the respondent filed M.P. Nos. 519 and 537 of 2001 praying the Rent

Controller (8th Small Causes Court), seeking for extension of time to comply with the common order dated 30.4.2001 passed in M.P. Nos.519 of

2001 and 44 of 2001 for paying the amount to the respondent-landlord and also directed the office to receive the amount as directed to the credit

of RCOP No.1415 of 1999.

6. The Court below by order dated 18.9.2001 directed thus:-

CRP dismissed. CRP xerox copy produced. Memo filed. Intimate the Court that a sum of Rs.32,000/= (Rupees Thirty-two thousand only) by

way of cheque was sent to respondent with petition filed for getting direction - to deposit a sum of Rs.32,000/= (Rupees Thirty Two Thousand)

into the Court. Time granted till 25.9.2001.

7. Mr. P.Kandavelu, learned counsel appearing for the petitioners contended that after passing of the earlier order, the Tribunal below has become

functus officio and it cannot extend the time to deposit the amount already ordered to be deposited u/s 11(4) before a particular date fixed by it. It

is further contended by the learned counsel that before ever extending the time, the Court below should have ordered notice to the petitioners and

heard them before passing orders of extension. As no notice has been served on the petitioners, they were not aware of the order nor they had an

opportunity to state their objections to the application moved for extension of time.

8. Per contra, Mr. Narottam Jain and Mr. V.Ragavachari, learned counsel appearing for the respondents contended that no interference is called

for in this revision petition preferred under Article 227 as justice has been

rendered by the Tribunal below. It is contended that in view of the pendency of appeal and revision and grant of interim stay by the appellate forum, as well as revisional forum, the petitioner had not deposited and after disposal of the revision, the petitioner had immediately sought for extension of time by few days and by grant of such extension to deposit, no prejudice has been caused to the revision petitioners. Further by grant of stay by appellate/revisional authority, the time stipulated stands suspended and, therefore, it is not really an extension nor notice is required to be given. It is further stated that the entire sum of Rs.32,000/= has been paid by remitting 50% to the revision petitioner and depositing the remaining one half to the credit of the proceedings and, therefore, no interference is called for.

9. Though Mr. Kandavelu, learned counsel for the petitioner rightly contended that the petitioners should have been afforded an opportunity by ordering notice and this failure is being in violation of principles of natural justice, it is fatal to the impugned order. This contention advanced by Mr. Kandavelu is not only attractive, but also deserves to be examined. However, it has to be pointed out that the Court below had exercised the jurisdiction vested in it by extending the time shortly in view of the stay granted by the appellate authority as well as in revision and this necessitated a formal order for depositing the amount to the credit of the proceedings with the Court. But for the stay, the respondent will not be justified in advancing such a contention. It is true that there is violation of principles of natural justice, in that no notice has been given nor an opportunity had been offered to the petitioners nor the order has been passed by the Court below after affording minimum opportunity. It is true that no notice has been ordered to the petitioners herein nor they were aware of the application moved by the respondent.

10. However, on that score, on facts of this case, this Court will not be justified in interfering with the order, in that the court below had extended the time by three days and even on the next day the arrears of rent ordered to be deposited has been remitted to the proceedings, but for the interregnum development, viz., grant of stay and just to deposit an order is required. It is true the appellate court had granted stay at the instance of the respondents. But that does not mean that after the disposal of the appeal

and revision, the extension by one or two days should not be granted as the order of the Rent Controller was under stay pending the proceedings before the appellate authority. The contention that the Rent Controller has become functus officio also cannot be sustained, in that the RCOP is still pending and the disposal of the M.P. alone cannot be a ground to hold that the Rent Controller has become a functus officio. It is only an miscellaneous petition pending the eviction petition. When the main petition is pending, it is always open to the Tribunal/Court to consider extension of time or such other incidental relief as the facts of the case may warrant. In the circumstances, time has been extended for a short while for the purpose of remitting one half and depositing the remaining half. The same has also been complied with.

11. The learned counsel for the petitioner relied upon the judgment of Singaravelu, J., as he then was, in M/s. C.SWAMINATHA MUDALIAR

SONS & OTHERS VS. S.M. SINGARAM & OTHERS reported in 1996 LW 16 in support of his contention that the Rent Controller has no

jurisdiction to revise the proceedings as if original petition is still pending. In the present case, as already pointed out, the orders of the Rent

Controller was stayed by the appellate court and appeal was pending for some time. The further revision has been dismissed and, thereafter, the

application has been filed. The contention that Rent Controller has no jurisdiction to grant extension of time, in my considered view, cannot be

sustained. The decision of Singaravelu, J., as he then was, in 1996 LW 16 is distinguishable on facts.

12. In S.K.RAJAPANDIAN VS. A.KESAVAN reported in 1991 (2) LW 453 Srinivasan, J., as he then was, while following an earlier Division

Bench judgment of this Court held thus :-

10) I cannot accept this contention put forward by the learned counsel for the petitioner. No doubt the petitioner had a right to prefer an appeal

and also a right to apply for stay. The mere fact that the order of stay was granted by the appellate authority would not mean that the time granted

by the Rent Controller for deposit of arrears of rent was extended by the appellate authority. If the petitioner wanted to comply with the order of

the Rent Controller, then he should have applied for extension of time either before the Rent Controller or the petitioner ought to have filed an

application before the appellate authority for extension of time for making the deposit as directed by the Rent Controller. He did not do so. On the

other hand, he made the payment on 28.4.1987 without prejudice to his right in the proceedings. Similarly the landlord accepted the payment

without prejudice. It is not open to the petitioner to contend now that such payment would mean in law due compliance with the order of the Rent

Controller. The grant of stay by the appellate authority in an official would not tantamount to extension of time fixed by the rent Controller for

deposit of arrears of rent.

In other words, it has been held that an extension petition is maintainable even before the Rent Controller and it is not as if the Rent Controller is a

functus officio.

13. The exercise of judicial review in this case under Article 227 is not called for as justice has been rendered. When in the view of the Court

justice has been rendered by the Tribunal below, this Court will not be justified in interfering with the order passed by the Tribunal below.

14. In the circumstances, this revision petition is dismissed. No costs. Consequently, connected C.M.P. is also dismissed.

15. It is well open to the petitioner to apply for payment out of the amount deposited and it is for the Tribunal below to consider the same on

merits and according to law.