
(1990) 12 MAD CK 0048
In the Madras High Court

K.J. Bastian

APPELLANT

Vs

A. Nazarali and Sons, Registered Partnership firm

RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1992) 2 MLJ 223

Hon'ble Judges : Venkataswami, J

Bench : Division Bench

Judgement

Venkataswami, J.—An interesting question of law arises for consideration in this civil revision petition filed under Article 227 of the Constitution of India by a tenant in rent control proceedings.

2. The question is whether the Rent Controller is right in ordering payment out of the amount deposited by the tenant u/s 11(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 (hereinafter called "the Act"-) after the disposal of the R.C.O.P. and the appeal filed against that order. A subsidiary question that also arises for consideration is whether the Rent Controller, in any event, was right in ordering payment out of the entire amount deposited when a portion of it was not recoverable by the landlord even on the date of deposit by reason of bar of limitation.

3. Let us now look into the facts leading to the filing of this revision petition.

4. The petitioner is a tenant under the respondent. The respondent filed an application for fixation of fair rent u/s 4 of the Act on 24.2.1976. The rent controller fixed the fair rent at Rs. 946 per month. Aggrieved by that fixation of fair rent both the petitioner and the respondent preferred appeals to the Appellate Authority, the Appellate Authority by a common order fixed the fair rent preferred a revision to this Court and the revision petition was dismissed by this Court on 17.11.1981. Meanwhile, the respondent called upon the petitioner to pay the difference in payment of monthly rents between the agreed rent and

the rent as fixed in rent control proceedings. The petitioner took up a stand stating that he was liable to pay the fair rent as fixed from the date of the order and not from the date of the application as claimed by the respondent. In view of the above stand taken by the petitioner the respondent filed R.C.O.P. No. 827 of 1982 for eviction of the petitioner on the ground of wilful default in payment of rents. Pending disposal of that application the respondent also filed a miscellaneous petition u/s 11 of the Act for a direction to the petitioner to deposit all arrears of rent due in respect of the building up the payment or deposit. Though the petitioner initially resisted that application ultimately deposited a sum of Rs. 42, 000 with the following endorsement "I deposited the amount only to show my bona fides and to prevent an adverse inference being drawn against me." R.C.O.P. No. 827 of 1982 was ultimately dismissed on 4.3.1986 on the ground that there was no wilfulness on nonpayment of difference in contractual rent and fair rent fixed in rent control proceedings and in any event the differential amount having been deposited u/s 11 there was no case for ordering eviction, Aggrieved by that order of the learned Rent controller the respondent preferred R.C.A. No. 598 of 1986 to the Appellate Authority, the Appellate/ Authority also concurred with a view taken by the learned Rent Controller and dismissed the appeal on 26.11.1986. Thereafter the respondent filed M.P. No. 926 of 1986 for payment out of the amount of Rs. 42,000 deposited by the petitioner to the credit of R.CO.P. No. 827 of 1982. That application for payment out was resisted by the petitioner inter alia contending that the Rent Controller after disposal of the R.C.O.P. became functus officio and as such could not order payment out, that R.C.O.P. and also appeal filed against that having been dismissed, there is no question of payment out to the Landlord, that the claim was barred by limitation and that the Rent Controller is not an Authority for collecting rents.

5. The Rent Controller overruling the objections raised by the petitioner/tenant ordered payment out. Aggrieved by that order of payment out the petitioner/tenant has filed this revision petition.

6. Miss O. K. Sridevi, learned Counsel appearing from the petitioner contended that the order of the Rent Controller is totally without jurisdiction is as much as he had become functus officio after he passed the order in R.C.O.P. which was confirmed by the Appellate Authority. The right if any of the landlord/respondent was only to file a suit subject to the law of limitation to recover the difference in payment of rent between agreed rent and rent fixed in rent control proceedings. On the date of order of payment out the entire claim was barred by limitation and therefore the Rent Controller ought not have ordered payment out. According to the learned Counsel by ordering payment out the vested right of the petitioner to raise the plea of limitation has been taken away.

7. In support of the above contentions the learned Counsel for the petitioner placed reliance on the following judgments. Messrs. India Automobiles and Company v. Life Insurance Corporation of India, Madras 91 L.W.

272C.Ranganatham v. M.Suri, 100 L.W. 708 The Collector of Madras, Accommodation Wing, Madras v. A. N. Gajendran 102 L.W.49 The State of Tamil Nadu, represented by the Accommodation Controller v. K. N. Dhanasekaran 93 L.W. 207 Maganlal Chhotabhai Desai Vs. Chandrakant Motilal, , M. Paul Verghese and Co., Ltd. Vs. G.A. Dhanaliwala, , Raval and Co. Vs. K.G. Ramachandran and Others, , S.E. Mohamad Abdulla Sons Vs. T.K. Dorai Arasu and Another,

8. Mr.K.C.Kathirvelu, learned Counsel appearing for the respondent/learned contending contra submitted that the order of the learned Rent Controller was quite in accordance with a decision of the Supreme Court reported in Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, , the learned Counsel further submitted that the petitioner by depositing the amount u/s 11 of the Act made the respondent to believe that there was no need to file a separate suit to recover the amount. The liability to pay fair rent as fixed by the Rent Controller from the date of the application was well settled by several decisions of this Court, nevertheless, the petitioner deliberately took a stand that he was not liable to pay the fair rent from the date of application, but liable to pay only from the date of final order fixing the fair rent. He also submitted that the petitioner does not deserve any indulgence while exercising revisional jurisdiction under Article 227 of the Constitution of India from this Court.

9. I shall now consider the rival submission with reference to the cases cited by counsel on both sides. In Messrs. India Automobiles and Company v. Life Insurance Corporation of India, Madras 91 L.W.272

A Division Bench of this Court speaking through Ramaprasada Rao, J. (as he then was) in clear and unequivocal terms held that fair rent orders are effective from the date of application. It was further held therein that it cannot be contended that the order fixing fair rent under the Act is effective only from the date of order of the statutory tribunal.

In C. Ranganatham v. M. Suri 100 L.W. 708M.N. Chandurkar, C.J. While considering a case of non-payment of difference between earlier accepted rent and fair rent by the tenant and the consequences thereof after elaborately noticing the relevant provisions held as follows: "Now, it is true that once fair rent is fixed u/s 4 of the Rent Control Act, the liability to pay the fair rent accrues from the date on which the fair rent is fixed. Even though the liability to pay fair rent dates back to the date of the application, the liability itself gets determined only on the date on which the fair rent is fixed. Until the fair rent is so fixed on an application made by the landlord, during the pendency of such an application the only statutory obligation of the tenant is to pay the "agreed" rent. It is undoubtedly true that where fair rent has been fixed, at a figure higher than the agreed rent, the tenant will become liable to pay a higher rent from the date of the application and when agreed rent is paid during the pendency of the application, the landlord will be entitled to claim the difference between the fair rent and the agreed rent for the period covered by the pendency of the application u/s 4. However, since the fair rent itself has been fixed at a future

date, there is no question of the tenant paying the fair rent either within fifteen days after the expiry of the time fixed in the agreement of tenancy or by the last day of the month next following the month for which rent is payable during the period of the pendency of the application for fixation of fair rent. In such a case, the tenant cannot be said to incur the liability of being adjudged a "defaulter" if he has not paid the difference between the fair rent and, the agreed rent. Though it is true that any default in the payment of fair rent after the date on which the fair rent has been fixed would attract the provisions of Section 10(7)(i) of the Rent Control Act, that provision cannot be availed of by the landlord for the period prior to the date on which the fair rent is fixed. Section 10(2)(i) and the Explanation is the default contemplated by Section 10(2)(i). Therefore, unless the landlord is entitled to avail of the provision in Section 10(2)(i), there is no occasion for the Rent Controller to apply his mind to the question whether the default is wilful and consequently the artificial rule of evidence contemplated in the Explanation will also not be attracted to a case to which the substantive provision in Section 10(2)(i) will not be attracted. Therefore, in a case where a certain amount becomes due from the tenant as a result of the fair rent being fixed at a higher figure than the agreed rent, the failure to pay the difference between the fair rent and the agreed rent will not attract the provisions of Section 10(2)(i) at all. Consequently, the landlord in the instant case was not entitled to invoke the provisions of Section 10(2)(i) of the Rent Control Act, and the petition filed by him was therefore clearly not maintainable. Consequently, further the provision in Section 11(4) cannot be attracted in the instant case. The Appellate Authority was, therefore, right in allowing the appeals filed by the tenant and dismissing the petition for eviction. The revision petitions are therefore dismissed. No costs.

In *The Collector of Madras, Accommodation Wing, Madras v. A.N. Gajendran* 102 L.W. 49 again *M.N. Chandurkar, C.J.* after referring to the judgment in *The State of Tamil Nadu, represented by the Accommodation Controller v. K.N. Dhanasekaran* 93 L.W. 207 held the fair rent will be payable from the date of allotment subject to Law of Limitation. In *The State of Tamil Nadu, represented by the Accommodation Controller v. K. N. .Dhanasekaran* 93 L.W. 207 a Division Bench of this Court speaking through Padmanabhan, J. has held that payment of fair rent is payable in cases falling u/s 3 of the Act from the date of allotment order but subject to Law of Limitation. In *Maganlal Chhotabhai Desai Vs. Chandrakant Motilal*, their Lordship of Supreme Court held that recovery of over paid rents by a tenant was subject to law of limitation. *M. Paul Verghese and Company Limited v. G.A. Dhanaliwald* (1969)1 M.L.J. 288S. *E. Mohamad Abdulla and Sons, Madurai, through its Managing Partner, M. S. Mohammed Ghani v. T. K. Dorai Arasu* (1956)1 M.L.J. 184 and *Raval and Co. Vs. K.G. Ramachandran and Others*, are not quite relevant for our present purpose.

10. Now coming to the decisions cited by the learned Counsel for the respondent namely *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur*, , their Lordships of the Supreme Court while considering a case

more or less similar to this case held as follows:

It will be seen that u/s (2) of the Act, the landlord gets a cause of action for evicting the tenant when the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. If the tenant pays the entire arrears of rent due at the first hearing of the suit the Court may relieve the tenant against eviction even though he had not complied with Section 20(2). The tenant can take advantage of the benefit conferred by Section 20(4) only when he pays the entire amount of rent due as required u/s 20(4). The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time barred. There is ample authority for the proposition that though a debt is time barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Law of England (Third Ed.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set-off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set off, the Act does not prevent him from recovering by those means." The Court of Appeal in *Curwen v. Milburn*", Cotton, L.J. said:

Statutes-barred debts are dues, though payment of them cannot be enforced by action. The same view was expressed by the Supreme Court in *Bombay Dyeing and Manufacturing Co., Ltd. v. The State of Bombay* AIR 1958 Bom. 328 where it held that the statute limitation only bars the remedy but does not extinguish the debt, except in cases provided for by Section 28 of the Limitation Act, which does not apply to a debt. u/s 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. Section 60 of the Contract Act provides that when a debtor makes a payment without any directions to how it is to be appropriated; the creditor has the right to appropriate it towards a barred debt. In a Full Bench decision of the Patna High Court.

Ram Nandan Sharma and Another Vs. Mt. Maya Devi and Others, , Untwalia, C.J. as he then was, has stated

There is a catena of decisions in support of what has been said by Tek Chand, J. in *First National Bank Ltd. (in Liqn.) Vs. Seth Sant Lal*, that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right." The law is well-settled that though the remedy is barred the debt is not extinguished. On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of Section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord u/s 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of Section

20(4). As he has not deposited the entire amount due the protection is no more available. We agree with the view taken by the trial court and the High Court of Allahabad that the words "entire amount of rent due" would include rent which has become time-barred.

11. From the portions extracted above from various decisions of this Court and of the Supreme Court the following propositions can be deduced.

(a) u/s 4 of the Act the liability to pay fair rent will arise from the date of fair rent application entertained by the Rent Controller.

(b) The right to recover difference between the agreed rent and in cases of higher fair rent fixed in proceedings u/s 4 is by means of a separate suit subject to law of limitation.

(c) Non-payment of higher fair rent fixed in proceedings u/s 4 of the Act for the period between the date of the application and the date of final decision on that application will not enable the Landlord to invoke Section 10(2)(i) of the Act.

(d) Consequently the question of deposit u/s 11(1) in such cases in the event of a petition filed u/s 10(2)(i) will not arise.

(e) Deposits u/s 11(1) will include the arrears of rent which have become time barred as well.

12. Bearing the above propositions in mind let us now proceed to decide the controversy that arises in this case. We have noticed that the respondent/landlord filed R.C.O.P. No. 827 of 1982 u/s 10(2)(i) of the Act on the ground of failure of the petitioner/tenant to pay the difference between the agreed rent and the fair rent fixed by the Rent Controller as confirmed by this Court in the revisional proceedings for the period between the date of application and the date of the order. It is common ground that the tenant has agreed to pay the fair rent from the date of the order. Pending that R.C.O.P. the tenant/petitioner deposited the difference including time barred claim to enable him to continue and contest the R.C.O.P. Of course under a mistaken impression that R.C.O.P. No. 827 of 1982 was maintainable. Strictly speaking applying the ratio in the decision of this Court reported in *C. Ranganatham v. M. Suri* 100 L.W. 708 the petition was not maintainable. By depositing the amount as mentioned above the respondent/landlord was made to believe that in the event of his succeeding in his claim that the tenant is liable to pay fair rent from the date of application he can withdraw the amount. It is not now open to the petitioner/tenant to contend that the payment out application is barred by limitation. Be it noted that the contention of the petitioner/tenant was that he was liable to pay the fair rent only from the date of the final decision fixing the fair rent and not from the date of the application. Be it also noted that when depositing the amount the tenant never raised any objections stating that the claim was barred by limitation. His objection was to the effect that the deposit was without prejudice to his contention namely that his liability to pay the fair rent as fixed will commence

from the date of final decision fixing the fair rent. In the circumstances and having regard to the ratio laid down by the Supreme Court in Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, . I am of the view that the petitioner/tenant cannot be heard to say that the respondent/landlord cannot withdraw the amount already deposited u/s 11(1) of the Act. The Supreme Court in the above said decision has held that in such circumstances that though the remedy is barred the debt is not extinguished.

13. The contention of the learned Counsel for the petitioner that after passing orders in R.C.O.P. the Rent Controller becomes functus officio and therefore he has no right to order payment out is not well founded. Section 11(5) enables the Rent Controller to pass consequential orders regarding the amounts deposited u/s 11(1) of the Act.

14. In the result, I do not find any ground to set aside the order of the Rent Controller and consequently confirm the order though for different reasons. The civil revision petition fails and it is dismissed. However, there will be no order as to costs.