
(1999) 02 MAD CK 0059
In the Madras High Court
Case No : C.R.P. No. 1000 of 1995

K.P. Janaki Ammal and 8 others

APPELLANT

Vs

K. Badrinarayanaiah

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 11(1)(3), 23

Citation : (1999) 2 CTC 46 : (1999) 2 LW 102 : (1999) 1 MLJ 698

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Mr. Ashok Menon, for the Appellant; Mr. K.P. Ashok, for the Respondent

Judgement

1. Before extracting in this order as to what is the question of law involved, it is better I trace the facts preceding to the filing of this revision. The revision petitioners are the tenants and the respondent is the landlord and their respective rights are protected under the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, as amended by Act 23 of 1973 and Act 1 of 1980, hereinafter referred to as the Rent Act. The premises in question is non-residential in nature. The contractual rent was Rs. 1,750.00 per month. The landlord filed R.C.O.P.No. 2177 of 1985 before the Rent Controller, Madras, u/s 4 of the Rent Act. That petition was filed on 16.7.1985. By order dated 19.4.1988, the Rent Controller fixed the fair rent at Rs. 6,335.00 per month. The tenants filed R.C.A.No.360 of 1988 questioning the correctness of the abovereferred to order. The landlord not satisfied with the quantum of fair rent, filed R.C.A, No.464 of 1988. On 12.1.1990, the Appellate Authority passed a common judgment dismissing the appeal fixed by the tenants and allowing the appeal filed by the

landlord and thus fixed the fair rent at Rs.7,479.00 per month payable with effect from the date of fair rent petition, namely 16.7.1985. Thereafter the landlord filed R.C.O.P.No. 681 of 1992 against the tenants seeking their eviction stating that they are guilty of wilful default in the payment of rent. In that rent control petition, the landlord filed M.P. No.879 of 1992 u/s 11(3) and (4) of the Rent Act to direct the tenants to pay the arrears of rent quantified at Rs.3,36,869.22, at the rate of Rs.7,479.00 per month as fixed by the Appellate Authority in the fair rent proceedings. That application was opposed on various grounds, one among the few being that the order of the Appellate Authority in R.C.A.No.464 of 1988 fixing fair rent at Rs.7,479.00 was challenged by the landlord before this Court in a Revision not satisfied on the quantum and that Civil Revision Petition was stated to be unnumbered as there was delay in filing the said Civil Revision Petition. Therefore no finality is reached in the fair rent proceedings and only then the difference can be claimed.

2. Ultimately the Rent Controller by order dated 26.3.1993 in M.P. No.879 of 1992 passed an order on merits stating that the tenants, should pay a sum of Rs. 3,36,869.22 on or before 12.4.1993 and, failing payment, all further proceedings in the main Rent Control Petition would be stopped followed by an order of eviction. The case was directed to be called on 13.4.1993. It is not in dispute that before the expiry of the time fixed under that order, the tenants moved the Rent Controller for an extension of time and the learned Rent Controller was inclined to extend the time for payment upto 20.4.1993. It is on record that before the expiry of 20.4.1993, the tenants filed R.C.A.No.405 of 1993 against the order in M.P. No. 879 of 1992 and even obtained an order of stay of the order challenged in that Appeal. This Court is informed that subsequent to the order of stay granted by the Appellate Authority as referred to above and a further proceeding as an off-shoot to that proceedings before this Court, substantial amounts have been paid to the landlord. An objection was taken before the Appellate Authority in R.C.A. No.405 of 1993 on behalf of the landlord that Section 11(1) of the Rent Act mandatorily provides for depositing of the amount as ordered by the Rent Controller in an application under that Section before filing an Appeal and since the amount as

determined by the Rent Controller by order dated 26.3.1993 in

M.P. No. 879 of 1992, was not deposited either before the Rent Controller or before the Appellate Authority before the Appeal was filed, the

Appeal must be held to be incompetent and not maintainable. Without going into the merits of the case, namely whether the order under challenge

before the Appellate Authority would be sustained or not, on facts, the Appellate Authority, sustaining the objection raised on behalf of the

landlord on the requirement to deposit the amount found due by the Rent Controller, dismissed the Appeal as not maintainable. The present

Revision is before this Court questioning the order dated 28.6.1994 of the Appellate Authority in R.C.A.NO. 405 of 1993.

3. I heard Mr. Ashok Menon, learned counsel appearing for the petitioners and Mr. K.P. Ashok, learned counsel appearing for the respondent. It

is the argument of Mr. Ashok Menon, learned counsel for the petitioners, that the order of the Appellate Authority is opposed to law and in

particular with reference to Section 11(1) of the Rent Act. The learned counsel would contend that the statutory requirement of depositing the

amount as found due and ordered by the Rent Controller will only apply to a case where the tenant is contesting the proceeding taken in eviction

against him u/s 10 of the Act and to an Appeal filed by the tenant against an order of eviction passed u/s 10 of the Act. To no other order passed

under the other provisions of the Rent Act, the statutory requirement as provided for u/s 11 of the Rent Act, would be attracted. In other words,

the submission of the learned counsel for the petitioner is that the order challenged before the Appellate Authority in R.C.A.No. 405 of 1993 being

an order u/s 11 (3) and (4) of the Rent Act, in an appeal filed against that order, the tenant is not under a legal obligation to deposit any money

much less the amount as determined by the Rent Controller in that application. The learned counsel for the petitioners, to sustain this argument,

relied upon the judgments of this court reported in Ravi Ram Vs. Somasundaram, and A.E.M Usoof and Sons Vs. O.M. Mohammed Ibrahim

represented by G.P. of Attorney Agent N.K. Mohammed Mustafa, . The learned counsel would further contend that the judgments of this court

reported in Iqbal & Co v. Abdul Rehman, 1982 (2) R.C.J. 369, S.K. Rajapandian v. A, Kesavan, 1991 (2) LW 453, Pichai Chetty v. N.K.

Mutkukrsknan, 1991 (2) LW614; Shahul Hameed v. Rasool Bivi, 1993 (2) LW 583. M.Y. Mohamed Ismail Vs. Sashi Sachdev, Bharat Surigical

Corporation, and Ravichandran Vs. N. Sulaiman, do not lay down the the correct law. Opposing the arguments of the learned counsel for the

petitioners, Mr. K.P. Ashok, learned counsel for the respondent, would contend that the argument by the learned counsel for the petitioners that

the judgments, which are sought to be relied on by the learned counsel for the respondent, as ones not laying down the law correctly, cannot be

that easily accepted. According to the learned counsel for the respondent, those judgments referred to above, which according to the learned

counsel for the petitioners do not lay down the law correctly, are in fact judgments on the issue which had conclusively decided the question

involved in this revision against the tenant.

4. In the light of the arguments advanced by the learned counsel on either side, the question that arises for consideration in this revision is whether

the tenants in the cases on hand, who had suffered an order u/s 11(3) and (4) of the Rent Act, at the hands of the Rent Controller, should deposit

the amount as found due and ordered by the Rent Controller in that proceedings as a condition precedent before filing of the appeal. In other

words the question is whether the appeal filed by the tenants in such a case is maintainable or not in the absence of such deposit? Both sides have

relied upon judgments in their favour to sustain their respective position. Since the correctness or otherwise of the order passed by the Rent

Controller u/s 11 (3) and (4) of the Rent Act was not decided on merits by the Appellate Authority in R.C.A. No. 405 of 1993, I am also

constrained not to go into factual aspects in this revision. Since the issue in this revision revolves around the question referred to above by me, I am

inclined to decide that question only with reference to the construction of Section 11(1) of the Rent Act in the light of the judgments of this Court

brought to my notice. Two learned Judges namely Justice Ismail and Justice Nainar Sundaram, as their Lordships were then, constituting a Division

Bench of this Court in the judgment in R. Radha Vs. C.R. Govindarajulu, were invited to decide the question whether in a revision filed before this

Court by the landlord u/s 25 of the Rent Act (eviction was sought for on two grounds viz. wilful default in payment of rent and for own use and

occupation and the landlord lost concurrently, an application u/s 11 (4) of the Rent Act at the instance of the landlord in that revision is

maintainable or not. The conclusion arrived at by the learned Judges in that case was that the application referred to above was incompetent. To

arrive at that conclusion, the learned Judges had elaborately considered the requirement of Section 11 of the Rent Act as well. In that context, the

learned Judges in more than one place held as follows:

7.....Sub sec. (1) of S. 11 deals with only two situations: one is the tenant contesting the application for eviction filed by the landlord under S. 10

of the Act, and the second is the tenant against whom an order for eviction has been passed by the Rent Controller preferring an appeal under S.

23 of the Act before the appellate authority. Sub-sec (1) provides that in either of these contingencies, the tenant will not be entitled to put forward

his case without paying the arrears of rent. It may be worthwhile to point out that sub-sec (1) of S. 11 does not even cover a case where a

landlord prefers an appeal under S. 23 of the Act to the appellate authority against an order passed on his application under S.10 of the Act. Thus,

thescope of sub-sec (1) of S. 11 is limited only to two cases as pointed out above.

10.....Thus, a reading of S. 11 makes it clear that S. 11(4) will apply only to the cases covered by S. 11(1) and the cases covered by S. 11(1) are

only are only two in number, namely, the application for eviction made by the landlord under S. 10 before the Rent Controller and the appeal

preferred by the tenant under S. 23 to the appellate authority against an order made against him on the application made by the landlord under S.

10 of the Act A reading of S. 11(1) and S. 11(4) together will exclude all other cases except these two from the scope of the operation of the

provisions in question...

19... As we pointed out already, S. 11 deals with only two cases, the tenant contesting the application for eviction filed by the landlord under S.

10 and the tenant preferring an appeal u/s 23 against an order made by the Controller on the application preferred by the landlord under S. 10.

The civil revision petition preferred to this court by the landlord will not come within the scope of Section 11(1) and therefore S. 11(4) cannot be

attracted. Consequently, simply as a matter of construction, we come to the conclusion that an application under S. 11(4) can be filed only before

the Rent Controller when the landlord has preferred an application under S. 10 for eviction of the tenant and the tenant is seeking to contest that

application, and before the Appellate Authority when the tenant is preferring an appeal against an order of eviction passed against him on an

application preferred by the landlord under S. 10 without paying the arrears of rent, and to no other case S. 11(4) will have application.....

Placing reliance on the judgment referred to supra, Justice P.R. Gokulakrishnan, as his Lordship then was, in the judgment in Ravi Ram v.

Somasundaram, 1984 (1) M.L.J. 52 held that the tenant in circumstances as the one available in the case on hand, need not deposit the rent as a

condition precedent for filing the appeal. The facts in that case are, against the tenant, an application was filed by the landlord u/s 11 of the Rent

Act. The Rent Controller found that the tenant was in arrears to the extent of Rs. 15,400.00 and directed the tenant to deposit the said amount.

Against that order, the tenant preferred R.C.A.No. 350 of 1982. The Appellate Authority took up for determination the question as to whether the

tenant can file an Appeal without complying with the order of the Rent Controller and after holding that the tenant cannot prefer an appeal without

depositing the amount, dismissed the appeal as not maintainable. The learned Judge in deciding that case in Ravi Ram v. Somasundaram also held

that the judgment of this Court in Iqbal and Company Vs. Abdul Rahim, did not visualise depositing of rent before preferring an appeal against the

determination of rent u/s 11(3) of the Act. Justice Ratnam, as his Lordship then was, in A.E.M Usoof and Sons Vs. O.M. Mohammed Ibrahim

represented by G.P. of Attorney Agent N.K. Mohammed Mustafa, , also placing reliance on the judgment of this Court in the case of R. Radha

Vs. C.R. Govindarajulu, and also another judgment of this Court in Murugaiya Konar v. Daniel Nursing Home, 1988 (I) LW 382, went into the

scope of Section 11(1) of the Rent Act and ultimately held that the requirement of depositing the amount as found and ordered by the Rent

Controller, would only apply to a case where the tenant is facing an application for eviction u/s 10 of the Rent Act and also in an appeal against the

order of eviction passed by the Rent Controller u/s 10 Rent Act and also in an appeal against the order of eviction passed by the Rent Controller

u/s of the Act. It is better to extract the exact words of the learned Judge in that judgment. Before extracting the relevant portion. I would like to

indicate the facts that preceded the filing of the Civil Revision Petition in that case. The tenant was the petitioner before this Court. Landlord filed

R.C.O.P.No. 4192 of 1982 for eviction on the ground of wilful default and sub-letting. An ex parte order of eviction was passed. The tenant filed

M.P. No.339 of 1993 to set aside that ex parte order. That application was dismissed on merits. The tenant filed R.C.A.No.1141 of 1983 before

the Appellate Authority. In the appeal, the landlord filed M.P. Nos. 364 and 365 of 1983 purporting to be u/s 11(3) and (4) of the Rent Act

praying that the quantum of total arrears of rent payable by the tenant from September 1982, should be determined and for a consequential

direction. The tenant raised an objection regarding the maintainability of those applications in the appeal filed by him. It was his contention that his

appeal before the Appellate Authority was not against an order of eviction passed u/s 10 of the Act and therefore Section 11(3) and (4) of the

Rent Act could not be invoked. The Appellate Authority, overruling the objections, ordered the landlord's application. What the learned Judge

said in the context of the above facts is as follows:

4....II would be necessary at this stage to notice the provisions of Section 11 as well as Section 23 of the Act. u/s 11(1) of the Act in a case

where an application for eviction has been filed by a landlord u/s 10 of the Act, the tenant is precluded from contesting the application before the

Controller, unless he has paid or pays to the landlord, or deposits with the Controller, as the case may be, all arrears of rent due in respect of the

building upto the date of payment or deposit, and continues to pay or deposit the subsequent rents falling due in respect of building, until the

termination of the proceedings before the Controller. Section 11(3) of the Act enables the Controller to decide summarily the rent payable or to be

deposited, in case there is any dispute regarding that. The consequences flowing from a failure on the part of the tenant to pay or deposit the rent,

is provided u/s 11(4) of the Act, wherein provisions are made enabling the Controller to stop all further proceedings and direct the tenant to put the

landlord in possession of the building. By Section 11(1), (3) and (4) of the Act, the same provisions are made applicable to the Appellate

Authority as well. However it is seen that the scheme of Section 11(1) (3) and (4) of the Act is that in a case where the application for eviction had

been made by the landlord u/s 10 of the Act, the tenant shall not be entitled to contest the application before the Rent Controller, unless the arrears of rent are either paid or deposited. Like wise, the tenant cannot also prefer an appeal, u/s 23 of the Act against any order made by the Controller on the application, unless the arrears of rent are either paid to the landlord or deposited before the appellate or another authority. The avowed object of the aforesaid provision u/s 11(1) of the Act is that under advantage of the pendency of the proceedings u/s 10 of the Act should not be taken by the tenant with a view to not pay the arrears of rent or the rents as and when they fall due, be it in the course of the proceedings before the Controller or the Appellate Authority, as the case may be. The phraseology employed in Section 11 of the Act is not without significance in that a specific reference is made to an application for eviction u/s 10 of the Act. It is such an application that the tenant is precluded from contesting before the Controller, unless the arrears of rent or subsequent rents are either paid or deposited. The reference to the appeal u/s 23 of the Act is against any order made by the Controller on the application. Obviously, the reference to an appeal u/s 23 of the Act against any order made by the Controller on the application, can have reference only to an appeal preferred before the Appellate Authority with reference to an order passed by the Controller u/s 10 of the Act. The content of the expression, "any order made by the Controller on the application", cannot, therefore, be enlarged and extended to include an order dismissing an application to set aside the ex parte order of eviction, against which an appeal had been preferred u/s 23 of the Act in this case. Bearing in mind the object as well as the scheme of Section 11(1) of the Act, it is at once obvious that in cases where an application for eviction is filed by the landlord against a tenant u/s 10 of the Act, the tenant will be entitled to contest the application before the Rent Controller only on payment or deposit of the arrears of rent and subsequent rents and likewise, he can also prefer an appeal against the order eviction passed by the Controller u/s 10 of the Act, only if he pays or deposits the arrears of rent in respect of the building and continues to pay or to deposit the subsequent rents till the termination of the proceedings before the Appellate Authority. To include within Section 11(1) of the Act appeals u/s 23 of the Act, arising out of orders passed other than on an application u/s 10 of the Act, would be to virtually enlarge

the scope of Section 11(1) of the Act and also to confer on landlords a benefit not at all intended to be so conferred on them nor even warranted

by the actual language employed u/s 11(1) of the Act. It is true that u/s 23(1)(b) of the Act, any person aggrieved by an order passed by the

Controller may prefer an appeal in writing to the Appellate Authority having jurisdiction within fifteen days from the date of such order, the time

taken to obtain a certified copy of the order appealed against being excluded. Though the right of appeal conferred u/s 23(1)(b) of the Act may be

wide in the sense that an order passed by the Controller may form the subject matter of an appeal before the Appellate Authority yet, with

reference to Section 11(1) of the Act, the appeal contemplated therein is one u/s 23 of the Act against any order made by the Controller on the

application and the application referred to in the first part of Section 11(1) of the Act is one u/s 10 of the Act. It is difficult to accept that with

reference to the Controller, Section 11(1) had contemplated, in its opening part. Section 10 of the Act, and that with reference to the Appellate

Authority any appeal u/s 23 of the Act, irrespective of whether it arose u/s 10 or not had been contemplated. The use of the expression, "the

application" with reference to the appeal u/s 23 of the Act has to be understood as having a reference only to Section 10 of the Act, and if so

done, it follows that whether the proceeding be before the Controller or the Appellate Authority, in a case arising u/s 10 of the Act or an appeal

passed u/s 10 of the Act, the tenant cannot contest unless the arrears or subsequent rents are either paid or deposited. Thus, on a consideration of

the relevant provisions in the Act as well as the Rules, the conclusion is inescapable that the appeal u/s 23 of the Act, contemplated u/s 11(1) of the

Act must arise out of an order for eviction passed u/s 10 of the Act and only in such an event, the provisions of Section 11(1), (3) and (4) of the

Act could be invoked by the landlord.

Justice Nainar Sundaram, as his Lordship then was, who was a party to the judgment of the Division Bench in *R. Radha Vs. C.R. Govindarajulu*, ,

had decided the case in *Murugaiya Konar v. Daniel Nursing Home*, 1988 (1) LW 382. The facts in that case are the landlords obtained orders of

eviction ex parte. The tenants filed application to set aside the ex parte orders. The landlord in that proceeding filed applications u/s 11 of the Act.

Those applications were allowed and the tenants applications were dismissed. The tenants preferred appeals and the Appellate Authority also dismissed those appeals. Hence the Revision before this Court. The argument before this Court was that Section 11 of the Act shall not be invoked in the applications filed by the tenants to set aside the ex parte order as there was no application for eviction as such pending before the Controller. The learned Judge accepted the argument and held that Section 11 of the Act contemplates a contest of an application for eviction by a tenant. Therefore it is clear that the judgments referred to above clearly lay down that the statutory requirement of deposit as mandatorily provided for u/s 11(1) of the Rent Act, can be invoked only when a tenant is contesting an application filed u/s 10 of the Act seeking his eviction and when the tenant files an appeal against an order of eviction passed on that application and not in any other contingency.

5. Let me now consider the judgments relied upon by the learned counsel for the respondent to contend that even in respect of an appeal filed against an order, not traceable to a stage of contesting the proceedings initiated for eviction u/s 10 of the Act or filing an appeal against an order of eviction, the amount as quantified by the Rent Controller in another order also should be deposited before ever the appeal could be filed. The first judgment is the judgment of this Court in *Iqbal & Co. v. Abdul Rehman*, 1982 (2) R.C.J. 369. The facts in that case;are as follows:

The tenant was the revision petitioner before this Court, The landlord filed H.R.C.No.3328 of 1978 for eviction. The landlord filed M.P.No.404 of 1980 u/s 11(4) of the Rent Act. On 22.8.1980, the Rent Controller allowed that petition directing the tenant to pay the money due as quantified in that order on or before 5.9.1980. The case was directed to be called on 6.9.1980. On 4.9.1980, the tenant filed M.P.No. 584 of 1980 for extension of time to deposit the money stating that he intends to file an appeal and that the order copy was not made ready. M.P.No. 584 of 1980 was dismissed by the Rent Controller on 20.9.1980 and in M.P.No. 404 of 1980, the order was passed on 20.9.1980. That order records that the tenant had not deposited the money and therefore all further proceedings are ordered to be stopped and the respondent is directed to put the petitioner in possession of the property. Against the order dated 20.9.1980 in M.P.No. 404 of 1980, the tenant filed R.C.A.No. 1644 of 1980.

Against the order dated 20.9.1980 in M.P.No. 584 of 1980, the tenant filed R.C.A.No. 1662 of 1980. Both the appeals were dismissed. There were two civil revision petitions before this Court.

It was contended in that case on behalf of the landlord that deposit of the amount as ordered u/s 11(1) of the Rent Act is a sine qua non for the entertainment of the appeals. The learned Judge while disposing of those two revisions analysed Section 11 of the Rent Act. The learned Judge had said in that case:

Admittedly at the time of preferring appeals, the arrears had not been paid or deposited in terms of Section 11(1) of the Act. Hence the appeals

themselves should not have been entertained apart from the fact that the order passed on 22.8.1980 had worked out itself by the Appellate

Authority. When the Appeals themselves were incompetent, now the question becomes academic whether there was justification for refusing to

deposit the amount.

This statement of the learned Judge in that judgment is heavily relied upon by the learned counsel for the respondent to sustain his argument as

noticed earlier. Even at the outset, I would like to make it clear that the judgment of the Division Bench of this Court in R. Radha Vs. C.R.

Govindarajulu, , appears to have been not brought to the notice of the learned Judge. There is no reference at all to that judgment in the above

referred to decided case. The learned Judge who rendered the judgment, in Ravi Ram Vs. Somasundaram, which judgment was based on R.

Radha Vs. C.R. Govindarajulu, , considered the judgment reported in Iqbal & Co v. Abdul Rehman, 1982 (2) R.C.J. 369 and found that the

above referred to judgment did not visualise the deposit of the amount as a condition precedent.

6. The next judgment on which heavy reliance is placed by the learned counsel for the respondent is the judgment in S.K. Rajapandian v. A.

Kesavan, 1991 (2) LW 453. It is better I notice the facts as found in that case before culling out the law laid down in that judgment. The tenant

was the revision petitioner in that case. Eviction was sought for on the ground of act of waste. The landlord filed M.P. No. 1414 of 1986 u/s 11 of

the Rent Act. On 31.3.1987, that application was ordered quantifying the rent payable by the tenant and the tenant was directed to pay the same

on or before 6.4.1987. The tenant filed an appeal in R.C.A.No.283 of 1987 and in that appeal, the order under challenge was stayed as an interim measure. On 28.4.1988, the money due by the tenant was deposited. On 18.4.88, the appeal was dismissed. Against that dismissal, the tenant preferred C.R.P.No.536 of 1989 before this Court. When the said C.R.P. was pending before this Court, the Rent Controller took M.P. 1414 of 1986 and passed a final order on 20.6.1988 stating that the order dated 31.3.1987 in the above referred to M.P. was not complied with.. By that final order, the tenant was directed to put the landlord in possession. The tenant filed an Appeal against that order dated 20.6.1988 and it was taken on file as R,C.A.No. 317 of 1988. On 11.2.1991, R.C.A. No. 317 of 1988 was dismissed resulting in the Civil Revision Petition No. 1088 of 1991 being filed before this Court, the judgment in which is reported in S.K. Rajapandian v. A. Kesavan, 1991 (2) L.W. 453. To complete the narration of facts, it appears that C.R.P. No. 536 of 1989, which arose out of the preliminary order dated 31.3.1987, in W.P.No. 1414 of 1986, was dismissed. The argument in C.R.P. No. 536 of 1989 that when the tenant has paid the arrears of rent due by him, the Rent Controller should not have passed the final order dated 20.6.1988 in that miscellaneous petition, was allowed to be decided by the Court in R,C.A.No. 317 of 1988. It also appears that the judgment in C.R.P.No. 536 of 1989 was taken before the Honourable Supreme Court of India by the tenant and it was also dismissed. In C.R.P.No. 1088 of 1991, several arguments were advanced to contend that the Rent Controller, should not have, on the facts of that case passed the final order dated 20.6.1988. The contention was, since pursuant to the order of interim stay in R.C.A. No. 183 of 1987 and the payment having been made by the tenant subsequent thereto during the pendency of that appeal, it would amount to compliance of the preliminary order dated 31.3.1987 in M.P.No. 1414 of 1986. That argument was not accepted. For that conclusion, the learned Judge relied upon the judgment of a Division Bench of this Court in Kuppanna Chettiar v. Rdmachandran, AIR 1981 Mad. 35 arising under the provisions of the Tamil Nadu Cultivating Tenants Protection Act. The learned Judge in paragraph 10 had stated that against the preliminary order u/s 11 of the Rent Act, the tenant had a right to prefer an appeal and also a right to apply for a stay, But however 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.

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 he ought to have filed an application before the Appellate Authority for extension of time. The learned Judge's attention was drawn

to the judgment of Justice P.R. Gokulakrishnan, in Ravi Ram Vs. Somasundaram, , to contend that there is no necessity for the tenant to make a

deposit as prescribed u/s 11 of the Act when the Appeal is filed. The learned Judge was pleased to say that the judgment of Justice P.R.

Gokulakrishnan has no bearing on the case before the learned Judge. The learned Judge proceeded to state in paragraph 16:

The mere fact that the tenant was not obliged to make a deposit along with R.C.A.No. 283 of 1987 (this appeal was against preliminary order)

would not enable him to extend on his own, the time granted by the Rent Controller.

I carefully read that judgment many a times. The question whether the tenant, who intends to file an appeal against the order passed u/s 11 of the

Rent Act, should deposit the amount quantified before filing the appeal or not, never came up for consideration before the learned Judge and the

learned Judge also had no occasion to say anything in that regard in that judgment. As already stated, the question involved in that civil revision

petition is whether the payment made during the appeal filed against the preliminary order would amount to compliance of the said preliminary

order itself in the absence of extension of time for depositing money either by the Rent Controller or by the Appellate Authority. The other question

that was raised and decided was whether the Court was justified, on the facts of that case, in passing the final order. It may be noticed that this

judgment was also rendered by the learned Judge without reference to the Division Bench judgment of this Court in R. Radha Vs. C.R.

Govindarajulu, . At the risk of repetition, and with respect, I make it clear that the judgment in S.K. Rajapandian v. A. Kesavan, 1991 (2) L.W.

453, is not an authority for the proposition that the tenant before ever he files an appeal against an order passed u/s 11 of the Rent Act, should

necessarily deposit the money quantified in the order under challenge before filing the appeal.

7. The next judgment that falls for consideration is the one reported in Pichai Chetty (died) v. N.K. Muthu Krishnan, 1991 (2) LW 614. The facts

in that case are as follows:

R.C.O.P.No. 3702 of 1996 was filed for eviction. The landlord filed M.P. No. 1063 of 1987 u/s 11 of the Rent Act. An order was passed in that

application directing the tenant to pay the rent found due in the order on or before 22.10.1987 and the case was directed to be called on

23.10.1987. Finding that the order was not complied with, final order was passed in M.P. No. 1063 of 1987 on 23.10.1987 stopping all further

proceedings and directing the tenant to put the landlord in possession. Consequently R.C.O.P.No. 3702 of 1996 was also ordered as prayed for.

It may be noticed here that against the final order dated 23.10.1987 in M.P.No. 1063 of 1987, no appeal was filed. The tenant filed an appeal in

R.C.A.No. 840 of 1987 against the order in R.C.O.P.No. 3702 of 1986. It was also dismissed on merits and hence C.R.P.No.1604 of 1988,

was before this Court. The argument before the learned Judge in that case was that there was no appeal against the final order passed u/s 11 of the

Rent Act and the tenant had not complied with that order. Therefore without depositing the amount found as due in the order, the appeal filed

against the order of eviction passed in the main rent control petition is not maintainable. On that argument and applying his mind to Section 11(1) of

the Rent Act, the learned Judge held,

Therefore depositing of arrears of rent is condition precedent for filing an appeal against the order of eviction. That was not done in this case.

For this conclusion, the learned Judge relied upon the judgment of Justice Mohan, as he then was, in the case of Iqbal & Co v. Abdul Rehman,

1982 (2) R.C.J. 369. The learned Judge had again stated in that judgment that the appeal against the order of eviction in the main original petition

is not maintainable without paying or depositing the arrears of rent as ordered by the Rent Controller u/s 11 of the Rent Act. There cannot be any

dispute with reference to the law laid down by the learned Judge and it is in consonance with the judgment of this Court in R. Radha Vs. C.R.

Govindarajulu, , Ravi Rant v. Somasundaram, 1984 (1) M.L.J. 52 and A.E.M. Usoof & Sons v. O.M. Mohammed Ibrahim, 1990 (1) M.L.J.

486.

8. The next judgment is the one reported in. M.Y. Mohamed Ismail v. Sashi Sachdev,. It is no doubt true that judgment arose out of an order

passed u/s 11 of the Rent Act. The tenant failed in M.P. No, 422 of 1992 filed by the landlord, the tenant's appeal in R.C.A.No. 1107 of 1992

was also dismissed. In that case the learned Judge said that the tenant is not entitled to file the above referred to Rent Control Appeal without

depositing the arrears of rent. It is no doubt true that this judgment is directly in favour of the landlord to sustain his argument advanced before this

Court about the necessity of the tenant depositing the amount found due and ordered by the Rent Controller u/s 11 of the Rent Act before ever he

can file an appeal. But this judgment had been rendered without reference to the Division Bench judgment of this Court in R. Radha Vs. C.R.

Govindarajulu, , Ravi Ram Vs. Somasundaram, and A.E.M Usoof and Sons Vs. O.M. Mohammed Ibrahim represented by G.P. of Attorney

Agent N.K. Mohammed Mustafa, . Therefore with respect J state that I am not in a position to follow this judgment. The other one relied upon by

the learned counsel for the respondent is the one reported in Ravichandran Vs. N. Sulaiman, . The learned Judge who decided the case, reported

in S.K. Rajapandian v. A. Kesavan, 1991 (2) L.W. 453, is the Judge who rendered the judgment in the abovereferred to case. The learned Judge

had also taken notice of the judgment of Justice Gokulakrishnan in Raviram v. Somasundaram, 1984 I M.L.J. 52. The learned Judge jn

Ravichandran Vs. N. Sulaiman, , had held as follows:

1. The view expressed by the Appellate Authority that the appeal filed by the respondent herein, without making a deposit as required by Section

11 of the Tamil Nadu Buildings (Lease and Rent Control) Act is maintainable is erroneous. The Appellate Authority has placed reliance in Raviram

v. Somasundaram, 1984 (I) M.L.J. 52. He has over looked that the matter has been considered in detail in several other judgments of this Court

including S.K. Rajapandian v. A. Kesavan, 1991 (2) L.W. 453. In that judgment, I have referred to the judgment in Raviram v. Somasundaram,

1984 I M.L.J. 52 and distinguished the same. I have followed the judgment of a Division Bench in Kuppanha Chettiar v. Ramachandran, AIR

1981 Mad. 35. Unfortunately, the lower appellate Court has not taken note of any of those judgments. Hence the order passed by the Appellate

Authority holding that there appeal is maintainable and that there should be an order of stay are unsustainable.

As already noticed by me, in the judgment of the very learned Judge in S.K. Rajapandian's case, 1991 (2) L.W. 453, the question whether there

should be deposit of rent before an appeal is filed against an order u/s 11 of the Act, was never raised and decided and the law was not laid down

in that case in the affirmative in favour of the landlord. Again the judgment in Ravichandran Vs. N. Sulaiman, is without reference to the judgment

of the Division Bench in the case of R. Radha Vs. C.R. Govindarajulu, . The learned Judge, who delivered the judgment in Ravichandran Vs. N.

Sulaiman, appears to have proceeded on the basis that the law was laid down in the learned Judge's earlier reported judgment in S.K.

Rajapandian v. A. Kesavan, 1991 (2) L.W. 453, while the fact remains otherwise. The judgment in Kuppanha Chettiyar v. Ramachandran, AIR

1981 Mad. 35, is not for the proposition that the deposit of the amount due is a condition precedent for an appeal against the order passed u/s 11.

It arose under different circumstances under the Tamil Nadu cultivating Tenants Protection Act and the point raised and decided was whether any

deposit made by the tenant pursuant to an interim order of stay granted by this Court in a pending revision, would amount to compliance of the

order of the Revenue Court or not and it was said it won't amount to. In the judgment in Shahul Hameed v. Rasool Bivi, 1993 (2) LW 583, the

question which I have decided in this case, had not arisen at all. There eviction petitions were filed and eviction was ordered. Pending proceeding

before the Rent Controller, no application u/s 11 of the Act was taken. In the appeal filed by the the tenants, the landlord filed an application u/s 11

of the Rent Act and they came to be ordered. Therefore on facts that judgment is not of any use to decide the issue involved in this revision.

9. Accordingly I have no hesitation to hold that the need or the requirement to deposit the amount as found due and ordered on an application u/s

11 of the Act will not be attracted to an appeal filed by the tenant against an order passed u/s 11 of the Rent Act. Such a requirement is called for

to be complied with only, either when the tenant is contesting the proceedings filed for eviction against him before the Rent Controller or when he

files an appeal against an order of eviction passed u/s 10 of the Act and not in any other contingencies. Accordingly Civil Revision Petition is

allowed. No costs. The judgment dated 28.6.1994 in R.C.A.No. 405 of 1993 on the file of the Vii Judge, Court of Small Causes, Madras, is set

aside. The said R.C.A. will stand remitted back to the Appellate Authority for fresh disposal in accordance with law Consequently C.M.P.No.

5482 of 1995 is dismissed.