
(1951) 08 MAD CK 0033

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 4841 of 1950

Lakkaju Satyanarayana

APPELLANT

Vs

Majati Venkatarattamma and Another

RESPONDENT

Date of Decision : 31-08-1951

Acts Referred:

Constitution of India, 1950 — Article 226

Madras Buildings (Lease and Rent Control) (Amendment) Act, 1951 — Section 20

Citation : AIR 1951 Mad 1044 : (1952) ILR (Mad) 308 : (1951) 64 LW 905 : (1951) 2 MLJ 477

Hon'ble Judges : Rajamannar, C.J;Somasundaram, J

Bench : Division Bench

Advocate : M.S. Ramchandra Rao, for the Appellant; G. Chandrasekhara Sastry, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—This application for a writ of certiorari is to quash the order of the Subordinate Judge of Tenali in C. M. A. No. 6 of 1950 setting aside the order of the Rent Controller and directing the petitioner before us to be evicted under the Madras Buildings (Lease and Rent Control) Act. The ground on which eviction was ordered was default in payment of rent within the prescribed time. Though the facts make it abundantly clear that there was no wilful default on the part of the tenant in the payment of rents, nevertheless, it cannot be said that the learned Subordinate Judge was wrong in holding that there was a technical default in payment within the time prescribed. His order therefore was on his finding quite proper. But the learned counsel for the petitioner invokes in his aid a new provision inserted by Madras Act VIII of 1951 which amended the Madras Buildings (Lease and Rent Control) Act, 1949. u/s 9 of this Amending Act (VIII of 1951) the following proviso was added to Section 7 (2) namely,

Provided that in any case falling under Clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, before making

an order as aforesaid, give the tenant a reasonable time, not exceeding 15 days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender.

Now in this case the rent due had been paid by the time the application was heard. We have no hesitation in holding that the tenant's default to pay or tender the rent was not wilful. If the proviso applies, undoubtedly, the petitioner will be entitled to have the application for eviction dismissed.

2. Mr. Ramachandra Rao, learned counsel for the petitioner relied on Section 20 of Madras Act VIII of 1951 for his contention that the proviso applied to this case. That section is in these terms:

Any application made, appeals preferred or other proceedings instituted under the said Act and pending at the commencement of this Act shall be disposed of as if this Act had been in force at the time when such application, appeal or proceeding was made, preferred or instituted.

Mr. Chandrasekhara Sastri, for the landlord respondent, contended that Section 20 has no application, because both the original application for eviction as well as the appeal preferred against the order of the Rent Controller were disposed of long before Madras Act VIII of 1951 came into force and the application for a writ of certiorari is not a proceeding instituted under the said Act. We see considerable force in the argument of Mr. Sastri that an application for the issue of a writ of certiorari or similar order made under Article 226 of the Constitution cannot be described as a proceeding instituted under the Madras Buildings (Lease and Rent Control) Act. The Act provides for an appeal, but it does not provide for any further proceeding by way of revision or by way of certiorari to this Court. It may be straining the language of the enactment to say that an application for certiorari is instituted under that Act though it may by a process of devious reasoning be held that in one sense this application for a writ of certiorari must be deemed to be instituted under the Act, because though there is no express provision made in the Act for an application for certiorari, inasmuch as the Rent Controller and the appellate Tribunal being inferior tribunals, are subject to the superintendence and supervisory jurisdiction of this Court, an application invoking such superintendence and supervisory jurisdiction, is also a proceeding under the Act.

3. We are clear, however, that Section 20 applies to this case, because we agree with Mr. Ramachandra Rao that the appeal preferred to the Subordinate Judge must be deemed to be pending so long as the application to quash the order is pending in this Court. In Halsbury's Laws of England vol. 9, page 838 (Section 1420), the nature of a writ of certiorari is thus set out:

The writ of certiorari issues out of a superior Court and is directed to the Judge, or other officer of an inferior Court of record. It requires that the record of the proceedings in some cause or matter depending before such inferior Court shall be transmitted into the superior Court to be there dealt with, in order to insure

that the applicant for the writ may have the more sure and speedy justice.

See also Short and Mellor's Crown Practice (2nd Edn.) page 14. The rule nisi in this case in terms calls upon the Subordinate Judge of Tenali to send for the use of this Court all the records with all things touching the same as fully and perfectly as they have been made by the learned Judge. It is obvious that the decision in the appeal is again set at large, as it lost its finality the moment this Court issued the rule nisi. This Court can on this application for certiorari set aside by quashing the order in the appeal. Surely, in such circumstances, it must be said that the appeal is pending. In *In re Clagett's estate, Fordham v. Glegett*, (1882) 20 Ch. d. 637, Jessel M. R. when discussing the question when an insolvency can be treated as pending observed thus:

What is the meaning of the word "pending"? In my opinion, it includes every insolvency in which any proceeding can by any possibility be taken. That I think is the meaning of this word "pending". A cause is said to be pending in a Court of justice where any proceeding can be taken in it. That is the test. If you can take any proceeding it is pending. "Pending" does not mean that it has not been tried. It may have been tried years ago.

In our opinion, therefore, Section 20 of Madras Act VIII of 1951 applies to this case.

4. In the result the order of the learned Subordinate Judge of Tenali is hereby quashed. Having regard to the fact that on the date when this application was filed in this Court, the new Act had not been passed and on that date the order of the Subordinate Judge was unassailable, we think the petitioner must pay the costs of this application to the respondent. Advocate's fee Rs. 100.