

(1951) 02 MAD CK 0017

In the Madras High Court

Case No : Civ. Petition Miscellaneous No. 5099 of 1950

Lingambhotla Subbayya

APPELLANT

Vs

The Subordinate Judge and Another

RESPONDENT

Date of Decision : 14-02-1951

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1946 — Section 7

Citation : AIR 1951 Mad 864(1) : (1951) 64 LW 396 : (1951) 1 MLJ 514

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

Bench : Division Bench

Advocate : D.P. Narayana Rao, for the Appellant; J. Sithamahalakshmi and M. Satyamathi, for the Respondent

Judgement

Rajamannar, C.J.—The petnr. filed an appln. for eviction on the ground of default in payment of rent. Both the Bent Controller & the

Appellate Tribunal found that there was default, but held that default by itself cannot be regarded as a valid ground to eject a tenant in a case

where the tenant proves that by long practice the house owner did not insist on regular monthly payment of rent. The Appellate Tribunal thought

that this conclusion was justified by the spirit of Act XV [15] of 1946. We have no hesitation in saying that both the Kent Controller & the

Appellate Tribunal committed a clear error of law. There cannot be an agreement under which rent is payable at irregular intervals. It may be that,

the landlord was not insisting on regular payments & was accepting without protest arrears of rent which had accumulated ; but when he choose a

to apply u/s 7 of the Act, he will be entitled to an order of eviction if he can prove that the tenant has not paid or tendered the rent by the last day

of the month nest following that for which the rent is payable. It is not suggested

that the tenancy was not a monthly tenancy; therefore, the rent for each month was payable before the last day of the month next following. Both the Rent Controller & the Appellate Tribunal have found that there was default in payment of rent according to this provision. They ought to have, therefore, passed an order of eviction. The orders of the Rent Controller & the Appellate Tribunal are quashed & there will be an order for eviction in favour of the petitioner.