
(2002) 10 MAD CK 0181

In the Madras High Court

Case No : CRP. PD. No's. 27 and 28 of 2002 and CMP No's. 211 and 212 of 2002

Mohammed Niyamathullah

APPELLANT

Vs

V. Sahitha

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 11, 11(1), 11(3), 11(4)

Citation : (2003) 2 CTC 747 : (2003) 2 LW 440 : (2003) 1 MLJ 47

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : P.B. Balaji, for the Appellant; None, for the Respondent

Judgement

K. Gnanaprakasam, J.—The facts, in the both the revision petitions, are similar and therefore, both the revision petitions are taken together and disposed of by this common order.

2. The revision petitioner is the landlord, who has filed the petitions, u/s 10(2)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, (hereinafter referred to as the Act), for eviction of the tenant, on the ground that the tenant has committed wilful default in payment of rent. Incidentally, it is also stated that the tenant has sublet the premises.

3. The respondent/tenant filed a counter, giving some explanations for non payment of rent.

4. As the respondents/tenants have not paid the rent, the petitioner/landlord filed a petition u/s 11(4) of the Act, to direct the tenants to pay the arrears of rent, due for the period set forth in the petition, failing which to stop all further proceedings and to direct the respondents/tenants to put the petitioner in possession of the petition premises.

5. The tenants have filed a counter, stating that they have spent some amount for the buildings and there was some arrangements between the parties to

adjust the money spent for repairs, towards the arrears of rent.

6. The learned Rent Controller has dismissed the petition, on the ground that there is some dispute with regard to the payment of arrears of rent and therefore an enquiry has got to be held, as contemplated u/s 11(3) of the Act and without which, the petitions cannot be decided and thereby, directed the landlord to file an application u/s 11(3) of the Act and the said order is under challenge in these civil revision petitions.

7. The learned advocate for the revision petitioners has submitted that Sections 11(3) and 11(4) of the Act are not independent provisions and they are mutually inclusive and therefore, there is no necessity for the landlord to file a separate petition u/s 11(3) of the Act and if the Rent Controller finds, that there is a dispute regarding the quantum of rent, he could very well hold an enquiry in the said application itself.

8. It is submitted that Section 11 deals with provisions with regard to non-payment of rent by the respondents/tenants and also the remedies available for the petitioner/landlord. It is true that an enquiry u/s 11(3) of the Act has to be held. But, however, ultimate orders have got to be passed only u/s 11(4) of the Act. Hitherto, from the date of the commencement of the Act, from the year 1960, petitions have been filed only u/s 11(4) of the Act and the courts have been holding enquiry under the said petition and if the Rent Controller is satisfied that the respondent is in arrears of rent, which he has not paid, in spite of the demand by the landlord and the non-payment of the rent is wilful and wanton, orders are passed u/s 11(4) of the Act, to stop all further proceedings and order and direct the tenant to put the landlord in possession of the building.

9. The Rent Controller is of the view that an enquiry has got to be held only u/s 11(3) of the Act and only thereafter, an order could be passed u/s 11(4) of the Act. The Rent Controller is perfectly correct in coming to such a conclusion. But, when the petition has been filed by the landlord u/s 11(4) of the Act, instead of filing an application u/s 11(3) of the Act, mere non-quoting of wrong provision of law is not a bar for the courts to hold an enquiry, under the correct, relevant provisions of law and therefore, the Rent Controller should have treated the said petition as one filed u/s 11(3) of the Act and should have passed an order. Instead of doing so, the Rent Controller directed the petitioner/landlord to file a separate petition u/s 11(3) of the Act, which according to the revision petitioner, is not proper.

10. Though notice was taken to the respondents, they have not appeared either in person or through their advocate.

11. The learned advocate for the revision petitioner would submit that the application filed u/s 11(3) of the Act could be treated as one filed Section 11(3) of the Act and the Rent Controller should have held an enquiry. It is also further argued that if the Rent Controller feels that an enquiry has got to be held initially, it should have been held as contemplated u/s 11(3) of the Act and there

is absolutely no necessity for the landlord to file another application u/s 11(4) of the Act.

12. Now let us examine Section 11(3) of the Act, which reads, "Where there is any dispute as to the amount of rent to be paid or deposited u/s (1), the Controller or the appellate authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deemed necessary, determine summarily the rent to be so paid or deposited."

13. Section 11(4) of the Act states, "If any tenant fails to pay or to deposit the rent as aforesaid, the controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building."

14. A careful reading of these sub sections 11(3) and 11(4) would obviously mean that an enquiry has got to be held u/s 11(3) of the Act, when there is any dispute as to the amount of rent to be paid or deposited u/s 11(1). On application made either by the tenant or landlord, and after making enquiry, the court shall determine summarily the rent to be so paid/deposited. If the above said order is not complied with, the Rent Controller/Appellate Authority as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the buildings u/s 11(4) of the Act. But, Section 11(4) does not say/prescribe a separate application to be filed under the said Section. That means an application has to be made only u/s 11(3) of the Act, and if the order passed u/s 11(3) is not complied with, it is automatic for the Rent Controller to pass an order to stop all further proceedings and direct the tenant to put the landlord in possession of the buildings and the said order has got to be passed u/s 11(4) of the Act.

15. Incidentally, I have also referred to the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, in which, under the Schedule, provisions are made for the payment of court fee for the application and appeals. There is a provision for the application filed u/s 11(3) of the Act only and there is no provision for payment of court fee for an application filed u/s 11(4) of the Act. That means a petition has to be filed only u/s 11(3) of the Act and not u/s 11(4) of the Act. Any order passed u/s 11(3) is not complied with, further order shall be passed u/s 11(4) of the Act. But, as it has been pointed out by the learned advocate for the revision petitioner, from the date of the Act having come into force, petitions have been filed only u/s 11(4) of the Act. I am, on one hand, put to surprise and on the other hand, unable to understand how things have been left unnoticed for the past more than four decades. But, it is a known fact that the petitions have been filed u/s 11(4) of the Act and I may even take a judicial notice of the said fact. But, however, when a mistake has been crept in and pointed out, the court cannot allow the same to stand on record for ever and it should be rectified

immediately and now the time has come. Of course, mere quoting of wrong provision of law, is not a ground to reject the petition or to dismiss the petition. But, in our case, the Rent Controller, has not done either of these two things. What all, he has stated, is that an enquiry has got to be held as contemplated u/s 11(3) of the Act and directed the petitioner/landlord to file an application u/s 11(3) of the Act. As such, the petition filed earlier by the petitioner would become of no use. But, there would not be any objection and even if there is any objection, the same is not sustainable to treat the very same petition as one u/s 11(3) of the Act, and this course could have been adopted by the trial court before proceeding with the matter. But, however, the direction given by the Rent Controller to file a separate petition u/s 11(3) of the Act is vitiated and same is liable to be set aside and accordingly, it is set aside.

16. Before parting with the case, I would like to give a direction to the Controller/Appellate Authorities, under the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, to take note of the fact that the necessary application to stop the proceedings for the non payment of rent/deposit, has got to be filed only u/s 11(3) of the Act and not u/s 11(4) of the Act and after enquiry, the rent to be paid or deposited has got to be determined. If the tenant fails to pay or deposit the rent, further order shall be passed u/s 11(4) of the Act.

17. In the result, the civil revision petitions are allowed and the Rent Controller is directed to treat the petitions filed by the petitioners u/s 11(4) of the Act, as one filed u/s 11(3) of the Act and the Rent Controller shall order notice to the respondents in these petitions and after hearing the parties concerned, as prescribed under the Act, pass an order, in accordance with law. No costs. Consequently, connected CMPs are closed.