
(2007) 01 MAD CK 0272

In the Madras High Court

Case No : C.R.P (NPD) No. 2494 of 2000 and C.M.P. No. 13460 of 2000

P. Balasubramaniam

APPELLANT

Vs

D. Dhanapandian

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Pondicherry Buildings (Lease and Rent Control) Act, 1969 — Section 11, 25, 8, 8(5)

Citation : (2007) 01 MAD CK 0272

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; V. Raghavachari, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This Civil Revision Petition is directed against the concurrent order of eviction passed by the Rent Control Authorities in R.C.A. No. 6 of 1999 on the file of Principal District Judge, Pondicherry (arising out of H.R.C.O.P. No. 49 of 1997 on the file of Rent Controller, Pondicherry) ordering eviction on the ground of wilful default.

2. Case of Petitioner / Landlord is that the Respondent / Revision Petitioner became a Tenant in respect of the demised premises in September 1994 on a monthly rent of Rs. 450/-. Lease Agreement was executed on 22.09.1994 for a period of 11 months and it was agreed that lease could be extended by a new Lease Deed. The Tenant paid rent only upto June 1995 and has not paid the rent from July to September 1995. A legal notice was issued on 13.10.1995 and after receipt of notice, the Respondent paid rent in lumpsum upto September 1995 and promised to execute new Lease Deed. Thereafter, the Tenant had not paid rent from October 1995 and hence, another Notice was issued on 15.03.1996. The Respondent evaded receipt of notice and it was returned unserved. On the ground of wilful default, eviction petition was filed on 03.07.1997.

3. Initially, ex parte order of eviction was passed on 08.08.1997. On Application filed by the Tenant (I.A. No. 270 of 1997), the ex parte order was set aside. The Respondent opposed the Eviction Petition contending that he tendered the rent, but the Landlord had not received the same and insisted enhanced rent of Rs. 600/- and for execution of a fresh Lease Deed and that is why the rental arrears have become due. After filing of the eviction petition, the Tenant had paid Rs. 6150/- on 15.02.1997 being part of rental arrears from October 1995 to 31.01.1997 and there is no wilful default.

4. The Rent Control Authorities held that the Respondent / Tenant has committed wilful default. It was pointed out that even after issuance of Notice, the Respondent / Tenant was not paying the rent regularly.

5. Assailing the concurrent findings of the Courts below, learned Counsel for the Revision Petitioner / Tenant contended that non-payment of rent by the Appellant was not due to Tenant's fault, but only because the Landlord refused to receive the rent. It was further submitted that in any event, arrears of rent has been paid before "the effective first hearing date of the case" and therefore, there is no wilful default in payment of rent. Rent was due from July to September 1995. Only after issuance of Notice on 13.10.1995, the Respondent paid the rent upto September 1995. Thereafter, again rent became due from October 1995 till the filing of Eviction Petition. Petition was filed in July 1997. Rent was not paid from October 1995 to till the date of filing of the Petition. It is the duty of the Tenant to pay the rent in time. Especially when there was strained relationship between Landlord and Tenant, the Tenant ought to have been vigilant in paying the rent. The Tenant has contended that the Landlord refused to receive the rent for quite some time. But, the Tenant had not taken any steps to deposit the rent invoking Section 8 of the Pondicherry Buildings (Lease and Rent) Control Act. When no receipt was given for the rent paid and when the rent was refused, it is the duty of the Tenant to invoke Section 8 of the Act. Referring to number of decisions, the Rent Control Appellate Authority has rightly held that the tenant did not send rent by any Money Order or initiated proceedings u/s 8(5) of the Act and there is wilful default well within the purview of the Act. The concurrent findings of the courts below that the Tenant was not regularly paying the rent and even subsequent to the legal notice cannot be interfered with.

6. Learned Counsel for the Petitioner / Tenant contended that the Tenant has paid the rent of Rs. 6,450/- on 15.02.1997 and that the Tenant had paid the amount before the first date of hearing and hence, there is no wilful default.

7. Contending that if entire arrears as on date of Petition is paid along with counter on very first hearing, non-payment of rent would not amount to wilful default, learned Counsel for the Petitioner placed reliance upon the decision reported in Abdul Hameed v. Sultan Abdul Kader 1996 T.L.N.J. 339. In the said case, Agent of Landlord used to collect the rent periodically and not regularly and entire arrears as on the date of the Petition was filed along with the Counter Affidavit and as such, there was no arrears and in those facts and circumstances

of the case, the Court has held that there was no wilful default in payment of the rent. The above decision is of no avail to the Petitioner / Landlord in view of facts and circumstances obtaining in this case. Eviction Petition was taken on file on 03.07.1997 and posted to 08.08.1997. Since Tenant remained absent, exparte order of eviction was passed on 25.08.1997. The Petitioner filed I.A. No. 270 of 1997 to set aside the exparte order of eviction. That Application was allowed on 24.06.1998. Only on 16.02.1998 the Tenant has paid a sum of Rs. 6450/- towards arrears of rent. The Rent Controller has observed that "only on compulsion from the court that proceedings u/s 11 of the Act would be initiated, the Tenant appears to have paid a further sum of Rs. 6450/- towards the partial discharge of previous arrears". The Revision Petitioner / Tenant is not right in contending that he has paid the entire arrears on 15.02.1997 even before the first hearing. Even subsequently, the Revision Petitioner / Landlord has not regularly paid the rent, but has made payments on 03.06.1998, 04.08.1998 and 28.10.1998 and so on.

8. The conduct of the Tenant in not paying the rent regularly during the pendency of the proceedings will amount to wilful default and such subsequent conduct of the Tenant can be taken into consideration in deciding the matter. Having taken steps to set aside the exparte order of eviction, the Tenant ought to have been more careful, inspite of which he has not chosen to pay the rent, which would only indicate that the Revision Petitioner / Tenant has committed wilful default. Exercising jurisdiction u/s 25 of the Act, the Revisional Court would not interfere with the concurrent findings unless there are perversity in the matter of appreciation of evidence by the authorities below. There is absolutely nothing to show that there is perversity in the appreciation of evidence by the authorities below, while arriving at the concurrent findings in these matters. Therefore, this Court has no reason to interfere with the concurrent findings rendered by the Courts below.

9. In the result, the order dated 31.03.2000 made in R.C.A. No. 6 of 1999 on the file of the Principal District Judge, Pondicherry, (arising out of H.R.C.O.P. No. 49 of 1997 on the file of the Rent Controller, Pondicherry) is confirmed and this Civil Revision Petition is dismissed. Consequently, the connected C.M.P. No. 13460 of 2000 is also dismissed.