

(1994) 10 MAD CK 0006
In the Madras High Court

P. Govindaraju

APPELLANT

Vs

S.P. Krishnan and Others

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Citation : (1995) 1 MLJ 254

Hon'ble Judges : Srinivasan, J;S. Genesan, J

Bench : Division Bench

Judgement

Srinivasan, J.—These three revision petitions arise out of a petition for eviction viz., R.CO.P. No. 284 of 1987 filed by the respondents on

the ground of wilful default in payment of rent and causing damage to the property. When the petition was pending, the landlord filed an application

u/s 11 of the Act for a direction to the tenant to pay the entire arrears of rent, which according to him amounted to Rs. 24,320 being the rent due

for 38 months from May, 1986 to June, 1989. The case of the tenant was that he had paid the property tax regularly and he had in fact paid in

excess than what was due from him. Under the agreement of tenancy, the landlord was liable to pay a sum of Rs. 988.50 by way of property tax

and the tenant had agreed to pay any increase in the property tax. Taking that into account, the Rent Controller deducted a sum of Rs. 8,896.50

from the total amount claimed by the landlord and directed the tenant to pay a sum of Rs. 15,425.50 within a particular time. The petitioner did not

comply with the order but chose to file an appeal before the Appellate Authority challenging the same. The Rent Controller passed an order of

eviction as the tenant had not complied with the order directing him to pay the amount. Against the order of eviction, the tenant filed R.C. A. No. 9

of 1991. The appeal against the order in the application was numbered as R.C.A. No. 8 of 1991. Pending the appeal, the landlords filed an application for admission of a document as additional evidence in I.A. No. 347 of 1991. The said application was allowed and the document was admitted as additional evidence. Pending the appeal, the landlords filed an application I.A. No. 332 of 1991 u/s 11 of the Act. An order was passed thereon directing the tenant to pay the arrears. The tenant challenged that order in a revision petition in this Court in C.R.P. No. 2296 of 1993. In that revision petition an order was passed on 17.1.1994 directing the tenant to pay a sum of Rs. 20,000 on or before 17.3.1994 and also directing him to pay the future rent from March, 1994 onwards. The tenant paid the said amount of Rs. 20,000 and continued to pay the future rent.

2. The main appeals before the Appellate Authority were taken up and they were dismissed. The Appellate Authority held that the tenant not having complied with the order passed u/s 11 of the Act by the Rent Controller, was liable to be evicted and the appeals without making a deposit of the arrears of rent were not sustainable. The aggrieved tenant has now preferred these three revision petitions. C.R.P. No. 2875 of 1994 is against R.C.A. No. 8 of 1991 which was in turn against the order passed by the Rent Controller u/s 11 of the Act. C.R.P. No. 2876 of 1994 is against the order made in R.C.A. No. 9 of 1991 which was against the order of eviction passed by the Rent Controller in the main R.C .O.P. C.R.P. No. 2877 of 1994 is against the order admitting the additional evidence in the appeal in I.A. No. 347 of 1991.

3. The contention of learned Counsel for the petitioner/tenant is that the tenant had been bona fide paying the property tax as an occupier notice had been issued to him. It is stated by him that from 1986 onwards the tenant has been paying very regularly the entire property tax due on the property and thus a total amount of Rs. 50,984.10 had been paid by 22.12.1992. It is contended that even if the tenant had agreed to pay the increase in the property tax, the landlords are liable to pay the original tax of Rs. 988.50 and as the tenant had paid the same, there was no question of wilful default as he was entitled to adjust the same against rent. It is submitted that even if there is no agreement between the parties for

adjustment of property tax as against the rent, the tenant's default in payment of rent will not amount to wilful default. Reliance is placed on a

decision of this Court in *Yousuff v. Akbar* Alt. 1986 T.L.N.J. 115. On the facts, the learned Judge found in that case that there was a specific

agreement between the tenant and the landlord that the tenant shall pay the Corporation Tax and the same may be adjusted towards the rent

payable by him. After giving such a finding of fact that there was no wilful default on the part of the tenant in view of the said agreement, the learned

Judge proceeded to hold as a matter of law that even if there was no such agreement, the default would not have been wilful. The observations

made by the learned Judge on the question of law are obiter and they are not binding on me. A Division Bench of this Court held in *In Re:*

Navaneethammal, . that the fact the landlord had with him an advance rent does not absolve the tenant from the consequences of wilful default

unless he had called upon the landlord to make an adjustment of the advance as against the rent due. In *K. Murugappa Chettiar Vs. C.*

Balasundaram Chetty and Another, , another Division Bench held that the fact that according to the rent fixed in an application by the tenant for

fixation of fair rent, the landlord would have with him sufficient money to discharge the arrears relating to the period of default, did not save the

tenant from the consequences of the default. If the principles laid down in those two cases are applied, there is no doubt that the tenant is guilty of

wilful default in the present case.

4. It is then contended that the payment of Rs. 20,000 by the tenant pursuant to the order of this Court in the earlier revision petition viz., C.R.P.

No. 2296 of 1993, should be taken into account and if that is done, there are no arrears whatever and the tenant is not guilty of wilful default.

There is no merit in this contention. As stated already, the Rent Controller passed an order u/s 11 of the Act directing the tenant to make a

payment on or before a specified date. The tenant ought to have complied with the same and as he failed to do so, he was clearly guilty of wilful

default and he was liable to be evicted. Consequently, the Rent Controller passed an order u/s 11(4) of the Act directing eviction of the tenant. No

exception can be taken to that order by merely saying that the tenant had paid property tax for the earlier period. Nor will the payment made by

the tenant during the pendency of the appeal before the Appellate Authority absolves the tenant of wilful default. The question has been considered

by me in *S.K. Rajapandian v. A. Kesavan*. (1991) 2 L. W. 453.1 have held that the payment during the pendency of the appeal pursuant to a

direction given by the appellate or revisional authority will not enable the tenant to plead that there was compliance with the order u/s 11.

5. In the circumstances, the view taken by the lower appellate court that there was no merit in the appeals before him, is absolutely correct and

does not warrant any interference. It is to be noted that the tenant had expressly agreed to pay the increase in property tax and he was liable to

pay the increased amount of property tax. While paying that amount the fact that the tenant chose to pay the amount payable by the landlord will

not enable the tenant to contend that he was making bonafide payments towards property tax and he was entitled to adjust the same on his own

towards the rent payable by him, as the adjustment on his own without a bilateral agreement is not permissible in law. In the circumstances, the

tenant is clearly guilty of wilful default.

6. The contention that the appellate authority is in error in admitting additional evidence in appeal is without any substance. The Appellate Authority

found that the document is absolutely essential and necessary for the proper disposal of the case and, therefore, he admitted the document. I do

not find any error in the order of the Appellate Authority in admitting the document.

7. In the result all the three revision petitions fail and they are dismissed. There will, however, be no order as to costs.