

(1986) 11 MAD CK 0001
In the Madras High Court

Papathi Ammal

APPELLANT

Vs

Kulitalai Cane Farms (P) Limited

RESPONDENT

Date of Decision : 14-11-1986

Acts Referred:

Citation : (1987) 100 LW 567 : (1987) 2 MLJ 162

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

V. Ramaswami, J.—Mr. V. Meenakshisundaram, advocate, had originally entered appearance on behalf of the respondent in both the civil

revision petitions. On his death, death memo was issued on the respondent on 18th July, 1985 and the respondent was served with a notice.

However, nobody represents the respondent. The respondent when called in Court is absent today.

2. The petitioner is the wife of one Ramaswami Reddiar who was the defendant in O.S. No. 539 of 1965, on the file of the District Munsif of

Kulitalai. That suit was filed by the respondent for recovery of lease arrears from the petitioner's husband. The arrears claimed is for the period

prior to 1964-65. The respondent again filed O.S. No. 199 of 1970 and obtained a decree in respect of arrears payable upto and inclusive of

1969-70. The annual rent payable by the lessee was Rs. 950. It appears that the defendant in the suit filed A.S.No.648 of 1977 on the file of the

District Court, Tiruchirapalli, against the Judgment and decree in the above suit. When the appeal was pending the Tamil Nadu Cultivating Tenants

Arrears of Rent (Relief) Act, 1971 (Tamil Nadu Act 21 of 1971)(hereinafter called the Act) came to be passed and came into effect on and from

1st July 1972. Taking advantage of the provisions of the Act, the defendant-appellant deposited the current rent, viz., the whole of the rent due for

fasli commencing from 1st July, 1971 and ending with 30th June, 1972. It may also be mentioned that the deposit was within the period of six

months from 1st July, 1972, which is the date of publication of the Act. However, it appears that the defendant did not file any application to have

the appeal allowed and the decrees of the trial Court set aside. The appeal itself seems to have been dismissed subsequently.

3. However, on 25th June, 1975, the petitioner herein who is the widow of the deceased defendant judgment-debtor filed E.A. No. 419 of 1975

praying for a declaration that the decree in O.S. No. 539 of 1965 on the file of the Principal District Munsif, Kulitalai stands vacated and fully

discharged, and to dismiss the execution proceedings. A similar application E.A. No. 45 of 1976 was also filed on 2nd July, 1975 in respect of

O.S. No. 199 of 1970. These two applications were disposed of by a common order dated 17th March, 1977 by the learned District Munsif,

Kulitalai. The applications were dismissed on the ground that after depositing the current rent while the appeals were pending, the defendant should

have filed an application as contemplated u/s 3(2) of the Act and had the suit dismissed, and since that application was not filed and the appeal

itself was dismissed without any reference to the provisions of the Act, the executability of the decree could not be questioned in these

proceedings. It is as against these orders, the two civil revision petitions have been filed.

4. The two relevant provisions relating to the point raised by the learned Counsel for the petitioner are Sections 3(1)(a) and 3(2) of Tamil Nadu

Act 21 of 1972. They read as follows:

Section 3 : Relief in payment of arrears of rent : (1)(a). All arrears of rent payable by a cultivating tenant to the landlord and outstanding on the

30th June, 1971 (hereinafter referred to as arrears of rent), shall be deemed to be discharged, whether or not a decree or order has been obtained

therefor, if such cultivating tenant-

(i) has before the date of the publication of this Act paid to the landlord or deposited in the court or before the competent authority, to the account

of the landlord; or

(ii) pays or deposits in the manner specified in Clause (b) within six months from the date of the publication of this Act; or

(iii) is deemed to have paid or deposited under this Act the whole of the rent due for the fasli year commencing on the 1st July, 1971 and ending

with 30th June 1972 (hereinafter referred to as the current rent.)

Section 3(2) : In any suit or proceeding pending on the date of the publication of this Act for the recovery of any arrears of rent or for the eviction

of a cultivating tenant for non-payment of any arrears of rent, the court or competent authority shall, if the cultivating tenant pays or deposits, or has

paid or deposited under this Act, the whole or the current rent and on the application of the cultivating tenant, pass an order dismissing, without

costs, the suit or proceeding in so far as such suit or proceeding relates to such recovery or eviction.

5. It appears that before the trial court the provisions of Section 3(2) alone were pressed into service and they had not concentrated on the

provisions of Section 3(1)(a) of the Act. As seen from the provisions of Section 3(2), if a suit or proceeding is pending on the date of the

publication of the Act for the recovery of any arrears of rent, the Court shall if the tenant pays the whole of the current rent and applies to the court

For passing an order dismissing the suit or proceeding, such suit or proceeding shall be dismissed. Therefore, if the tenant has filed an application,

invoking Section 3(2) of the Act, on the ground that the appeals shall be treated as proceedings pending on the date of the publication of the Act

for the recovery of any arrears, probably the appeals would have been allowed and the suit dismissed. This is on the ground that an appeal is a

proceeding pending and by virtue of the filing of the appeal, the finality attached to the decree of the trial Court is set at large. Therefore it is

possible for a tenant to file a petition u/s 3(2) of the Act for dismissal of the suit on condition of his depositing the current rent and applying to the

Court for each dismissal.

6. However, the question really that arises for consideration is whether even in such a case on the ground that he had deposited the rent, the tenant

could invoke the provisions of Section 3(1)(a) of the Act. As seen from the provisions of Section 3(1)(a) of the Act, it applies to a case whether in

respect of the rent a decree or order had been obtained therefore or not. In

other words, if there was a decree for payment of the arrears of rent and the tenant deposits the current rent within the period of six months from the date of the publication of the Act, then the arrears of rent shall be deemed to be discharged. In this case, on the date when the Act came into force, the suits O.S. No. 439 of 1965 and 199 of 1970, have ended in decrees, though an appeal against them was pending. I am of the view that even to a case where a decree has been obtained and an appeal is pending, the provisions of Section 3(1)(a) of the Act could be invoked. After all, the intention of the Act was that if the current rent is paid, the entire arrears shall be deemed to have been discharged. The Act itself was intended to give relief to the tenants in view of the fact that there was wide-spread drought and the tenants were not in a position to pay arrears of rent due to the indebtedness and poor economic conditions and having regard to the object and purpose of the Act, I have no doubt that even in a case where the appeal is pending, if the deposit had been made, the tenant could invoke the provisions of Section 3(1)(a) or Section 3(2) of the Act, the option being left to the tenant himself. The result of dismissing the appeal is to confirm the decree of the trial Court and in fact the execution proceedings are taken to execute the original decree, though as confirmed by the lower appellate Court. Section 3(1)(a) also does not restrict its applicability where the decree had become final and not subject-matter of any appeal or further proceedings. If the tenant does not want to dispute the decree further, he may allow the appeal to be dismissed by paying the current rent having the benefit of Section 3-(1)(a) of the Act. That is what has happened in this case. The petitioner is therefore entitled to have the execution proceeding dismissed on the ground that the entire arrears had been paid and the decree shall be deemed to have been discharged.

7. In the result, the revision petitions are allowed and the order of the learned District Munsif is set aside. The petitions filed by the petitioner in the court below will stand allowed. There will be no order as to costs in these petitions.