

(1979) 10 MAD CK 0010
In the Madras High Court

S. Balachandran	Vs	APPELLANT
A. Champalal Jain		RESPONDENT

Date of Decision : 17-10-1979

Acts Referred:

Pondicherry Buildings (Lease and Rent Control) Act, 1969 — Section 7(2)
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 6(c)

Citation : (1980) 93 LW 605 : (1980) 1 MLJ 116

Hon'ble Judges : V. Ratnam, J

Bench : Division Bench

Judgement

V. Ratnam, J.—The landlord is the petitioner and he filed an application for eviction against the respondent herein on the ground of wilful

default in the payment of rent for the period from 1st January, 1974 to 31st May, 1974. The respondent contended that the default was not wilful.

The Rent Controller held that the respondent-tenant was guilty of wilful default in payment of rent and ordered eviction. The appellate authority

also confirmed that order. However, on further revision to the learned District Judge, Pondicherry, the learned District Judge was inclined to take

the view that since the petitioner had an advance of Rs. 900 with him, Section 7(2) of the Pondicherry Buildings (Lease and Rent Control) Act,

1959 could be invoked which would amount to an automatic adjustment of that advance as against the unpaid rent. In this view, the orders of the

Court below were set aside and the application for eviction was dismissed.

2. In this civil revision petition, the learned Counsel for the petitioner contends that the view taken by the learned District Judge that there is an

automatic adjustment of the advance as against the arrears of rent is erroneous. Particularly, he relies upon the language in Section 7(2)(b) of the

Act which states that the refund exadjustment should be at the option of the tenant and since in the instant case, there has been no such exercise of option by the respondent, there is, therefore, no question of any adjustment. In *In Re: Navaneethammal*, a Bench of this Court held that in order to invoke the provisions of Section 6(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act and seek an adjustment, the tenant should have exercised the option and called upon the landlord to make the adjustment and the mere fact that the landlord had with him the advance rent, does not mean that the tenant has not committed default within the meaning of Section 7(2) of that Act. Though the present case arises under the provision of the Pondicherry Buildings (Lease and Rent Control) Act, the principle of the aforesaid decision would apply on all fours to the interpretation of Section 7(2) of that Act as well, which is couched in almost identical terms. The view of the learned District Judge that there is an automatic adjustment of the advance paid by the respondent to the petitioner and consequently, there is no wilful default in payment of rent by the respondent herein, cannot be sustained. It is only on account of this adjustment which, according to the learned District Judge, was available to the respondent, it was held that the respondent was not in arrears. When once that adjustment is not available, it follows that the respondent was in arrears. There is no explanation whatever for the non-payment of the rents by him for nearly a period of five months. In the circumstances, the default in the payment of rents is clearly wilful and the order of eviction passed by the Rent Controller and affirmed by the appellate authority is restored and the order of the learned District Judge is set aside. Accordingly, this Civil revision Petition is allowed; but, in the circumstances, without costs.

3. The learned Counsel for the respondent requests that the respondent may be given six months time to vacate the premises and the learned Counsel for the petitioner has no objection to this course. Accordingly, the respondent is granted six months time from today to vacate the premises in question.