
(1953) 01 MAD CK 0003

In the Madras High Court

Case No : Civil Revision Petition No"s. 1678 and 1789 of 1952

Sha Gomraj Poonamchand

APPELLANT

Vs

Ponnuru Venkathnam Chetty

RESPONDENT

Date of Decision : 28-01-1953

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 7(2)

Citation : AIR 1953 Mad 857 : (1953) 66 LW 922 : (1953) 2 MLJ 92

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : P.S. Kothandapani, for the Appellant; C.A. Vaidhyalingam, T. Venkatadri, K. Ramachandra Rao and P. Venkataswami, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—C. R. P. No. 1673 of 1952 : In answer to an execution petition before the City Civil Court in respect of an order of

eviction originally passed by the Rent Controller which became final by the dismissal of the civil revision petition by Ramaswami Goundar J. in this

Court, it was urged by the tenant in the execution application filed by him that the question of his default in the matter of payment of rent was a

matter to be decided with reference to its wilfulness or otherwise under the provisions of Section 7(2) (a) proviso of the Madras Buildings (Lease

and Rent Control) Act, 1949. If the default were to be found not wilful it was urged for the tenant that the execution of the decree for eviction

which followed upon the original Rent Controller's order for eviction would not be competent. The City Civil Court refused to go into the question

of the wilfulness or otherwise of the default and dismissed the execution application. In this revision against the order of dismissal of the execution

application it has been urged on the authority of a ruling of this Court by Basheer Ahmed Sayeed J. in -- B.A. Woodman Vs. Mrs. Regina Rajan,

that the objection was one which could very well be entertained by the executing Court and that the Court below declined jurisdiction in refusing to

go into the question. The decree itself having become in-executable, by force of the provisions of the Amending Act 8 of 1951 to be found in

Section 7(2) proviso, it has been urged that this civil revision petition is good even without reference to Section 12-B of the Amending Act and

without reference to the revisional powers under that section which are much wider than the revisional powers vested in this Court by the Code of

Civil Procedure. The general proposition is not disputed for the petitioner that the executing Court cannot go behind the decree in execution and

entertain objections other than to the jurisdiction of the Court which passed the decree. What is contended is that the non-executability of the

decree in the present case which is consequent upon the amending provision of the Madras Act 3 of 1951 as construed by this Court in the

reported ruling just referred to is in the nature of a valid objection to the execution petition in the Court below which renders the orders passed by

it illegal, improper or irregular within the meaning of Section 12-B of the Amending Act. In answer to this point for the petitioner, it has been

contended by Mr. Vaidhyalingam for the respondent that the judgment of this Court between the very parties before me reported in -- Sha Ganraj

Poonamchand Vs. V.P. Venkataratnam Chetti, precludes the petitioner before me from raising the point even if that point is otherwise well

founded. What is argued by the learned counsel for the respondents is that in the revision petition preferred to this Court against the order of the

appellate authority which confirmed the order of eviction made by the Rent Controller, a point was raised to the effect that the default in the case

on the part of the present petitioner was not wilful and that if that were so under the provisions of the Amending Act, Act 8 of 1951 which had by

that time come into force the order for eviction could not stand. It is further pointed out by the learned counsel for the respondent that that point

was overruled by the learned Judge of this Court who disposed of the civil revision petition, Ramaswami Goundar J. on the ground that the

Amending Act cannot govern the parties to this revision petition for the reason that there was no proceeding pending at the time the Amending Act

came into force which could be said to be governed by it. Says learned counsel) whether that view of the learned Judge is right or wrong that is the view of law binding upon the parties to that proceeding in the subsequent stages of the same litigation of which the execution petition with which we are concerned happens to be one. In my opinion the exact limits within which the judgment of Ramaswami Goundar J. should be held operative are to be understood with reference to the particular proceeding which was in question before the learned Judge and the operation of His Lordship's view cannot be extended to other proceedings, if regard is to be had to the reasoning which was employed by the learned Judge in the revision petition which His lordship disposed of. There is, in my opinion, here no question of constructive "res judicata" analogous to that enacted by Explanation IV to Section 11, Civil P. C. nor can the question be regarded as one of actual "res judicata" except with due regard to the scope of the exact proceeding in which the view of His Lordship was expressed. It cannot be disputed nor indeed has it been, by the learned counsel for the respondent that the later proceeding which is an execution proceeding is a proceeding governed by the Amending Act.

2. No attack has been made top before me against the correctness of the ruling in B.A. Woodman Vs. Mrs. Regina Rajan, . I am in the circumstances content in the interests of the comity of judicial decision to accept that ruling. The result is that this civil revision petition must be allowed with costs to abide the result of the enquiry into the objection made in the execution application before the Court below on the question of wilfulness or otherwise of the default committed by the tenant.

3. C. R. P. No. 1789 of 1952 : The matter connected with C. R. P. No. 1678 of 1952, will in view of the foregoing also go back to the Court below for appropriate orders being passed on it after the question of wilful default in the execution application is disposed of by it, in the light of such disposal as well as the foregoing.