
(1996) 07 MAD CK 0008

In the Madras High Court

Case No : C.R.P. No. 2223 of 1991 and C.M.P. No's. 11525 and 14390 of 1991

Sree Ramachandran

APPELLANT

Vs

Krishnaraj

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Pondicherry Buildings (Lease and Rent Control) Act, 1969 — Section 10(2)(1)

Citation : (1996) 2 CTC 130 : (1996) 2 LW 559

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : Krishnaveni, for T.R. Rajaraman, for the Appellant; Philip Ravindran, for P. Peppin Fernando, for the Respondent

Judgement

AR. Lakshmanan, J.—The civil revision petition is directed against the order of the Principal District Judge/Appellate Authority,

Pondicherry, dated 12.3.1991 in M.A. No. 47 of 1990 confirming the order of the District Munsif/Rent Controller, Pondicherry, dated

20.11.1990 in H.R.C.O.P. No. 46 of 1990. The tenant is the petitioner in this revision,

2. The respondent/landlord filed an eviction petition on the file of the Rent Controller, Pondicherry, against the petitioner/tenant for eviction on the

ground of wilful default in payment of rent and his requirement of the premises for personal occupation u/s 10(2)(I) and Section 10(3)(a)(I) of the

Pondicherry Buildings (Lease and Rent Control) Act, 1969. As far as the requirement for personal occupation is concerned, the claim was

rejected by the Rent Controller and there was no appeal by the landlord. As far as the claim made on the basis of wilful default is concerned, the

landlord contended that the tenant failed to pay the rents for the months of

January and February, 1990, and filed the eviction petition on 12.3.1990. The tenant filed his counter stating that right from the inception of the tenancy, he has been very regular in payment of rent and the rent for the months of January, February and March, 1990, was sent by money order on 12.4.1990 even before he received the summons in the H.R.C.O.P. There was also an agreement of sale in favour of the tenant and when the matter was being discussed, the landlord refused to collect the rent and hence the tenant sent the rent for the three months by money order. The tenant's contention before the Rent Controller was that the default was not wilful and therefore, the landlord is not entitled to an order of eviction.

3. Before the Rent Controller, Exs.A-1 to A-16 were marked on the side of the landlord. The landlord examined himself as P.W.I. The tenant examined himself as R.W.I and marked Exs.B-1 to B-13. The learned Rent Controller held that the non-payment of rent for January and February, 1990, was wilful and ordered eviction. Aggrieved by the same, the tenant preferred M.A. No. 47 of 1990 before the Appellate Authority /Principal District Judge, Pondicherry. The Appellate Authority confirmed the order of eviction holding that the default is wilful.

Aggrieved by the same, the tenant has preferred the above revision.

4. It is argued on behalf of the tenant that he has been very regular in payment of rent right from the year 1983 and in fact, his advance of Rs.

2,000 paid to the landlord pursuant to the agreement of sale is with the landlord. The rent was not sent for January and February, 1990, as there

was exchange of notices between the parties during that time in relation to the agreement of sale. Therefore, the non-payment of rent in the same

month was not wilful. It is also further stated that the tenant has paid the rent uptill date and there was no arrears of rent. It is also pertinent to

notice that the landlord did not prefer any appeal against the rejection of his claim for eviction on the ground of personal occupation.

5. I have been taken through the pleadings and the judgments of the authorities below. I have also perused the entire records and the oral evidence

tendered by both parties before the Rent Controller. I have heard the arguments of Mrs. Krishnaveni for the petitioner/tenant and Mr .Philip

Ravindran for the respondent/landlord.

6. It is contended on behalf of the tenant that the Appellate Authority has erred in holding that the tenant committed wilful default in payment of rent

his reasons therefore are erroneous and unsustainable. My attention was invited to Exs.A-4, A-6, and A-7 and Exs.B-10 and B-11 by the learned

counsel for the tenant. The above documents clearly show that the landlord and the tenant have been exchanging notices on the basis of the

agreement of sale admittedly entered into under Ex.B-9 and at no point of time the landlord had any complaint that the tenant has been irregular in

payment of rent. Therefore, the Appellate Authority should have held that the default, if any, cannot be termed as wilful in view of the agreement of

sale dated 19.6.1989. However, this vital factor has not been noticed by the Appellate Authority. The Appellate Authority has also failed to sec

that the tenant had remitted the rent for January, February and March, 1990, even before he received the summons in the H.R.C.O.P., and that

the landlord has received the same without any protest on 12.4.1990.

7. I have perused the H.R.C. Original Petition filed before the Rent Controller. It is seen from the court seal that the same was filed on 13.3.1990.

It was returned by the court on 19.3.1990. It was represented on 21.3.1990. It was taken on file on 28.3.1990 and the court ordered issue of

summons to the respondent on the same day returnable by 24.4.1990. In the meanwhile, the tenant sent the money order for Rs. 900, being the

rent for January, February and March, 1990, which was received by the landlord on 12.4.1990, i.e., long prior to the service of summons on the

tenant through court in the H.R.C.O.P. Therefore, as rightly pointed out by the learned counsel for the petitioner/tenant, there is no cause of action

for eviction of the tenant on the question of wilful default on the date when the summons were served on the tenant.

8. Learned counsel for the respondent/landlord contended that under the provisions of Section 10(2)(i) of the Pondicherry Buildings (Lease and

Rent Control) Act, 1969, a duty is cast on the tenant to make the payment or tender the same every month if he desires to take advantage of the

provisions of the Act and since the monthly rent was not paid regularly, it must be held that the non-payment of arrears of rent must be held to be

wilful. I am unable to accept or agree with the contention of the learned counsel for the landlord, who vehemently and repeatedly contended that if

the totality or cumulative of all the circumstances is taken into account, the attitude of the tenant should be construed as wilful. There is a clear difference in law between "default" and "wilful default". While non-payment of rent within the time specified will certainly be tantamount to default, obviously any default cannot be treated in law as wilful default. There is a sharp distinction between "default" and "wilful default". The Legislature presumably was very conscious of all these distinctions when the Rent Control Act laid down that mere default, prolonged or established, was not a ground for eviction but that wilful default was alone a ground for eviction.

9. Learned counsel for the landlord again contended that the non-payment of arrears of rent for January and February, 1990, would only exhibit callousness on the part of the tenant. It is settled law that the non-payment of arrears of rent must prove beyond doubt that the tenant had exhibited supine indifference and callousness. The Explanation to Section 10(2) indicates that if a tenant does not pay the rent at all for a considerable time and the landlord files a petition for an order of eviction on the basis that the tenant had committed wilful default without issuing any notice, then, in the absence of any other explanation by the tenant the default should be considered wilful in spite of the fact that the landlord had not chosen to issue a notice to the tenant claiming the rent.

10. In the instant case, it is not so, Here, the tenant has explained the reasons for the delay. According to him, he has been very regular in payment of rent, that there was an agreement of sale in his favour and when the matter was in discussion, the landlord refused to receive the rent and hence the tenant sent the rent for three months by money order. In fact, the tenant has paid a sum of Rs. 2,000 as advance pursuant to the agreement of sale, which is still with the lessor/landlord. Rent was not sent for January and February, 1990, as there was exchange of notices between the parties during that time in relation to the agreement of sale. Therefore, the non-payment of rent in the same month was not wilful. As a matter of fact, the Legislature by introducing the Explanation to Section 10(2) of the Act has given a helping hand to the tenant not to commit default by enunciating that if after demand for arrears they fail to pay the arrears of rent within the prescribed time, then it is statutorily called wilful default. As already seen, the tenant has paid the rent by money order on 12.4.1990 itself

even before the receipt of notice in the H.R.C.O.P. filed by the landlord.

11. Even on merits, the learned Appellate Authority has failed to appreciate that till the filing of the petition, the landlord was only demanding the premises for his personal occupation and not at all complained of any default in payment of rent. The landlord has taken advantage of the remittance of the rent for three months, the delay having been caused because of the exchange of notices between the parties relating to the agreement of sale, for adding the relief based upon wilful default. Likewise, the learned Appellate Authority also failed to appreciate that the tenant was never indifferent in the payment of rent nor purposely avoided payment of rent during his tenancy from the year 1983. In this regard, the Appellate Authority had not adverted to the conduct of the tenant right from the inception of the tenancy while deciding the question whether the default is wilful or not.

12. My attention was drawn to the recent of the Supreme Court reported in *Dakaya alias Dakaian v. Anjani*, 1996 (I) L.W. 25 dated 12.10.1995.

In that case, the landlady made an application u/s 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, for eviction

of the tenant/appellant before the Supreme Court on the ground of wilful default in payment of rent for the period September to November, 1988,

amounting to Rs. 1,125. There was no dispute in that case, that the tenant failed to make the payment within the time stipulated. The landlady gave

a notice to the tenant on 6.12.1988 claiming payment of rent for the said months. She also demanded surrender of the tenancy of the tenant within

one week of the receipt of the notice. The tenant initially sent a money order for a sum of Rs. 375, being the monthly rent on 7.12.1988, which

was received by the landlady and accepted by her. Within five days thereafter, on 12.12.1988, the tenant sent a bank draft for Rs. 1,125, which

was received by the landlady before the filing of the suit for eviction. The said demand draft, however, had not been encashed by the landlady and

the same had been deposited before the Rent Controller in the eviction proceedings. The eviction petition was filed before the Rent Controller on

19.12.1988. The Rent Controller held that the tenant had committed wilful default and that the landlady is entitled to get the order of eviction. The

said view was upheld in appeal and also in the revision by the High Court. The tenant filed an appeal before the Apex Court and drew the attention

of the Apex Court to an earlier judgment of the said Court in *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, . In the said

decision, the provisions of Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, was taken into consideration. It is to be

noticed here that Section 10 of the Tamil Nadu Act is in pari materia to Section 10 of the Andhra Pradesh Act, excepting that in the Tamil Nadu

Act an Explanation has been added to the proviso to sub-section (2) of Section 10. The Supreme Court in *S. Sundaram Pillai and Others Vs. R.*

Pattabiraman and Others, had indicated that default per se cannot be construed as wilful and keeping in mind the beneficial purpose of the Rent

Act to protect the eviction of the tenant, if the payment has been made before the institution of the suit, the cause of action for instituting the suit will

vanish. The Supreme Court in *Dakaya alias Dakaian v. Anjani*, 1996 (I) L.W. 25 held as follows:

It, therefore, appears to us that there was no occasion to proceed on the footing that there was a wilful default for which an order for eviction of

the tenant was to be passed. As the tenant had already sent the Bank draft covering the entire default, there was also no occasion of the Rent

Controller to direct deposit of arrears within the stipulated period. In our view, the Rent Controller, the first appellate court, and the High Court

have failed to appreciate the incidence of tendering the entire amount under default before the institution of the suit. As a result, the courts below

have erroneously proceeded on the footing that there had been a wilful default for which the landlady was entitled to a decree for eviction.

13. In my opinion, the above cited Supreme Court judgment *Dakaya alias Dakaian v. Anjani*, 1996 (I) L.W. 25 directly applies to the facts and

circumstances of the case on hand. The facts and circumstances of the above mentioned Supreme Court case and the facts and circumstances of

the case on hand are exactly identical. In this case, as already seen, the tenant has paid the entire arrears by money order, which was received by

the landlord without protest on 12.4.1990 long prior to the receipt of the summons in the H.R.C.O.P. As observed by the Supreme Court, since

the entire arrears covering the entire period of default viz., January and February, 1990, was paid by money order and received by the landlord on

12.4.1990, i.e., long prior to the receipt of summons in the H.R.C.O.P. I am of the view that there was no cause at all for the landlord to proceed

on the footing that there was a wilful default, for which an order of eviction of the tenant was to be passed. As observed by the Supreme Court in

the above cited case, as the tenant has already sent the arrears of rent covering the entire default by money order, there was no occasion for the

Rent Controller in the instant case to direct deposit of arrears within the stipulated period.

14. In the decision reported in *V. Krishna Mudaliar v. Lakshmi Ammal*, 1995 (II) C.T.C. 540, the Supreme Court while considering a similar

question came to the conclusion that since the tenant had deposited the rent immediately after the filing of the eviction petition by the landlord, there

cannot be any wilful default on the part of the tenant. As already seen, in the present case the tenant has paid the arrears for the months of January

and February, 1990, after the filing of the eviction petition but before service of summons in the H.R.C.O.P. In my opinion, the Rent Controller

and the Appellate Authority have failed to appreciate the instance of tendering the entire amount under default before the proceedings for eviction

commenced. The authorities below have erroneously proceeded on the footing that there has been a wilful default for which the landlord was

entitled to an order for eviction.

15. Learned counsel for the respondent/landlord cited a decision reported in *Thayammal v. K. Suhramaniam*, 1989 (I) L.W. 228 to show that the

sending of arrears of rent by the tenant upon receipt of notice from the landlord will not absolve the tenant of the wilful default committed earlier.

He also cited the decision reported in *C. Pandithurai v. Jaithoon Bibi*, 1991 (I) M.L.J. 330, which is a case of no notice under the Explanation to

Section 10 of the Tamil Nadu Act. A learned single Judge of this Court held that the Court can consider whether the default was wilful when no

notice was issued under Explanation to Section 10(2) of the Tamil Nadu Act. The learned Judge also held that the evidence available discloses that

the tenant had committed wilful default in payment of rent. In my view, the said judgments will be of no assistance to the respondent/landlord. The

voluminous evidence, both oral and documentary, available disclose that the tenant has not committed default in the payment of rent. The above

cited judgments are, therefore, distinguishable on facts.

16. In the result, the civil revision petition succeeds and the orders of the Appellate Authority in M.A. No. 47 of 1990 dated 12.3.1991 and that of

the Rent Controller in H.R.C.O.P. No. 46 of 1990 dated 20.11.1990, are set aside. Consequently, C.M.P. Nos. 11525 and 14390 of 1991 are

dismissed as no longer necessary. I make no order as to costs.