

(2000) 01 MAD CK 0003
In the Madras High Court
Case No : C.R.P. No. 1881 of 1996

T. Gopalsamy and T. Radhakrishnan	Vs	APPELLANT
R. Renganathan and Others		RESPONDENT

Date of Decision : 03-01-2000

Acts Referred:

Citation : (2000) 01 MAD CK 0003

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Subramaniam, for the Appellant; C.T. Selvam, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—Landlord in R.C.O.P. 8 of 1985 on the file of Rent Controller, Madurai are the revision petitioners. According to

landlord, tenants are liable to be evicted on the ground that they have committed default in payment of rent from July 1983 to November, 1984

i.e., for the period of 17 months and have committed wilful default in paying the rent. Rent arrears comes to Rs. 6,800/- as on November, 1984. It

is also said that they have already moved an application for fixation of fair rent and Rent Controller has fixed the same at Rs. 1,290/-. The appeal

filed by tenant was dismissed and it is said that C.R.P, taken against that order also was dismissed by confirming the decision of Appellate

Authority on 3.4.1987. But in this case, we are not concerned about the fixation of fair rent. Eviction petition is filed only on the ground that the

tenant has defaulted in paying rent at the rate of Rs. 400/- per month, which is agreed rent.

2. Material averments in the eviction petition also will have to be considered

before further proceeding into the matter. There had been earlier proceedings between parties. Landlord filed an application for eviction as R.C.O.P. 160 of 1979 on the ground that tenant has defaulted in paying rent. That application was dismissed. Even though the matter was taken in appeal, the same was also dismissed. There was also another proceedings in R.C.O.P.736 of 1981 which also did not meet with any success to landlord. It is also now admitted that tenant has moved an application u/s 8(5) of the Act seeking permission to deposit the rent in Court. That was filed after initiation of the present proceedings. It has also come out in evidence that landlord also filed R.C.O.P.598 of 1973 on the ground that the tenant is making use of the building for the purpose other than for which the building was let out and the same also did not succeed.

3. It is the case of landlord that from July, 1983 to November, 1984 tenant has not paid rent at the rate of Rs. 400/- and on enquiry it was found that the amount was being deposited in R.C.O.P. 160 of 1979 and in C.M.A.248 of 1981, which have already ended years back. According to landlord, deposit before the Rent Controller after termination of litigations is not proper tender and the same will not amount to valid tender of rent. It is further averred that even though landlord has received the amount from Court, that will not take away his rights to contend that tenant has defaulted in paying rent.

4. As against then said contention, respondents have narrated the history of various litigations and said that from 1973 onwards they have been depositing rent in one proceeding or the other. Even if landlord has withdrawn the amount without prejudice to their rights, fact remained that the rent deposited by them has been withdrawn. In that view of the matter, there is no default in payment of rent much less it will amount to wilful default.

5. In para 8 of the counter statement tenants have further said that in R.C.O.P.160 of 1979 they have deposited the amount from June 1983 to December 1983 at the rate of Rs. 400/- and in R.C.O.P.736 of 1981 they have deposited rent for the period from January 1984 till September, 1984 They further alleged that regarding the rent for the months of October and November, they deposited rent in C.M.A.248 of 1981 and the same was deposited with the knowledge of landlord's counsel.

6. It is, therefore, alleged that they have no intention not to pay rent. It is also said that whenever amount is deposited, intimation has been given to counsel for landlord then and there and only thereafter landlord used to withdraw the same from Court. It is her case that once parties have adopted a particular procedure in payment of rent i.e., depositing rent in Court and withdrawal of rent from Court by landlord that practice will have to be taken into consideration as valid payment. It is their case that they are entitled to deposit rent as per the provisions of Rent Control Act during pendency of proceedings. According to them, the rent for the month of December 1984 was sent by money order on 10.1.1985 and the same was refused to be accepted by landlord. The conduct of petitioners in refusing to receive rent shows that they are interested only in evicting the tenants and landlords also did not choose to specify any bank in which rent should be deposited. Therefore, tenant moved an application u/s 8(5) of the Act seeking permission to deposit rent in Court and Rent from the months of December, 1984 are being deposited in RCOP. 31 of 1985. It is said that landlords also have withdrawn that deposit. They prayed for dismissal Of the application.

7. Rent Controller took oral and documentary evidence on the basis of above pleadings and as per order dated 3.4.1992 allowed the application.

Rent Controller held that the practice of depositing rent in Court after litigation has come to an end will not amount to valid tender but at the same

time, Rent Controller held that since landlord has been withdrawing the same, it cannot be said that the practice amounts to default. Rent Controller

further held that there was wilful default for the months of October and November, 1984 since tenant did not file any documents to show that he

has deposited amount. Since he has not paid amount for two months, the same amounts to wilful default and eviction was ordered.

8. Aggrieved by the said order tenant filed R.C.A.72 of 1992 on the file of Rent Control Appellate Authority, Madurai. Appellate authority

reversed the finding of Rent Controller and held that the tenant is not a wilful defaulter and not liable to be evicted on that ground.

9. It is against the said judgment this revision petition has been filed by the landlord.

10. I heard the counsel on both sides.

11. The eviction petition was filed on 2.1.1985. According to landlords, tenants have defaulted in payment of rent from July 1983 to November.

1984 for the period of 17 months. It is alleged by landlord that merely because there had been prior proceedings between them that does not

prevent tenants from tendering rent every month and they never refused to receive rent. There is no justification for tenant to deposit rent in RCOP.

160 of 1979 or in C.M.A.248 of 1981 or in R.C.O.P.736 of 1981. It is argued that all these proceedings have come to an end years before from

the date of filing this proceeding and depositing rent in the proceedings which has already come to an end will not be a proper tender of rent.

12. As against the said contention, Learned Counsel for respondents submitted that ever since misunderstanding arose between parties, landlord

used to receive rent only from the court and the same is deposited in one proceeding or the other. It is also contended that once landlords received

the amount deposited, they cannot contend that there is wilful default.

13. Rent Controller held that the deposit in the proceeding which has already come to an end is not proper deposit. But landlord was not given

benefit of eviction on the ground that, he has received rent from court: Appellate authority found that tenant cannot be termed as wilful defaulter

once he has paid the rent whether through court or otherwise.

14. Learned Counsel for petitioners submitted that it is the duty of the tenants to pay the rent to landlord and merely because there had been prior

litigations, that does not follow that tenant can deposit rent anywhere or in any case or Court. It is argued that some amount seems to have been

deposited in R.C.O.P 160 of 1979 and some amount in CMA 248 of 1981 and in R.C.O.P.736 of 1981. All these cases came to an end long

before initiation of this proceeding. It is argued by Learned Counsel that u/s 10 of the Rent Control Act, it is the duty of the tenants to tender the

amount to landlord. A deposit in Court is valid only when the conditions u/s 8 of the Act are satisfied. As against the said contention, Learned

Counsel for respondents submitted that ever since misunderstanding arose between the parties, they used to deposit the amount only in Court and

landlord is also withdrawing the amount from Court as and when it is deposited.

15. Before further proceeding into the matter, it is to be stated that the definite case of landlords that they never refused to receive rent if it was

tendered every month. In the counter statement, tenants have no case that they tendered the amount towards rent except the rent for the month of

December, 1984, which was sent by money order. The same was refused to be accepted by landlords. DW1. during his cross-examination has

said thus.

In the earlier portion of cross-examination, he has said thus,

In the cross-examination dated 19.3.1992, DW1 has said thus,

16. From the above deposition, it is clear that even though court refuses to accept the deposit, tenant was insisting to deposit the rent in another

proceeding. For five months from April 1984, rent was deposited in lump in C.M.A. 248 of 1981, which was already closed long before the

deposit. When Court itself refused to give permission to deposit rent in R.C.O.P.736 of 1981, tenant did not think of offering rent to Landlord

directly. Again, he went to court and deposited the amount in C.M.A.248 of 1981, which also came to an end by that time.

17. It is also clear from the above statement that tenant did not want to pay rent directly to Landlord and he should receive the same only from the

court. The practice which is alleged in the counter statement is one invented by tenant himself and landlord was compelled to receive the amount

only without prejudice to his claim. The fact that landlord received the rent without prejudice to his right is not disputed, but what tenant contends is

that even if the rent is received without prejudice, it is not going to affect his rights. It is in this background, we have to consider whether tenant can

be termed as wilful defaulter.

18. u/s 10 of the Act, a duty is cast on tenant to tender the rent to landlord. Rent becomes arrear if the rent is not tendered to landlord within IS

days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the

month next following that for which the rent is payable.

19. Section 8 of the Act deals with consequences where landlord refuses to issue receipt or refuses to receive rent Section 8(1) says whenever

landlord receives any payment towards rent or advance, he shall issue a receipt duly signed by him for the actual amount of rent or advance

received by him. Section 8(2) says that where landlord refuses to accept or evades the receipt of rent lawfully payable to him, tenant may by notice

in writing, require landlord to specify within ten days from the date of receipt of notice by him, a bank into which the rent may be deposited to the credit of landlord. If landlord specifies the bank tenant shall deposit the rent as and when it becomes due in that account till he gets further instructions of landlord. As per Section 8(4), if landlord does not specify bank, tenant is bound to remit the rent to landlord by money order, after deducting the money order commission. In spite of sending rent by money order, if landlord refuses to accept the same, tenant can deposit the amount in Court u/s 8(5) of the Act.

20. In view of the statutory provisions, can it be said that the deposit made in Court is valid tender?

21. In *Kuldeep Singh Vs. Ganpat Lal and another*, this question came for consideration under Rajasthan Rent Act. Section 19-A of the Rajasthan

Rent Act is similar to Section 8 of our Act. Considering the scope of that section their Lordships have held thus in paras 6 to 8:

6. Shri Sachar does not dispute that the conditions prescribed in clause (c) of sub-section (3) of Section 19-A for the purpose of making the

deposit in court are not fulfilled in the present case. The submission of Shri Sachar, however, is that since the appellant had deposited in court the

rent for the months of May 1982 to October 1982 on 29.10.1982, before the said rent for six months fell due, he cannot be held to be a defaulter

in payment of rent for six months and a decree for eviction u/s 13(1)(a) could not be passed. Shri Sachar has, in this connection, placed reliance on

the decisions of this Court in *Duli Chand v. Maman Chand* and *Sheo Narain v. Sher Singh*.

7. We have carefully perused the said judgments. Both these judgments relate to the proviso to Section 13(2)(i) of the East Punjab Urban Rent

Restriction Act, 1949 which affords protection against eviction of the tenant if on the first hearing on the application for ejectment after due service

he pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the

Controller. In both these cases, the tenant had deposited the amount of rent in the court in which ejectment proceedings were pending prior to the

first hearing of the application and on the first hearing, the landlord was made aware of the deposit. this Court has held that even though there was

no provision in the Act for deposit of the rent in court the said deposit could be treated as compliance with the requirements of the proviso to

Section 13(2X0 of the East Punjab Urban Rent Restriction Act, 1949 and the tenant was entitled to avail of the benefit of the said proviso.

8. In the present case, the appellant is seeking to avail of the benefit of the legal fiction u/s 19-A(4) of the Act. It is settled law that a legal fiction is

to be limited to the purpose for which it is created and should not be extended beyond that legitimate field (See: Bengal Immunity Co.Ltd. v. State

of Bihar (SCR at p.646)). The appellant can avail of the benefit of Section 19-A(4) if the deposit of Rs, 3600 made by him in the Court of Munsif

(South), Udaipur, on 29.10.1982, by way of rent for the months of May 1982 to October, 1982, can be treated as a payment u/s 19-A(3)(c), so

as to enable the appellant to say that he was not in default in payment of rent. u/s 19-A(3Xc) the tenant can deposit the rent in the court only if the

conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present

case. The deposit which was made by the respondent in court on 29.10.1982 cannot, therefore, be regarded as a deposit made in accordance

with clause (c) of sub-section (3) of Section 19-A and the appellant cannot avail of the protection of sub-section (4) of Section 19-A and he must

be held to have committed default in payment of rent for the months of May 1982 to October 1982. This means that the decree for eviction has

been rightly passed against the appellant on account of default in payment of rent for the period of six months.

22. In (1995) Supp(I) S.C.C.318(I), a similar question came for consideration under U.P. Urban Buildings (Regulation of Letting, Rent and

Eviction) Act, 1972. In that case, tenant used to deposit the amount in Civil Court and he contended that he deposited the rent with bona fide

intention. An argument was also taken that deposit in a Civil Proceedings will enure to the benefit of Rent Control proceedings. The submission

was rejected by the Honourable Supreme Court. In that case it is held thus,

.....Nevertheless, the defence of the appellant that he had deposited bona fide the rent in the civil proceedings that would enure to the benefit of

the Rent Control proceedings is unacceptable to us. Law prescribes the procedure as to the deposit under U.P. Urban Buildings (Regulation of

Letting. Rent and Eviction) Act. 1972. Such a procedure if complied with alone will be a valid defence to a petition for eviction on the ground of

arrears of rent. Therefore, even accepting the defence, the ultimate order of eviction passed against the tenant will have to be upheld.....

(emphasis supplied)

23. My attention was also drawn to the decision reported in Brij Bhushan Vs. Kewal Kumar, , a case under Haryana Rent Control Act. Section

6-A of Haryana Rent Control Act is similar to Section 8 of our Act. Under Haryana Act, if landlord refuses to receive rent or refuses to issue

receipt, tenant is given the right to apply to Controller to deposit rent in Court. In that case, tenant deposited the amount and Honourable Supreme

Court held that is valid deposit. On going by the facts of the case, I find that tenant satisfied the statutory requirements and therefore their

Lordships held that the deposit was proper.

24. I also had occasion to consider similar question in the decision reported in 1997-2-L. W. 66 (Raffudin, S.K. and others v. N. Yeswantha Rao

and others):

25. In all these cases, the Honourable Supreme Court held that the deposit made which is not in compliance with the statutory provisions is not

valid tender. Tenant cannot say that this is a practice which is acquiesced by the landlord. There cannot be a practice in disregard of the law. From

the extract of deposition it is clear that the tenant did not want to tender rent to landlord and it is not their case that they offered rent to landlord

and they refused to accept the same. Merely because landlord received rent which is due to him there cannot be any estoppel especially when the

amount was received under protest.

26. While considering the scope of wilful default, conduct of tenant also will have to be considered. It is not the intention of legislature to absolve

tenant of all consequences merely because he has made some deposit in the way he chooses. By making deposit in the Court, his intention is clear

that he will not tender the amount to landlord directly. Again by a deposit in Court, landlord also will not be in a position to receive the rent as and

when it becomes due. If it is a valid deposit, he is absolved of being accused as defaulter.

27. In a recent decision rendered by my learned brother Justice Raman in the

decision reported in 1998 (III) CTC 467 (Vasantha Leela v. N.

Vadivelu Chettiar) it was held that when there is litigation between parties, it is foremost duty of the tenant to pay rent in time and any default

committed by tenant in not paying rent in time will amount to wilful default.

28. In another judgment rendered by my learned brother Justice K. Govindarajan reported in 1999 (I) CTC 221 (Easwara Rao T. v. N. W.

Ansari) it was held that unless tenant specifies the conditions u/s 8(5) of the Act, he is not entitled to make deposit and even if any deposit is made,

it cannot be said that he is not a defaulter.

29. In this case, tenant when he made deposits, litigation has already been terminated. He cannot say that he has satisfied the conditions u/s 8(5) of

the Act. He voluntarily made the deposit without paying amount to landlord. It could further be seen from his own evidence that from the month of

April 1984 for five months, deposit was made in lump in C M.A.248 of 1981. Even in cases where deposit is made u/s 8(5) of the Act, law

stipulates that the rent will have to be deposited as and when it becomes due. So far as respondents are concerned, when they invoked provisions

of Section 8(5) of the Act, deposit in lump cannot absolve them of their liability to be evicted on the ground of default in payment of rent. Likewise

the deposit in R.C.O.P. 160 of 1979 also cannot be said as valid deposit.

30. There is also one reason why tenants have to comply with the conditions before invoking the provisions of Section 8(5) of the Act. When

landlord refuses to receive rent and also does not name the bank, and even refuses to receive money order, tenant is enabled to deposit rent in

Court and Court receives the amount on behalf of landlord. Court when acting as agent of landlord and deposit is made is treated as payment to

landlord himself. The court can be called as an agent only when the conditions are satisfied. Tenant is also deemed to be absolved from all the

liabilities when he satisfies all the conditions. Any deposit made not complying with Section 8(5) of the Act and deposits made in courts where

litigations are not pending cannot be treated as valid deposit. It is also admitted by tenants themselves that regarding these deposits, notice was not

given to landlords or to their counsel. Merely because landlord on enquiry gets information and seeks withdrawal of the amount, that cannot be

said as notice. Lower appellate court has taken the view that since landlord has

withdrawn the amount, he might have notice. That position of law as stated by Appellate Authority is not correct.

31. Even though tenant has given details of deposit, he has not given the dates of deposit and even while he was examined he has not given the details about the deposits made by him. Only challan numbers and the months for which rent is due are given.

32. When the tenant sent the amount by money order for the month of December 1984, landlord was justified in refusing the same since amount for October and November, 1984 were not paid till then and no intimation was also given to landlord that the amount has been deposited in

C.MA.248 of 1981.

33. Immediately after landlord refuses to accept rent for the month of December, 1984. tenants invoked the jurisdiction u/s 8(5) of the Act and

filed R.C.O.P. 31 of 1985. Rent Controller commented on the conduct of tenant and held that the deposit even thereafter was not made as and

when rent became due but according to the convenience of tenants. Exs. A17 to A22 will show how the amounts were being deposited in

R.C.O.P.31 of 1985. Tenants took their own time to deposit the rent in every four or five months interval. The conclusion is irresistible that tenants

are in default for having not paid the rent in time, and they did not want landlord to receive rent on the due dates.

34. Learned Counsel for respondents relied on the decision reported in S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, to

contend that they cannot be termed as wilful defaulters. Learned Counsel also relied on paragraphs 21 to 25 of the judgment and argued that there

was no intention on the part of tenants not to pay the rent. I do not find that the said submission of counsel could be accepted. Tenants might have

been paying rent, but if the intention is that the amount should not reach the landlord on the due date, or. if they deposit rent not in accordance with

law. and thus intentionally prevent landlords from getting rent in time, the same also will amount to wilful default. Delayed payment or payment with

an intent to see that the landlord does not receive rent in time will also amount to wilful default. In the result, the revision petition is allowed by

setting aside the judgment of appellate, authority. There, will be an order of eviction on the ground that tenants have committed wilful default in

paying rent. R.C.O.P.8 of 1985 on the file of Rent Controller/Principal District Munsif, Madurai Town is allowed with costs throughout.