
(1998) 10 MAD CK 0071
In the Madras High Court
Case No : C.R.P.No. 360 of 1996

T. Pramod Wilson and 3 others

APPELLANT

Vs

Dr. Hari Ramesh

RESPONDENT

Date of Decision : 30-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, Order 10 Rule 1(5)
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(8), 11(4),
2(6)(8), 23, 8(2)(3)(4)(5)

Citation : (1999) 1 CTC 732

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Mrs. Nalini Chidambaram, S.C. for Mr. S. Natarajan, for the Appellant; Mr. M. Venkatachalapathy, for Mr. A. Subramanya Iyer, for the Respondent

Judgement

1. The above revision is directed against the judgment and decree dated 14.7.1998 made in RCA.No. 337 of 1991 on the file of the learned Rent

Control Appellate Authority (VII Judge, Small Causes Court) Madras, setting aside the order of the eviction dated 6.12.1990 made in RCOP.No.

1727 of 1988 on the file of the learned Rent Controller (XI Judge, Small Causes Court), Madras.

2. The brief facts of the case are stated as follows:

The landlords were the revision petitioners who filed the above RCOP.No. 1727 of 1988, seeking eviction of the respondent-tenant, u/s 10(2)(i)

of the Tamil Nadu Buildings (Lease and Rent Control) Act, (hereinafter referred to as the Act), on the ground of wilful default for non-payment of

rent for the period from January 1987 to March 1988, at the rate of Rs. 3,000 per month.

3. According to the revision petitioners, the petition premises namely door No. 224, Indira Nagar, 4th Avenue, Madras-20 originally let out to the respondent-tenant, by one T.J.M. Wilson, father of the revision petitioners, for a monthly rent of Rs. 3,000 for non-residential purpose, namely to run a clinic. T.J.M. Wilson, father of the revision petitioners died on 10.12.1986. After his death, the revision petitioners have become entitled to receive the rent along with their mother Smt. Indira Wilson. Smt. Indira Wilson died on 17.12.1987 and thereafter, the revision petitioners are alone entitled to receive the rent. The revision petitioners stated that their father himself initiated eviction proceedings against the respondent herein and after the death of their father, they filed an application to bring them as legal representative of their father, deceased T.J.M. Wilson.

4. The revision petitioners further stated that the respondent neglected to pay the rent from January, 1987 inspite of repeated oral requests.

Therefore, they gave a lawyer's notice dated 28.3.1988, which is marked as exhibit P1, to which the respondent sent reply notice dated

11.4.1988, which is marked as exhibit P2. The lawyer's notice dated 28.3.1988 was given on behalf of Pradeep Wilson, first petitioner in RCOP,

Pramod Wilson, second petitioner in RCOP and Srikanth Wilson, fifth Petitioner in RCOP whereas Praveen Wilson and Rathnakant Wilson,

namely third and fourth petitioners in RCOP respectively, were represented by their power agent, Pramod Wilson, second petitioner in RCOP.

Therefore, the notice dated 28.3.1988 was given on behalf of all the sons of the deceased T.J.M. Wilson.

5. In the said notice dated 28.3.1988, the petitioners in RCOP claimed that on the death of their parents, they became the landlords of the said

property and as such the respondent was liable to pay the rent to the petitioners in RCOP.

6. In the reply notice dated 11.4.1988, the respondent had stated the he was regular in paying the rent till the death of T.J.M. Wilson and they

could not pay the rent thereafter as no one came forward with any claim for the rent for more than a year. It is further stated that he did not know

whether the deceased Wilson left any Will or settlement in favour of the petitioners. It is also contended that there was no cordial relationship

between the deceased T.J.M. Wilson and his wife and other relations and therefore, the respondent apprehended that there might be other

claimants also. The respondent-tenant justified non-payment of rent stating that there was no mention in the lawyer's notice dated 28.3.1988

whether there was any daughter or any other heirs.

7. In view of the stand taken by the respondent, the petitioners in RCOP, filed the above RCOP seeking eviction of the respondent-tenant u/s

10(2)(i) of the Act on the ground of wilful default in paying the rent, as referred to above.

8. The above eviction proceedings was objected by the respondent stating that the deceased T.J.M. Wilson was living alone in the neighbouring

house at No.225, 4th Avenue, Indira Nagar, Madras 600 020; the deceased T.J.M. Wilson was not living with his wife or any of his children;

passed away by the end of December 1986 and it was not known whether he had left any Will or settlement. The respondent further contended

that he was not told whether the deceased T.J.M. Wilson had left any Will or settlement, inspite of specific enquiry. The respondent questioned the

very locus standi of the petitioners in filing the above eviction petition as they have not established their right to receive the rent as the legal

representatives of the deceased T.J.M. Wilson. The respondent also contend that unless the petitioners establish their right, it would not be safe for

him to pay the rent to the petitioners, especially when they had avoided to answer the specific enquiry about the Will or settlement. The respondent

denied the arrears of rent for the period 1.1.1987 to 31.3.1988 and contended that there was no supine indifference or wilful default, as alleged by

the petitioners. He further contended that wilful default would arise only when there was a subsisting relationship of the landlord and the tenant and

also contended that the petitioners should have obtained the succession certificate to collect the rent and having failed to do so, they are not entitled

to claim any rent from the respondent, complaining the same as wilful default.

9. During the pendency of the above petition, the petitioners also filed an application u/s 11(4) of the Act to deposit the rental arrears from

1.1.1987 to 31.3.1988 wherein an order was passed on 30.9.1988 directing the respondent to pay the arrears. In pursuance of the said order

dated 30.9.1988, the respondent paid the arrears.

10. The second petitioner in RCOP examined himself as the only witness on behalf of the petitioners as PW1 and marked the legal notice issued

on their behalf, dated 28.3.1988, as exhibit P1 and the reply notice received, dated 11.4.1988 as exhibit P2. However, no witness was examined

nor any document was filed on behalf of the respondent.

11. In the light of the above evidence of PW1 and exhibits P1 and P2, namely the legal notice sent by the petitioners, dated 28.3.1988 and the

reply notice dated 11.4.1988 sent by the respondent-tenant to the petitioners respectively, the learned Rent Controller (XI Judge, Small Causes

Court), Madras, by his order dated 6.12.1990 in RCOP No.1727 of 1988, ordered eviction giving three months notice to the respondent-tenant

to vacate and hand over the vacant possession of the petition premises to the petitioners in RCOP. On appeal in RCA No. 337 of 1991, the

learned Rent Control Appellate Authority (VII Judge, Small Causes Court), Madras, set aside the order of eviction, by his judgment dated

14.7.1993. Hence, the above revision.

12. The learned senior counsel appearing on behalf of the revision petitioners contends that the learned Appellate Authority committed an error,

apparent on the face of the record, in holding that the petitioners had failed to prove that they are entitled to receive the rent and that the alleged

default said to have been committed by the respondent-tenant in paying the rent, could be construed as wilful or supine indifference, merely

because the father of the petitioners was living alone.

13. The learned senior counsel for the revision petitioners also contends that the learned Appellate Authority failed to appreciate the fact the

petitioners, in their legal notice dated 28.3.1988, marked as exhibit P1, had clearly stated that they are the only legal heirs of the deceased T.J.M.

Wilson and the demand by the respondent-tenant to know whether there was any Will or settlement executed by the deceased T.J.M. Wilson is

totally irrelevant and unjustified as no rival claim was made to the respondent-tenant by any others except the petitioners.

14. The learned senior counsel for the revision petitioners, further contends that the learned Appellate Authority also failed to appreciate that

inspite of the fact that the petitioners had produced their legal heir certificate to the respondent-tenant, as per the evidence of PW1, the

respondent-tenant, had not paid the rent to the petitioners till the petitioners filed an application W.M.P.No.1160 of 1988 u/s 11(4) of the Act

and obtained an order dated 30.9.1988, in pursuant to which the respondent-tenant paid the arrears on 8.3.1989.

15. The learned senior counsel for the revision petitioners states that the conduct of the respondent-tenant in not paying the rent, inspite of the

production of legal heir certificate by the petitioners, clearly prove supine indifference and wilful default, as even after the receipt of legal notice

dated 28.3.1988 and filing of the eviction proceedings u/s 10(2)(i) of the Act, the respondent-tenant was not prepared to pay the rent and failure

to deposit the rent, inspite of the receipt of legal notice dated 28.3.1988, will substantially prove that the respondent-tenant had committed wilful

default satisfying the explanation to Section 10(2)(i) of the Act. In this regard, she relies upon the decision *Abdul Majeeth v. Smt. Masiammal*,

1981 TLNJ 315.

16. Referring to the evidence of PW1, the learned senior counsel for the revision petitioners contends that there is no dispute between the

deceased T.J.M. Wilson and his wife and the petitioners. Assuming if there is any dispute, it cannot be a ground for the respondent-tenant to refuse

to pay the rent contending that the petitioners are not entitled to receive the rent, after the death of their father, T.J.M. Wilson, particularly when

they have produced the legal heir certificate and no rival claim was made by any one, and the respondent-tenant is not entitled to ask for any Will

or settlement left by the deceased T.J.M. Wilson for paying the rent to the petitioners as the petitioners are entitled to receive the rent by

inheritance.

17. Placing reliance on the decision *Nilgiris Co-operative Marketing Society etc. v. C.T. Uthandi*, 1998 (2) LW 216, the learned senior counsel

for the revision petitioners contends that the mere deposit of rent pursuant to the order dated 30.9.1988 made in M.P.No. 1160 of 1988 filed u/s

11(4) of the Act, cannot cure the disqualification of the respondent-tenant and if such a defence is accepted, there can never be an order of

eviction on the ground of wilful default u/s 10(2)(i) of the Act.

18. The learned senior counsel for the revision petitioners further contends that the petitioners are justified in expecting the respondent-tenant to

pay the rent regularly atleast after the issue of notice, as required under the explanation to Section 10(2)(i) of the Act, much less the initiation of the

eviction proceedings. In this regard, she relies upon the decision *B. Anraj Pipada v. V. Umayal*, 1998 (3) LW 159.

19. The learned senior counsel appearing on behalf of the respondent contends that the respondent was occupying the petition premises as tenant

only under T.J.M. Wilson for running a 24 hours hospital, under the name and style of Swaram Hospital Private Limited with 22 beds, x-ray,

ECG, Ultrasonogram and endoscopy facilities with fifty staff members. After the death of T.J.M. Wilson, neither his wife nor the petitioners had

claimed the rent for about 13 months. Hence, he contends that the failure to demand the rent for about 13 months, under the context of indifference

between T.J.M. Wilson and his wife and the petitioners, necessitate the respondent-tenant to ask whether the deceased T.J.M. Wilson executed

any Will or settlement in favour of the petitioners to satisfy himself that the petitioners are entitled to receive the rent and as the petitioners failed to

reply to the said enquiry the respondent-tenant had to withhold the rent, which cannot be termed as wilful default or supine indifference.

20. The learned senior counsel for the respondent invited my attention to Section 2(6) of the Act and contends that before complaining that the

respondent had committed wilful default or supine indifference in paying the rent, the petitioners are under statutory obligation to prove that they

are coming within the definition of "landlord" as defined u/s 2(6) of the Act. Having failed to prove that they are the only legal heirs of their father,

deceased T.J.M. Wilson, either by way of any Will or settlement, they are not entitled to receive the rent and to claim as "landlord" as no

relationship of landlord and tenant between the petitioners and respondent subsists. In any event, the respondent-tenant having deposited the

arrears of rent on 8.3.1989, pursuant to the order dated 30.9.1988 made in M.P.No. 1160 of 1988, filed u/s 11(4) of the Act, it cannot be said

that the respondent-tenant had committed wilful default. In this regard, he relies upon the decision *Abdul Rahman v. G. Chandrasekharan*, 1978

(2) MLJ 234. and contends that the eviction proceedings itself is not maintainable in law as they have not obtained any previous written consent to

apply for eviction, as contemplated u/s 10(8) of the Act.

21. Placing reliance on the decision *D.K. Pandey Vs. Abdul Azeez*, , learned senior counsel for the respondent contends that in the absence of any

finding that the petitioners are real landlords, the deposit of rent by the respondent-tenant in the Court, shall cure the default in paying the rent as

bona fide and therefore, the respondent-tenant had not committed any wilful default warranting eviction.

22. The learned senior counsel for the respondent also relied upon the decisions

(a) K. Mohideen Sahib Vs. Theodore Samuel, ; (b) Rajalinga Chettiar and 2 others v. Nataraja Mudaliar, 1995 (1) LW 456; and (c) Krishna

Mudaliar v. Lakshmi Ammal, 1996 (2) LW 467

and contends that failure to resort to the procedure laid down u/s 8(2) to 8(5) will not automatically entitle the petitioners to evict the respondent

on the ground of wilful default as they are only optional and not mandatory. He contends that, in the instant case, the respondent-tenant deposited

the entire rent on 8.3.1989 itself, which is admittedly prior to the first hearing of trial. As per the decision Advaita Nand Vs. Judge, Small Cause

Court, Meerut and Others, , only the date on which Court proposes to apply its mind to the points in controversy between the parties alone can be

construed as a relevant date for the first hearing of the suit and not the date fixed for filing of the written statement. Relying upon the above

decision, he contends that even though the respondent-tenant had not deposited the rent immediately after the receipt of the summon of eviction

proceedings, he had deposited the entire amount on 8.3.1989, even before the commencement of trial, which was admittedly on 3.10.1990 and

therefore, the respondent-tenant had not committed wilful default.

23. The learned senior counsel for the respondent further relied upon the proviso to Section 10(2)(i) of the Act and contends that the provision

enables the Court to give 15 days time to pay the arrears of rent and to prove that he has not committed any wilful default. But, in the instant case,

the respondent had already deposited the amount on 8.3.1989, even prior the the eviction order passed by the learned Rent Controller on

6.12.1990 and therefore, the respondent-tenant had not committed any wilful default and he is not liable to be evicted.

24. In reply, the learned senior counsel appearing on behalf of the petitioners, contends that, under the facts and circumstances of the case, the

very doubt as to the status of the petitioners as landlords and the subsistence of the relationship between the petitioners and the respondent as

landlords and tenant, is baseless and nothing but imaginary and surmise as the petitioners are entitled to receive the rent in view of the admitted fact

that they are the only legal heirs, as claimed by themselves, in the light of the legal heir certificate produced by them and particularly, when there

was no rival claim made by anyone.

25. According to the learned senior counsel appearing for the petitioners, when the petitioners sent the legal notice dated 28.3.1988, which is

marked as exhibit P1, stating that they are the only legal heirs of their father, deceased T.J.M. Wilson and there was no rival claim whatsoever by

whomsoever for the rent payable by the respondent-tenant, the petitioners are automatically entitled to receive the rent and there is no necessity

either to inform the respondent whether the deceased T.J.M. Wilson executed any Will or settlement nor there was any other legal heirs.

26. She invited my attention to the explanation to Section 10(2)(i) of the Act and contends that since the respondent, in the reply notice dated

11.4.1988, refused to pay the rent as per Section 10(2)(i), the petitioners initiated eviction proceedings even without waiting for two months time

to expire from the date of receipt of the notice dated 28.3.1988, and the deposit made by the respondent-tenant towards the arrears of rent on

8.3.1989, in compliance of the direction of the learned Rent Controller dated 30.9.1988 in M.P.No.1160 of 1988 filed u/s 11(4) of the Act, will

not erase the wilful character of the respondent-tenant in not paying the rent. She further contends that the failure to pay the rent for the period

from January 1987 to March 1988 is so deliberate and wilful and cannot be construed as bona fide. She also contends that the decisions relied

upon by the learned senior counsel appearing for the respondent are not applicable to the facts and circumstances of this case and therefore, the

respondent-tenant is liable to be evicted on the ground of wilful default in paying the rent for the period from January 1987 to March 1988, u/s

10(2)(i) of the Act.

27. I have given careful consideration to the submissions of both sides.

28. In this regard, I am obliged to refer Sections 2(6), 2(8), Sections 8(2) to 8(5), 9, 10(2)(i) with explanation thereto and Section 11, which

reads as follows:

Sections 2(6):

Landlord"" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account on or behalf of another

or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be

entitled to receive the rent if the building were let to a tenant.

Section 2(8):

tenant"" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter,

or the legal representative of a deceased tenant..

Section 8(2) to 8(5):

8(2) - Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the

tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the

rent may be deposited by the tenant to the credit of the landlord:

8(3)- If the landlord specified a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which

may subsequently become due in respect of the building.

8(4) - If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the

money order commission.

8(5):- If the landlord refuses to receive the rent remitted by Money Order under sub-section (4), the tenant may deposit the rent before the

Controller and continue to deposit with him any rent which may subsequently become due in respect of the building.

Section 9:

(1)- Where the address of the landlord or his authorized agent is not known to the tenant, he may deposit the rent lawfully payable to the landlord

in respect of the building, before the Controller in such manner as may be prescribed, and continue to deposit any rent which may subsequently

become due in respect of the building, before the Controller and in the same manner until the address of the landlord or his authorized agent

becomes known to the tenant.

(2) - The amount deposited under sub-section (3) or under sub- section (5) of

section 8, or under sub-section (1) of this section may, subject to such conditions as may be prescribed, be withdrawn by the person held by the Controller to be entitled to the amount on application made by such person to the Controller in that behalf.

(3) - Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building, the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the controller the circumstances under which such deposit was made by him, and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent court or by a settlement between the parties or until the Controller makes an order under clause (b) - of sub-section (4), as the case may be

(4) (a) - The Controller to whom a report is made under sub- section (3) shall, if satisfied that a bona fide doubt or dispute exists in the matter, direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned.

(4) (b) - If the Controller is not so satisfied, he shall forthwith order payment of the amount deposited to the landlord.

(5) - Where the Controller passes an order under clause (a) of sub-section (4), any amount deposited under sub-section (3) may be withdrawn only by the person who is declared by a competent Court to be entitled thereto, or in case the doubt or dispute is removed by a settlement between the parties, only by the person who is held by the Controller to be entitled to the amount or amounts in accordance with such settlement.

Section 10(2)(i):

A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

(i) - that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence any such agreement, by the last day of the month next following that for which the rent is payable, or

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may,

notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by

him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

Explanation:

For the purpose of this sub-section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender

of rent continues after the issue of two month's notice by the landlord claiming the rent.

Section 11:

No tenant against whom an application for eviction has been made by a landlord u/s 10 shall be entitled to contest the application before the

Controller under that section, or to prefer any appeal u/s 23 against any order made by the Controller on the application, unless he has paid or

pays to the landlord, or deposits with the controller or the Appellate Authority, as the case may be, all arrears of rent due in respect of the building

up to the date of payment or deposits, and continues to pay or to deposit any rent which may subsequently become due in respect of the

proceedings before the Controller or the Appellate Authority, as the case may be.

(2) - The deposit of rent under subsection (1) shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1) the Controller or the Appellate Authority, as

the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary,

determine summarily the rent to be so paid or deposited.

(4)- If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority, as the case may be, shall, unless the

tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession

of the building.

(5) - The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on

application made by him in that behalf to the Controller or the Appellate Authority as the case may be.

29. u/s 2(6) of the Act, the landlord includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account

or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so

receive the rent or be entitled to receive the rent if the building were let to a tenant. Ofcourse, a reading of Section 2(8) makes it clear that tenant

means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the

legal representative of a deceased tenant. Since the legislature has included the surviving spouse or any daughter or legal representative of the

deceased tenant to include within the definition of tenant and such persons of the deceased landlord were not included within the definition of

landlord, in my considered opinion, it will not take away the right of the surviving spouse, sons, daughters or legal representative of the deceased

landlord to claim that they are entitled to receive the rent and therefore, it will not enable the tenant to evade the payment of rent to the surviving

spouse or son or daughter or legal representative of the deceased landlord on the ground that they failed to produce Will or settlement executed by

the deceased landlord to show that they are the only legal heirs of the landlord particularly when they called on the respondent- tenant seeking their

legitimate right to receive the rent, which have devolved on them by inheritance as there was no rival claim made by any one other than the

petitioners.

30. In the instant case, the petitioners in RCOP, in their legal notice dated 28.3.1988, had clearly stated that they are the only legal heirs of the

deceased T.J.M. Wilson and the said legal notice was issued on behalf of all the sons, namely the petitioners in RCOP. However, the respondent-

tenant had chosen to ask about any Will or settlement left by the deceased T.J.M. Wilson, in favour of the petitioners stating that there was no

cordial relationship between T.J.M. Wilson and his wife and the petitioners and therefore, apprehended that there might be some other claimants

also.

30-A. In this regard, it is relevant to refer to the evidence of PW1, namely the

second petitioner in RCOP, wherein PW1 had clearly deposed that the property belong to his father and the same was let out to the respondent for a monthly rent of Rs.3,000 his father died on 10.12.1986; his mother died in the year 1987; and thereafter the petitioners in RCOP had become the legal heirs. P.1, further deposed that he had shown the legal heir certificate to the respondent and also sent a legal notice, which is marked as exhibit P1 dated 28.3.1988, referred to above. PW1 had stated that the respondent had not paid the rent from January 1987 to March 1988 and deposited the arrears only pursuant to the order dated 30.9.1988 made in M.P.No. 1160 of 1988 u/s 11(4) of the Act. PW1 categorically denied the suggestion that they were quarreling with their father when he was alive. Even in the cross-examination, PW1 had categorically stated that they showed the legal heir certificate to the respondent as the respondent wanted evidence to show that the petitioners in RCOP are the only legal heirs of T.J.M. Wilson. It is also stated that the first petitioner in RCOP died during the pendency of the petition, namely in the year 1990, without any legal heir. PW1 had stated that his father made a criminal complaint only against their maternal uncle but not against them or their mother and that they did not reply whether there was any Will or settlement left by their father deceased T.J.M. Wilson, as, in fact there was no Will or settlement left by their father.

31. The evidence of PW1 is clear and direct to the effect that they are the only legal heirs of the deceased T.J.M. Wilson and Indira Wilson and that they made a claim through the legal notice dated 28.3.1988 and that there was no quarrel between the deceased T.J.M. Wilson and his wife and the petitioners requiring the respondent-tenant to doubt the entitlement of the petitioners in RCOP to receive the rent. In spite of the above fact, the respondent had not chosen to adduce any witness on his behalf, to shift the burden on the petitioners to prove their entitlement to receive the rent. In the absence of such discharge of burden by the respondent either to prove that there was any rival claim made by any one or as to the dispute between the deceased T.J.M. Wilson and his wife and the petitioners, it is not open for the respondent-tenant to claim that the petitioners, who are admittedly surviving sons of the deceased T.J.M. Wilson and Indira Wilson are not entitled to receive the rent merely because the

surviving spouse or son or daughter or any legal representative of the deceased landlord are not included within the definition of landlord u/s 2(6)

of the Act. Therefore, I am unable to draw any inference by reading Section 2(6) of the Act that merely because surviving spouse or son or

daughter or legal representative of the deceased landlord were not included in the definition of "landlord", they are not entitled to claim the rent

unless and until they prove that they are of their parents, rightly claimed that they are entitled to receive the rent. Therefore, the above decision is

not applicable to the facts of this case.

32. Placing reliance on the decisions *Mohideen Sahib v. Theordere Samuel*, 1985 (2) MLJ 354, *Rajalinga Chettiar and 2 others v. Nataraja*

Mudaliar, 1995 (1) LW 456 and *Krishna Mudaliar v. Lakshmi Ammal*, 1996 (2) LW 467, learned Senior counsel for the respondent contended

that merely because the respondent-tenant failed to deposit the rent before the Rent Controller adopting the procedure prescribed u/s 8(2) to 8(5)

of the Act, it cannot be said that the respondent-tenant had committed wilful default in paying the rent.

33. In *Mohideen Sahib v. Theodre Samuel*, 1985 (2) MLJ 354, *K.M. Natarajan, J*, following the decision *Sundaram Pillai v. Pattabiraman*, AIR

1985 SC 528, has held as follows:

In the instant case in view of the fact that the petitioner had sent the rent by money order and that the same was refused by the landlord repeatedly

and in view of the fact that he has issued a notice calling upon the respondent to specify the name of the bank into which the rent has to be

deposited and immediately after receipt of the notice, he deposited the entire arrears, it cannot be said that the petitioner has committed wilful

default in payment of rent. Both the Courts below have not properly appreciated the principles enunciated by the Supreme Court in *S. Sundaram*

Pillai and Others Vs. `R. Pattabiraman and Others, , to the facts of the instant case and the same has resulted in the order of eviction.

34. In *Rajalinga Chettiar and 2 others v. Nataraja Mudaliar*, 1995 (1) LW 456, *A.R. Lakshmanan, J* has held as follows:

In the instant case, admittedly, the landlord has refused to receive the rent which compelled the tenants to open Post Office Savings Bank

Account, to deposit the rent immediately thereafter. A letter was sent from the

tenant which has been referred to in Ex.B6 asking the landlord to name a Bank. However on 6.10.1983, a reply was sent by the counsel for the landlord that his client was not prepared to receive the rent. Under such circumstances, the tenants had taken the right step in depositing the money in the Post Office Savings Bank Account, which establishes the bona fides of the tenants. As has been observed by Ramaprasada Rao, J, unless an element of indifference, which is wanton and deliberate besides being designed, is provable and proved in the attitude of the tenant, it cannot be said that all defaults made in the payment of rent are to be automatically characterised as wilful defaults. I am, therefore, unable to agree with the findings of the Courts below in which a material irregularity is patent, that the petitioners- tenants had committed wilful default in the payment of rent.

The tenants have proved their bona fides by producing documentary evidence to the effect that since the rents sent by money orders were refused by the landlord and the landlord himself was not prepared to receive the rents from the tenants under Ex.B6 dated 6.10.1983, the tenants had to deposit the same in the Post Office Savings Bank Account. ""With respect, I agree with the view taken by Ramaprasada Rao, J, followed by the other learned Judges (referred to) that S.8 is only an enabling provision to prove the bona fide of the tenant and absence of willfulness on the part of the tenant in the matter of payments of the rents. I am also of the view that non-adoption of the procedure prescribed u/s 8(2), which could be adopted by the tenants in their discretion, does not throw any light upon want of bona fides of the tenants. In the instant case, I am also of the view that the procedure prescribed u/s 8 of the Act is only optional and not mandatory. With reference to the payment of rents, the tenants had produced before the court below the evidence regarding the deposits. In fact, the landlord has withdrawn the amount after obtaining orders from the Rent Controller, of the deposits made by the tenant. Therefore, it follows that there could not be any wilful default as such in the payment of rents in the instant case as contended by the learned counsel for the landlord.

35. Ofcourse, Section 8 of the Act provides the procedure for the tenant to deposit the rent in the manner provided thereunder, if the landlord refuses to accept the same. It is under such context, in the above cases, where

the landlord admittedly refused to receive the rent, the Courts have held that the failure to deposit the rent adopting the procedure prescribed u/s 8(2) to 8(5), shall not amount to wilful default. But, in the instant case, the respondent-tenant neither paid the rent to the surviving sons of the deceased T.J.M. Wilson nor the petitioners refused to receive such payment nor the respondent-tenant had chosen to make payment even after the claim made by the petitioners by their legal notice dated 28.3.1988, satisfying the explanation to Section 10(2)(i) of the Act. Therefore, the decisions referred to above are also not applicable to the facts of the case as the very procedure prescribed u/s 8(2) to 8(5) itself is not attracted.

36. That apart, assuming the respondent-tenant had bona fide doubt or dispute as to the persons who is entitled to receive the rent either for the alleged reason that the petitioners in RCOP failed to prove that they are entitled to receive the rent or produce any Will or settlement left by the deceased T.J.M. Wilson, nothing prevented the respondent-tenant to resort for depositing the rent by adopting the procedure laid down u/s 9(3) of the Act to show their bona fide nor to claim that they have not committed any wilful default or supine indifference. The respondent-tenant having failed to prove his bona fide, assuming that he has not committed default wilfully, by depositing the rent for the mere reason that the authority to whom such deposit has to be made is not prescribed by the State, as observed in *Abdul Majeeth v. Smt. Masiammal*, 1981 TLNJ 315, the tenant ought to have deposited the entire arrears of rent to the credit of eviction proceedings namely RCOP No. 1727 of 1988. But, in the instant case, the respondent-tenant deliberately kept silent, even after filing of eviction proceedings and evaded the payment of rent till the petitioners filed an application namely M.P.No.1160 of 1988, u/s 11(4) of the Act.

37. While Section 8 and 9 of the act are enabling provisions available for the tenant to show his bona fide by depositing the rent when the landlord refuses to receive the rent or when there was a bona fide doubt or dispute as to the person who is entitled to receive the rent respectively and to prove that he has not committed wilful default. Section 11, on the other hand, enables the landlord to collect the rent in order to prevent the defaulters from continuing in possession of the petition premises, even without

performing their part of obligation to pay the rent. It is only after resorting to such procedure to collect the rent, the respondent-tenant had chosen to pay the rent to the petitioners. The learned senior counsel for the respondent contended that the respondent, having deposited the entire arrears of rent on 8.3.1989, pursuant to the order dated 30.9.1988 made in M.P.No.1160 of 1988, filed u/s 11(4) of the Act, even before the date of the trial claims that the respondent had not committed wilful default. No doubt, the Apex Court in *Advaita Nand Vs. Judge, Small Cause Court, Meerut and Others*, , while interpreting the word "First hearing" of the suit, u/s 20(4) of the U.P. Rent Act, has held as follows:

3. The short question which falls for consideration is whether the appellant is entitled to avail the benefit of Section 20(4) of the Act. The said provision, as amended by U.P. Act 28 of 1976, provides as follows:

20. (4) In any suit for eviction on the ground mentioned in clause (a) or sub-section (2), if at the first hearing of the suit the tenant unconditionally

pays or tenders to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him

(such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per

annum and the landlord's costs of the suit in respect thereof, after deducting there from any amount already deposited by the tenant under sub-

section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability

for eviction on that ground:

Explanation: For the purposes of this sub-section-

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;

4. The Explanation was inserted in Section 20(4) by the Amendment Act of 1976. Dealing with the provisions of Section 20(4), as they stood

prior to the amendment of 1976, this Court in *Ved Prakash Wadhwa v.*

Vishwa Mohan, construing the expression "first hearing of the suit" has held: (SCC p. 668, para 3)

We may however add that the expression "at the first hearing of the suit" is also to be found in Order 10, Rule 1, order 14, Rule 1(5) and Order

15, Rule 1 of the Code of Civil Procedure. These provisions indicate that "the first hearing of the suit" can never be earlier than the date fixed for

the preliminary examination of the parties (Order 10, Rule 1) and the settlement of issues (Order 14, Rule 1(5)).

5. The provisions of Section 20(4), as amended "by the Amendment Act of 1976, whereby the Explanation was inserted in Section 20(4), were

considered by this Court in *Siraj Ahmad Siddiqui v. Prem Nath Kapoor*, wherein it has been held: (SCC p. 417, para 13)

The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the

contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the

suit. Does the definition of the expression "first hearing" for the purposes of Section 20(4) mean something different? The step or proceeding

mentioned in the summons referred to in the definition should, we think, be construed to be a step or proceeding to be taken by the court for it is,

after all, a "hearing" that is the subject-matter of the definition, unless there be something compelling in the said Act to indicate otherwise; and we

do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or

proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason

that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even thereafter but prior to the first hearing

when the court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf. We are of the

view, therefore, that the date of the first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine

the points in controversy between the parties to the suit and to frame issues, if necessary.

6. Shri Satish Chandra, learned Senior Counsel appearing for the respondents, has, however, urged that the Explanation that was inserted in

Section 20(4) by the Amendment Act of 1976 has not been given due consideration by this Court in *Siraj Ahmad Siddique*. The learned counsel

has invited our attention to the Full Bench decision of the Allahabad High Court in *Sai Ram v. District Judge, Kheri*, wherein after referring to the

decision of this Court in Ved Prakash Wadhwa, it was held that the law laid down in the said case has been changed by the Legislature by inserting

the Explanation in Section 20(4) and as a result it is only the date mentioned in the summons and not any adjourned date that should be treated as

the date of first hearing.

7. We are unable to uphold the said contention. We find that in Siraj Ahmad Siddiqui this Court took note of the Explanation and has observed

that it was not possible to construe the words ""first date for any step or proceeding"", which were contained in the Explanation, to mean the step of

filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that it is permissible under the CPC

for the defendant to file a written statement even thereafter but prior to the first hearing when the court takes up the case. It cannot, therefore, be

said that the Explanation to Section 20(4) was not given due consideration by this Court in Siraj Ahmad Siddiqui. The said decision shows that

even after the insertion of the Explanation the expression ""first hearing of the suit"" in Section 20(4) means the date on which the court proposes to

apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary.

38. I find that there is no similar provision enabling the tenant to deposit the arrears of rent at the first hearing of the suit. Therefore, the ruling of the

above decision is also not applicable to the facts and circumstances of this case and therefore, will not help the respondent-tenant to claim that he

has not committed any wilful default merely on the ground that he had deposited the entire arrears of rent on 8.3.1989 pursuant to the order dated

30.9.1988 made in M.P. No.1160 of 1988, filed u/s 11(4) of the Act. On the other hand, a reading of Section 10(2)(i) of the Act makes it clear

that when the legislature is clear and explicit in its terms with reference to a particular commission or omission of an act of the tenant to make him to

hold that he had committed wilful default, which enable the landlord to evict him u/s 10(2)(i) of the Act, such legislative intention cannot be

interpreted in some other manner which is inconsistent with the language employed thereunder by importing the intention of legislature in some other

Act, namely U.P. Rent Act, particularly when no such similar provision is available under the Tamil Nadu Buildings (Lease and Rent Control) Act

even though both the statutes are in pari materia. Therefore, mere deposit of rent by the respondent-tenant, assuming prior to the order of eviction

dated 6.12.1990, will not erase the wilful default committed by the respondent-tenant.

39. That apart, placing reliance on the decision in *Krishna Mudaliar v. Lakshmi Ammal*, 1996 (2) LW 467, the learned senior counsel for the

respondent contended that under proviso to Section 10(2)(i) of the Act, notwithstanding to Section 11 of the Act, if the Controller is satisfied that

the tenant's default to pay or tender rent was not wilful, he may give the tenant reasonable time not exceeding 15 days to pay or tender the rent

due by him, to the landlord, upto the date of such payment. On such payment or tender, the application for eviction shall be rejected. It is to be

noted that even in the case referred to above, the appellant had in fact deposited the rent immediately after the eviction proceedings was initiated

by the landlord. Only taking into consideration the peculiar facts and circumstances of the case, the Apex court has held that the tenant had not

committed wilful default. But, in the instant case, the conduct of the respondent-tenant is deliberate and wilful, as, even after filing of the eviction

proceedings, he has not chosen to deposit the rent voluntarily till a direction was passed on 30.9.1988 in M.P.No. 1160 of 1988 filed u/s 11(4) of

the Act. Even after filing of the eviction proceedings, the respondent-tenant has chosen to resist the eviction proceedings by questioning the

entitlement of the petitioners to collect the rent. In any event proviso to Section 10(2)(i) of the Act would come to operate only in the event if the

controller is satisfied that the tenant's default to pay or tender rent was not wilful. But, when there are substantial and material evidence on record

to show that the respondent-tenant had committed wilful default, he is not entitled even for the benefit conferred in the proviso to section 10(2)(i)

of the Act.

40. In *Nilgiris Co-operative Marketing Society etc. v. C.T. Uthandi*, 1998 (2) LW 216, R. Balasubramanian, J, has held as follows:

5. The learned counsel for the revision petitioner argued that since the tenant is proved to have paid the entire arrears of rent complained of in the

Rent Control petition on the first date of hearing itself namely, 8.12.88, it cannot be said that the tenant is guilty of wilful default and therefore, the

order of eviction on that ground cannot be sustained. For this proposition, the learned counsel for the revision petitioner brought to my notice three

judgments reported in Abdul Hameed v. M. Sultan Abdul Kader, 1996 T.L.N.J. 339 (Justice A.R. Lakshmanan) A.M. A. Jabaar v. T.S. Abdur

Bari and two others, 1997 (2) L.W. 616 (Justice A.R. Lakshmanan) and V. Krishna Mudaliar Vs. Lakshmi Ammal, .. It is no doubt true that in all

those cases, it was held that if the tenant paid the rent, which was in arrears, immediately after the filing of the eviction petition at any time before

the first hearing, it cannot be said that the tenant has committed a wilful default. I have perused the judgments very carefully. In all those cases, I

find that the explanation offered by the tenant for not paying the rent earlier was found satisfactory and in the context of that explanation and in the

light of the payment of the arrears of rent as stated above, the court held that there was no wilful default on the part of the tenant, on paying the rent

immediately after the filing of the Rent Control Petition. I am yet to come across a case, where the tenant was relieved of the disqualification, which

he has suffered, to continue any more in the occupation of the building on the mere fact of paying the rent pending proceeding without there being

any acceptable explanation for non-payment of the same as and when it became due. There cannot be any hard and fast rule to that effect,

because, if that is the position in law, then there can never be an order of eviction on the ground of wilful default, if the tenant, who had been

indifferent all along in paying the rent after the Rent Control petition was filed. That does not appear to be the trend of the decisions referred to

above. In this case, I find that the explanation offered by the tenant is wholly unsatisfactory and it is an afterthought. This is the position of facts.

Mere payment of rent by the tenant as stated above in this case would not absolve him of the disqualification which he had suffered already.

41. In B. Anraj Pipada v. V. Umayal, 1998 (3) LW 159, S. Jagadeesan, J. has held as follows:

When the eviction proceedings have been initiated on, the ground of wilful default, one would expect the tenant to pay the rent regularly every

month atleast after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even during the pendency of the

proceedings than there is no doubt that his conduct in paying the rent as he likes, will amount to wilful default.

42. Under the facts and circumstances of the case, particularly in the light of the evidence of PW1 and exhibits P1 and P2 and for the reasons

discussed above, I am satisfied that there are substantial material evidence to show the respondent-tenant had committed wilful default and

therefore, the mere deposit of the arrears of rent for the period from January 1987 to March 1988 on 8.3.1989, pursuant to the order dated

30.9.1988 made in M.P.No. 1160 of 1988, filed u/s 11(4) of the Act, will not remove the disqualification which the respondent-tenant had already

suffered in the eye of law and hence, applying the principles laid down in Nilgiris Co-operative Marketing Society etc. v. C.T. Uthandi reported in,

1998 (2) LW 216 and reported in B. Anraj Pipada v. V. Umayal, 1998 (3) LW 159, I am obliged to hold that the respondent had committed

wilful default, in paying the rent, in the eye of law, which cannot be erased merely because he had deposited the entire arrears of rent on 8.3.1989

on the application filed u/s 11(4) of the Act. The learned Appellate Authority, while setting aside the order of eviction of the learned Rent

Controller, had not gone into the wilful and deliberate conduct of the tenant in paying the rent for the period from January 1987 to March 1988, to

the petitioners, as discussed above.

43. In result, the revision is allowed and consequently the order of the learned Appellate Authority is set aside and the order of the learned Rent

Controller is confirmed. The respondent-tenant is given two months time to vacate and hand over the vacant possession of the petition premises to

the revision petitioners. However, there is no order as to costs.