

(2010) 08 MAD CK 0144

In the Madras High Court

Case No : C.R.P. (NPD) . No. 2125 of 2010 and M.P. No. 1 of 2010

T. Thangamani

APPELLANT

Vs

Smt. Mangammal rep. by her Power Agent Mrs. V. Kanchana

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 227

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 14(1), 15, 20, 22

Citation : (2010) 08 MAD CK 0144

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N.S. Sivakumar, for the Appellant; K. Veeraraghavan, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 28.4.2010 passed by the Rent Control Appellate Authority(VII Small Causes Court)

Chennai, in R.C.A. No. 618 of 2005 in confirming the order dated 27.1.2005 passed by the XIII Judge, Court of Small Causes, Chennai, in

RCOP No. 771 of 2002, this civil revision petition is focussed by the tenant.

2. Broadly but briefly, narratively but precisely the relevant facts absolutely necessary and germane for the disposal of this revision petition would

run thus:

(a) The respondent/landlady filed the RCOP No. 771 of 2002 invoking Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control)

Act, (herein after referred to as the "Act" for short) on the ground of "wilful default" in paying the rents by the tenant. The matter was contested.

(b) During enquiry, on the side of the landlady, her son-in-law-Elango was examined as P.W.1 and Exs.P1 to P3 were marked. On the side of the tenant, one Dhamodharan was examined as R.W.1 and Exs.R1 to R8 were marked.

(c) Ultimately, the Rent Controller ordered eviction on the ground of "wilful default".

(d) As against the said order, the tenant preferred the appeal in RCA No. 617 of 2005 for nothing but to be dismissed by the appellate authority.

(e) Being aggrieved by and dissatisfied with the orders of the Courts below, this revision has been filed by the tenant on various grounds.

3. Placing reliance on the grounds of revision, the learned Counsel for the revision petitioner/tenant would develop his arguments, which could

tersely and briefly be set out thus:

(i) Even though the respondent/landlady contended that the revision petitioner/tenant committed default in paying the rents ever since December

2000, there was no evidence adduced on her side to establish the same. The landlady has not even chosen to examine herself as a witness. On her

behalf, her son-in-law, on the strength of the power of attorney executed pendente lite by her, in his favour, appeared and deposed in support of

the petitioner and he had no knowledge about the payment of rents by the tenant and the receipt of the same on behalf of the landlady.

(ii) Sincere steps have been taken to summon Harinatha Reddy before the Rent Controller, but his presence could not be secured and for which,

the tenant cannot be found fault with.

(iii) On receipt of notice from the landlady dated 11.12.2001, demanding rent from December 2000 onwards, the tenant replied denying any

arrears of rent being payable by her.

(iv) The Courts below failed to take into consideration the contention of the tenant that one among the tenants, namely, Harinatha Reddy, in the

said building, wherein the demised premises is situated, received regularly the rents, but he did not issue any receipt. In fact, the said Harinatha

Reddy received the rent only on behalf of the landlady and this is the regular practice in payment of rent by the tenant and the said Harinatha

Reddy was in the habit of receiving rent only on behalf of the landlady and without any problem such practice was going on. However, like a bolt

from the blue, the landlady sent the aforesaid notice demanding rent, which was shocking to the tenant and whereupon alone the tenant started

sending the rent by money order every month, but it was virtually evaded to be received by the landlady and that shows the conduct of the

landlady in seeing that the tenant some how or other should be pushed within the mischief of "wilful default" and she wanted to evict the tenant by

invoking Section 10(2)(i) of the Act.

(v) The rent Controller fell into error in invoking Section 8(5) of the Act. The tenant with all sincerity sent for several months rent by money orders,

which were returned and subsequently, vacation intervened and whereupon after receipt of notice in RCOP, she paid the entire dues ever since

December 2001 and as such, the tenant cannot be labelled or dubbed as a "wilful defaulter".

(v) All cases of default in payment of rent would not tantamount to "wilful default".

(vi) After considering the various decisions highlighting the aforesaid point, the Courts below cryptically decided the lis as against the tenant,

warranting interference by this Court.

4. Per contra, by way of torpedoing and pulverising the arguments as put forth and set forth on the side of the revision petitioner, the learned

Counsel for the respondent/landlady would develop his arguments, the warp and woof of them would run thus:

(i) The onus probandi was on the tenant to prove that she paid the rent to the landlady in any one of the recognised modes, but there is no shard or

shred, molecular or miniscule, jot or scintilla of evidence to point out that the rents were paid from December 2000 onwards and in such a case,

the Courts below correctly invoked the provisions of law and arrived at the conclusion that there was default in payment of rent on the part of the

tenant and that amount to "wilful default".

(ii) Even after receipt of the notice sent by the landlady as early as in the month of December 2001, the tenant has not come forward to pay rent

from December 2000. Mere production of the Money Order coupons evidencing that the tenant sent the rents by money orders from the month of

December 2001 onwards for about three months would not absolve the tenant from being legally labelled as a "wilful defaulter".

(iii) Section 8(5) of the Act has been properly invoked by the Rent Controller for the reason that there are precedents pointing out that non-

compliance with Section 8(5) of the Act would attract the definition of "wilful default" as against the tenant, as the provisions of Section 8(5) of the

Act are mandatory and not merely directory.

(iv) Even though Dhamodaran, who examined himself as R.W.1 in the RCOP, deposed that he was in possession of the endorsements made by

the said Harinatha Reddy evidencing the receipt of rents by him from the tenant, yet he did not choose to produce the same.

As such, the learned Counsel for the respondent/landlady would pray for dismissal of the revision petition confirming the orders of the Courts

below.

5. The point for consideration is as to whether the Courts below were correct in holding that the tenant committed "wilful default" in payment of

rent and whether there is any perversity or illegality in the orders passed by the Courts below?.

6. The learned Counsel for the revision petitioner/tenant cited the following precedents:

(i) S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, , certain excerpts from it would run thus:

Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional, deliberate,

calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default

after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of

wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to

above.

(ii) 1985 TNLJ 178 - K. Mohideen Sahib v. Theodore Samuel, certain excerpts from it would run thus:

Learned counsel for the petitioner drew my attention to the decision reported in 95 L.W.1-7 wherein Singaravelu J, held that the procedure

prescribed u/s 8(2) of the Act is only optional and not mandatory and the non-adoption of the procedure does not constitute wilful default....

Yet another decision brought to my notice is 1981 T.L.N.J. 315. Wherein Sengottuvelan, J., held that there is absolutely nothing in the provisions

as to where the amount has to be deposited and no procedure has been contemplated and as such the failure to adopt the procedure u/s 8(5)

would not constitute wilful default on the other hand,...

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.

(iii) 1987 T.N.L.J. 125 - Lakshmi Bai v. Gita Bai, Natwarlal and Anr. certain excerpts from it would run thus:

In a leading case on this subject in Khivraj Chordia Vs. G. Maniklal Bhattad, , Ramamurthi, J. after referring to the earlier decisions, has clearly

stated that wilful default was a state of mind or intention which must be inferred from the totality of circumstances and that mere default by itself

would not amount to wilful default and the conduct of the tenant should be such as to lead to the inference that his omission was a conscious

violation of his obligation to pay the rent or reckless indifference.

....

It is not possible to lay down any hard and fast rule applicable to all cases. But the basic and essential distinction between mere default and wilful

default should be borne in mind and the totality and cumulative effect of all the circumstances should be taken into account and not any particular

feature of the case in isolation. The facts and circumstance of each case have to be taken note of before coming to the conclusion that a tenant has

committed "wilful default" in the payment of rent.

(iv) V. Krishna Mudaliar Vs. Lakshmi Ammal, certain excerpts from it would run thus:

5. The only contention raised before us by learned Counsel for the appellant is that the default in the payment of rent by the appellant, if any, was

not wilful and as such he was entitled to the benefit of the proviso to Section 10(2)(i) of the Act. According to him the Rent Controller should have

given time not exceeding 15 days to pay or tender the rent due by him to the

landlord. It is further contended that the appellant had in fact deposited the rent immediately after the ejectment-application was filed by the respondent. We see force in the contention of the learned Counsel.

Despite the fact that the appellant was tenant of the property in dispute under the earlier owner, the respondent dragged the appellant to the civil court on the allegations that he was a tress-passer. The civil Court decided the controversy in favour of the appellant and held that he was a tenant in the property purchased by the respondent. In reply to the notice dated August 12, 1981 the appellant stated that he could not pay the rent because the respondent never accepted him as his tenant and refused to accept the rent till the proceedings were finally decided by the civil Courts.

In the reply it was further stated that the non-payment of rent was not due to any fault on the part of the appellant and he was prepared to pay the same in easy installments. We are of the view that the courts below have not taken into consideration these facts in the right perspective. Keeping in view the peculiar facts and circumstances of this case, we hold that the default in the payment of rent on the part of the appellant was not wilful.

Admittedly the appellant had deposited the rent in the court of the Rent Controller within one month of the institution of the application.

(v) Sree Ramachandran Vs. Krishnaraj, , certain excerpts from it would run thus:

10. In the instance 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.

13. In my opinion, the above said Supreme Court judgment *Dakaya alias Dakaian v. Anjani* 1996(1) 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.

(vi) 1996 T.N.L.J. 339 - *Abdul Hameed v. M. Sultan Abdul Kader*, certain excerpts from it would run thus:

The supreme Court in *V. Krishna Mudaliar Vs. Lakshmi Ammal*, while considering a similar question came to the conclusion that since the petitioner-tenant had deposited the rent immediately after the filing of eviction petition by the landlord, there cannot be any wilful default on the part of the tenant. In my opinion, the Court below has not taken into consideration this aspect of the matter in the correct perspective. P.W.2, the agent of the landlord, also did not say that he often went to the shop of the petitioner and the petitioner refused to pay the rent. The appellate authority has failed to appreciate the peculiar circumstances of this case and the conduct of the landlord in receiving the rent in lumpsum for four months or six months. Though in the present case, the default was for 12 months, immediately on the filing of the petition, the entire arrears have been paid. As rightly urged by Mr. K. Chandrasekaran, learned Counsel for the petitioner, the

trial Court has exercised its discretion correctly and come to the conclusion that the non-payment of rent was only due to the practice, which has been existed between the landlord and the tenant. The petitioner-tenant was not given to understand at any time either by overtly or covertly that the respondent-landlord is going to utilise this situation as a ruse to get eviction. As already stated, the petitioner has deposited the entire arrears even at the first instance without the Court granting any reasonable time. This important fact has not taken note of by the appellate authority. The order of the appellate authority, which is impugned in this revision is therefore, liable to be set aside and the eviction ordered cannot, therefore, stand. This revision petition is allowed.

(vii) P.M. Punnoose Vs. K.M. Munneruddin and Others, certain excerpts from it would run thus:

Rent Control and Eviction - Revision- Jurisdiction of High Court u/s 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (18 of

1960) - Scope - Wilful default by tenant in payment of arrears of rent alleged - Question of fact - Finding of fact arrived at by appellate authority

should not be lightly interfered with - On facts held, interference by High Court was not justified.

(viii) (1983) 1 M.L.J. 14 - Ramaswamy Pathar v. Thiagaraja Chettiar

(ix) V.S. Hamid Sultan, rep. by his Power Agent Mohamed Farooq Vs. Abdul Latheef,

(x) 2007 (5) CTC 160 - S.M. Irshad Ahamad v. S.E.A. Usman Basha Sahib

(xi) CDJ 2008 MHC 1299 - V. Sulaiman v. Azeezur Rahman

(xii) 1976 T.N.L.J. 72 - Thaiyalnayagi Ammal v. Ayyamma Chettiar

(viii) 1994(1) MLJ 576 - Karra Kondamma v. Karra Nagamma;

(ivx) 1989 (1) L.W. 155 - Durgai Ammal v. R.T. Mani.

7. The learned Counsel for the respondent/landlady also cited the following decisions:

(i) 2007 1 S.C.C.(Cri) 18-Sugaram alias Chhugaram v. State of Rajasthan.

(ii) 2005 S.C.C.(cri) 546 - Central Board of Dawoodi Bhora Community and Anr. v. State of Maharashtra and Anr.

(iii) S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, certain excerpts from it would run thus:

- (iv) 2002 1 L.W. 600 - S. Subramania Pillai v. Then Mohan;
- (v) R. Govindhammal, R. Hariharanathan, R. Umapathy, R. Ravindharan and R. Kesavan Vs. A. Nirmala, ;
- (vi) 1999 M.L.J. 401 - T. Easwara Rao v. N.E. Ansari and Ors.;
- (vii) 1997 1 MLJ S.C. 109 - M. Bhasker v. J. Venkatrama Naidu;
- (viii) 1995 2 L.W. 731 Mohammed Zackaiya v. Abdul Aziz.

8. In addition to the precedents referred to supra, I would also like to refer to the following judgment of the Honourable Apex Court:

M/S Chordia Automobiles Vs. S. Moosa and Others, CERTAIN EXCERPTS FROM IT WOULD RUN THUS:

8. Wilful default means an act consciously or deliberately done with open defiance and intent not to pay the rent. In the present case the amount of rent defaulted firstly is on account of the fact that the agent of the landlord did not come to collect the rent for some reason. Further, notice of default contained the disputed rent. This fact coupled with the fact that eviction suit was filed before maturing a case of wilful default in terms of the explanation to the proviso of Section 10(2). The dispute of rent admittedly was genuine. Further, we find the conduct of the appellant throughout in the past being not of a defaulter or irregular payer of rent. Thus, all these circumstances cumulatively come to only one conclusion that the appellant cannot be held to be a wilful defaulter.

9. In S. Sundaram Pillai v. V.R. Pattabiraman this Court had occasion to consider the word "wilful default" u/s 10(2) of the aforesaid Tamil Nadu

Buildings (Lease and Rent Control) Act, 1960 which is reproduced below:(SCC pp. 605-06, paras 21-26)

21. Before, however, going into this question further, let us find out the real meaning and content of the word "wilful" or the words "wilful default".

In the book A Dictionary of Law by L.B. Curzon, at p.361 the words "wilful" and "wilful default" have been defined thus:

"Wilful" - deliberate conduct of a person who is a free agent, knows that he is doing and intends to do what he is doing.

"Wilful default" - Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.

22. In other words, "wilful default" would mean a deliberate and intentional default knowing full well the legal consequences thereof. In Words and

Phrases, Vol 11-A (Permanent Edition) at p.268 the word "default" has been defined as the non-performance of a duty, a failure to perform a

legal duty or an omission to do something required. In Vol. 45 of Words and Phrases, the word "wilful" has been very clearly defined thus:

"wilful" - intentional; not incidental or involuntary;

- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or

inadvertently;

- in common parlance word "wilful" is used in sense of intentional, as distinguished from accidental or involuntary.

p.296 - "Wilful" refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is

accidental, negligent or involuntary.

23. In Vol. III of Webster's Third New International Dictionary at p.2617, the word "wilful" has been defined thus:

governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed.

24. The word "default" has been defined in Vol. I of Webster's Third New International Dictionary at p.590 thus:

to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation.

25. In Black's Law Dictionary (Fourth edn.) at p.1773 the word "wilful" has been defined thus:

"Wilfulness" implies an act done intentionally and designedly; a conscious failure to observe care; conscious; knowing; done with stubborn

purpose, but not with malice.

The word "reckless as applied to negligence, is the legal equivalent of "wilful" or "wanton"

26. Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional,

deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant

commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is

not guilty of wilful default because such a course of conduct manifestly amounts

to wilful default as contemplated either by the Act or by other Acts referred to above.

(emphasis supplied)

9. A mere poring over and perusal of those decisions which are relating to the ground of "wilful default" would unambiguously and unequivocally

highlight and spotlight the fact that it is the duty of the tenant to pay the rent regularly and he/she cannot wriggle out of his/her liability on the ground

that the landlord/landlady refused to receive the rent or evaded to receive the rent.

10. I would also like to specifically refer to the following decisions of the Honourable Apex Court:

(i) 2002(4) CTC 572-E. Palanisamy v. Palanisamy (D) by Lrs. and Ors., certain excerpts from it would run thus:

4. It would be seen from the above provisions that while the landlord is required to issue a notice of default, on refusal by landlord to accept rent,

the tenant is required to call upon the landlord by way of a notice to specify the name of a Bank in which rent could be deposited by the tenant to

the credit of the landlord. If the landlord specify the name of the Bank to deposit the rent, there is an obligation on the part of the tenant to make

the deposit of arrears of rent in the account of the landlord. However, if the landlord does not specify the name of a Bank inspite of being called

upon by the tenant through a notice, the tenant is required to send the amount of arrears through a money order to the landlord after deducting the

commission payable on the money order. If the landlord still refuses to accept the rent, the tenant is entitled to file an application before the Rent

Controller seeking permission to deposit the arrears of rent under Sub-section (5) of Section 8 of the Act.

5. Mr. Sampath, the learned Counsel for the appellant argued that since the appellant-tenant had deposited the arrears of rent in Court, it should

be taken as compliance of Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no

eviction order could have been passed against the appellant on that ground. According to the learned Counsel, the Court should not take a

technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders

that the tenant was driven to move the Court for permission to deposit the arrears of rent. Since there is a substantial compliance of Section 8 in as much as the arrears of rent stand deposited in Court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned Counsel. The tenant legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance of the procedure is necessary. The tenant cannot straight away jump to the last step i.e. To deposit rent in Court. The last step can come only after the earlier steps have been by the tenant. We are fortified in this view by the decisions of this Court in Kuldeep Singh Vs. Ganpat Lal and another, and M. Bhaskar Vs. J. Venkatarama Naidu, Represented by his Power of Attorney Holder A. Narayanaswamy Naidu, .

(ii) 1997 2 L.W. 571-S. Sundararajan v. S.A. Viswanathan Chetty and Anr. CERTAIN EXCERPTS FROM IT WOULD RUN THUS:

11. ...It is thus seen that Section 8(5) of the Act, which had been resorted to by the petitioner in this case in H.R.C. No. 569 of 1981, is intended to protect the tenant from the consequences of non-payment of rent amounting even to wilful default owing to the refusal by the landlord to receive the rent when tendered. u/s 9(2) of the Act, the amount deposited u/s 8(5) of the Act may be permitted to be withdrawn by the person held by the Rent Controller to be entitled to the amount on an application made by such person, to the Rent Controller on that behalf. It is thus seen that the obligation of the tenant to pay or tender the rent within fifteen days after the expiry of the time fixed in the agreement of tenancy or in its absence, by the last day of the month next following that for which the rent is payable is intended to be fulfilled by resort to Section 8() of the Act and the deposit of the rents, refused to be received by the landlord when remitted by money order as well as that which may subsequently become due u/s

8(5) of the Act, when paid out to the landlord u/s 9(2) of the Act, would ensure the payment of the rent regularly by the tenant as well as the receipt thereof by the landlord on being paid out to him by an order of the Controller u/s 9(2) of the Act. It is therefore, obvious that it is not merely for the sake of a deposit in to Court Section 8(5) of the Act is intended, but it also serves to very vital and important purpose in that by resorting to a deposit of rents u/s 8(5) of the Act after obtaining the orders of the Controller in that regard, the rents refused to be received in the usual course by the landlord are not only paid by the tenant, but also made available to the landlord, so that a ground for eviction u/s 10(2)(i) of the Act does not arise, in the event of the deposit of rents being made without default....

(iii) Abdul Fatha and another Vs. Villayudham and another, certain excerpts from it would run thus:

9. The decision relied on by the learned Counsel for the respondents in Padmavathi Ammal Vs. Gopal, arose u/s 8 of the Act. Pratap Singh, J. held that when the tenant chose to exercise the enabling provision, he should take steps one after another as laid down in the procedure and only if the landlord still refused to receive the rent, then he could come to the court with a petition u/s 8(5) of the Act. In that case, the tenant had skipped Section 8(4) of the Act. The learned Judge held that the tenant was obliged to take the step contemplated u/s 8(4) of the Act and since he had not done it, the petition filed by him u/s 8(5) of the Act had to necessarily fail. I have already held that the petition filed by the revision petitioners u/s 9 of the Act was misconceived. Assuming that a wrong section had been quoted and that it was only a petition u/s 8, in view of the decision of Pratap Singh, J. it has to be held that the authorities below rightly rejected the petition inasmuch as the tenants has jumped steps.

(iv) 2000 2 LW 699 1) T. Gopalasamy 2) T. Radhakrishnan v. 1) R. Renganathan 2) R. Narayanan 3) R. Vijayaraghavan 4) R. Neelamegham 5)

R. Srinivasan 6) Tmt. Rajamuthukone, certain excerpts from it would run thus:

20. 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 day 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

instruction 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.

11. A mere poring over and perusal of those excerpts including the whole of those judgments would amply make the point clear that the tenant

should not have mala fide intention in depositing the arrears of rent straight away in Court by invoking Section 8(5) of the Act, so as to put the

landlord into discomfiture in getting payment out of the Court. But on the other hand, in the event of the landlord refusing to receive the rent, the

tenant should call upon the landlord to specify the name of the bank so as to deposit the rent and on such failure on the part of the landlord, the

tenant should send the rent by Money Order depressed by the money order commission. If the Money order amount is refused to be received by

the landlord, then lastly the tenant should take steps to deposit it in Court by invoking Section 8(5) of the Act.

12. Here the pertinent point arises as to whether the tenant complied with the landlady's demand notice.

13. Admittedly and indubitably, indisputably and incontrovertibly the tenant did not comply with the landlady's demand notice and for which the

learned Counsel for the tenant would try to explain and expound that when the tenant was not in default at all, there was no necessity for complying

with Section 8(5) of the Act.

14. Then the core question arises as to whether the tenant did not pay the rent from December 2001 onwards.

15. Even as per the very admission of the tenant, she had not paid the rent directly to the landlady. However, the tenant would try to point out that

one of the tenants, namely, Harinatha Reddy, in the building wherein the

demised premises is situated, received on behalf of the landlady the rents from December 2000 onwards and that in such a case, she was not bound to respond to the landlady's notice positively in paying the alleged arrears claimed in the said notice.

16. Then the core question arises as to whose burden it was to prove that the rent was paid actually from December 2000 onwards to the landlady.

17. On the one hand, the learned Counsel for the tenant would submit that the burden is only on the landlady to prove that from December 2000

the rent was not paid. Whereas the learned Counsel for the landlady would submit that when the tenant is asserting that she paid the rent, then it is for her to prove it.

18. At this juncture, I recollect and call up the following maxims:

(i) *Affirmanti, non neganti incumbit probatio* - The burden of proof lies upon him who affirms, not upon one who denies.

(ii) *Affirmantis est probare* - He who affirms must prove.

19. Here the landlady would state that she did not receive the rent from the tenant. Whereas, the tenant would state that it was she who paid it not

to the landlady directly, but to one other tenant Harinatha Reddy, who was in the habit of receiving the rent on behalf of the landlady. It is therefore

clear that the burden of proof is on the tenant to prove and establish that she paid regularly the rent from December 2000 to Harinatha Reddy,

who allegedly received the rent on behalf of the landlady. Merely because Harinatha Reddy's presence could not be secured before the Rent

Controller, it cannot be held that the tenant should be absolved from proving her liability. A landlady cannot be expected to prove the negative and

in such a case, the Courts below addressed themselves correctly to the concept "burden of proof" and decided the lis, warranting no interference

in the revision.

20. The learned Counsel for the tenant inviting the attention of this Court to the money order coupons would develop his argument that ever since

the receipt of demand notice from the landlady in the month of December 2001, the tenant started sending rents by money orders, but it was the

landlady who evaded to receive them and that shows the good conduct of the

tenant and the mala fide intention of the landlady.

21. No doubt, from December 2001 onwards there is evidence to show that the tenant tried to pay the rent, but it was not received by the

landlady. Whereupon, the law envisages that the tenant should have resorted to Section 8(5) of the Act, but she had chosen to send the notice in

the month of May 2002, calling upon the landlady to specify the bank, for which also there was no response, as the said notice was returned and in

such a case, as per the dictum of the Honourable Apex Court, as found enunciated in the aforesaid cited decisions, the tenant should have sent the

rents by money order and even if there was any default on the part of the landlady in receiving the rent, then she should have approached the Court

u/s 8(5) of the Act. But as correctly pointed out by the Rent Controller such a procedure had not been followed meticulously by the tenant even

though the Honourable Apex Court in the aforesaid judgments contemplated that adherence to Section 8(5) of the Act was mandatory so as to

enable the tenant to save herself from being labelled as a "wilful defaulter". The Courts below afaict with law and auctoritate with facts dealt with

the matter and analysed the evidence and decided the lis.

22. The learned Counsel for the tenant would submit that the landlady has not chosen to figure herself as a witness and depose.

23. No doubt, on behalf of the landlady, P.W.1-her son-in-law was examined. In fact, RCOP itself was filed by her daughter on the strength of

one other Power of Attorney Ex.P1. Ex.P2-the Power of Attorney executed by the landlady in favour of her son-in-law authorising him to depose

before the Court would show that he had authority to depose.

24. The core question arises as to whether the deposition of the son-in-law of the landlady could be taken as the one deposed by the landlady

herself.

25. It is the trite proposition of law that a witness could depose what is there in his knowledge. Accordingly, P.W.1-Elango from his knowledge

deposed.

26. The learned Counsel for the tenant would submit that had the landlady been examined then the tenant would have had the opportunity of cross-

examining her about the payment of rent etc.

27. Such an argument could not be countenanced by me for the reason that it is not the case of the tenant herself that she directly paid the rent to

the landlady and in such a case, non-examination of the landlady, in my considered view, is not fatal to the case.

28. I also recollect and call up the following decisions in respect of Section 25 of the Act.

(i) JT 2000 (Supp) 3 SC 83 - D. Radhakrishnan and Anr. v. M. Loorduswamy and Ors. certain excerpts from it would run thus:

5. The requirement of Section 14(1)(b) of the Act for the purpose of demolition and reconstruction has been considered and dealt with elaborately

by a constitution Bench of this Court in the case of Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, . The only question that arises for our

consideration is, whether the findings arrived at by the Rent Controller and affirmed by the appellate authority, could have been interfered with by

the High Court in exercise of revisional jurisdiction u/s 25 of the Act. Though the power of revision of the High Court u/s 25 cannot be held to be

similar to the power of civil court u/s 115 C.P.C., but at the same time, the same cannot be held to be conferring appellate power on the High

Court. The High Court is only required to examine and satisfy, whether the procedure followed by the forum below is regular or not and whether

there has been any illegality or impropriety of the decisions arrived at.

6. ...While exercising revisional jurisdiction, to find out illegality with the findings or illegality of any procedure, it was not open to reappreciate the

evidence, in the light of the object of the Act. In that view of the matter, we set aside the impugned order of the High Court and affirm the decision

of the Rent Controller as affirmed by the appellate authority. Respondent No. 1 is granted six months" time to deliver the vacant possession of the

premises to the landlord subject to the usual undertaking being filed in this Court within four weeks from today. The appeals stand disposed of

accordingly.

(ii) 2001(2) CTC 95 - Vallampati Kalavathi v. Vaji Ismai, certain excerpts from it would run thus:

11. ...The finding recorded by the High Court in the revisional proceedings amounts to taking a view different from those recorded by the Forums

below on the evidence available on the record. Was this permissible within the

purview of the revisional power vested in the High Court u/s 22 of

the Act? The said section reads as follows:

22. Revision: (1) The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order

passed or proceeding taken under this Act by the Controller in execution u/s 15 or by the appellate authority on appeal u/s 20, for the purpose of

satisfying itself as to the legality, regularity or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

2) The costs of and incident to all proceedings, before the High Court under Sub-section (1), shall be in its discretion.

12. As the language of the section suggests, the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the

legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer any such vice the High Court may pass such

order in reference to the proceeding as it thinks fit. The expression "legality", "regularity" or "propriety" are undoubtedly wider than mere

correction of jurisdictional error. But even such regional power cannot be exercised to upset the concurrent findings of fact recorded by the

Forums below merely on the ground that the High Court is inclined to take a different view on the materials on record in the case. We should not

be understood to be saying that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown

that the findings recorded by the Forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so

perverse that no reasonable person will come to such conclusion on the material.

29. A mere poring over and perusal of the above excerpts, including the whole judgments would amply make the point clear that even though this

Court, while exercising its jurisdiction u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act is having more revisional powers than

exercising its revisional powers under Article 227 of the Constitution of India or u/s 115 of the C.P.C. yet it cannot assume the role of an appellate

Court, which is the last Court of facts. Unless there is perversity or gross illegality, the question of interfering in revision u/s 25 of the Act would not

arise.

30. Here based on the evidence and complying with the correct proposition of

law the Courts below decided the lis and the judgments of the

Courts below do not suffer from perversity or illegality, warranting interference by this Court.

31. In the result, I could see no merit in the revision. Accordingly the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

32. The learned Counsel for the revision petition/tenant would pray for a years" time for the tenant to vacate the premises.

33. Whereas, the learned Counsel for the respondent/landlady would submit that huge arrears of rent are there and in such a case, granting of time would cause discomfiture to the landlady.

34. By way of striking a balance between the two, I would like to grant six months" time for vacating the premises subject to payment of arrears of rent, if any, within 15 days from this date and the future rents regularly by the tenant to the landlady and to that effect affidavit shall be filed by the tenant within 15 days from this date.