

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P. (NPD) .No.739 of 2004

Nagarajan

... Petitioner

Vs.

A.K.Jambulinga Mudaliar

... Respondent

Prayer: Petition filed under Section 115 of the Code of Civil Procedure, against the judgment and decree dated 26.2.2004 made in RCA.No.18 of 1999 on the file of Subordinate Judge, Vellore, reversing the judgment and decree dated 27.7.1999 made in RCOP No.36 of 1993 on the file of Rent Controller (Principal District Munsif), Vellore.

For Petitioner : Mrs.Emily Venkatesan

For Respondent : Mr.V.Chandrasekar

O R D E R

The civil revision petitioner is the respondent/tenant in R.C.O.P.No.36 of 1993 on the file of the learned Rent Controller, Vellore.

2.The civil revision petitioner/tenant is the respondent in R.C.A.No.18 of 1999 on the file of learned sub Judge, Vellore.

3.The landlady, deceased Andalammal filed R.C.O.P.No.36 of 1993 on the file of learned Rent Controller, Vellore under Section 10(20(1) and 10(3)(a)(iii) under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960). The learned Rent Controller, Vellore in R.C.O.P.No.36 of 1993 while passing orders on 27.7.1999 has come to the conclusion that the civil revision petitioner/tenant has not committed wilful default deliberately and answered the said point in favour of the tenant.

4.Before the learned Appellate Authority viz., the Sub Judge, Vellore, the deceased Andalammal preferred R.C.A.No.18 of 1999 as appellant and after her death, her legal heir, second appellant was impleaded as the appellant.

5.The learned Appellate Authority viz., Sub Judge, Vellore has allowed the R.C.A.No.18 of 1999 on 26.02.2004 by setting aside the order and decretal order of the learned Rent Controller, Vellore and allowed the RCOP petition on the ground of wilful default in payment of rent and dismissed the RCOP petition in other respects and granted three months time for eviction.

6.According to the learned counsel for the civil revision petitioner, the learned Appellate Authority erred in coming to the conclusion that the civil revision petitioner/tenant committed default in payment of rent and that the learned Appellate Authority viz., Sub Judge, Vellore also failed to notice that the usual practice followed by the landlady was to collect the rents once in a while and as such, the question of wilful default does not arise.

7.It is the further case of the civil revision petitioner that entire arrears of rent were deposited soon after the receipt of notice, on the first hearing of the matter and that the landlady collect rents through her agent once in three months and the agent used to visit according to his convenience and there was no supine indifference in payment of rents.

8.P.W.1 Thiru.Jambulingam, son of the deceased landlady Tmt.Andalammal in his evidence has deposed that the civil revision petitioner/tenant was not proper in regard to the payment of rent and that there is a default in payment of monthly rent from September 1991 till the issuance of notice Ex.A.1 and Ex.A2 is the Reply Notice and that for 10 months there is non payment of rent. P.W.1 Thiru.A.K.Jambulingam in his evidence has further stated that the civil revision petitioner/tenant paid in August 1993 Rs.6,000/-, being the 20 months rent and the present month rent was not paid on 10th and that it was paid today.

9.R.W.1 Thiru.Nagarajan (civil revision petitioner/tenant) in his evidence has stated that he received the Ex.A.1-Notice and in that notice it was stated that 10 months rent is due and that he gave reply notice and that he was not aware as to when he paid the lumpsum rent.

10.Ex.A.1 is the legal notice dated 22.9.1992 issued on behalf of deceased landlady Andalammal addressed to the civil revision petitioner/tenant. In the said notice, it is specifically mentioned that for about 25 years, the civil revision petitioner/tenant is occupying the premises on an oral agreement, agreeing to pay Rs.350/- per month as rent payable by 10th of every succeeding English calendar month and that he has committed default in payment of rent for the past 10 months. In Ex.A.2-Reply Notice dated 01.10.1992 issued on behalf of the revision petitioner/tenant, it is inter-alia mentioned that the present rent is Rs.300/- per month and not Rs.350/- as alleged in the notice and that the landlady

Andalammal used to come personally collect the rent as and when she chooses and some times she may send word through her son or grand son to collect the rent and municipal taxes due and payable for the property was not paid by the landlady and occupier a notice was issued to the civil revision petitioner/tenant and that the civil revision petitioner/tenant sent word to the landlady to pay the taxes due to Municipality.

11.Ex.A.2-Reply Notice dated 01.10.1992 also states that on 03.04.1992 the landlady sent word through her grand son Velmurugan to pay the rent for the month November 1991 and directed the civil revision petitioner/tenant to keep the subsequent rents so that she will come and received the same in lumpsum for payment of municipal tax to the site in occupation of the civil revision petitioner/tenant and other adjoining properties and that the civil revision petitioner is prepared to pay the rent due and payable from 01.12.1991 till 30.09.1992 in all 10 months rent Rs.3000/- by way of demand draft etc. Ex.A.3 dated 11.10.1993 is the lawyers notice issued by the deceased Andalammal addressed to the civil revision petitioner/tenant. In this notice, it is categorically mentioned that the monthly rent is Rs.300/- and the tenancy is agreeing to English Calendar. Ex.A.4 is the reply notice of Advocate issued on behalf of the civil revision petitioner/tenant addressed to the deceased landlady's Advocate.

12.It is to be noted that "Wilful Default has to decided on account of the conscious default of the tenant to pay rent without any discernible justification which the Rent Controller can accept as taking away the element of *Wilfulness*". Admittedly, the term 'Wilful Default' is employed by the statute with a clear purpose.

13.In the decision 1973 TLNJ page 1 between Kesavan V. Vincent Pillai, it is observed that "however much the tenant has paid the amount subsequently the default committed by him cannot be cured".

14.In 1984 (1) MLJ page 251 at special Page 252 (Associated Traders and Engineers Limited V. Alamelu Ammal), it is held that "the tenant deducted the amount spent for repairs carried out without consent from landlord amounts to wilful default".

15.In 1987 (2) MLJ page 50 at special page 54 (Surajmal Sowcar and sons V. Arokia Mary), it is observed that "the tenant paying ground rent and municipal tax will not enable him to claim title to the superstructure - Denial not bona-fide and default is wilful".

16.It is not out of place to point out that in 1995(1) MLJ 288 (Seshachala Chettiar (decd.) and another V. Duraiammal) it is held that "it is not open to the tenant to set off a plea that the practice was to pay only lump sum payments. Even if such a practice

is there, once a landlord issues a notice demanding arrears of rent, then such practice would come to an end. Hence, the tenant not paying for a period of six months held to be wilful".

17. In 1996(2) L.W. 494 (G.R.Ragupathy V. Dr.K.Shankar, etc.) it is observed that "in a petition for eviction under Section 10(2) (i), the tenant raised a plea that the landlord agree to receive, or was in the habit of receiving lump sum rent, or once in a year. The High Court did not accept the plea and held that the same was without good faith and that the silence of the landlord was exploited by the tenant. The conduct of the tenant will be very relevant in such cases".

18. The arrears of rent is from 01.11.1991 till 20.09.1992, In the instant case on hand, rental receipts were not issued for the payment of rents made by the civil revision petitioner/tenant. As a matter of fact, in Ex.A.2 reply notice dated 01.10.1992, it is categorically stated that "my client is prepared to pay the rents due and payable from 01.12.1991 till 30.09.1992 for 10 months amounting to Rs.3000/- by way of Demand Draft."

19. The specific stand of the civil revision petitioner/tenant is that Municipal taxes due and payable for the petition mentioned property by the deceased landlady Andalammal was not paid and that occupier notice was issued to the civil revision petitioner/tenant and that the civil revision petitioner/tenant sent word to the landlady to pay the due taxes to the municipality and that on 03.04.1992 the landlady sent word through her grandson Velmurugan to pay the rent for the month of November 1991 and directed the civil revision petitioner/tenant to keep the subsequent rents so that she will come and receive the same in lump sum for payment of the municipal tax to the site in occupation of the civil revision petitioner/tenant, etc. The grandson Velmurugan was not examined as witness in the Rent Control Proceedings.

20. The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 visualises a duty cast on the tenant to tender the rents. In the absence of such a tender, the tenant is squarely held to have committed wilful default. It is pertinent to mention that irregular payments or lump sum payments would only show that the tenant has committed wilful default as per decision 1994 (1) MLJ page 510 (K.N.Gunalan V. C.Santhalingam).

21. In 1983 (1) MLJ at page 52 special page 53 (Rajeswari V. Vasumai Lalchand), it is held that "subsequent payment is neither sufficient excuse nor can relieve the tenant from the charge of Wilful Default committed prior to filing eviction petition filed under this Section". As far as the present case is concerned except the *Ipsi Dixi* of R.W.1 Nagarajan that the grandson of landlady

Andalammal viz., Velmurugan and one Sathiyannarayana have received the 4 months rent, there is no acceptable and satisfactory evidence on the side of civil revision petitioner/tenant to indicate that the grandson Velmurugan and another Sathiyannarayana have received the 4 months rent and as such, the plea of the civil revision petitioner/tenant that grandson Velmurugan used to collect rent on behalf of the landlady deceased Andalammal is not accepted by this Court. In general, there cannot be any presumption as to the payment of rent by a tenant and it is the duty of the tenant to prove payment, in the considered opinion of this Court. Even the payment of municipal taxes due will not exonerate the tenant from the plea of wilful default. In that view, the plea of the civil revision petitioner/tenant, the landlady deceased Andalammal directed him to keep the subsequent rents so that she will come and receive the lump sum for payment of municipal tax to the site in his occupation is not accepted by this Court. Moreover, the payment of tax voluntarily will not enable the tenant to plead adjustment in the rents and it constitutes wilful default as per decision 1991 (2) L.W. Page 203 at 205 (Mrs.Manoranjitham V. Mrs.T.G.Gangabai). It cannot be gainsaid that the civil revision petitioner/tenant having paid the arrears of rent after filing of the RCOP petition and that he was also paying the monthly rents subsequently to the respondent/petitioner cannot enure to the benefit of the civil revision petitioner/tenant, in the considered opinion of this Court.

22.In view of the detailed discussions and on careful examination of available materials on record and in consideration of evidence on record and looking at from any angle, this Court comes to inescapable conclusion that the civil revision petitioner/tenant has committed wilful default in the instant case in regard to the payment of monthly rent for a period of 10 months in question and in that view of the matter, the civil revision petition fails and the same is hereby dismissed to prevent aberration of justice. The order of the learned Appellate Authority dated 26.02.2004 made in R.C.A.No.18 of 1999 is confirmed for the reasons subscribed in this revision. Three months time is granted for eviction from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, the parties are directed to bear their own costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Subordinate Judge, Vellore.

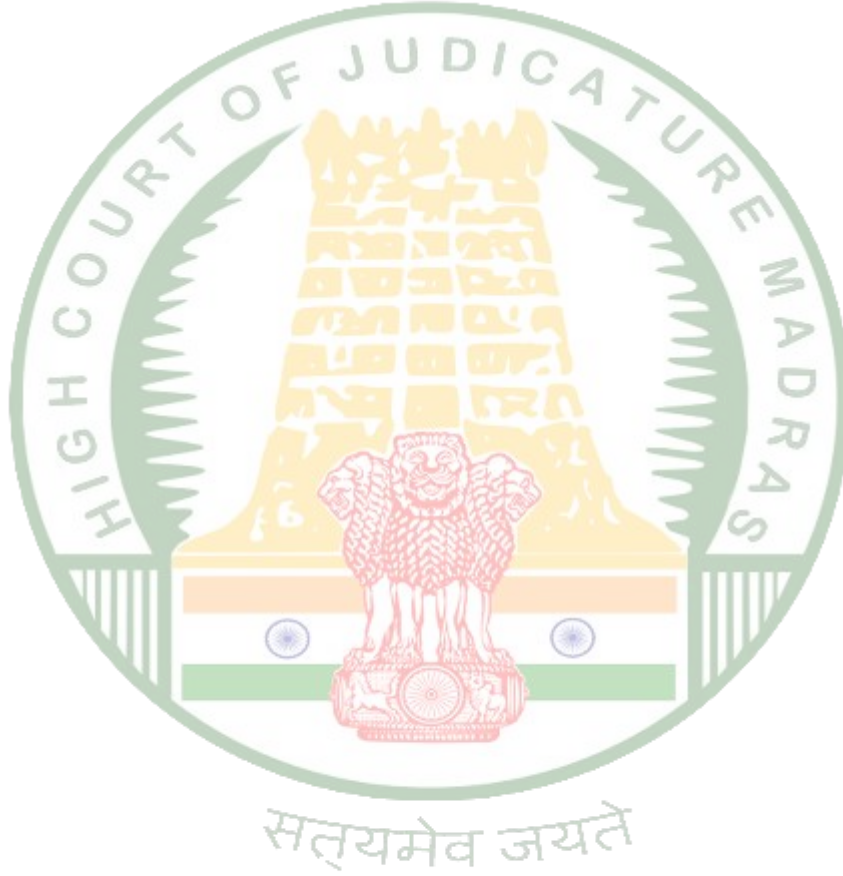
2.The Principal District Munsif, Vellore.

one cc to Mr.T.R.Rajaraman, advocate SR.No.76144

one cc to Mr.K.V.Anantha Krushnan, advocate SR.No.76111

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