

SANKARAN PILLAI (DEAD) BY LRS.

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v.

V.P. VENGUDUSWAMI AND ORS.

JULY 29, 1999

[V.N. KHARE AND S.S. MOHAMMED QUADRI, JJ.]

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*Rent Control and Eviction :*

*Tamil Nadu Buildings (Lease and Rent Control) Act, 1960-Sub-sections (1), (2) and (4) of Section 11-Application for eviction against a tenant on ground of default in payment of rent-Requirement of the tenant to deposit all the arrears of rent and the rent which may subsequently fall due until the termination of the proceedings, within time provided and in the manner prescribed, in order to contest the application for his eviction-Non-deposit of such rent-Consequences of Held, if the deposit of rent is not made, the Controller or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary stop all proceedings and pass an order of eviction against the tenant-Sufficient cause-Construction of Held, the expression 'sufficient cause' necessarily implies an element of sincerity, bona fide and reasonableness showing that non-deposit of rent by the tenant was beyond his control and there was no element of negligence or in action or lack of bona fides on his part in not depositing the rent within time.*

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*Direction to the appellant-tenant by the Rent Controller to deposit the arrears of rent in an eviction petition on ground of default in payment of rent-Non-compliance of such direction by the appellant-tenant on the ground that he was not required under law to deposit any arrears of rent or month to month rent as he himself was the landlord of the premises-Subsequent plea by the appellant-tenant that he did not deposit arrears and month to month rent under mistaken belief-Held, such plea is an afterthought and not bona fide and cannot be said to constitute 'sufficient cause' as to condone the non-deposit of arrears and also month to month rent which was required to be deposited by the tenant-Plea of non-depositing of arrears of rent on account of sufficient cause was never a case set up by the tenant-The appellant-tenant's subsequent deposit of the arrears of rent before the Appellate Authority being requirement of law for hearing the appeal on merits, cannot be treated as bona fide deposit.*

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A Appellant-tenant entered into an agreement with the previous owner of the building in question, for purchase of the premises in dispute, in pursuance of which he paid a sum of Rs. 3 lakhs toward the part payment of consideration amount. Subsequently, certain disputes having arisen with regard to the mode of payment of the balance amount, the said agreement was repudiated by the previous owner. Thereafter, the appellant-tenant filed a suit for specific performance of the agreement. While the said suit was pending, the previous owner executed a sale deed in respect of premises in dispute in favour of first respondent. The first respondent after having purchased the said premises, filed a suit for ejection of the tenant-appellant on various grounds, including the default in payment of arrears of rent. One of the grounds for ejection C being default in payment of rent, the Rent Controller by order dated 23/7/90 directed the appellant-tenant to deposit the arrears of rent. The said direction was not complied with by the appellant-tenant as a result of which the Rent Controller by an order dated 7/8/90 passed an order for his eviction. The appellant-tenant preferred two separate appeals, one against the order dated 23/7/90 and the other against the order dated 7/8/90 passed by the Rent Controller. Since the deposit of the arrears of rent was condition precedent for the appeals being heard on merits, the same were deposited by the appellant-tenant before the appellate authority. The appellate authority allowed both the appeals holding that the appellant-tenant was not liable to deposit the arrears of rent. Aggrieved, respondent no.1 preferred two Civil E Revision Petitions before the High Court which were allowed. Hence the present appeals.

F On behalf of the appellant, it was contended that the fact that the tenant after having entered into an agreement with the erstwhile owner of the building, paid considerable amount of money towards part performance of the agreement and his further filing of suit in the Civil Court for Specific Performance of the agreement constituted sufficient cause for non-depositing the arrears of rent within time as well as monthly rent which became due in respect of building.

G Dismissing the appeals, this Court

H HELD : 1.1. Where an application for eviction has been filed against a tenant on the ground of default in payment of rent, the tenant is required (i) to deposit all the arrears of rent due in respect of the building with the Controller or the appellate authority, as the case may be; (ii) the tenant is further required to pay or deposit the rent which may subsequently fall due

in respect of the building until the termination of the proceedings; (iii) the said deposit of rent is required to be paid or deposited within time provided and in the manner prescribed; and (iv) if the deposit of rent is not made, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all proceedings and pass an order of eviction against the tenant. [1236-B-E] A

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1.2. If the tenant shows sufficient cause for non-deposit of rent, the Controller or the appellate authority, as the case may be, may permit the tenant to contest the application filed by the landlord for his eviction. The expression 'sufficient cause' has to be liberally construed to do substantial justice between the parties. But the expression 'sufficient cause' necessarily implies an element of sincerity, *bona fide* and reasonableness. It has to be shown by the tenant who has not deposited the rent within time, as directed by the Controller, that non-deposit of the rent was beyond his control and there was no element of negligence or inaction or lack of *bona fides* on his part in not depositing the rent within time. [1236-D-E] C

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1.3. In the present case, the tenant was required to deposit the rent by a particular date. But the arrears of rent were not deposited by that date. Subsequently, when the order of eviction was passed, no application was moved by the tenant before the Rent Controller for revoking the order striking out defence as he could not deposit the arrears of rent on account of reasons beyond his control. On the contrary, the tenant denied the relationship of landlord and tenant before the Rent Controller. The tenant's subsequent deposit of the arrears of rent before the appellate authority being requirement of law for hearing the appeal on merits, cannot be treated as *bona fide* deposit. Further, the tenant did not deposit the month to month rent as required under Section 11(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and reiterated his stand that he is a landlord and not a tenant of the premises in dispute. Even before the High Court it was not the case of the tenant that under some *bona fide* mistake he could not deposit the arrears and month to month rent and, therefore, delay may be condoned. Plea of non-depositing of arrears of rent on account of sufficient cause was not a case set up by the tenant before the Rent Controller, the appellate authority and the High Court. The tenant's consistent stand was that he was not required under law to deposit any arrears of rent and month to month rent as he himself was the landlord of the premises. The plea of the tenant now advanced that he did not deposit arrears and month to month rent under mistaken belief, is an afterthought and is not *bona fide*. Therefore, H

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**A** such plea cannot be said to constitute 'sufficient cause' as to condone the non-deposit of arrears and also month to month rent which was required to be deposited by the tenant. [1236-G-H; 1237-A-C]

**CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4062-63 of 1998.**

**B** From the Judgment and Order dated 7-1-98 of the Madras High Court in C.R.P. No. 3195 of 1993.

S. Sivasubramanium, Senthil Jagadeesan, S. Aravindh and V. Balachandran for the Appellant.

**C** T.L.V.Iyer, K.B.S. Rajan, Ms. Pushpa Rajan and Ms. V. Mohana for the Respondents.

The Judgment of the Court was delivered by

**D** **V.N. KHARE, J.** The appellants herein are the tenants(hereinafter referred to as 'the tenant'). It appears that on 6th October, 1982 the tenant entered into an agreement with erstwhile owner of the building, namely, the Church of South India Trust Association for purchase of the premises in dispute. It is stated that the appellants paid a sum of Rs. 3 lakhs towards the part payment of consideration amount under the said agreement. It further appears that subsequently certain disputes arose with regard to the mode of payment of the balance amount and as a result of which on 12th April, 1984 the Church repudiated the agreement. On 29th August, 1986 the tenant filed a suit for specific performance of the agreement referred to above. While the aforesaid suit was pending, the Church on 12.11.86 executed a sale deed in respect of premises in dispute in favour of first respondent, namely, V.P. Venuguduswami. After purchasing the aforesaid premises the purchaser who became the landlord of the premises filed a suit on 27.8.87 for ejection of the tenant-appellant on various grounds, including the default in payment of arrears of rent for a period beginning from 12.11.86 to 31.7.87. It is not disputed that the premises in dispute is governed by The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the 'Act'). Since one of the grounds for ejection was default in payment of rent, the Rent Controller on 23.7.1990 passed an order under Sub-section (1) of Section 11 of the Act directing the tenant to deposit the arrears of rent by 3.8.90. The tenant did not comply the order dated 23.7.1990. Since the order dated 23.7.90 remained non-complied, **H** the Rent Controller by an order dated 7.8.90 passed an order for eviction of

the tenant. The tenant preferred two separate appeals, one of which was directed against the order dated 23.7.90 and the other related to the order dated 7.8.90. On 22.8.90, the tenant deposited the arrears of rent before the appellate authority as the said deposit was condition precedent for the appeal being heard on merits. The appellate authority by an order dated 27.10.92 allowed both the appeals holding that the tenant was not liable to deposit the arrears of rent. The subsequent purchaser, namely, the respondent aggrieved by the aforesaid order preferred Civil Revision Petitions before the High Court of Judicature at Madras which were numbered as Civil Revision Petition Nos. 3195-3196/93. The High Court allowed the Revision Petitions and that is how the tenant is in appeal before us.

Learned counsel appearing for the appellant urged that the facts that the tenant after having entered into an agreement with the erstwhile owner of the building paid considerable amount of money towards part performance of the agreement and his further filing of suit in the Civil Court for specific performance of the agreement constituted sufficient cause under Sub-section (4) of Section 11 of the Act for non-depositing the arrears of rent within time, as well as monthly rent which became due in respect of building and, therefore, this Court may, after condoning the delay, permit the appellant to deposit the entire arrears of rent and remand the matter to the Rent Controller to enable the appellant to contest the application filed by the landlord for his eviction from the premises on the ground of default in payment of rent. In order to appreciate the argument of learned counsel, it is necessary to look into the relevant provisions of Section 11 of the Act. Sub-sections (1), (2) and (4) of the Act runs as under :

“11(1) No tenant against whom an application for eviction has been made by a landlord under section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 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 upto the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the case may be.

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

A (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.”

B A Perusal of the aforesaid provisions shows that where an application for eviction has been filed against a tenant on the ground of default in payment of rent the tenant is required (i) to deposit all the arrears of rent due in respect of the building with the Controller or the appellate authority, as the case may be; (ii) the tenant is further required to pay or deposit the rent which

C may subsequently fall due in respect of the building until the termination of the proceedings; (iii) the said deposit of rent is required to be paid or deposited within time provided and in the manner prescribed; and (iv) if the deposit of rent is not made, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all proceedings and pass an order of eviction against the tenant. It is

D true that the Controller or the appellate authority, as the case may be, if the tenant shows sufficient cause may permit the tenant to contest the application filed by the landlord for his eviction. The question that is required to be seen is, what does the expression ‘sufficient cause’ means in sub-section (4) of Section 11 of the Act? It is no doubt true that the expression ‘sufficient cause’ has to be liberally construed to do substantial injustice between the parties. But the expression ‘sufficient cause’ necessarily implies an element of sincerity, *bona fide*, and reasonableness. It has to be shown by the tenant who has not deposited the rent within time, as directed by the Controller, that non-deposit of the rent was beyond his control and there was no element of negligence or inaction or lack of *bona fides* on his part in not depositing the

E rent within time. Viewed in this light, what we find in the present case is, that the tenant was required to deposit the rent by 3.8.1990. But the arrears of rent were not deposited by that date. On 7.8.1990, when the order of eviction was passed, no application was moved by the tenant before the Rent Controller for revoking the order striking out defence as he could not deposit the arrears of rent on account of reasons beyond his control. On the contrary, the tenant denied the relationship of landlord and tenant before the Rent Controller. The tenant’s subsequent deposit of the arrears of rent before the appellate authority being requirement of law for hearing the appeal on merits, cannot be treated as *bona fide* deposit. Further, the tenant did not deposit the month to month rent as required under section 11(1) of the Act and reiterated his stand that

F he is a landlord and not a tenant of the premises in dispute. Even before the

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High Court it was not the case of the tenant that under some bona fide mistake he could not deposit the arrears and month to month rent and, therefore, delay may be condoned. It appears that, after the Supreme Court affirmed the dismissal of the suit filed by the tenant for specific performance of the Agreement, the tenant has now come forward with a plea that since he under mistaken belief did not deposit arrears and month to month rent and, therefore, default may be condoned. As noticed earlier, this plea of non-depositing of arrears of rent on account of sufficient cause was not a case set up by the tenant before the Rent Controller, the appellate authority and the High Court. The tenant's consistent stand was that he was not required under law to deposit any arrears of rent and month to month rent as he himself was the landlord of the premises. This plea of the tenant now advanced is an afterthought and is not *bona fide* and, therefore, we do not find it to constitute 'sufficient cause' as to condone the non-deposit of arrears and also month to month rent which was required to be deposited by the tenant. We, therefore, do not find any merit in the submission of the learned counsel for the appellants.

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In view of the above, the appeals fail and are dismissed. However, in the circumstances, there shall be no order as to costs.

M.P.

Appeals dismissed.