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RAJA MUTHUKONE (D) BY LRS.

v.

T. GOPALASAMI AND ANR.

MARCH 21, 2002

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[R.C. LAHOTI AND RUMA PAL, JJ.]

*Rent and Eviction.*

C *Tamil Nadu Buildings (Lease and Rent Control) Act, 1960:*

D *S. 10(2)(i); Explanation—Tenant in arrears of rent—Notice claiming arrears served by landlord—Tenant replying that rent deposited in court in another proceeding—Landlord filing suit for eviction before expiry of two months' period and later withdrawing the rent deposited by tenant—High Court decreeing the suit—Held, once landlord gave notice to tenant claiming rent in arrears, he should have waited for a period of two months from date of service of notice and it is only on non-payment or non-tender of rent within the period of two months that landlord could have initiated eviction proceedings and then it would have been for the tenant to satisfy the Rent Controller that inspite of non-payment of rent he was not a defaulter for reasons—Besides, E in the instant case, before initiation of proceedings, tenant had brought to notice of landlord the fact that rent had been deposited in court—Landlord had also withdrawn the rent so deposited before expiry of said two months—Therefore, tenant cannot be held to be a defaulter—Judgment of High Court set aside—Eviction proceedings dismissed.*

F *S. Sundaram Pillai and Ors. v. V.R. Pattabiraman and Ors., [1985] 1 SCC 591, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6929 of 2000.

G From the Judgment and Order dated 3.1.2000 of the Chennai High Court in C.R.P. No. 1881 of 1996.

Balaji Srinivasan, M.B. Rama Subba Raju and V. Sudeer for S. Srinivasan for the Appellants.

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K.V. Vijay Kumar for the Respondents.

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The following Order of the Court was delivered :

A Suit for eviction of the tenant on the ground available under Clause (i) of sub-section (2) of Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act', for short) has been ordered to be decreed by the High Court. Feeling aggrieved thereby the tenant has filed this appeal by special leave.

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For our purpose it would suffice to set out only a few relevant facts which, at this stage, are not in controversy. The rent for the months of June, 1983 to November, 1984 was not paid by the tenant to the landlord. On 7/12/1984 the landlord served a notice on the tenant claiming the rent in arrears as contemplated by Explanation to sub-Section (2) of Section 10. The notice was served. The tenant replied to it. It appears that there were multiple legal proceedings initiated before different fora, between the landlord and the tenant which had all stood concluded. In two or three of such proceedings, the tenant had deposited the amount of rent. The dates of deposit are not known but the fact remains that the rent which was claimed as in arrears, was actually deposited. The factum of rent having been deposited in such proceedings was stated by the tenant in his reply to the notice. However, without waiting for the period of two months, the landlord filed a petition for eviction of the tenant on 2/1/1985 before the Rent Controller. Subsequent to the filing of these proceedings for eviction, on 18/1/1985 the landlord moved a petition, called the cheque memo, withdrawing the rent deposited by the tenant in different proceedings and the amount was also withdrawn.

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The short question which arises for consideration is whether in such facts and circumstances the tenant can be said to have committed a wilful default in paying or tendering the rent to the landlord.

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According to the learned counsel for the landlord, the tenant was bound to pay or tender rent to the landlord, month by month, within fifteen days of the expiry of each tenancy month and if the tenant had deposited the rent in certain proceedings, which had already stood concluded, then he did so at his own peril and he cannot take advantage of such deposits for purging the default. The submission of the learned counsel for the tenant is that if the landlord chooses to serve a notice claiming the rent in terms of the Explanation abovesaid, then he must wait for a period

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A of two months for payment or tender of rent by the tenant and it is only in the event of latter's failure to pay the rent in the notice period that he may be considered to be a defaulter. In the event of giving a notice, other modes of adjudging the tenant a wilful defaulter, except by reference to the Explanation abovesaid, are excluded.

B The submission of the learned counsel for the tenant finds support from the Three-Judge Bench decision in *S. Sundaram Pillai and Ors. v. V.R. Pattabiraman and Ors.*, [1985] 1 SCC 591. Having taken into consideration the provisions of Section 10(2)(i), and the Proviso and the Explanation to sub-section (2) Fazal Ali, J., speaking for the majority, C stated his conclusions as under :

(1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he

D feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

E (2) If the landlord chooses to give two months' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord."

Vide para 63, His Lordship observed:

G "Indeed, if the landlord chooses to give two months' notice to his tenant and he does not pay the rent, then, in the absence of substantial and compelling reasons, the Controller or the court can certainly presume that the default is wilful and order his eviction straightforward. We are unable to accept the view that whether two months' notice for payment of rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because

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that would render the very object of explanation otiose and nugatory." A

The submission made on behalf of the landlord that even if two months' notice for payment of rent is given still it will be open to the Controller under proviso to determine the question of default, was discarded by Fazal Ali, J. by placing on record his opinion that such a view, if accepted, would render the very object of explanation otiose and nugatory. The same submission which was expressly discarded in the case of *S. Sundaram Pillai* (supra) has been advanced before us and obviously we cannot entertain the same. In the case at hand, once the landlord gave a notice to the tenant claiming the rent in arrears, he should have waited for a period of two months from the date of service of notice and it is only on non-payment of non-tender of rent within the period of two months that the landlord could have initiated the proceedings for eviction on the ground of wilful default and then it would have been for the tenant to satisfy the Rent Controller that inspite of non-payment of rent for a period of two months from the date of service of notice, he was not a defaulter for reasons. In the present case, there is the additional fact that before the initiation of the proceedings for eviction, the factum of the tenant having deposited the rent in the Court, though in the proceedings which had stood terminated, was brought to the notice of the landlord and the landlord having initiated the proceeding for eviction withdrew the amount of rent and on the date when he sought for withdrawal, a period of two months from the date of notice had not expired. In such circumstances, in view of the law laid down in the case of *S. Sundaram Pillai* (supra) the tenant cannot be held to be a wilful defaulter.

For the foregoing reasons, the appeal is allowed. The impugned judgment of the High Court is set aside and the petition for eviction filed by the landlord is directed to be dismissed. No order as to costs.

R.P.

Appeal allowed.