

Hemavathiammal and Another Vs. Valliammal and 2 Others

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Court : Chennai

Decided On : Apr-20-1999

Reported in : 1999(2)CTC487; (1999)3MLJ110

Judge : M. Karpagavinayagam, J.

Acts : Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 -- Sections 10 and 25; [Evidence Act, 1872](#) -- Sections 3

Appeal No. : C.R.P. No. 3369 of 1995

Appellant : Hemavathiammal and Another

Respondent : Valliammal and 2 Others

Advocate for Def. : Mr. S. Mohanasundarajan for ;R. Muthukumaraswamy, Adv.

Advocate for Pet/Ap. : Mr. R. Subramanian, Adv.

Judgement :

ORDER

1. 1st petitioner is the tenant. Having suffered by the orders of eviction by both the Authorities below, the present Civil Revision Petition has been filed challenging the impugned orders.

2. The respondents filed an application for eviction in R.C.O.P.No. 8 of 1990 on the ground of wilful default, owner's occupation and sub-letting. The Rent

Controller though rejected their prayer on the ground of owner's occupation, ordered eviction on the other two grounds. The Appellate Authority, in the appeal filed by the tenant, the petitioner herein, though held that the tenant is not liable to be evicted on the ground of sub-letting, confirmed the eviction on the ground of wilful default. Now, the present revision by the tenant is as against the order of the Appellate Authority confirming the finding with reference to the wilful default.

3. Learned counsel for both sides were heard. On a perusal of the orders impugned and the grounds and other records and on consideration of the submissions made on either side, I am of the view that this petition has to be allowed and the order of the Appellate Authority confirming the order of eviction on the ground of wilful default is liable to be set aside, on a short ground.

4. Admittedly, the landlords filed an application on the ground that the tenant has defaulted to pay rent arrears from December, 1988 to January, 1990 i.e. for 14 months. The Rent Controller on the basis of the materials produced by the tenant, the petitioner herein, observed that the rental arrears for the months of 1988 to December, 1989 have already been paid and as such, he defaulted to pay the rent arrears only for the month of January, 1990. The Appellate Authority also would confirm the said finding by holding that the rental amount for the month of January, 1990 has not been paid in time and as such, the tenant is liable to be evicted.

5. Both the Authorities, in my view have failed to take into consideration Ex. R6, reply notice sent by the tenant in response to the demand notice made by the landlords claiming rent.

6. According to Ex.R6, the entire amount due for the months from December, 1988 to December, 1989 have already been paid and the rent amount due for the month of January, 1990 was sent on 7.3.1990 along with the reply notice dated 7.3.1990.

7. There is no finding with reference to this contention of the tenant on the strength of the evidence through RW1 and Ex. R6. In fact, no evidence was let in by the landlords in contra.

8. In view of the above fact situation, there is no difficulty in coming to the conclusion that one month rent viz. January, 1990 was paid on 7.3.1990 and only thereafter, the R.C.O.P. has been filed on 12.3.1990. Therefore, on the date of filing of the application, there is no cause of action, as pointed out by the petitioners.

9. The Apex Court in *Dakaya @ Dakaian v. Anjani*, 1996 (1) L.W. 25 would observe as follows:

'This court in the aforesaid case of *S. Sundaram Pillai* has indicated that default per se cannot be construed as wilful and keeping in mind the beneficial purpose of the Rent Act to protect the eviction of the tenant, if the payment has been made before the institution of the suit, the cause of action for instituting of the suit, will vanish.'

10. In the light of the above observation, when we look at the materials available on record, it is seen that immediately on receipt of the demand for payment of rent, on 7.3.1990, the tenant, the petitioner herein sent the amount for the month of January, 1990 by Money Order and it was established that the said Money Order was received by the landlords before filing the petition for eviction. Therefore, it is quite clear that there is no cause of action to proceed on the footing that there is a wilful default for which an order of eviction of tenant has to be passed.

11. In view of the above finding, I am of the view that the orders passed by both the Authorities are liable to be set aside and accordingly the same are set aside. However, on the strength of the Apex Court's decision in *Dakaya @ Kakalan v. Anjani*, 1996 (1) L.W. 25, counsel for both agreed to have the rent revised by fixing some enhanced rent.

12. It is seen from the records that the rental premises is situated in the Mount Road, business area and the present rent is Rs. 200. Originally, it is stated that the rent was fixed at the rate of Rs. 75. Thereafter it was enhanced to Rs. 200. Admittedly, the tenant has been paying rent at the rate of Rs. 200 from November, 1989.

13. So, considering the facts and circumstances of the case, I feel that the monthly rent can be enhanced to Rs. 900 only to which both the counsel would agree. Accordingly 1st petitioner is directed to pay to the respondents/landlords the enhanced rent for the premises in question with effect from 1.4.1999. The 1st petitioner also will pay any other amount unpaid towards payment of rent within one month from today. If there are arrears in default, the revision shall stand dismissed.

14. However, it is made clear that this order would not preclude the landlords to seek eviction of the tenant in future on such ground as may be permissible under law. Accordingly, the revision is allowed. No costs.

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