

C. Ranganathan Vs. M. Suri

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Court : Chennai

Decided On : Jan-23-1987

Reported in : (1987)2MLJ235

Appellant : C. Ranganathan

Respondent : M. Suri

Judgement :

ORDER

M.N. Chandurkar, C.J.

1. Both these revision petitions can be disposed of by a common order as both of them arise out of an eviction petition filed under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Rent Control Act).

2. The petitioner is the owner of premises No. 6 Sivaparakasa Mudaliar Road, T. Nagar, Madras-17, the southern portion in the ground floor of which is occupied by the respondent as a tenant. Originally, the monthly rent for the premises was Rs. 100. As according to the landlord the rent paid by the tenant was low, he filed a petition under Section 4 of the Rent Control Act, being H.R.C. No. 1922 of 1978. The Rent Controller fixed the fair rent of the premises at Rs. 236. Both the landlord and the tenant filed appeals against this order of the then Rent Controller. The Appellate Authority allowed the appeal filed by the landlord and fixed the fair rent

at Rs. 267 by an order dated 20.4.1981. By the same order, the Appellate Authority dismissed the appeal filed by the tenant. It is not in dispute that the fair rent fixed became effective from 19.7.1987 which was the date on which the petition under Section 4 came to be filed.

3. The effect of the order fixing the fair rent at Rs. 267 per month was that the landlord became entitled to the difference between the fair rent and the originally agreed rent from 19.7.1978 till the end of the month of April, 1981. It is not in dispute that rent at the enhanced figure has been paid for the subsequent period commencing from 1st of May, 1981.

4. The landlord served a lawyer's notice on 24.4.1981 demanding from the tenant a sum of Rs. 8,577 being the difference between the fair rent and the agreed rent for the period 19.7.1978 to 30.4.1981. When that amount was not paid by the tenant, the landlord filed a petition for eviction in June, 1981 claiming that the tenant had committed wilful default in the payment of monthly rent, from 19.7.1978 to 30.4.1981 and was therefore liable to be evicted.

5. The tenant took the stand that the provision in Section 10(2)(i) of the Rent Control Act was not available to the landlord in respect of non-payment of the amount found due as a result of the fixation of the fair rent. According to the tenant, the proper remedy for the landlord was to file a suit against the tenant to recover the amount found due. In fact, It is an admitted position that the landlord had already filed a suit for the additional rent payable to him and had also obtained a decree.

6. During the course of the pendency of eviction petition, the landlord filed a petition (M.P. 639 of 1981) under Section 11(4) of the Rent Control Act, for direction that the proceedings for eviction should be 'stayed' until the tenant paid a sum of Rs. 5,777.80 which was due as on 31.7.1981, as in the meantime the tenant had paid a sum of Rs. 801 to the landlord.

7. With regard to this application, the tenant's case was that since there was no application under Section 11(3) of the Rent Control Act, and no amount was fixed or direction given by the Court to the tenant to pay any amount, the petition under

Section 1(4) was not maintainable.

8. The Rent Controller initially made an order in M.P. 639 of 1981 which was made under Section 11(4) of the Rent Control Act, holding that since the admitted arrears due from the tenant came to Rs. 5,777.80, the tenant could not prosecute the defence in the proceeding unless he paid that amount. He, therefore, directed the tenant to pay the arrears of rent of Rs. 5,777.80 on or before 28.9.1981 failing which, all further proceedings would be stopped and eviction petition was directed to be called on 29.9.1981.

9. The tenant did not comply with this order and therefore on 29.9.1981, the Rent Controller made an order for eviction, though he gave one month's time to the tenant to vacate.

10. The tenant filed two appeals, one against the order in M.P. No. 639 and the other against the substantive order of eviction passed in H.R.C. No. 2790 of 1981. The Appellate Authority took the view that the difference between the fair rent and the agreed rent was not 'rent' as defined in Section 10(2)(i) of the Rent Control Act, and in view of this the Explanation at the end of Section 10(2) of the Rent Control Act could not be invoked by the landlord. Holding that the arrears of rent could only amount to a 'debt' the Appellate Authority further held that the landlord was not entitled to file an application under Section 11(4) of the Rent Control Act. Having taken the view that the petition under Section 10(2)(i) of the Rent Control Act, was not maintainable the Appellate Authority further held that the Rent Controller was in error in directing the tenant to deposit the entire arrears on the application under Section 11(4) of the Rent Control Act. Taking the view that non-payment of the difference between the agreed rent and the fair rent for the period prior to the date on which the fair rent was fixed, did not amount to 'wilful default' both the appeals were allowed by the Appellate Authority. These orders are now challenged in the present revisions.

11. Mr. Tajuddeen appearing on behalf of the landlord (revision petitioner) has contended that the landlord was entitled to invoke the Explanation in Section 10(2) of the Rent Control Act, because, the fair rent fixed must be treated as 'agreed rent' referred to in Section 10(2)(i) and that since the arrears due from the tenant

were not paid by him in spite of the notice contemplated by the Explanation, the landlord was entitled to an order of eviction.

12. On behalf of the tenant (respondent) it was contended that the landlord was not entitled to file a petition for eviction under Section 10(2)(i) of the Rent Control Act, on the ground that the difference between the fair rent and the agreed rent was not paid in respect of the period prior to the date of fixing the fair rent. Thus, according to the learned Counsel for the tenant, the petition under Section 10(2)(i) of the Rent Control Act, itself was not maintainable and consequently the provision in Section 11(4) would also not be applicable to the proceedings before the Rent Controller.

13. For a proper appreciation of facts raised by the learned Counsel, it is necessary to refer to the relevant provisions of the Rent Control Act. Section 10(1) of the Act inter alia provides as follows-

'A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Sections 14 to 16:

Provided....

Provided....

The Provisions of Sections 14 to 16 are not relevant for the purposes of this case. Section 10(1) thus expressly provides for a bar against eviction of a tenant except in accordance with the provisions of Section 10 of Section 14 or 16. Therefore, no order of eviction of a tenant can be made unless the requirements of Section 10, which alone is relevant for the purposes of this case, are satisfied. The provisions of Sub-Sections (2) to (8) of Section 10 regulate the power of the Court to order an eviction. Those provisions also place restrictions on the right of the landlord to evict the tenant. The Rent Control Act is an Act made for the protection of the tenants and to regulate the relationship between the landlord and the tenant. Therefore unless the requirements of the relevant provision in accordance with which the landlord seeks an order of eviction against the tenant, are fully satisfied, an order for eviction cannot be made against the tenant.

14. The only relevant provision for the purposes of this case is the one in Clause (i) of Section 10(2) and the Explanation which is added to Section 10(2) by Act 23 of 1973. Section 10(2), in so far as is relevant for the purposes of this case, reads as follows-

A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable,

(ii)....

(a)....

(b)....

(iii)....

(iv)....

(v)....

(vi)....

(vii)....

the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that in any case falling under Clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful he may, notwithstanding anything contained in Section 11 give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord upto the date of

such payment or rent and on such payment or tender, the application shall be rejected.

Explanation : For the purpose of this subsection, default to pay or tender rent shall be construed as wilful, if the default by tenant in the payment or tender of rent continued after the issue of two months notice by the landlord claiming the rent.

Section 10(2) of the Rent control Act therefore required that a landlord who seeks to evict his tenant must apply to the Controller for a direction in that behalf. The different grounds on which an order of eviction can be made are enumerated in the different clauses of Sub-section (2) of Section 10. In Clause (i) of Section 10(2), it is provided that if the tenant has not paid or tendered the rent due by him in respect of the building occupied by him within fifteen days after the expiry of the time fixed in the agreement of tenancy, or where there is no such agreement, by the last day of the month next following that for which the rent is payable, the Rent Controller can make an order directing the tenant to put the landlord in possession of the building. The effect of Section 10(2)(i) therefore is that there is an obligation on the part of the tenant to pay the rent within a period of fifteen days after the expiry of the time fixed in the agreement of tenancy. If, however, there is no such time fixed for payment of rent by the agreement between the landlord and the tenant then, statutorily the tenant is required to pay the rent by the last day of the month next following the month for which the rent is payable. It is obvious that when Section 10(2)(i) refers to 'rent' which is not paid or tendered by the tenant that rent is the 'agreed' rent. The proviso to Section 10(2) embodies the power of Controller to give relief to the tenant in a case where the default in payment of rent or in tendering the rent is not wilful. If the Rent Controller is satisfied that the tenant's default to pay or tender the rent was not wilful, there is power given to the Rent Controller to give the tenant a reasonable notice not exceeding 15 days to pay the entire amount due by him upto the date of such payment or tender. If the tenant accordingly pays the entire rent the application is to be rejected.

15. So far as the Explanation is concerned, it statutorily provides that if the tenant fails to pay or tender rent within two months after a notice given by the landlord claiming rent, then, the default in payment of rent or default in tendering rent shall

be construed as 'wilful'

16. It is necessary to point out that the proviso and the Explanation to Section 10(2) would be attracted in a case where the tenant fails to discharge his obligation and liability referred to in Section 10(2)(i) of the Rent Control Act. As already pointed out, the obligation of the tenant is to pay the agreed rent within fifteen days after the expiry of the time fixed in the agreement of tenancy, or by the last day of the month next following the month for which the rent is payable. Therefore, before a landlord can claim relief under Section 10(2)(i) or can call in aid the explanation to Section 10(2) to adjudge the tenant a 'wilful' defaulter' it must be established that the tenant has failed to pay the rent as originally agreed between him and the landlord.

17. Now, it is true that once fair rent is fixed under Section 4 of the Rent Control Act, the liability to pay the fair rent accrues from the date on which the fair rent is fixed. Even though the liability to pay fair rent dates back to the date of the application, the liability itself gets determined only on the date on which the fair rent is fixed. Until the fair rent is so fixed on an application made by the landlord, during the pendency of such an application the only statutory obligation of the tenant is to pay the 'agreed' rent. It is undoubtedly true that where fair rent has been fixed at a figure higher than the agreed rent, the tenant will become liable to pay a higher rent from the date of the application and when agreed rent is paid during the pendency of the application, the landlord will be entitled to claim the difference between the fair rent and the agreed rent for the period covered by the pendency of the application under Section 4. However, since the fair rent itself has been fixed at a future date, there is no question of the tenant paying the fair rent either within fifteen days after the expiry of the time fixed in the agreement of tenancy or by the last day of the month next following the month for which rent is payable during the period of the pendency of the application for fixation of fair rent. In such a case, the tenant cannot be said to incur the liability of being adjudged a 'defaulter' if he has not paid the difference between the fair rent and the agreed rent. Though it is true that any default in the payment of fair rent after the date on which the fair rent has been fixed would attract the provision of Section 10(2)(i) of the Rent Control Act, that provision cannot be availed of by the landlord for the

period prior to the date on which the fair rent is fixed. Section 10(2)(i) and the Explanation have to be read together. The 'default' to pay referred to in the Explanation is the default contemplated by Section 10(2)(i). Therefore, unless the landlord is entitled to avail of the provision in Section 10(2)(i), there is no occasion for the Rent Controller to apply his mind to the question whether the default is wilful and consequently the artificial rule of evidence, contemplated in the Explanation will also not be attracted to a case to which the substantive provision is Section 10(2)(i) will not be attracted. Therefore, in a case where a certain amount becomes due from the tenant as a result of the fair rent being fixed at a higher figure than the agreed rent, the failure to pay the difference between the fair rent and the agreed rent will not attract the provisions of Section 10(2)(1) at all. Consequently, the landlord in the instant case, was not entitled to invoke the provisions of Section 10(2)(i) of the Rent Control Act, and the petition filed by him was therefore clearly not maintainable. Consequently, the further provision in Section 11(4) cannot be attracted in the instant case. The Appellate Authority was, therefore, right in allowing the appeals filed by the tenant and dismissing the petition for eviction. The revision petitions are therefore dismissed. No costs.

18. Before parting with the case, it is necessary to point out that the Rent Control Act does not make any provisions with regard to the consequences of nonpayment of the difference between the fair rent and the agreed rent where fair rent is fixed at a higher figure than the agreed rent and the only remedy available to the landlord will therefore be to file a civil suit. The Act also does not specify any period within which the excess rent becoming due as a result of the fixation of fair rent at a higher figure should be paid by the tenant. Normally, civil suit takes a long time for disposal and the landlord will be deprived for a long time of the amount legitimately due to him. At the same time, it must be recognised that petitions filed under Rent Control Act also take a considerable time to be decided. Thus all of a sudden tenants will be suddenly called upon to discharge a large liability if the rent is enhanced. Most of the tenants would not be in a position to discharge such a large liability in a lump sum. It would therefore be advisable to make a provision in the Rent Control Act itself requiring the tenant to pay this difference either in a lump sum if he has the capacity, or, otherwise by instalments. It is necessary to provide for a power to the Rent Controller to order the payment of the difference

between the fair rent and the agreed rent after taking into account the capacity of the tenant. In such a case, it would also be possible to provide for the consequence of eviction of the tenant in case he commits default in payment, if the payment is to be paid in a lump sum or in default of two or more instalments and such default could statutorily be provided as an additional ground for eviction by the landlord. However, as the Rent Control Act stands at present, the landlord is not entitled to ask for eviction of a tenant on the ground of non-payment of the difference between the fair rent and the agreed rent. His only remedy is to file a suit for recovery of the amount due. An amendment of the Act in the light of what is pointed above is clearly called for. A copy of this order may be sent to the Law Secretary to the Government of Tamil Nadu.

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