T.C.A. Anandalwar Vs. the Second Judge, Court of Small Causes and anr.

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Court : Chennai

Decided On : Feb-15-1949

Reported in : (1949)1MLJ528

Appellant : T.C.A. Anandalwar

Respondent : The Second Judge, Court of Small Causes and anr.

Judgement :

P.V. Rajamannar, C.J.

1.These two applications for issue of writs of certiorari arise in respect of the same subject-matter, namely, Premises No. 118, China Bazaar Road, Madras. The petitioner is the landlord, the contesting respondent is the tenant. The petitioner filed two successive applications before the Rent Controller, Madras, for eviction. The first application was on the ground that the tenant had committed default in payment of rent for February, March and April, 1948. The other application was on the ground that the tenant had committed default in payment of rent for July August and September, 1948. The Rent Controller passed orders of eviction on both the applications, and there were two appeals to the Court of Small Causes. Both the appeals were allowed by the learned Third Judge of that Court, on practically the same reasoning. The landlord has filed the above two applications to quash the two orders of the learned Judge.

2. It is sufficient to state the following facts for the disposal of these applications The rent of the premises for January was payable by the end of February 1948-A telegraphic money order for the rent of January was apparently despatched by the tenant on 29th February, 1948, from Baroda, but actually the money order was delivered to the petitioner only on 1st March, 1948, when he refused to accept it. Thereafter, there is no finding that the tenant made any tender of the rent due for any of the subsequent months, February onwards. On these facts, the learned Judge held (I) that there was a valid tender of the rent for January, and an unjustifiable refusal by the landlord and (2) that, because of this unjustifiable refusal, it was not necessary in law for the tenant to go on tendering, month after month, the rent due for each month. According to the learned Judge, in these circumstances, the tenant could not be considered to be a defaulter in respect of the rent due for the months, February to April and July to September, 1948.

3. We shall assume for the purpose of argument that the refusal by the landlord on 1st March, 1948, to accept the money was an unreasonable and unjustifiable' refusal of a valid tender made by the tenant, though if we were compelled to give our decision on that question we would have been inclined to hold that it was not an improper refusal. The question remains whether by reason of the improper refusal of the rent for January, the tenant is exempted from the obligation to tender the rent for the succeeding months within the time limited by law. Under Section 7(2)(i) of Madras Act XV of 1946, a landlord is entitled to an order for eviction of the tenant, if the tenant has not paid or tendered the rent due by him in respect of the building by the last day of the month next following that for which the rent is payable. It cannot be said that, merely because the rent due for one month has been improperly refused when tendered, the rent for succeeding months is neither due nor payable. It is clear that under the above provision of the Act, 'the duty is cast on the tenant to make a payment or tender for every month, if he desires to take advantage of the provisions of the Act. We are not concerned in this case with the contingency of the landlord intimating to the tenant his intention not to receive the rent, even if tendered. Having regard to the facts of this case, it is unnecessary to deal at any length with the decisions cited to us by the learned Counsel for the respondent, namely, Chelikani Venkatarayanim v. Zamindar of Tuni (1922) 44 M.L.J. 631 : L.R. 50 IndAp 41 : I.L.R. 46 Mad. 108 (P.C.)

Bhagwantulayya v. Venkandhora : AIR1941 Mad484 and Harnath Raibinjraj v. Hirdyanarain I.L.R. (1946) Pat. 451, because all these decisions lay down the well-known proposition which was enunciated by Wigram, V.G., in the leading case of Hunter v. Daniel (1845) 4 Hare 420 : 67 E.R. 712. that where there has been an unequivocal refusal to accept a tender, the law does not: require a tender to be made. Those cases dealt with cases of mortgages and contracts, and with the particular incidents of tender, default in which was made the subject-matter of the action. In this case it may be that the tenant had a good defence, if the landlord had chosen to apply for an order of eviction on the ground that the tenant had defaulted in the payment of the rent for January, because it was an improper refusal of the tender made by the tenant. But as regards the rent for the subsequent months, the principle enunciated in those decisions can have no application whatever. There is no evidence in this case of an unequivocal intimation by the landlord that he would not accept any payment or tender for subsequent months. The learned Judge was clearly in error in holding that the tenant could not be considered to be a defaulter in respect of rent for months for which admittedly there is no evidence of payment or tender. There is nothing to support the learned Judge's conclusion that after the landlord's refusal of the January rent on 1st March, 1948, the tenant was not bound to tender the rent. There is, therefore, a clear error apparent on the face of the record, and we, therefore, direct the issue of a writ quashing the order of the trial Judge in. each of the two appeals.

4. Learned Counsel for the respondent contended that as there was another remedy open to the petitioner, the application for a writ of certiorari was not competent. The remedy, according to him, is to apply in revision to this Court against the order of the Court of Small Causes. He relied upon the decision of Panchapakesa Aiyar, J., in Krishna Nair v. Valliammal : (1949)1MLJ74 . With respect to the learned Judge, we find that his decision loses its value because of the omission to refer to. an important statutory provision, namely, Sub-section (4) of Section 12:

the decision of the appellate authority and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any

Court of law whether in a suit or other proceeding or by way of appeal or revision.

It has not been contended before us that this provision is invalid. Therefore, the order of the Court of Small Causes as an appellate authority cannot be the subject-matter of a revision to this Court. There is no other remedy available to the petitioner. These applications are, therefore, allowed. The respondent will pay the costs of the petitioner in one of the petitions.