

Ravi Ram Vs. Somasundaram

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Court : Chennai

Decided On : Dec-02-1983

Reported in : (1984)1MLJ52

Appellant : Ravi Ram

Respondent : Somasundaram

Advocate for Def. : Mr. Thulasiraman

Judgement :

P.R. Gokulakrishnan, J.

1. The tenant is the petitioner in this Civil Revision Petition. In an application filed under Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Act) by the landlord, the Rent Controller has found that there are huge arrears of rent amounting to Rs. 15,400 and directed the tenant to deposit the said amount to the credit of the proceedings. As against the determination of arrears of rent under Section 11 (3) of the Act in M P. No. 560 of 1982 in R.C.O.P. No. 2520 of 1982 the tenant preferred R C. A. No. 350 of 1932 The appellate authority took up for determination the question as to whether the tenant can file an appeal without complying with the order of the Rent Controller, and after holding that the tenant cannot prefer an appeal without depositing this amount dismissed the appeal as not maintainable. It is as against this order, the present revision has been filed.

2. Mr. Selvaraj, learned Counsel appearing for the revision petitioner/tenant contends that for an appeal under Section 11(3) of the Act, there is no need to deposit the arrears of rent determined by the Rent Controller. This proposition is, no doubt accepted by Mr. Thulasiraman learned Counsel appearing for the respondent / landlord. But the learned Counsel submits that the appellate authority has, as a matter of fact, found that such an arrear is due from the tenant. Before advertent to the factual finding of the appellate authority, it is necessary to decide as to whether an appeal can be preferred without depositing the arrears that were found due by the Rent Controller.

3. It is clear that the appeal filed before the appellate authority is only as against the order passed under Section 11 (3) of the Act wherein the Rent Controller has decided as to the arrears payable by the tenant. Section 11 of the Act reads as follows:

11. Payment or deposit of rent during the pendency of proceedings for eviction:

(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 up to 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 shall be made within the time and in the manner prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under Sub-section (1) the Controller or the appellate authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary determine summarily the rent to be so paid or deposited.

(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.

(5) The amount deposited under Sub-section (1) may subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the appellate authority, as the case may be.

4. From the above extract of Section 11, it is clear that under Section 11 (3) of the Act, the Rent Controller or the appellate authority, as the case may be, shall on application and after enquiry, determine summarily the rent to be so paid or deposited. Section 11 (3) of the Act has to be read along with Section 23 of the Act, which provides the machinery for an appeal. Section 23 of the Act reads as follows:

Appeal :--(1) (a) The Government may, by general or special order notified in the Tamil Nadu Government Gazette, confer on such officers and authorities as they think fit, the powers of appellate authorities for the purpose of the Act, in such areas and in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction.

In computing the fifteen days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall call for records to the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller shall decide the appeal.

5. Section 23 (1) (b) of the Act clearly states that any person aggrieved by an order passed by a Rent Controller, can prefer an appeal. In *Radha v. C. R. Govindarajulu* : AIR1978 Mad399 , a Division Bench of this Court, while dealing with the powers under revision to pass orders under Section 11 of the Act, has observed as follows:

If the argument advanced on behalf of the petitioner is to be accepted, all that a landlord to whom his tenant has not paid the rent has to do is just to file a petition under Section 10 of the Act, whether he has a good ground or not for obtaining an order of eviction against the tenant under the provisions of the Act, and thereafter to file a petition under Section 11 (4) calling upon the tenant to pay the arrears of rent and if he does not pay, to obtain an order of eviction against him. even though the ground on which he filed the application for eviction of the tenant may be totally untenable. Certainly the Legislature could not have contemplated such a situation in enacting Section 11(4) a summary remedy for recovery of arrears of rent from a tenant by the landlord in all cases, as a substitute for a suit by a landlord for the recovery of arrears of rent from his tenant.

From this it is clear that the authorities constituted under the Act are not machinery for recovering the arrears of rent. If that be so, the question of paying the determined rent under Section 11 (3) of the Act is a condition precedent for filing an appeal will, in effect, run contra to the observations made in the above Bench decision.

6. Section 11 (1) read along with Section 23 of the Act, which clearly gives the right for a tenant or to a person aggrieved by an order passed by the Rent Controller to prefer an appeal, clearly visualises an appeal to be filed questioning the determination of such a rent summarily under Section 11 (3) of the Act. The decision reported in *Iqbal and Company y. Abdul Rahim* : (1982)1MLJ221 , does not visualise depositing of rents decided before preferring an appeal against the determination of rent under Section 11 (3) of the Act. A reading of the judgment rendered by Mohan, J, in the above decision, clearly spells out that the rent admitted by the tenant as arrears has to be paid before any appeal has to be heard. Hence, I am of the view, that an appeal against an order rendered by the

Rent Controller under Section 11 (3) of the Act can be heard even without the tenant depositing the arrears of rent determined by the Rent Controller.

7. The next point is, as to whether the appellate authority in this case has given a finding as regards the arrears of rent. The main question that was taken up for determination by the appellate authority is as to whether an appeal can be filed without the complying with the order of the Rent Controller under Section 11 (3) of the Act. Except stating the finding given by the Rent Controller, the appellate authority has not discussed, as to whether the tenant has to pay the huge amount of Rs. 15,400 by way of arrears of rent. In my opinion, the appellate authority has to apply its mind with reference to the evidence as to whether the tenant has to pay such a huge amount by way of arrears of rent. In these circumstances, the order-of the appellate authority is set aside and the matter is remanded back to the appellate authority for the determination of the question as to whether the finding of the Rent Controller under Section 11 (3) of the Act is correct or not.

8. In the result, the Civil Revision Petition is allowed and the matter is remanded back to the appellate authority for fresh disposal according to law bearing in mind the observations I have made in paragraphs supra. There will be no order as to costs. The appellate authority is directed to dispose of the matter within a month from the date of receipt of this order.

9. Mr. Selvaraj, learned Counsel for the revision petitioner undertakes to pay the admitted arrears of rent i. e., the rent payable from March, 1983 onwards up to date counsel for the landlord. Mr. Thulasiraman is agreeable to receive the same. Accordingly the petitioner herein is directed to pay the arrears upto date to Mr. Thulasiraman within a week from this date.