

G. Chandra Vs. Marimuthu

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Court : Chennai

Decided On : Apr-17-2004

Reported in : 2004(3)CTC508; (2004)3MLJ7

Judge : S. Sardar Zackria Hussain, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 25

Appeal No. : Civil Revision Petition (NPD) No. 1205 of 2002

Appellant : G. Chandra

Respondent : Marimuthu

Advocate for Def. : S. Subbiah, Adv.

Advocate for Pet/Ap. : V.R. Venkatesan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

S. Sardar Zackria Hussain, J.

1. The landlady is the revision petitioner. The revision is filed against the order of the learned Rent Control Appellate Authority allowing the R.C.A. No. 92 of 1997 filed by the tenant against the eviction ordered by the learned Rent Controller on

the ground of own use and occupation in respect of the petition residential premises.

2. The landlady filed the Rent Control Original Petition for eviction on the ground of wilful default in payment of rent for 8 months from December, 1991 to July, 1992 at the rate of Rs. 450/- per month and that the petition premises is required bona fide for own use and occupation with her family members and stating that she is residing in the rented building.

3. The Rent Control Original Petition was opposed by the respondent/tenant by filing counter, in which it is stated that even during lifetime of the landlady's father Rajagopal Naidu, he was owning other buildings in which he was residing in one of such buildings and the revision petitioner is also residing in her own building and therefore, the requirement of the petition premises for own use and occupation is without bona fide. It is further stated that the respondent has not committed default wilfully in payment of rent as claimed by the revision petitioner/landlady. Since rival claims were made for the rents by the legal heirs on the death of Rajagopal Naidu, the respondent/tenant was unable to ascertain as to whom the rent is to be paid and therefore, the respondent/tenant has not committed default much-less wilful default in payment of rent as claimed by the landlady and further even in the first hearing date of the Rent Control Original petition, entire arrears of rental amount have been deposited into Court.

4. Before the learned Rent controller, the revision petitioner/landlady examined herself as P.W.1 and marked Exs.A-1 to A-8 on the side of the landlady and the respondent/tenant examined himself as R.W.1 and marked Ex.B-1 on the side of the tenant. Considering such evidence, the learned Rent Controller ordered eviction on the ground that the requirement of the petition residential premises sought for own use and occupation is bona fide, though denied eviction on the ground of wilful default in payment of rent finding that the tenant has not committed wilful default as claimed. The tenant preferred the appeal before the Rent Control Appellate Authority in respect of the eviction ordered on the ground of own use and occupation and the appeal was allowed recording finding that the requirement of the petition residential premises for own use and occupation by the

landlady/revision petitioner is without bona fide. The learned Rent Control Appellate Authority also confirmed the finding of the learned Rent Controller that the default in payment of rent as claimed for 8 months from December, 1991 to July, 1992 cannot be construed as wilful, inasmuch as the entire arrears of rent also was paid even before the first hearing date of the Rent Control Original Petition. Such order of the learned Rent Control Appellate Authority is under challenge in this Civil Revision Petition by the landlady.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

6. The learned counsel for the revision petitioner/landlady argued that inasmuch as the landlady is residing with her husband and children in a rented premises, the requirement of the petition residential premises sought for own use and occupation by the landlady is proved as bona fide and therefore, the contra finding in this regard by the learned Rent Control Appellate Authority is to be set aside. The learned counsel for the revision petitioner/landlady further contended that though no appeal or cross appeal was filed against the order of the learned Rent Controller denying the eviction on the ground of wilful default in payment of rent by the landlady, inasmuch as that aspect has been considered by the learned Rent Control Appellate Authority and confirmed the order of the learned Rent Controller that the tenant has not committed wilful default in payment of rent as claimed and since the said ground also urged in the grounds for revision that ground can also be canvassed in this revision and submitted that inasmuch as the rent for 8 months from December, 1991 to July 1992 was not paid wilfully by the respondent, there have been supine indifference and callousness on the part of the respondent and therefore, eviction is to be ordered on that ground also. In this regard, the learned counsel for the revision petitioner/landlady also pointed out that even before filing of the Rent Control Original Petition, subject matter of this Civil Revision Petition, the tenant was not in the habit of paying the rent regularly and every month and in the R.C.O.P. No. 483 of 1988 filed by the tenant for deposit of rent into Court also, he did not deposit the rent regularly and even after filing of the Rent Control Original Petition, subject matter of this Civil Revision Petition, the tenant is very irregular in payment of rent and such conduct of the tenant in

committing default wilfully in payment of rent before filing of the Rent Control Original Petition as well as after filing of the Rent Control Original Petition is also to be considered in finding that the tenant has committed wilful default in payment of rent from December, 1991 to July, 1992.

7. The learned counsel for the respondent/tenant contended that inasmuch as the landlady was residing in the house owned by her husband and that at the time when she gave evidence she has been residing with her husband and children in another building owned by herself, her two sisters and mother, the requirement sought for the petition residential premises on the ground of own use and occupation is mala fide. The learned counsel for the respondent/tenant also relied on the decision Fakir Mohideen - vs. - Habibunnissa (died) and others reported in , in which, this Court has held:-

'It is settled law that a claim for eviction, on the ground of bona fide own occupation, that requirement must be available to the landlord not only on the date of petition but it should continue to be there on the date of final adjudication of rights. If, in between the periods, there is a change of circumstance due to subsequent events, that is also a matter which should be taken into consideration by this Court..... In both Sections 10(3)(a)(i) and 10(3)(a)(iii), one of the qualifications for getting possession is that the landlord or the person for whose requirement the building is sought to be evicted, should not own a building of his own (whether the requirement is residential or non-residential) in the City, town or village.'

The learned counsel for the respondent/tenant further submitted that since rival claims were made for the rents by the legal heirs on the death of Rajagopal Naidu, the respondent/tenant was unable to ascertain as to whom the rent is to be paid and therefore, the respondent/tenant has not committed default much-less wilful default in payment of rent as claimed by the landlady and further even in the first hearing date of the Rent Control Original petition, entire arrears of rental amount have been deposited into Court. The learned counsel for the respondent/tenant also submitted that inasmuch as no cross-appeal or appeal has been filed by the landlady challenging the correctness of the finding of the denial of eviction on the

ground of wilful default by the learned Rent Controller, it is not open for the landlady to seek eviction on that ground by raising the same in this Civil Revision Petition. The learned counsel for the respondent/tenant placed the following decisions:-

(1) Chordia Automobiles - vs . - S.Moosa and others reported in : [2000]2SCR13 , in which, the Apex Court has ruled:-

'Explanation 1 to Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has given a benefit to a tenant viz., if there is default in payment of rent and a notice is sent by the landlord of such default, then the default would mature into a wilful default only if the default continues; in other words, the defaulted amount is not paid within a period of two months from the date of notice.'

(2) T.Soundarapandian - vs. - G.Rathinam reported in , in which this Court has held at page 628:- 'It is not in dispute that as against the order passed by the Rent Controller, rejecting the case of the petitioner on the ground of wilful default, the landlord has not chosen to file any appeal nor the landlord filed any cross appeal also before the Appellate authority. Even in the revision petition filed before this Court, the landlord has not raised any such ground. In those circumstances, the Court is of the view that it is not open to the landlord to raise such a plea in this civil revision petition and if it is allowed, the opposite party would be caught unaware of the matter, which is not permissible. If the landlord or the tenant is allowed to raise such a plea in the civil revision petition, which he has not chosen to do so before the Courts below, then the very purpose of filing of appeal or revision would also be defeated that the Court has to put to an end to this type of course of action and therefore, the Court is of the view that the petitioner is not entitled to raise such a plea before this Court, who having failed to prefer an appeal as against the order of original authority, before the Appellate Authority concerned'.

8. In the Rent Control Original Petition, in paragraph 7, it is stated that the landlady is residing in a small building consisting of one room with her family members and such averment made in the petition is denied in the counter. It is further stated in the counter that even during the life time of Rajagopal Naidu, the father of the

landlady, he was owning other buildings and he was residing in one of such buildings and the landlady is also residing in her own building. In the Rent Control Original Petition, the address of the landlady is given as 65, North Krishnan Koil, North Masi Street, Madurai. In her chief examination, P.W.1 has deposed that she is residing in North Krishnan Koil lane. In her cross-examination P.W.1 has stated that the petition premises is originally belonged to her grandmother Santhana Lakshmiammal, the aunt of her father and she executed a Will in favour of her father. It is further in her evidence that in notice Ex.A-3 dated 17.6.1992, the address is given as 376, North Masi Street, Madurai. Her mother Devaki Ammal is residing in the house bearing door No. 375, North Masi Street, Madurai which belongs to the father of the landlady and it consists of two floors in which property also she has got a share. The house bearing door No. 65, North Krishnan Koil lane is her own house. The upstairs portion of the house bearing door No. 375, North Masi Street, Madurai was rented and the tenant from that portion vacated and it is lying vacant. It is her further evidence that since the house bearing door No. 65, North Krishnan Koil Lane is in dilapidated condition, she is residing with her husband and children along with her mother in the house bearing door No. 375, North Masi Street, Madurai. In the re-examination, she has stated that the house bearing door No. 65 belongs to her husband. It was allotted to the share of her husband in the partition between her husband and his elder brother and which partition took place 15 years before. She denied the suggestion that since the house bearing door No. 65, North Masi Street, Madurai allotted to the share of his husband in the partition is in dilapidated condition and is to be reconstructed, she has been residing in the house of her mother wherein her mother is also residing. In her further re-examination, P.W.1 has stated that her husband's father Muthu Azhagarsamy executed a Will, as per which, 'D' schedule property was allotted to the share of her husband. Therefore, it is clear that the house bearing Door No. 65, North Masi Street, Madurai, where she was residing along with her husband and children, belongs to her husband. Admittedly, the landlady is now residing along with her mother in the house bearing door No. 375, North Masi Street, Madurai belonged to her, two sisters and her mother Devaki Ammal. Since the landlady is in occupation of the residential building of her own, viz., the house bearing door No. 375, North Masi Street, Madurai, along with her husband and

children and residing with her mother in the same house, the requirement of the petition residential premises sought for own use and occupation by her under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, cannot be considered to be bona fide. Therefore, the finding of the learned Rent Control Appellate Authority on that aspect cannot be said to be incorrect.

9. As regards the contention put-forth for the respondent/tenant that it is not open to the landlady to raise the ground of wilful default in payment of rent as claimed by the landlady in this Civil Revision Petition, in that the denial of eviction on that ground by the learned Rent Controller was not challenged by filing cross appeal or appeal by the landlady, as rightly argued by the learned counsel for the landlady though no cross appeal or appeal was filed against the denial of eviction on the ground of wilful default in payment of rent, the Rent Control Appellate Authority has recorded finding on that aspect also and confirmed the order of the learned Rent Controller in finding that the tenant has not committed wilful default in payment of rent, inasmuch as he has paid the entire arrears of rent before first hearing date of the Rent Control Original petition and that the landlady has also taken this as one of the grounds in this Civil Revision Petition. Therefore, the case of the landlady with regard to the eviction sought on the ground of wilful default also can be considered in this Civil Revision Petition.

10. In the Rent Control Original Petition, it is set out that the respondent/tenant committed wilful default in payment of rent for 8 months from December, 1991 to July, 1992, but in the counter it is not specifically denied as to whether the tenant committed default wilfully in payment of rent as claimed for the said months and it is only stated in the counter in paragraph 5 that since on the death of Rajagopal Naidu, the father of the landlady, other legal heirs have also made rival claims for the rent and so he was unable to ascertain to whom the rent has to be paid, because of which he could not deposit the rent into Court and further in view of the fact that entire arrears of rent was deposited even before the first hearing date in the Court, in the said circumstances, the respondent/tenant has not committed default much-less wilful default in payment of rent for the months of December, 1991 to July 1992.

11. The landlady as P.W.1 has stated in her evidence that the tenant was very irregular in payment of rent and he used to pay the rent in lump-sum four or many months together. Her father Rajagopal Naidu caused lawyer notice under Ex.A-1 dated 23.7.1989 to which the respondent/tenant replied under Ex.A-2 dated 8.8.1989 and along with the reply notice the tenant sent a demand draft for Rs. 3,600/- and even after the death of her father, the tenant was very irregular in payment of rent. Hence P.W.1 along with other co-owners caused lawyer notice under Ex.A-3 dated 17.6.1992 that the tenant committed default in payment of rent from December, 1991 to May, 1992 for six months aggregating to Rs. 2,700/- (Rs. 450.00 x 6 = Rs. 2,700.00). The notice was served upon the tenant under Ex.A-4 on 20.6.1992. It appears no reply was sent to the notice Ex.A-3 by the tenant and that the arrears of rental amount as claimed from December, 1991 to May, 1992 was also not paid. The Rent Control Original Petition was filed on 12.8.1992. On the first hearing date of the Rent Control Original Petition, viz., on 23.9.1992 the tenant deposited the entire arrears of rent into Court. Therefore, it is clear only two months after issuance of notice Ex.A-3 dated 20.6.1992, the arrears of rent admittedly have been deposited by the tenant into the Court. As such there have been deliberate intention in depositing the rent and as such default in payment of rent as claimed for the period from December, 1991 to July, 1992 is to be construed as wilful default, in that, the default continued even two months after the issuance of notice under Ex.A-3 in depositing the rent by the tenant.

12. Even after filing of the Rent Control Original Petition, the tenant deposited Rs. 3,150/- in lump-sum on 1.9.1993 in Court as per chalan No. 1351, Rs. 1,350/- on 25.7.1994 as per chalan No. 2894 and Rs. 2,700/- on 19.7.1994 as per chalan No. 1490. Admittedly, the quantum of rent is Rs. 450/-. The arrears of rent for the period from December, 1991 to July, 1992 comes to Rs. 3,600/-. It is admitted by the landlady, as P.W.1 in her evidence that a sum of Rs. 1,500/- was paid as advance. After adjusting one month rent alone towards the advance, the balance sum of Rs. 1,050/- is to be adjusted with the arrears of rent, viz., from Rs. 3,600/- relating to the period from December, 1991 to July, 1992 and after adjustment Rs. 2,550/- was due towards arrears of rent for the said period and in paying such rental amount the tenant deposited only two months after issuance of notice under Ex.A-3 dated 17.6.1992. As such, under Section 10(2)(i) of the Tamil Nadu

Buildings (Lease and Rent Control) Act there have been supine indifference and callousness on the part of the tenant.

13. It is merely stated in the counter that since rival claims were made for the rent on the death of Rajagopal Naidu and since the tenant was unable to ascertain to whom the rent was payable, he could not pay the rent. There is no force in the contention. It is clearly set out in the lawyer notice Ex.A-3 dated 17.6.1992 sent on behalf of the landlady, her mother and sisters that rent is payable to them. In the Rent Control Original Petition it is stated that P.W.1 being the original landlord's daughter, the petition has been filed by her as one of the co-owners and she has also deposed in her evidence that she is residing with her mother and her sisters are residing elsewhere and her mother is unable to move about and she is paying property tax and she is collecting the rental amount. Further no petition was filed by the tenant for depositing the rent into Court under Section 9 of the Act. If really, the tenant had doubt as to whom the rent was payable for the relevant period in spite of the fact previously he has filed R.C.O.P. No. 483 of 1988 under Section 8(5) of the Act to deposit the rent into Court when the original landlord Rajagopal Naidu was alive, he ought to have filed a petition to deposit the rent into Court under Section 9 of the Act. So there have been supine indifference and callousness on the part of the tenant and he has committed wilful default in payment of rent for the period from December, 1991 to July, 1992 and even after adjustment of the advance amount of Rs. 1,050/- from the total arrears of rent for the said period i.e., Rs. 3,600/- payable for the said period. The Rent Control Appellate Authority has not recorded proper finding stating that inasmuch as the entire arrears of rent has been paid even before the first hearing date of the Rent Control Original Petition, the default committed by the tenant cannot be construed as wilful. Further, the tenant deposited the rent only on 23.9.1992 which is two months after issuance of notice Ex.A-3 dated 17.6.1992. Therefore, eviction has to be ordered on the ground of wilful default in payment of rent for the months of December, 1991 to July, 1992.

14. In the result, this Civil Revision Petition is allowed with cost ordering eviction on the ground of wilful default in payment of rent and setting aside the judgment and decree dated 12.4.1999 made in R.C.A. No. 92 of 1997 by the learned Rent

Control Appellate Authority.

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