

**M. Nagalinga Josiar Vs. the Trust for Building Belonging to T.K.S.A.R. Punniyappan Nadar Sons and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/821179](http://sooperkanoon.com/821179)

**Court :** Chennai

**Decided On :** Feb-17-1972

**Reported in :** (1972)2MLJ623

**Appellant :** M. Nagalinga Josiar

**Respondent :** The Trust for Building Belonging to T.K.S.A.R. Punniyappan Nadar Sons and ors.

**Judgement :**

**S. Genesan, J.**

1. The tenant has filed this revision petition and he is aggrieved that the appellate Court and the Court of revision have upheld the plea of the respondent that the petitioner had committed wilful default in payment of the rent.

2. The rent receipts filed in this case show the petitioner had been irregular in the payment of rents and that there has been a delay of two to three months on several occasions. On 22nd April, 1969, the respondent issued notice Exhibit A-1 determining the tenancy and complaining of arrears of rent for three months. On 12th May, 1969, the petitioner sent a money order for three months rent but it was refused. It is unnecessary to refer to the subsequent money orders.

3. On these facts the Rent Controller was reluctant to uphold the plea of wilful default; but the appellate Court and the Court of revision have accepted that this is a case of wilful default.

4. The learned Counsel for the petitioner relies on the decision of Venkatadri, J., in Mahaboob Bi Bi v. Ambrose : (1964)1MLJ260 , in which the learned Judge has held that it cannot be said that there was any wilful default in payment when the tenant, on coming to know of the application filed by the landlord, rushes to Court and pays the amount due.

5. As against this decision, the 'learned Counsel for the respondent relies on the decision of another single Judge, Anantanarayanan, C.J., in Nagarathinam Pillai v. Mahadevier (1970) 83 L.W. 12, in which the learned Judge has held that the fact that the tenant deposited the rent subsequently and quite early, after the inception of the proceedings, may serve to extenuate his default in the sense that he might be, now granted reasonable time for vacating the premises, but that it is not a ground that the law can recognise for holding that a tenant who deposits such rent is not guilty of 'wilful default' with regard to the period of default preceding the petition for eviction. The learned Judge has further observed that it was very clear from the Act that there is no condonation on the part of the landlord, merely because he takes the rents deposited into Court. I agree with this decision.

6. The learned Counsel for the petitioner has also referred to a decision of Raja-gopala Ayyangar, J., in Raja v. Ramaswami Naicker : AIR1954 Mad1016 , in which the learned Judge has stated that, where the case of the tenant was that there was an agreement to pay rent once in four months, it is impossible to see how there can be any default in the payment of it before the stipulated time had arrived. (No agreement to pay rent in two or three months has been set up under the section in this case and this case is not therefore relevant for our purposes). On behalf of the respondent a decision of a Division Bench of this Court in Lingam-bhotla Subayya v. The Subordinate Judge, Vijayawada : AIR1951 Mad864a , has been referred to, where the learned Judges have observed that the Courts below went wrong in refusing to uphold the plea of wilful default in a case where the tenant proved that by long practice the house owner did not insist on

regular monthly payment of rent and that there cannot be an agreement under which the rent is payable at irregular intervals, though the landlord may not have been insisting on regular payments and was accepting without protest the arrears of rent which had accumulated, and that when he chooses to apply under Section 7 of the Act, he will be entitled to an order of eviction, if he proves that the tenant has not paid or tendered the rent by the last day of the month next following that for which the rent is payable.

7. I am bound by the Bench decision and I am clear that the fact that the landlord in this case had been lenient on previous occasions in accepting the rent at irregular intervals does not necessarily show that he had condoned the delay. The fact that on receipt of the notice of termination, the petitioner sent the rent for three months by money order may be one of the circumstances for consideration in determining whether there is wilful default, but it cannot be the, sole consideration or the conclusive test in tire case. The fact remains that the petitioner has been a chronic defaulter in the payment of the rents, and I am unable to say under the circumstances that the default in the payment of rents for 3 months is not wilful.

8. In the result the petition is dismissed, but in the circumstances, without costs. The petitioner is allowed six months time for vacating the premises, but on condition that he deposits into the Rent Control Court all the proved arrears till this date within a month from today, failing which he will be evicted forthwith.