

Mayila Vs. Muthupalaniappan

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Court : Chennai

Decided On : Apr-30-1999

Reported in : (1999)3MLJ127

Appellant : Mayila

Respondent : Muthupalaniappan

Advocate for Pet/Ap. : Mr. D. Veerasekaran

Judgement :

ORDER

M. Karpagavinayagam, J.

1. Mayila, the petitioner herein is the tenant. Muthupalaniappan, the respondent herein is the landlord.

2. The landlord filed a petition in R.C.O.P. No. 25 of 1992 of the file of the Rent Controller-cum-District Munsif, Devakottai seeking for eviction of the tenant on the ground of wilful default in payment of monthly rent. The Rent Controller on taking into consideration oral and documentary evidence adduced by both sides concluded that the tenant was liable to be evicted on the said ground. Aggrieved by the same, the tenant filed an appeal before the appellate authority, which in turn confirmed the view of the Rent Controller and dismissed the appeal. On being aggrieved, the tenant has preferred this revision.

3. According to the landlord, the respondent herein, the tenant committed wilful default in payment of the rent from December 1991 to June 1992.
4. According to the petitioner/tenant, immediately on receipt of the notice dated 2.7.1992 the petitioner sent 7 months rent by way of money order, but the same was returned with an endorsement 'refused to receive', and as such, there was no Wilful default in payment of rent on the part of the tenant herein.
5. Mr. M.A. Swaminathan, the learned Counsel representing the counsel Mr. D. Veerasekaran, appearing for the petitioner, while assailing the orders of the authorities below, would strenuously contend that both the courts below have failed to consider that the petitioner immediately on receipt of the demand notice sent the money order for the arrears of rent for 7 months, which was refused to be received by the landlord and that therefore, it cannot be construed to be a wilful default. Moreover, even according to P.W.1 the tenant used to pay the rental arrears only in lump sum and as such, the failure to pay arrears of 7 months' rent, though can be considered to be a default, cannot be construed to be a wilful one.
6. According to the learned Counsel for the petitioner, unless the default is established to be an intentional, deliberate, calculated and conscious with the full knowledge of legal consequences, the said default cannot be construed to be a 'wilful default'. In order to substantiate this plea, the learned Counsel for the petitioner would cite a decision of the Apex Court rendered in S. Sundaram v. V.R. Pattabhiraman : [1985]2SCR643 and point out that the rental arrears was paid, in pursuance of the notice, then there cannot be any cause of action resorting to the action under Act, by filing a petition before the Rent Controller.
7. He would also cited a decision rendered in Shanmuganathan alias Shanmugaraj v. Balasingam 1986 T.L.N.J. 277, in which it is held as follows:

But there is clear proof of the fact that the tenant has made all attempts to pay rent even before the filing of the petition and after issue of 2 months notice under, Ex.A-7 S. Sundaram v. Pattabhiraman : [1985]2SCR643 appears to be brought to the notice of both the Rent Controller and the appellate authority. When the landlord goes on refusing the rent even when the rent was sent in pursuance of

the notice under Ex.A-7 giving the tenant two months time to pay the rent, the tenant could not be said to have committed wilful default.

8. On the other hand, Mr. AR.L. Sunderasan, the learned Counsel for the respondent/landlord, in support of the impugned orders, would contend that mere sending of the M.O. after the receipt of notice would not absolve the tenant from the charge of wilful default and that the aspect relating to the wilful default has got to be taken note of with the various other circumstances.

9. It is also pointed out that she failed to pay the arrears of 7 months rent within the due date not only before filing the petition for eviction but also during the pendency of the R.C.O.R and R.C.A. before the authorities concerned. The petitioner/tenant did not make regular payment in spite of the orders of the courts concerned.

10. He would also point out that during the pendency of this revision petition before this Court, interim stay was granted by this Court on condition that the tenant/petitioner herein pays the rent at the rate of Rs. 100 per month. Though the said direction was initially complied with by the tenant subsequently as usual she committed default in payment of rent from October 1997.

11. In the light of the rival submissions, I shall go into the merits of the case and the reasonings given by the authorities below.

12. There is no dispute that the petitioner is the tenant under the respondent. Originally, rent was fixed at Rs. 8 per month which was periodically enhanced it was finally enhanced to Rs. 60 per month. RW. 1 would admit that he used to receive the rent in lump sum for 4 or 5 months and used to give receipt for the same.

13. On the strength of this admission, the learned Counsel for the petitioner would say that when there is a practice that the lump sum amount was used to be paid, failure to pay the rental arrears for 7 months, cannot be said to be wilful default and more particularly, when the petitioner sent the amount after the receipt of the notice the petitioner sent M.O. which was returned with an endorsement 'refused

to receive'.

14. No doubt, it is true that immediately on receipt of the notice the act of sending the money order would only show that there was an attempt to pay the amount of rental arrears. But, this alone cannot be taken to hold that the said attempt was a genuine one in the facts and circumstance of the case. The duty of the tenant is, as held by this Court, to pay the rent amount regularly as and when the demand is made.

15. It is the case of the tenant that in the instant case, the landlord did not use to demand the rental arrears for each and every month and whenever he asked, the tenant used to give it in lump sum.

16. It is contended by the learned Counsel for the petitioner that the very same petitioner was allowed to make lump sum payment once in 4 or 5 months and the very fact that the landlord would accept and issue receipts for the same would imply that there is an agreement.

17. This contention is, in my view, lacks substance. In view of the demand made by P.W.1, the tenant used to make lump sum payment whenever there is demand. Since there was no demand for every month, she did not pay the monthly rent. This would show that there is no such agreement with regard to the payment of rental arrears in lump sum.

18. In these circumstances, an observation made by this Court in a decision rendered in *G.R. Ragupathy v. Dr .K. Sankar* (1996) 2 L.W. 494 is quite relevant which is as follows:

If the contract was to pay the monthly rent only once in a year, nothing prevented the parties from providing the same is the contract itself. But in Ex.A-6 it is said that the monthly rent has to be paid every month in advance. From his own showing, it is clear that the tenant was not paying the rent in time, and the landlord was compelled to receive the rent as and when he paid the same. The silence of the eviction/petitioner (landlord) has been exploited by the tenant, petitioner herein.

19. While dealing with this aspect, this Court in Pappu Reddiar v. T.K. Murugesu Udayar (1996) 1 M.L.J. 403 would observe as follows:

When there is a contract between the parties in regard to payment of rent, unless the tenant shows that the same was given and a different contract was entered into, any default in payment of rent can only be presumed as wilful. It is for the tenant to explain before court that the delay in payment was not wilful or for reasons which would satisfy the conscience of the court.

20. Yet another decision of this Court, when a similar question came up for consideration made in Dhanraj B. Shah v. N. Srinivasalu 97L.W.212 would hold as follows:

I must point out that it is for the court to ascertain whether the default is wilful or not solely depending upon the facts in each case. I am not prepared to subscribe to the view that in every case, where the landlord had accepted rents at irregular intervals without demur, such conduct on the part of the landlord would invariably lead to the presumption of agreement to pay rent at irregular intervals so as to save the tenant from being guilty of wilful default.

21. While referring to the duty of the tenant to pay the rent regularly even without the demand from the landlord, this Court would hold in Mohamed Rowther v. S.S. Rajalinga Raja and two Ors. (1994) 2 L. W. 524 as follows:

It is settled law that it is the duty of the tenant to pay the rent regularly every month as enjoined in the statute without expecting any demand from the landlord in that regard.

22. In the instant case, the explanation of the tenant for making delayed payment by the tenant is that there was no demand. Though the Apex Court held in Sundaram v. V.R. Pattabhiraman : [1985]2SCR643 , that when the amount has been paid before the filing of the application there was no cause of action, this Court while referring to the said decision rendered in Mohammed Rowther v. S.S. Rajalinga Raja and Ors. : (1994)2MLJ509 distinguished by saying as follows:

All that the tenant deposes as explanation for the delayed payment every month is that the landlord did not demand it and hence he did not pay. But, it is settled law that it is the duty of the tenant to pay the rent regularly every month as enjoined in the statute without expecting any demand from the landlord in that regard. The above deposition clearly shows that for every month there was delayed payment.

23. In the instant case, admittedly before the filing of the application, no amount was paid, no amount sent by M.O. was received by the landlord. It is the case of the tenant that on receipt of notice on 2.7.1992, immediately she sent the money order. But when the money order was returned with an endorsement 'refused to receive' she has not taken steps to send a notice asking the landlord to name the bank to deposit the arrears of rent. Even after the receipt of the said notice, the petitioner immediately should approach the court for deposit of rent under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act which was not admittedly done in this case.

24. In the light of the above factual position and the materials available on record and the settled principles of law as laid down in the decisions cited supra, I am of the view that the finding given by the authorities is correct as such, it does not call for any interference of this Court, as held by the decisions rendered in *Kulsumba Mjulla Jeewajee v. Madras Marine P. Ltd.* : (1984)1MLJ399 and in *Dharmaraj v. Narasimhalu* : (1985)2MLJ166 .

25. Consequently, this revision, which has no merit is liable to be dismissed. Accordingly, this revision is dismissed. No costs. Consequently, C.M.P. Nos. 1646 and 10493 of 1996 are closed.