

Padmavathi Ammal Vs. Gopal

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Court : Chennai

Decided On : Jul-12-1994

Reported in : (1994)2MLJ622

Appellant : Padmavathi Ammal

Respondent : Gopal

Judgement :

ORDER

Pratap Singh, J.

1. This civil revision petition is directed against the judgment in R.C.A. No. 1197 of 1985 on the file of the Appellate Authority (VII Judge, Court of Small Causes, Madras), in which the learned appellate authority had allowed the appeal, reversing the order passed by the Rent Controller (XI Judge, Court of Small Causes, Madras) in R.C.O.P. No. 3762 of 1983.

2. Short facts are: The respondent/tenant had filed a petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (which I shall hereafter refer as the Act) seeking for permission to deposit the rent in court. In the petition he has alleged that he was the tenant under the petitioner landlord on a monthly rent of Rs. 90 as per English Calendar, that he had been paying rent regularly, but he had been refusing to receive the rent from October, 1982, and despite his repeated notices to the landlord to inform the bank in which rent is to

be deposited, he had not sent any reply and since he continues to refuse to receive the rent, he has filed this petition. The landlord revision petitioner herein had resisted the claim stating that there was wilful default in payment of rent and that the tenant never offered to pay the rent and that since he had not taken the steps which he is obliged to take under the provisions of the Act, the petition is liable to be dismissed.

3. After enquiry, the Rent Controller had dismissed the petition, holding that the procedure adumbrated in Section 8 was not followed. Aggrieved by the said order the tenant filed appeal in R.C.A. No. 1197 of 1985. After hearing both sides, the appellate authority had allowed the appeal and thereby allowed the petition in R.C.O.P. No. 3762 of 1983. Aggrieved by the order of the appellate authority, the landlord has come forward with this revision.

4. Mr. T.N. Vallinayagam, learned Counsel appearing for the revision petitioner would submit that in this case the tenant had not complied with Section 8(4) of the Act that he cannot straight way come to the court under Section 8(5), skipping Section 8(4) of the Act and hence the petition filed by the tenant ought to have been dismissed. He would add that the appellate authority had misconstrued that provisions under Section 8 of the Act have been complied with and hence erroneously allowed the petition and it is liable to be set aside.

5. I have carefully considered the submission made by the learned Counsel. The short question that falls for consideration in this case is whether a tenant seeking permission to deposit the rent in court by resorting to Section 8 of the Act can skip any one of the steps laid down in Section 8 of the Act and filed a petition under Section 8 of the Act. In the instant case, Section 8(4) of the Act is skipped. It is to be decided whether the petition under Section 8 of the Act can be allowed, though the tenant had skipped Section 8(4) of the Act.

6. To consider this submission Section 8 of the Act needs extraction and it reads as follows:

Section 8 : Landlord liable to give receipt for rent or advance:

(1) Every landlord who receives any payment towards rent or advance shall issue a receipt duly signed by him for the actual amount of rent or advance received by him.

(2) Where a landlord refused to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant to the credit of the landlord:

Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within five kilometres of the limits thereof.

Explanation: It shall be open to the landlord to specify from time to time a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in bank any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, tenant shall remit the rent to the landlord by money order, after deducting the money order commission.
[Italics supplied]

(5) If the landlord refused to receive the rent remitted by money order under Sub-section (4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building.

The procedure laid down in Section 8 prescribes that the tenant should take certain steps to pay rent and if the landlord still consistently refuses to receive the rent, the tenant can resort to Section 8(5) of the Act and pays the rent before the Rent Controller and continuously pays the rent. The first step is the tenant should

require the landlord to specify within 10 days from the date of receipt, the bank in which the rent is to be deposited to the credit of the landlord. If the landlord specifies the bank, the tenant can remit the rent into the bank and shall continue to deposit the rent into the bank. In case, the landlord does not specify the bank, then the tenant is obliged to remit the rent to the landlord by money order after deducting the money order commission. If still the landlord refuses to receive the rent by money order under Sub-section (4) then the tenant may deposit the rent before the Rent Controller and to continue to deposit the same. Section 8 enables a tenant to pay the rent in the aforesaid manner. When the tenant chooses to exercise the enabling provision, the tenant shall take steps one after another, as laid down in the procedure and only if the landlord still refuses to receive the rent then he can come to the court with a petition, as provided under Section 8(5) of the Act. In the instant case, the tenant had skipped Section 8(4) of the Act, which he is obliged to take before he comes to court. Since he had not done it, the petition filed by him under Section 8(5) of the Act has to necessarily fail. The appellate authority had not considered this aspect of this case, and he had committed the error and consequently it is liable to be set aside.

7. In the result, the civil revision petition is allowed, setting aside the order passed in R.C.A. No. 1197 of 1985 on the file of the Appellate Authority (VIII Judge, Court of Small Causes, Madras) and the Order of the Rent Controller (XI Judge, Court of Small Causes, Madras) in R.C.O.P. No. 3762 of 1983 will stand restored.

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