

S. Vanitha Vs. E. Kuppusamy

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Court : Chennai

Decided On : Jul-19-1999

Reported in : (1999)3MLJ511

Appellant : S. Vanitha

Respondent : E. Kuppusamy

Judgement :

ORDER

S.S. Subramani, J.

1. Tenant who failed before the Authorities below is challenging the concurrent findings against her. She has been directed to be evicted by Rent Controller on the ground that she has committed wilful default in paying rent. Though she preferred an appeal before the Appellate Authority, the same was also not fruitful. Hence, the revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

2. Since the respondent has entered appearance by filing caveat, I heard him also at the time when the Revision came up for admission.

3. Respondent's mother filed R.C.O.P.No. 1911 of 1994, on the file of XVI Judge, Court of Small Causes, Madras, for eviction of the petitioner herein, on the ground that she has committed default in paying rent from November, 1991. Pending

eviction proceedings she died, and the case is further prosecuted by her son, respondent herein.

4. It is averred in the petition that the petitioner herein was a tenant in respect of a shop bearing Door No. 217, Periyar Road, Choolaimedu, Madras-600094 for non-residential purpose on a monthly rent of Rs. 200 excluding electricity charges. Thereafter, she took another residential portion in the very same premises on a monthly rent of Rs. 350 excluding electricity charges. The tenancy is in accordance with English calendar month.

5. Tenant, petitioner herein, disputes the quantum of rent payable and also the nature of tenancy. According to her, two portions of the same premises had been let out as a single unit for non-residential purposes on a monthly rent of Rs. 350. According to her, the monthly rent is not Rs. 550 as alleged by respondent herein.

6. Respondent's mother originally filed R.C.O.P.No. 561 of 1990, on the file of Small Causes Court, Madras, against the petitioner herein on the ground of wilful default in payment of rent. Simultaneously, petitioner herein also filed R.C.O.P.No. 681 of 1990, on the file of the same court under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act-, alleging that the landlady refused to receive the rent and that therefore she may be allowed to deposit the rent in court.

7. Both the petitions were tried jointly, R.C.O.P.No. 681 of 1990 filed by tenant was allowed, and R.C.O.P.No. 561 of 1990 filed by landlady was dismissed. It is said that during the pendency of the petitions, petitioner was directed to pay the rent, and the same was being received by respondent/landlady without prejudice to her claim. In view of the court's direction, she paid a sum of Rs. 8,200, and details of such payments are made in the eviction petition, and rent for the period from November, 1991 is in arrears. It is alleged by the landlady that even though R.C.O.P.No. 681, of 1990 was allowed directing the petitioner herein to deposit the rent under Section 8(5) of the Act, she did not pay the same, and even the admitted rent is in default. It is alleged that the approach of the petitioner herein is only to harass the landlady by illegally withholding the rent and creating an atmosphere that there is a dispute regarding the quantum of rent. In spite of the fact that the Rent Control court has decided the quantum of rent payable, without

any just cause, the payment of rent is being withheld, and till the date of eviction petition, no rent was paid. On 24.7.1994, a registered notice was issued to the petitioner herein to vacate the premises and also informing her about the rental arrears from November, 1991. For the said notice, petitioner herein sent a reply dated 2.8.1994 informing the landlady that a sum of Rs. 11,550 is being deposited. According to the landlady, the tenant is showing supine indifference and she is also callous in paying the rent and, therefore, she is liable to be evicted.

8. A counter was filed by the tenant, petitioner herein. According to her, the eviction petition itself is not maintainable, and the attempt of the landlady is only to harass her. The previous conduct of the landlady in initiating proceedings for eviction, and her failure to get possession of the buildings is stated to be the motive for filing the present eviction petition, namely, R.C.O.P. No. 1911 of 1994. It is admitted in the counter that rent for the period from November, 1991 was not paid. But a contention is put forward, namely, that the default in paying the rent is not wilful or intentional, and she had explained the circumstances under which the rent could not be paid. It is contended that R.C.O.P.No. 681 of 1990 was decided on 31.1.1994 by allowing the same. But, even though the petitioner herein applied for copy of the judgment, she could not get the same and, therefore, without knowing the terms and conditions stipulated in that order, she could not pay the rent. It is further said that she has been continuously depositing the rent payable to the landlady since November, 1991 for payment to the respondent. Petitioner herein has also stated that she withdrew the amount that had accrued in March, 1994 with interest. But the amount could not be re-deposited since the judgment was not ready in the office. Petitioner herein again approached the Small Causes Court seeking permission to deposit the amount during the last week of July, 1994, whereupon she was asked to comply with certain formalities. Through her counsel, she wrote a letter to the respondent herein on 2.8.1994 informing her intention to deposit the rent. An application was also filed before the Rent Control Court on 2.8.1994, seeking direction to the office to receive the rent. The allegation that the landlady was making repeated demands for payment of rent, is denied. She prayed for dismissal of the eviction petition.

9. The Rent Controller took oral and documentary evidence, and on the side of the landlady, her son, who is the respondent herein, was examined as P.W.1 and Exs.A-1 to A-15 were marked. On the side of the tenant, petitioner herein, her husband was examined as R.W.1, and Exs.R-1 to R-11 were marked.

10. After evaluating the entire evidence, the Rent Controller came to the conclusion that the tenant has committed wilful default, and that she was not intentionally paying the rent. In spite of that, she moved an application under Section 8(5) of the Act. The Rent Controller has elaborately discussed the evidence of petitioner herein, and came to the conclusion that in spite of the fact that the landlady demanded the rent, she did not pay the rent as and when it became due. Finally the Rent Controller held that from the conduct of the tenant, the only conclusion that could be arrived at is, that she did not want to pay the rent and that such an act is wilful or intentional. The eviction petition was, therefore allowed.

11. Against that order, petitioner herein, preferred R.C.A.No. 60 of 1996, on the file of VII Judge, Court of Small Causes, Madras. The Appellate Authority also confirmed the decision, and the appeal was dismissed. The concurrent findings of the authorities below are assailed in this revision.

12. Before going to the facts of the case, this Court will have to consider its own jurisdiction in a revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

13. In a recent decision of the Honourable Supreme Court reported in Rafat Ali v. Sugni Bai and Ors. (1999)1 S.C.C. 13. Their Lordships considered the scope of revisional power of the High Court under Section 22 of the Andhra Pradesh Buildings (Lease and Rent and Eviction) Control Act, 1960, which is in pari materia with the relevant Section of our Act. After extracting that section, their Lordships, in paragraph 8, have held thus:

The appellation given to the section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well-nigh settled that a revisional jurisdiction cannot be equated with appeal

powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the 'legality, regularity or propriety' of the order of the lower authority. Even such widely-worded frame of the section may at best indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of supervisory jurisdiction. In a recent decision we had occasion to consider the scope of revisional jurisdiction under certain rent control enactments - vide: *Sarla Ahuja v. United India Insurance Co., Ltd.* : AIR 1999 SC100 . Reference was then made to a decision wherein similar words used under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 were considered (vide: *Sri Rajalakshmi Dyeing Works v. Rangaswamy* : AIR 1980 SC1253 . A two-Judge Bench has observed therein (at S.C.C. p.262, para 3) that, 'despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority.'

After advertng to it, we have stated in *Sarla Ahuja*:

The High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.*[Italics supplied]*

It is clear from the above law declared by the Honourable Supreme Court that unless the court finds that there is some perversity, or the orders of the Authorities below are irregular, improper or illegal, this Court is not entitled to interfere with the findings of fact. This Court also cannot re-appreciate the evidence merely for the purpose of entering a different finding from the one entered by the authorities below. The appreciation of evidence must be limited to see whether the authorities below have rightly understood the evidence, and whether they have passed orders on the basis of materials available before them. Merely because this Court can form a different opinion, that will not be a reason for exercising the jurisdiction

unless it is found that no man having some knowledge in law would have entered such a finding.

14. Now I come to the facts of the case. It is admitted that the petitioner herself moved the Rent Controller under Section 8(5) of the Act, which says that a landlord is bound to give receipt in acknowledgement of Rent. It is further provided that in case any landlord refuses to accept the rent, or evades issuance of receipt, the tenant is entitled to issue a notice to the landlord to specify a bank in which the rent could be deposited to the credit of the landlord. If the landlord specifies a bank to the tenant, deposit shall be made in that bank. If the landlord does not specify a bank, rent will have to be deposited by money order after deducting the money order commission. Thereafter, Section 8(5) of the Act says thus:

If the landlord refuses 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.*[Italics supplied]*

15. When does a rent become due? Section 10(2)(i) of the Act says that the rent will have to be paid as and when it becomes due, and the payment will have to be made within 15 days after the expiry of the time fixed in the agreement of tenancy, or, in the absence of such an agreement, by the last day of the month next following that for which the rent is payable. On a reading of Section 8(5) and 10(2)(i) of the Act, even in case where a landlord refuses to receive rent remitted by money order, the obligation of the tenant to deposit the rent as and when it becomes due continues. Since it is the tenant who has moved the court to exonerate himself from the penal consequences of default, it is his duty to see that the rent does not fall in arrears.

16. In *K. Avinasingam v. Hamsa* 1990 L. W. 591, Ratnam, J., as he then was, while considering the scope of Section 8(5) of the Act, has held thus:

Under Section 10(2)(i) of the Act, protection, is given to the tenant against removability, from the premises in his occupation, if the tenant pays or tenders the rent due by him in respect of the building within fifteen days after the expiry of the

time fixed in the agreement of tenancy with his landlord or in the absence of any such agreements by the last day of the month next following that for i which the rent is payable. Under 8(2) of the Act, in a case where a landlord refuses to accept or evades the receipt of any rent lawfully payable to him by a tenant in respect of any building, the tenant may, call upon the landlord in writing requiring him to specify a bank into which the rent may be deposited by the tenant to the credit of the landlord, Section 8(3) of the Act permits the tenant to deposit the rent in the bank so specified by the landlord and enables him to continue to deposit the rent which may subsequently become due in respect of the building. On the failure of the landlord to specify a bank under Section 8(4) of the Act, the tenant shall remit the rent to the landlord by money order, after deducting the money order commission. It is only when the landlord refuses to receive the rent remitted by money order, under Sub-section (5) of Section 8, the tenant may deposit the rent before the Rent Controller and continue to deposit any rent which may subsequently become due in respect of the building. It is thus seen that Section 8(5) of the Act, which had been resorted to by the petitioner in this case in H.R.C.No. 569 of 1981, is intended to protect the tenant from the consequences of non-payment of rent amounting even to wilful default owing to the refusal by the landlord to receive the rent when tendered. Under Section 9(2) of the Act, the amount deposited under Section 8(5) of the Act may be permitted to be withdrawn by the person held by the Rent Controller to be entitled to the amount on an application made by such person to the Rent Controller on that behalf. It is thus seen that the obligation of the tenant to pay or tender the rent within fifteen days after the expiry of the time fixed in the agreement of tenancy or in its absence, by the last day of the month next following that for which the rent is payable, is intended to be fulfilled by resort to Section 8(5) of the Act, and the deposit of the rents, refused to be received by the landlord when remitted by money order as well as that which may subsequently become due, under Section 8(5) of the Act, when paid out to the landlord under Section 9(2), of the Act, would ensure the payment of the rent regularly by the tenant as well as the receipt thereof by the landlord on being paid out to him by an order of the controller under Section 9(2) of the Act. It is, therefore, obvious that it is not merely for the sake of a deposit into court Section 8(5) of the Act is intended, but it also serves a very vital and

important purpose in that by resorting to a deposit of rents under Section 8(5) of the Act after obtaining the order of the Controller in that regards, the rents refused to be received in the usual course by the landlord are not only paid by the tenant, but also made available to the landlord, so that a ground for eviction under Section 10(2)(i) of the Act does not arise, in the event of the deposit of rents being made without default. Thus, on conjoint consideration of Sections 10(2)(i), 8(5) and 9(2) of the Act, it is at once evident that the order for deposit under Section 8(5) of the Act is primarily intended to confer a protection on the tenancy from eviction on the ground of wilful default in the payment of rent.*[Italics supplied]*

If the tenant fails to make the deposit, a cause of action arises for the landlord to get an order of eviction.

17. I also had occasion to consider the scope of Section 8(5) of the Act, in the decision reported in *Saratha Ammal and Anr. v. Ganiappan* (1996)¹ L.W. 737 and also in the decision reported in *S.K. Rajjudink and Ors. v. N. Yeswantha Rao and Ors.* (1997)² L. W. 66. In those cases, I have held that it is the duty of the tenant to pay the rent as and when it becomes payable. Instead of paying the rent to the landlord, he deposits the rent in court. That means, the court becomes the agent of the landlord and gives the tenant a discharge. Bearing the scope of Section 8(5) of the Act in mind, let us consider whether the tenant in the case on hand can be said to have committed wilful default in payment of rent and is, therefore, liable to be evicted.

18. The order in Section 8(5) petition, namely, R.C.O.P.No. 681 of 1990 was passed on 31.1.1994. Even though that petition was filed in 1990, it could be seen that the tenant continued to pay the admitted rent directly to the landlord. The details of payments of admitted rent, i.e., at the rate of Rs. 350 per mensem are given in paragraph 6 of the petition. Payment seems to have been made till October, 1991. Thereafter rent was not paid to the landlord. From the deposition of the tenant's agent who was examined as R.W.1, it could be seen that the payment was not made even in court. He said that from the month of November, 1991, till March, 1994, rent was being deposited in bank. From November, 1991 till August, 1993, he admitted that a sum of Rs. 7,200 was due in September, 1993 in the

bank account a sum of Rs. 7,750 alone was the balance due. When we come to March, 1994, the bank balance was only Rs. 575. R.W.1 also admitted that if the rent was being deposited in the bank regularly as and when it became due, the total amount of balance should have been Rs. 9,800. But the balance was much less, i.e., only Rs. 575. Even in July, 1994, the same amount was the balance. He also admitted that if the rent was being deposited till June, 1994, the balance would have been Rs. 11,200. From the above admission of R.W.1, it is clear that even during the pendency of the petition, rent was not being deposited in time.

19. According to me, even this deposit cannot be said to be proper deposit in view of the statutory provision under Section 8(5) of the Act. Under Section 8(5) of the Act, the tenant is not entitled to deposit the rent in a bank, and that too in his name. The rent will have to be deposited before the controller as and when it become due. Deposit made by the tenant from November, 1991, and that too irregularly cannot be said to be in terms of Section 8(5) of the Act. Subsequent conduct also shows that the tenant was not in the habit of depositing the rent or paying the same, as and when it became due. As I said earlier, the order in R.C.O.P.No. 681 of 1990 was passed on 31.1.1994. On 24.7.1994, landlord issued a notice to the petitioner informing the tenant that she has committed default in payment of rent from November, 1991 onwards, and she was further informed to pay the arrears, and also to vacate the demised premises without any further delay. The same was replied by tenant as per letter dated 2.8.1994, informing the landlord that she is going to deposit a sum of Rs. 11,550 towards rent for the period from November, 1991 to July, 1994, at the rate of Rs. 350 per month. From this letter, it is clear that no deposit was made from November, 1991 till July, 1994 before the Rent Controller. In the notice, the landlady has expressed her willingness to receive the rent. But the tenant did not show her inclination to pay the rent, and she wanted to deposit the amount in court. I have already stated that even during the pendency of the petition, the tenant was directly paying rent and receipts were also issued. When that was so, why there was a change in the mode of payment, is not explained by the tenant. Thereafter, the petitioner herein moved the Rent Control Court in R.C.O.P.No. 681 of 1990, and she filed M.P.No. 913 of 1994, seeking permission to deposit the rent that had become due from November, 1991 at the rate of Rs. 350 per mensem. In the affidavit filed in support

of the application, it is admitted that the rent from November, 1991 has not been tendered to the landlady or deposited before the Rent Controller. It has come out in evidence that this application filed by the tenant was dismissed by the Rent Controller. It was thereafter she thought of sending the amount directly to the landlady as per letter dated 1.11.1994. In that letter, she has said that she is tendering Rs. 13,353 towards rent together with interest derived from the rent amount deposited in Bank, along with the statement. On receipts of the demand draft, the landlady, through her counsel, informed the tenant that she has accepted a sum of Rs. 12,600 towards rent without prejudice to her claim for eviction on the ground of wilful default, and that she was returning Rs. 753 which was sent as interest. It was thereafter, the tenant sends a reply to the eviction notice dated 24.7.1994, informing the landlady that she has not committed any wilful default, and gives an explanation why the amount was not deposited in time. In that letter, she has said that she was not aware of the procedure followed in courts, and she wanted to get a copy of the judgment, to take further action. She also said that she was always ready and willing to pay the rent. But, since the judgment was not ready, the amount could not be paid. She has also said that since there was no clear and categorical direction from court, the amount could not be deposited and that she was labouring under the bona fide impression that she could make the payment after receipt of the judgment. It is further said that after receipt of the registered notice, the tenant went to the Rent Controller to deposit the rent, wherein she was said that certain procedural formalities have to be complied with, and thereafter a petition has to be filed. In view of these circumstances, and also in the light of the payment that was made to the landlord, she would contend that she is not a wilful defaulter.

20. From the correspondence and also from the admission of the Petitioner herein, it is clear that from November, 1991 rent was not paid. The reason for non-payment of rent from November, 1991 till the order was passed in R.C.O.P.No. 681 of 1990 is not stated in the reply notice. If she had deposited the entire rent till the order in the petition under Section 8(5) was passed, there would have been some justification in her contention about the absence of clear and categorical direction from court.

21. It is at this juncture, learned Counsel for petitioner argued that while disposing of the petition R.C.O.P.No. 681 of 1990, the court should have given time to deposit the rent, and the court having failed to do so, tenant shall not be made a victim of eviction. Reliance was placed on the decision reported in Rajagopal v. Salma Beevi and Ors. 1994 T.L.N.J. 78, wherein Abdul Hadi, J. has considered Section 11(3) and (4) of the Act. I do not think the above decision will have any application to the facts of this case. Section 11 of the Act contemplates the payment or deposit of rent during the pendency of proceedings for eviction. It says that as per the provisions of the Act, tenant is duty bound to deposit the rent as and when it becomes due. Section 11(3) of the Act says that as and when there is a dispute regarding the amount to be paid, the Rent Controller or the Appellate Authority has to determine the rent to be deposited. Section 11(4) of the Act says that if the tenant fails to deposit the rent as aforesaid, the Controller shall stop all further proceedings and make an order, directing the tenant to put the landlord in possession of the building 'unless the tenant shows sufficient cause to the contrary.' The scope of Section 11(3) and (4) of the Act is entirely different when compared to Section 8(5) of the Act. Similarly, when there is a dispute as regards the rate of rent, until it is determined, it could not be paid. If that is so, naturally, question of failure to pay rent will not arise. Opportunity should be given to the tenant to pay rent after determination. But, in the case of Section 8(5) of the Act, the scope of the Act is entirely different. It is the tenant who initiates the proceedings on the ground that the landlord has refused to receive the rent or is refusing to issue receipt. It is not a proceeding for eviction. By initiating proceedings under Section 8(5) of the Act, tenant wants to get himself relieved of his being stamped as a defaulter. There is a statutory obligation under Section 8(5) of the Act to deposit the rent as and when it becomes due. The contention that the petitioner (tenant) was waiting for some direction in the order passed by the Rent Controller, is only an afterthought. As I said earlier, if she could pay the rent directly to the landlord even during the pendency of the proceedings, what prevented her from paying the rent from November 1991 till the case was decided on 31.1.1994?

22. Even after the landlady expressed her willingness to receive the rent and asked her to pay the same, she did not think of tendering the same to the

landlady. She moved the Rent Controller and wanted a direction for depositing the rent. That means, she did not want to pay the rent even after the landlady expressed her wiliness to receive the same. The contention that some time should have been granted for depositing the rent, is not correct. According to me, the said contention is also barred by res judicata. Admittedly the tenant moved the Rent Controller seeking permission to deposit the rent. That application was dismissed, and that has been allowed to become final.

23. Reliance was also placed by learned Counsel for petitioner herein on the decision reported in A.M.A. Jabbar v. T.S. Abdul Bari and Ors. 1998 T.L.N.J. 326, wherein A.R. Lakshmannan, J., as he then was, has held that if the entire amount is deposited before the effective hearing, the tenant is not liable to be evicted. This decision also may not help the petitioner in this case. While R.W.1. was examined, he has stated ! in chief-examination that the first hearing of the case was on 23.9.1994. He also admitted that his wife (tenant) filed M.P.No. 913 of 1994 in R.C.O.P.No. 681 of 1990, and withdrew the entire amount payable to the landlady, Since no order was passed in time, she re-deposited the amount in the bank. We must understand that the deposit is made in his own account, after the landlady had expressed her willingness to receive the amount, and that too after the Order was passed in R.C.O.P.No. 681 of 1990. He has deposed that on the first hearing date of the eviction petition, the tenant withdrew the amount for being deposited in court. He has further de-posed that since the summons did not reach him in time, he thought that the case will not be taken up on that day, i.e., on 23.9.1994 and, therefore, the amount was not paid. The case was posted to 1.10.1994 and he attended the court and since the summons was not returned to court, the Bench clerk informed him that the case may not be taken up on that day. Even then he did not think of paying the amount to the landlady. On 1.11.1994, the amount was deposited. He has also said that on 23.9.1994 and 1.10.1994, the amount could not be paid. From this attitude of the tenant, it is clear that she does not want to pay the rent in time and intentionally committed default at her own risk. In Ramalakshmi and Anr. v. K. Kalidas, (1998)2 L.W. 707, a learned Judge of this Court (K. Govindarajan, J.), has said that if the tenant deposited the amount in a bank, that deposit must continue without fail, and in case default is committed in depositing the rent in bank, it must be presumed as wilful default. In the same

Volume, at page 216 Nilgiris Co-operative Marketing Society, etc. v. C.T. Uthandi : (1998)2MLJ745 , another learned Judge of this Court (R. Balasubramanian, J.) has also held that mere deposit of the arrears of rent at the first hearing date will not absolve the tenant from the liability of being evicted. In that case, the learned Judge has said that unless the explanation is found to be satisfactory, in the context of that explanation and also in the light of payment of arrears of rent, it cannot be said as an ordinary rule that mere deposit at the first hearing will relieve the tenant from the liability of being evicted from the building. The learned Judge has said thus:

There cannot be any hard and fast rule to that effect, because, if that is the position in law, then there can never be an order of eviction on the ground of wilful default, if the tenant, who had been indifferent all along in paying the rent, suddenly becoming wiser and pays the rent after the Rent Control Petition was filed. That does not appear to be the trend of the decision referred to above.

24. The decision of R. Balasubramanian, J referred to above, was followed by me in the decision reported in C.K.R. Murugan v. T.S. Arunagiri and Anr. : (1999)1MLJ154 , wherein I have held that once default is admitted, it is for the tenant to prove that the default was neither wilful nor wanton or deliberate, and that he was not aware of the consequences arising therefrom. If the tenant was not prevented from discharging his contractual or statutory obligations, and is not paying the rent, there is a presumption of wilful default.

25. It is on the basis of the above legal position, the explanation of the tenant has to be considered. I have already given the details of the explanation. I am of the view that by no stretch of imagination, can it be accepted as satisfactory.

26. Learned Counsel for petitioner also relied on the decision reported in K.A. Ramesh and Ors. v. Smt. Susheela Bai and Ors. : [1998]1SCR892 . I do not think that the said decision will have any application to the facts of this case. In that case, the default was committed between July, 1988 to December, 1988. A telegram was sent by the tenant on 17.12.1988 to the landlords calling upon them to issue receipt for rent already paid by him. Landlords denied having received any rent for the said period. Immediately the tenant sent a bank draft for the entire

arrears and the same was received on 7.2.1989. Eviction petition had also been filed the previous day. From these facts, it is clear that even before the proceedings were initiated, the entire amount was tendered by way of bank draft on 7.2.1989 and the landlords also received the same without any protest. In that connection, the Honourable, Supreme Court held that the default is not wilful, and the tenant cannot be termed as wilful defaulter. The facts of the case on hand are entirely different. It is not disputed even by the tenant herein that on the date of filing of the eviction petition, the landlady had a cause of action; The tenant wants to get herself relief only on the ground that she has paid the amount in November, 1994, long after the eviction proceedings were initiated. The cause of action which has accrued to the landlord can cease to exist only if the explanation offered by the tenant is accepted. If it is found to be unsatisfactory, and from the conduct, it is clear that she is a wilful defaulter, any payment made after the institution of the proceedings will be of no avail, and the court is bound to pass a statutory order, i.e., an order of eviction. The concurrent findings of the authorities below are based on materials. I do not find any irregularity, illegality or impropriety in the orders passed by the authorities below, and that is the only conclusion that could be arrived at by the authorities below.

27. In the result, the civil revision petition is dismissed with costs. C.M.P.No. 9942 of 1999 for stay is also dismissed.