

**Thanamani Vs. Sethuraman**

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**SooperKanoon Citation :** [sooperkanoon.com/829445](http://sooperkanoon.com/829445)

**Court :** Chennai

**Decided On :** Sep-09-1997

**Reported in :** (1998)1MLJ759

**Appellant :** Thanamani

**Respondent :** Sethuraman

**Judgement :**

ORDER

**S. Jagadeesan, J.**

1. Though the counsel for the respondent is absent, the civil revision petition was taken up today for final disposal. The petitioner is cultivating tenant under the respondent. The respondent filed a petition P. No. 64 of 1995 to evict the petitioner on the ground of wilful default in payment of rent. The Revenue Court, Mayiladuthurai passed a conditional order on 30.8.1995 directing the petitioner to pay a sum of Rs. 4,649 to the respondent on or before 8.10.1995 and posted the matter on 9.10.1995 for reporting. However, the petitioner did not pay any amount from 30.8.1995 till 8.10.1995. He has paid an amount of Rs. 1,700 between 16.10.1995 and 8.1.1996 periodically getting extension of time before the Revenue Court. Ultimately, the Revenue Court passed an order on 8.1.1996 stating that the petitioner shall pay the entire balance i.e., Rs. 4,649--1,700 = 2,949 on or before 24.1.1996 and posted the matter on 24.1.1996. On 24.1.1996, the petitioner did

not appear either in person or through counsel. Hence, the order of eviction has been passed. Aggrieved by the same the petitioner has filed this revision.

2. The only contention of the counsel for the petitioner is that the petitioner had been granted time till 24.1.1996 to pay the arrears and as such the Revenue Court ought not to have passed the order of eviction on 24.1.1996 because the petitioner has got time to pay the arrears of rent till midnight of 24.1.1996. The order of eviction could have been passed only on the next day. Hence, the order of eviction is illegal. Further, the counsel for the petitioner represented that as per the conditional order of this Court, the entire balance amount has been deposited, and hence the case may be leniently considered. 3. I carefully considered the contention of the counsel for the petitioner. It is true that the Revenue Court has granted time to the petitioner to pay the arrears of rent till 24.1.1996 and posted the matter on 24.1.1996 itself. Having known about the date of hearing as 24.1.1996, it is the duty of the petitioner to be present in court on that day to inform the court as to whether he has paid the money or he is going to pay the money in the course of the day. He cannot simply remain away from the court and put forth such technical pleas before this Court. When the case is posted on 24.1.1996, there is no explanation on the part of the petitioner as to why he was not present on that day. When the Revenue Court has posted the matter on 24.1.1996 for payment, the Petitioner was fully aware that the matter is posted on 24.1.1996 either to report the payment or to pay the amount. In case, the petitioner did not pay the amount earlier, he ought to have been present in court and paid the arrears on that day. Hence, there is nothing Wrong on the part of the Revenue Court in passing the order of eviction especially when the petitioner remained ex parte and the counsel also did not appear.

4. Learned Counsel for the petitioner however represents that on 24.1.1996, the counsel appeared and represented the matter and sought for time. I have perused the records of the Revenue Court. There is nothing on record to establish the fact that the counsel appeared on 24.1.1996 before the Revenue Court and sought for time. The counsel for the petitioner is also unable to produce any record to establish his statement. In the absence of any materials, the plea now put forth that on 24.1.1996 the counsel for the petitioner represented to the Revenue Court

cannot be accepted and is found to be false.

5. Learned Counsel for the petitioner also relied on a judgment of this Court in T.R. Balu v. Shanmugham Chettiar (1964) 2 M.L.J. 14, to find support for his contention that when a date has been specified for payment of amount the order of eviction or an ex parte order cannot be passed till the expiry of the period. Only the next day the consequential order can be passed. In this case it has been held as follows:

The principle of the decision is that, when the court fixes a date for the fulfilment of a certain condition, the person on whom the obligation is imposed, will have the whole of that day for complying with the order. 'It follows that in the present case the court has no jurisdiction to pass an ex parte order directing eviction on 17th April, 1962 itself.

On the facts of the case it seems that the petitioner therein had appeared before the court on the next day of the stipulated time and made representation. Hence, the court has taken into consideration that the petitioner therein bona fide thought that till such date he is having time to pay the amount. Here it is not the case of the petitioner that he appeared on the very next day to pay the amount. Hence, the principle laid down on the facts of that case cannot be made applicable to this case. In this case there is absolutely no material to establish that the petitioner had made any attempt to pay the arrears either on 24.1.1996 or subsequently on the next day. In the absence of any material I am of opinion that the petitioner did not make any effort to comply with the conditional order to pay the arrears until this Court directed him to deposit the same and hence the consequential order of eviction is not vitiated. For the reasons stated above I am of opinion that the order of eviction passed by the Revenue Court is not illegal and the civil revision petition is dismissed. No costs.