

A. Marappan Vs. Nagarathinam

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Court : Chennai

Decided On : Dec-04-1998

Reported in : (1999)1MLJ418

Appellant : A. Marappan

Respondent : Nagarathinam

Judgement :

ORDER

S.M. Abdul Wahab, J.

1. C.R.P.No. 1929 of 1997 has arisen out of an order passed by the Rent Control Appellate Authority, (Subordinate Judge) Erode, dated 22.7.1996 in R.A.No. 7 of 1993, confirming the fair and decretal order dated 28.6.1993 in R.C.O.P.No. 26 of 1992, on the file of the District Munsif, Erode.

2. The respondent landlady filed an eviction petition R.C.O.P.No. 26 of 1992 on four grounds, namely, wilful default, sub-letting waste, damages and different user. But the Rent Controller found that the landlady failed to prove the other grounds except the grounds of wilful default and sub-letting. On appeal, the appellate authority confirmed the eviction order only on the ground of wilful default. He reversed the finding with reference to the sub-letting. He also considered the other grounds rejected the contention of the landlady. Hence, the aggrieved tenant has filed the above civil revision petition.

3. C.R.P.No. 1323 of 1997 has arisen out of R.C.O.P.No. 28 of 1992 on the file of the District Munsif, Erode, under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on rejecting the said petition. On appeal, the Rent Control Appellate Authority (Subordinate Judge), Erode, confirmed the said order in R.C.A.No. 8 of 1993, dated 22.7.1996. Hence, the tenant has filed this civil revision petition.

4. The learned senior counsel for the petitioner Thiru M. Venkatachalapathy, appearing on behalf of the counsel for the petitioner in both the petitions contended that the finding of the lower courts with reference to wilful default is not sustainable from the facts and circumstances of the case. On the other hand, learned Counsel for the respondent/landlady Thiru A.K. Kumarasamy, contended that the order of eviction on the ground of wilful default and the ground of sub-letting also should be found in favour of the landlady. Hence, the civil revision petitions have to be dismissed.

5. In both the cases, the main question that arise for consideration is whether the petitioner has committed wilful default in payment of rent.

6. The case of the landlady is that from January. 1991, the respondent failed to pay the rent and there was a default for 18 months when the petition was filed. According to the landlady, the rent was increased from Rs. 750 to Rs. 1,000 in 1990. But according to the tenant, the rent was only Rs. 500 and it was regularly paid. The landlady did not issue any receipt for payment of rent. Taking advantage of her default to issue receipt, she has come with the case of default etc. The further contention of the tenant is that as there was an attempt to wrest possession of the tenant, he filed a suit O.S.No. 44 of 1992 and obtained injunction. Only thereafter, the landlady refused to receive the rent and came with the case of default etc. Hence, she in turn filed R.C.O.P.No. 28 of 1992 for default in payment of rent. Therefore there is no default at all. He also contended that there was no sub-letting.

7. Both the courts below have come to the conclusion that the rent paid from 1990 was Rs. 1,000 and not Rs. 500. Therefore, from such conclusions they straight-away found that there was wilful default. Prima facie this inference is incorrect.

8. The Courts below rely upon Exs.A-6 and A-7. As per these documents, the rent paid on 2.6.1986 and 31.3.1989, the rent was Rs. 750. These two documents are receipts issued to the landlady's husband in connection with his payment of chit contribution to the petitioner. After deducting the amounts due to the petitioner from the rent of Rs. 750, for the balance due from the respondent's husband, the receipt is issued. The case of the respondent is that from May 1990, the rent was increased to Rs. 1,000. The increase is spoken to by P.W.1. Then we have the evidence of P.W.2, said to be a friend of the petitioner's son. He has admitted that the petitioner's son informed him that the rent was Rs. 1,000. There is an admission that the petitioner's son is his customer and he knew him because of it. He has also admitted that the respondent's (landlady's) son brought him to give evidence. He has again admitted that he met the lawyer, but thereafter he denied that he is not giving evidence as told by the Advocate. Therefore, in my view, much reliance cannot be placed on his evidence. At one place, P.W.1 has stated that the petitioner paid the rent at the rate of Rs. 1,000 upto the end of 1990 and from 1991 he failed to pay the rent. But in another place she has admitted that till the filing of the original suit, the tenant paid the rent regularly. Further, she says that she was present when her husband and the tenant talked about the rental agreement. She also says that she knows what they talked. But yet, she says that she does not know whether the advance of Rs. 6,000 was paid or not. But, she says that it is wrong to state that Rs. 6,000 was paid as advance. She further says that an advance amount was paid at the time of entering into the tenancy. She has also admitted that there was Police raid in the shop as he happened to be a Dravida Kazhagam supporter and sympathiser of L.T.T.E. A reading of her evidence shows that after the raid was conducted in the shops and the tenant was arrested, she took a decision to evict him. That is why she attempted to take possession by using some force. After the suit was filed and injunction was obtained, she resorted to rent control proceedings to evict the tenant by hook or crook. That is why, she added the grounds of damage and different user, but she admitted that there was no damage at all.

9. From the aforesaid evidence, it is very difficult to conclude that the rent was fixed at Rs. 1,000 in May, 1991 and the petitioner accepted to pay the rent. Exs.B-6 and B-7 show the rent was Rs. 750 during 1986 and 1989. It is also true that the

rent was increased from Rs. 300 onwards from time to time. But it cannot be presumed that the rent must have been increased to Rs. 1,000 in May, 1991. As we have seen above, the oral evidence on this aspect is unreliable.

10. Normally, it is the duty of the landlord to issue receipt. It is a statutory duty. Here the respondent stated that she was present when there was a discussion about the rental agreement and when it was entered into. But she has not stated that at that time the rent was to be paid after noting it in the note book kept by the petitioner. After failing to issue regular receipt, this story is trotted out, when the petitioner has to sign in a note book kept up by the tenant mentioning the rent and month, what prevented her from issuing a regular receipt. So, the landlady, who failed to issue a regular receipts and discharge her statutory duty; when comes out with a case of default, such cases has to be scrutinised and decided very carefully, unless strong evidence is forth-coming.

11. The courts below have placed the burden of proving the quantum of rent on the tenant. The approach itself is wrong. In a case where the landlord admittedly does not issue receipt, the Courts must be more diligent and careful in finding out the default. In this case, we find that after the raid by police there was some attempt on the part of the landlady to take possession from the tenant by force. The petitioner/tenant has approached the civil court and obtained an order of injunction by filing a suit. Thereafter, eviction proceedings have commenced with almost all the available grounds for eviction. After the filing of the suit, the tenant has admittedly sent the rent by money order. They have been refused. Thereafter, he filed a petition under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to deposit the rent, can anybody imagine that there was supine indifference and callousness on the part of the rent of the tenant to pay the rent in the aforesaid circumstances.

12. It is true, that there is evidence that the rent was Rs. 750 during 1986-89. But he has chosen to send the rent at the rate of Rs. 500. It is also true that he has admitted that entries have been made in the accounts showing the payment of rent, but the account books were not produced. On a close analysis of the evidence and circumstances, the fact appears to be, that the landlady has come

with a case of Rs. 1,000 as rent, when the rent is only Rs. 750. As the claim has been exorbitant, the, petitioner (tenant) has made an attempt to defeat it by coming with another case of Rs. 500. That is why probably he has not chosen to produce the account books. But whatever it is, there is no positive evidence in this case that the rent was increased to Rs. 1,000 in May, 1990. We have also to note that even though the tenant has come with a case of Rs. 500 as rent, which is also contrary to the fact. He has chosen to send the rent at Rs. 500. The normal procedure for the landlady would be to receive the rent and immediately send a notice stating that the rent was Rs. 750 or Rs. 1,000. The tenant has chosen to send the rent at the rate of Rs. 500 and also attempted to create evidence in support thereof with the help of Exs.B-20 and B-21. Even though the rent sent for January, 1992 was returned on 7.2.1992, the notice sent by the landlady under Ex.A-1, dated 6.4.1992 is silent about it. Before 6.4.1992, three money orders have been returned, they are Exs.A-5, A-6 and A-7 respectively dated 7.2.1992, 11.2.1992 and 4.3.1992, in spite of it there is no mention in Ex.A-1 that the aforesaid money orders were returned, since the monthly rent was not Rs. 500 but Rs. 1,000.

13. Simply because the petitioner/tenant has not produced the account books, it cannot be inferred that the rent should be at the rate claimed by the respondent/landlady. In the R.C.O.P.No. 28 of 1992, it is stated that in 1990 it was increased to Rs. 1,000. But as we have seen in Exs.A-6 and A-7, the rent is mentioned as Rs. 750. But in the evidence P.W.1 states that the rent was increased in May, 1986 to Rs. 750 and in the fifth month of 1990, it was further increased to Rs. 1,000. So it is clear that it can be inferred that both the parties are not telling the truth with reference to the quantum of rent. Hence, we have to place reliance upon Exs.A-6 and A-7. According to them, the rent is only Rs. 750.

14. The question of default was not at all considered by the courts below as mentioned above. Placing the burden upon the tenant to prove the quantum of rent and as he failed to prove the same by producing the accounts etc., the courts below have straight-away come to the conclusion that the rent was Rs. 1,000 and as he chose to send only Rs. 500 by money orders, the default could be presumed.

15. When there is a serious dispute with reference to the quantum and when the tenant has chosen to send the rents at the rate of Rs. 500, according to him, the said rate is the rate of rent, at the most, an inference can be drawn that the tenant has not chosen to pay the rent at the accepted rate. There is no possibility of inferring supine indifference or callousness on the part of the tenant in such cases. Apart from sending the rent by money order for every month, in the present case, the tenant has also moved the court under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

16. The learned Counsel for the respondent cited the following decisions in support of his contention that there was wilful default.

1. Rasheeda Bivi v. V.R. Sreepathy 96 L.W. 677; 2. A.S. Mohamed Yousuf v. A.K. Anwar Basha (1990) 1 L.W. 111. South India Corporation Agencies Ltd. v. Chandrakanth C. Bandani : (1998)IMLJ685 .

17. In the first cited decision, a learned single Judge of this Court has held that the tenant had a duty to tender the full amount of rent every month and failure to do so entitled the landlord to refuse the money orders. In the said case, the tenant agreed to pay the rent at Rs. 150 as per the letter of attornment. Without any alteration in the letter of attornment, the tenant started adjusting the rent in the advance. The facts of the said case is different from the case on hand. Here there is no admission on the part of the tenant to pay rent at Rs. 1,000 as I have found above both the landlady and the tenant are wrong in their claims with reference to the quantum of rent. Further there is a tender of rent in this case. After the refusal of the money orders, the tenant has approached the court for determination of the quantum and for deposit. That shows his promptness to have the dispute with regard to quantum determined by the Rent Controller. That is why the elements of default and the wilfulness are not present in the case.

18. In the decision second cited above, Justice Abdul Hadi, has held that no presumption can be raised as to payment of rent by tenant in a case where the landlord does not issue a receipt. The learned Judge has further held that the duty is on the part of the tenant to prove the payment. The facts of the said case is different. In the said case, the tenant attempted to take advantage of the failure on

the part of the landlord to issue receipt. But there is no such attempt here. The said case is also not helpful to the respondent.

19. In the decision third cited above, Justice K. Govindarajan, has indicated the scope of Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, It is true that normally High Court will not interfere when the Rent Controller and the Appellate Authority have concurrently found a ground entitling the landlord to have an order of eviction. In the said case, the lower authorities considered all evidences available, both oral and documentary and arrived at a factual finding, after giving elaborate reasons. But in this case, the court found that the approach of the courts below is wrong. When the tenant failed to prove the quantum of the rent as claimed by him, the authorities have chosen to find wilful default on the part of the tenant; they have not discussed the evidence on the default or the wilfulness attached to such a default. Therefore, in my view, it cannot be concluded that the tenant committed default much less wilful default in this case.

20. The learned Counsel for the respondent argued the point of sub-letting in this Court. The Rent Controller has found that the petitioner has sub-let a portion for a watch repairer; but the appellate authority has reversed the finding. Hence, the learned Counsel for the respondent contended that the finding of the appellate authority is wrong.

21. The Rent Controller based his finding on the contradiction of the petitioner between the statement in the reply notice and in the evidence. In the reply notice, he has stated that he is running the watch-repair shop, but in the evidence he has stated that in the platform in front of the shop, he has helped a member of Dravida Kazhagam to carry on the watch repair business. There is no connection between the said business and his shop. From this, it cannot be assumed that a portion of the shop has been let out to a sub-tenant. The burden is upon the petitioner. The details of the sub-tenancy has not been set out. The sub-tenant has also not been impleaded as a party to the proceedings. As per Section 26 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 any order for the eviction of a tenant passed under this Act shall be binding on all sub-tenants who were made parties in the application for eviction. Therefore, from the fact that the sub-tenant is not

made as a party, it is clear that the respondent is not definite about the sub-tenancy. When a petition is filed for eviction on the ground of sub-letting the landlord must be presumed to know that the order will not be binding the sub-tenant unless he is made a party and when that is the position, it is expected that the petition gives the details about the sub-tenant and the sub-tenant is also made as a party. But in this case, from a contradiction on the part of the petitioner, the Rent Controller has presumed the sub-tenancy without considering the evidence of the respondent-landlady.

22. In the case of sub-letting also, the Rent Controller has placed the burden upon the tenant to prove that there was no sub-letting. This approach is thoroughly wrong and hence, the finding of the Rent Controller cannot be said to be valid. The learned Counsel for the respondent once again reiterated the finding of the Rent Controller and relied upon the inconsistency in the notice and the evidence of the petitioner. In my view, the respondent has not proved sub-letting. Therefore, there is no substance in the contention of the learned Counsel for the respondent that the order of eviction should be upheld on the ground of sub-letting.

23. For the foregoing reasons, I am of the view that the courts below have approached the case from a wrong angle and the finding arrived at by them with reference to default is unsustainable.

24. With reference to C.R.P.No. 1323 of 1997, the courts below have rejected the petition for deposit under Section 8(5) of the Act on the ground that the rent sent by the tenant at Rs. 500 per month was rightly refused by the respondent/landlady. The Rent Controller as well as the appellate authority have found that the rent was Rs. 1,000. But as discussed above, from the evidence, we can at the most conclude that the rent is only Rs. 750. But in the notice dated 6.4.1992, the respondent has claimed the rent at Rs. 1,000. An attempt has been made by both the petitioner as well as the respondent to stick to their stand, that is, the petitioner claiming the monthly rent at Rs. 500, while the respondent claiming the rent at Rs. 1,000. As I have indicated above, there is an attempt by both to outwit the other. In the circumstances, if we permit the petitioner to continue to deposit the rent at the rate of Rs. 500, we will be approving his stand that will be against the finding

arrived at by this Court with reference to the rent. Therefore, the petition for deposit has got to be dismissed as has been rightly done by the courts below. However, it is made clear that if the petitioner offers to pay the rent at the rate of Rs. 750 per month and it is not accepted, then it is open to the petitioner to move the rent controller once again for deposit.

25. For the foregoing reasons, the C.R.P.No. 1929 of 1997 is allowed and C.R.P.No. 1323 of 1997 is dismissed. However, there will be no order as to costs in both the revisions. Consequently, C.M.P.Nos. 6867 and 9814 of 1997 are disposed of as unnecessary.

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