

E. Sekar Vs. Sampath Rajkumar

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Court : Chennai

Decided On : Feb-21-2007

Reported in : (2007)0MLJ0; 2007(34)PTC0(Mad)

Judge : R. Banumathi, J.

Acts : Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 - Sections 8, 8(2), 8(5), 9 and 25

Appeal No. : C.R.P. (N.P.D.) No. 2520/2004

Appellant : E. Sekar

Respondent : Sampath Rajkumar

Advocate for Def. : K.P. Gopalakrishnan, Adv.

Advocate for Pet/Ap. : G. Rajagopalan, Sr. Counsel for G.R. Associates

Judgement :
ORDER

R. Banumathi, J.

1. Aggrieved by the concurrent findings of Rent Control Authorities ordering eviction on the ground of wilful default, the Tenant has preferred this revision.
2. Relevant facts in nutshell for disposal of this revision are as follows:

2.1. The demised premises is a portion at No. 4/3, Karaneeswarar Koil Street, 2nd Lane, Mylapore, Chennai-4, rented for residential purposes on a monthly rent of Rs. 25/-. The Tenant is a chronic defaulter and he was sending rents only by Money Order. Rent was paid upto July, 1989 and Tenant has committed default from August 1999 to February 2003, amounting to Rs. 1,075/-. The Landlord filed Eviction Petition on the ground of wilful default.

2.2. The Tenant has resisted the Eviction Petition contending that he was sending rent at Rs. 25/- per month by money order and the Landlord was accepting the same but the Landlord claimed rent at Rs. 90/-. Earlier Landlord filed RCOP No. 3063/1994 for additional accommodation and the said RCOP was dismissed on 13.03.1996. The present Landlord is none other than the Advocate who appeared for the then Landlord. The Tenant was sending rent through Money Order and the Landlord has been illegally refusing to accept the rent. During the pendency of previous RCOP, the Landlord has shifted his residence without intimation and hence the Tenant was unable to send the rent. After getting notice, Tenant has paid the rent and hence there is no wilful default.

2.3. Holding that Tenant was not regular in paying the rent even while litigation was pending between the parties, the Rent Controller has held that the Tenant has committed wilful default. It was further held that when the Landlord has refused to receive the rent, Tenant ought to have taken steps under Section 8 of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 [for short, 'the Act'] or under Section 9 of the Act for depositing rent lawfully payable to the Landlord in respect of the building, but the Tenant has not done either of the two.

2.4. In the appeal preferred by the Tenant, Appellate Authority confirmed the order of eviction passed by the Rent Controller and observed that there were irregular payment of rent. Referring to Exs.R-2 to R-4, series the Appellate Authority held, when once rent sent by way of Money Order was refused, the Tenant ought to have issued notice under Section 8 of the Act. The Appellate Authority was of the view that Section 8 is mandatory. Finding that there was wilful default committed by the Tenant, the Appellate Authority confirmed the order of eviction.

3. Assailing the concurrent findings, the learned Senior Counsel Mr. G.Rajagopalan, appearing for the Petitioner/ Tenant has drawn the attention of the Court to Money Order receipts for sending rent from August, 1999 till 2001 which were returned 'as refused'. The learned Senior Counsel interalia raised the following contentions:

It is not enough that there was mere default and as per the decision of the Supreme Court in Sundaram Pillai's case the default in order to be wilful must be intentional and deliberate;

The Tenant had no knowledge of address of the Landlord and hence steps could not be taken under Section 8 of the Act;

The Rent Control authorities erroneously observed that Section 8 is mandatory, ignoring the Judgment of the Division Bench reported in 1989 (1) LW 155.

4. Placing reliance upon a number of decisions, Mr. K.P.Gopalakrishnan, learned Counsel for the Respondent/ landlord has submitted that it is the duty of the Tenant to pay rent regularly. The learned Counsel further submitted that when Money Orders were refused, Tenant had not taken any steps under Section 8 of the Act to deposit rent in Bank nor under Section 9 to deposit the rent in Court. Arguing further, the learned Counsel for the Landlord has submitted that under Section 25 of the Act, scope of revisional Court is very much limited and Court cannot go beyond the scope. It was further submitted that when no question of law is involved warranting interference, the Court cannot interfere with the concurrent findings recorded by the appellate authorities based on facts.

5. Landlord-Tenant relationship is not disputed. Default period is from August 1999 to November 2003 i.e. for a period of 43 months. Case of Landlord is that Tenant has not paid rent for 43 months and committed default. Further case of the Landlord is that the Tenant has agreed to pay the rent of Rs. 90/- from August 1999 and hence when there was no proper tendering of rent at Rs. 90/-, Landlord has not accepted the rent.

6. Ex.R-2-Money Order Receipts [series] and acknowledgment sent on 11.06.1999, 10.07.1999, 16.08.1999 [not covering the default period] and Money Order receipt and communication sent on 12.10.1999 [rent for August and September, 1999] and another Money Order receipt communication sent on 15.12.1999 [rent for November, 1999] were filed. The Appellate Authority has noticed 'One portion of space for communication representing the rent for August 1999 alone filed. It does not have any authenticity of the Postal Department or Postal Stamp. Hence it cannot be believed'. I find no reason to differ from the said finding recorded by the Appellate Authority.

7. Exs.R-3 to R-5 series are the Money Order receipts and communications sent from December, 1999 to September, 2001. Ex.R-5 series Money Order receipts dated 10.05.2003 was received by the Landlord without prejudice. On perusal of Exs.R-3 to R-5, demonstrably, the Tenant did not send the rent regularly.

8. From July 1999 to August 2001, Tenant has been paying rent by Money Orders. Pointing out return of Money Orders, the Rent Control Authorities observed that after return of Money Orders, Petitioner ought to have approached the Court for deposit of rent under Section 8(5) of the Act.

9. The learned Senior Counsel submitted that the Judgment and Order of the trial Court placing reliance upon are not good law, in view of the fact that those decisions do not refer to Division Bench Judgment reported in 1989 (1) LW 155 [Durgai Ammal v. R.T. Mani]. It was further submitted that Courts below erred in observing that Section 8 of the Act is mandatory. Placing reliance upon the decision of Division Bench reported in 1989 (1) LW 155 it was submitted that Section 8 is only an enabling provision and Section 8 is not mandatory and the Courts below erred in saying that Section 8 is mandatory. In the said case before the Division Bench, due to refusal of the rents sent by the Tenant, it was observed that the failure of the Tenant to resort to Section 8 of the Act to deposit rent will not amount to wilful default in payment of rents. The Bench has held as follows:..But with great respect we are unable to agree with the learned Judge, S. 8 provides that in case the landlord refuses to receive rent tendered by the Tenant the Tenant can call upon the landlord to name a bank where she can deposit it and if he fails

to do so the Tenant can send it by money Order and if even that money Order is not received, the Tenant can deposit the rent before the Rent Controller. But it is nowhere stated that if the Tenant does not do so it will amount to wilful default. When a landlord refuses to receive the rent sent by the Tenant it is his fault. He cannot subsequently say that the Tenant has not exercised his right given under Section 8, and, therefore, he must be taken to have committed wilful default. Similarly, if the Tenant has not deposited the rent before the Rent Controller in case of bonafide doubt as to the person who is entitled to receive the rent and the person concerned does not help to remove the doubt of the Tenant, the Tenant cannot be said to have committed wilful default in payment of rent. Therefore we find that the finding of the Appellate Authority that the Tenant committed wilful default in payment of rent is wrong and hence that finding has to be set aside.

10. In [Rajalinga Chettiar and Ors. v. Nataraja Mudaliar], Landlord had refused to receive the money order sent by the Tenant. Tenant had also sent a letter [Ex.P-6], asking the Landlord to name a Bank. But reply was sent by the counsel for the Landlord that his client was not prepared to receive the rent. Thereafter the Tenants have deposited money in the Post Office Savings Bank Account. Observing that such deposit of Post Office Savings Bank Account shows the bonafide of the Tenants, and there is no wilful default, elaborately referring to the various decisions on the subject, Justice AR.Lakshmanan [as His Lordship then was] has held as follows:

As has been observed by Ramaprasada Rao, J. in *Thaiyalnayagi Ammal v. Ayyana Chettiar* 1976 TLNJ 72 unless an element of indifference which is wanton and deliberate besides being designed, is provable and proved in the attitude of the Tenant it cannot be said that all defaults made in the payment of rent are to be automatically characterised as wilful defaults. Section 8 of the Tamil Nadu Buildings [Lease and Rent Control] Act, is only an enabling provision to prove the bona fides of the Tenant and absence of wilfulness on the part of the Tenant in the matter of payment of rents. The Court is also of the view that the non-adoption of the procedure prescribed under Section 8(2) which could be adopted by the Tenants in their discretion, does not throw any light upon want of bona fides of the Tenants. In the instant case the procedure prescribed under Section 8 of the Act is

only optional and not mandatory.

11. In the decision cited supra, Tenants have proved their bonafide by producing documentary evidence to the effect that since the rents sent by Money Orders were refused by the Landlord and the Landlord himself was not prepared to receive rents from the Tenants, under Ex.P-6 dated 06.10.1983, Tenants had to deposit the same in Post Office Savings Bank Account.

12. Failure to invoke Section 8(5) of the Act would definitely be one of the relevant circumstances to decide the question of default but it is not the only conclusive circumstance. It is for the Court to ascertain whether default is wilful and whether failure to invoke Section 8(5) of the Act would show lack of bonafide amounting to wilful default.

13. The above decisions are of no assistance to the Tenant in this case, firstly this is not a case of refusal by the Landlord to receive the rent actually payable to the premises. According to the Landlord, rent payable is Rs. 90/- where as the Tenant has sent Money Order only for Rs. 25/-. When the Landlord has demanded increased rent, if the Tenant has not agreed for the increase and insisted upon paying the old rent, Landlord is not obliged to receive the old rent.

14. In the present case, failure to invoke Section 8(5) of the Act would definitely be one of the relevant circumstance to be reckoned with. As noticed earlier, RCOP No. 3063/1994 was filed for eviction on the ground of own use and occupation and the same was dismissed. With the filing of Eviction Petition when relationship with the Landlord was strained, Tenant was expected to pay the rent without any default. When the Money Orders sent were refused by the Landlord, Tenant was not justified in taking steps under Section 8 of the Act. In the light of factual scenario of this case, Rent control authorities were justified in drawing conclusion of wilful default because of failure to invoke Section 8(5) of the Act.

15. While referring to the duty of the Tenant to pay the rent regularly, even without demand from the Landlord, in 1994 (2) LW 524 [Mohammed Rowther v. S.S. Rajalinga Raja and 2 Ors.], this Court has held 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. In this case, the deposition clearly shows that for every month there was delayed payment. As per the deposition, though six months' rent was due, the Tenant paid only one months' rent despite the fact that a demand was made for six months'. This can be inferred from the reply. So, despite the demand, the payment was not made. So, it is clearly that the default was wilful.

16. Rent is payable as and when due and it is the obligation of the Tenant to pay the rent and in case of failure to pay, he is a defaulter. Tenant is under a statutory obligation to pay rent every month according to the Agreement. In case the Tenant fails to do so, he is a defaulter. Even if the rents are paid during the course of proceedings, it cannot absolve him from contending that he is not a wilful defaulter [Vasuvaithiar v. Rangoo Chettiar 2000 (2) LW 708.

17. Reliance was placed upon [Hatim and Co., rep. by its Partners v. Radhakrishnan and Ors. and in that case, it was contended that landlord refused to receive the rents for more than two years, but had not taken steps to deposit rents in Court invoking Section 8. The Court has held the Tenant guilty of wilful default .

18. According to the Tenant, Landlord shifted his residence in 2001 and his residential address was not known to him and hence the Tenant was not able to pay the rent subsequent to 2001. Landlord has denied shifting of his residence in 2001. Landlord has produced Exs.P-2 to P-5, showing that he was residing in the very same address upto April 2002 and only in May 2002 he shifted his residence. Ex.P-2 is the Phone Bill dated 18.02.2002. Ex.P-3 is the application [dated 15.04.2002] requesting shifting of phone from the demised premises No. 4, Karaneeswarar Koil Street, Mylapore to the shifted residence of the landlord i.e. No. 7, Appu Street, II Lane, Mylapore. Ex.P-4 is the Gas Consumer Card showing shifting of residence only in May, 2002. Ex.P-5 series is the LIC Policy correspondence showing residence of Landlord as No. 4, Karaneeswarar Koil Street, Mylapore. It is evident from Exs.P-2 to P-5 that the Petitioner/landlord was residing in the same premises No. 4, Karaneeswarar Koil Street, Mylapore, till May, 2002. The contention of the Tenant that he attempted to pay rent by Money

Order and that Landlord shifted his residence even in August 2001 and that he did not know the address of the Landlord is untenable.

When both the Landlord and Tenant were residing in the same building till May 2002, failure to pay rent certainly amounts to wilful default.

19. The learned Senior Counsel for Tenant has contended that on the first hearing date, rental arrears was paid and there was no default. Placing reliance upon : [1985]2SCR643 , Sundaram Pillai's case, it was contended that in order to be wilful, it must be intentional and deliberate non-payment of rent. The learned Senior Counsel submitted that the Tenant has made every effort to pay the rent by Money Order and on the first hearing date, Tenant has paid entire rental arrears and hence there was no wilful default. Landlord has only received the arrears without prejudice.

20. Tenant has no right to accumulate rent. In : (1999)IMLJ401 [Easwara Rao v. Ansari [deceased] and Ors.], this Court has held that the Tenant's tender of rents by M.O. was refused. The Tenant deposited the arrears on the first hearing date of the eviction Petition filed by the landlord. It was held merely sending money by money Order and thereafter keeping quiet after refusal of money Order not proper and default is wilful. Deposting the rents on the day of the hearing without valid explanation does not absolve Tenant of wilful default.

21. In [Dharani Ammal v. P.J. Raphal] it was held, 'accumulated arrears were paid by the Tenant in lump sum before the first hearing date of the eviction Petition. Tender of rents on the part of the Tenant, not proper and conduct amounts to wilful default in payment of rents. Tenant ought to have taken steps to tender rent by modes prescribed under the Act when landlady refuses to receive rent'.

22. The learned Counsel for the Landlord has submitted that subsequent to filing of eviction Petition, even when Landlord was ready to receive the rent, purposefully, Tenant has sent the rent by Money Order. RW-1 - wife of Tenant has stated in her cross examination that subsequent to Petition, they sent rent only by Money Order. Irregular payment of rent subsequent to filing of Petition and subsequent conduct can be taken into account in deciding the matter. In 1998 (3)

LW 159 [Anraj Pipada v. Umayal] Justice S. Jagadeesan, has held, 'The conduct of the Tenant in not paying the rent regularly during the pendency of the proceedings will amount to wilful default and such subsequent conduct of the Tenant has to be taken into consideration in deciding the matter. In the light of the above principles, it is clear that the Petitioner has committed wilful default not only prior to the filing of the RCOP but also during the subsistence of the proceedings before the Rent Controller...'.

23. In consideration of the conduct of the Tenant prior to the filing of the RCOP and also during the subsistence of the proceedings, Courts below have recorded concurrent findings of fact, ordering eviction on the ground of wilful default. Exercising revisional jurisdiction under Section 25 of the Act, the High Court would not interfere unless the concurrent findings are perverse or erroneous. There is nothing to suggest that the findings of the Courts below are illegal, erroneous and perverse, warranting interference, exercising revisional jurisdiction under Section 25 of the Act. The revision is devoid of merits and is bound to fail.

24. In the result, Order in R.C.A. No. 356/2004 [arising out of RCOP No. 557/2003 on the file of XV Small Causes Court, Chennai] is confirmed. This CRP is dismissed. No costs.

25. After the Court has passed the Order, the learned Counsel for the Revision Petitioner submitted that the Revision Petitioner has to find alternate accommodation and requested for longer time for vacating.

26. In consideration of the submissions, six months time is granted for vacating and handing over possession to the Respondent/landlord subject to the condition that the Revision Petitioner should file an affidavit to that effect within a period of two weeks from this date.