

SUREME COURT OF INDIA

R. Appavoo (Dead) By L.Rs.

Vs.

Sree Dharna Vinayakan Dharmaraja Devasthanam

(R Misra and M Punchhi JJ.)

31.08.1990

JUDGMENT

1. The sole appellant having died during the pendency of the appeal, a petition for substitution has been filed. Heard counsel for the parties. Delay condoned and substitution ordered.

2. This appeal by Special Leave is directed against the revisional order of the Madras High Court by which the finding rendered in the appellate forum that the tenant was not a wilful defaulter was reversed and eviction ordered.

3. The tenancy is a commercial one, located in a busy street of Madras. The rent as found was Rs. 30/- per month. The record indicates that the original tenant had offered to pay the rent for the months of July and August of 1970 and for some subsequent months initially by personal tender and on refusal, by remittance through money-order and the landlord was refusing to accept the same. Later the landlord demanded by notice rent at the rate of Rs. 45/- by saying that that was the agreed rent. As already noticed the agreed rate has been found to be Rs. 30/- per month. Therefore, the conduct of the landlord demanding a rate higher than the agreed rate was taken into consideration by the appellate authority as a circumstance to find against the landlord's plea of the tenant being a wilful defaulter. It is true that there was a subsequent demand for the arrears of rent at the rate of Rs. 30/- per month and we have it on record that by 1972 the entire arrears had been paid. In the facts and circumstances of this case referred to above, we are inclined to agree with the appellate authority's conclusion that the tenant was not a wilful defaulter and the interference with that finding in revision by the High Court was not warranted. The appeal is, therefore, allowed and the order of eviction is set aside.

4. We must, however, take notice of the fact that the tenancy is an old one and in the 20 years that have elapsed between 1970 and now, Thambi Chetty Street of Madras has become commercially important and market rate of tenanted premises in Madras has gone up; the fair rent for the premises would now be at least Rs. 200/- per month. We accordingly direct that the rent for the premises shall be treated to be Rs. 200/- per month from 1-9-1990. The rent for the month of September shall be payable along with the cent due for the month of October, 1990. There will be no order as to costs.

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