

N.S.M.Ahmed Jamalia Beevi

Vs

D.N.Shah

(Sujata V. Manohar, D. P. Wadhwa JJ)

30.07.1997

JUDGMENT

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D.P. WADHWA

1. Leave granted.

2. The appellant is landlady. She is aggrieved by the order dated July 9 1996 of the Madras High Court granting yet further time to the respondent tenant for depositing rent in spite of persistent default committed by him in violation of the provision of sub- section (1) of Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short 'the Act').

3. The appellant is the owner and landlady of property bearing No.145 Linghi Shetty Street, Madras. She let out the same to the respondent at a monthly rent of Rs.4500/- with permission to sublet the same. The premises comprise of four independent shops. The appellant says the respondent is recovering enormous rent from these shops having sublet the same. It has come on record in respect of one shop that the respondent is realising Rs.3000/- per month as rent. Since the respondent committed default in payment of rent from September, 1990, the appellant served a notice dated September, 1991 on him demanding rent for the period from September 1, 1990 to August 31, 1991 amounting to Rs.54,000/-. Respondent was told that in case he failed to pay rent proceeding for his eviction shall be instituted against him. In spite of the notice, the respondent did not pay the rent which led the appellant to file proceeding for his eviction under clause (1) of Sub section (2) of Section 10 of the Act. That was in October 1991. Notice of filing of the eviction proceeding was issued to the respondent. He failed to reason to the same and an ex parte order of eviction dated July 31,1990 was passed against him by the Rent Controller. On an application filed by the respondent on August 22, 1992 a part order of eviction was, however, set aside. In spite of pendency of these proceedings on the ground of default in payment of rent the respondent did not pay any rent in breach of the provisions of Section 11(1) of the Act. The appellant, therefore, filed an application under sub-section (4) of Section 11 of the Act requesting that she be put in possession of the suit premises.

4. At this stage we may sat out the relevant provisions of the Act.

"10. Eviction of tenant.

(1)

(2) A landlord who seeks to avict his tenant shall apply to the controller for a

direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied:

(i) that the tenant has not paid or tendered 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 agreement, by the last day of the month next following that for which the rent is payable or the controller shall make an order directing the tenant to out the landlord in possession of the building and if Controller is not satisfied, he shall make an order rejecting the application.

Provided that in any case falling under clause(1) of the Controller is satisfied that the tenant's default to pay or tenant rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tander the rent due by him to the landlord upto the date of such payment or tender and on such payment or tender, the application shall be rejected. Explanation for the purpose of this subsection, default to pay or tender rent shall be constructed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the land lord claiming the rent. Section 11 Payment or deposit of rent during the pendency of proceedings for eviction. (1) No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the controller under that section, or to prefer any appeal under section 23, against any order made by the Controller on the application unless he has paid or pays to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the controller or the appellate authority, as the case may be.

(2).....

(3).....

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to out the landlord in possession of the buildings."

5. We may also note that under explanation to clause (6) of section 2 of the Act which defines landlord, a tenant who sublets shall be deemed to be a landlord within the meaning of the Act in relation to the sub-tenant. Section 23 provides for appeal to the appellate authority. Under Section 25 a revision lies to the High Court. It may, on an application of any person aggrieved by an order of the appellate authority call for and examine the record of the appellate authority, to satisfy itself as to the regularity of such proceedings of the correctness, legality or property of any decision or order passed therein and if any case it appears to the High Court that any such decision or order should be modified, annulled, reversed or remmitted for reconsideration it may pass orders accordingly. Under Section 26 Order made under the Act is binding on the sub - tenant as well.

6. Coming back to the narration of events, the application of the appellant filed under Section 11(4)

was dismissed by the Bank Controller by an order passed in July 1993. The appellant filed appeal to the Rent Control Appellate Authority and the same appeal was allowed by the order dated September 12, 1994. The appellate authority directed the respondent to deposit the entire arrears of rent within one month failing which an order of eviction would be passed. Against this order, the respondent went in revision before the High Court and sought for an interim stay of all further proceedings in the eviction petition. The High Court by order dated September 27, 1995 directed the respondent to deposit the entire arrears of rent from September 1, 1990 to July 31, 1992 amounting to Rs.1,03,500/- being rent for 23 months within a period of six weeks from the date of the order. It was mentioned that on respondent's failing to deposit the rent as aforesaid the stay granted would automatically stand vacated. Again the respondent committed default and did not deposit rent in terms of the order dated September 27, 1995 of the High Court. The appellant, therefore, again approached the Rent Controller as there stood no impediment in passing an order of eviction against the respondent. The rent controller after satisfying himself that the order of the High Court had worked itself out due to non compliance, passed the order of eviction against the respondent. Against this order the respondent again filed an appeal before the Appellate Authority which was dismissed. The respondent then approached the High Court with a prayer to stay all further proceedings pursuant to the order of eviction passed against him.

7. All these years the respondent did not pay any rent to the appellant and committed persistent default. The High Court by the impugned order granted further time to the respondent and now gave him liberty to pay a sum of Rs.1,10,100/- towards arrears of rent within two weeks from the date of the order which is July 9, 1996. In the impugned order the High Court noticed that "the council for the tenant represented that due to unavoidable circumstances, the tenant could not comply with the conditional order passed by this court and if time is granted, he would pay the amount, since he is always ready and willing to comply with the order". On considering this representation the High Court granted time to the respondent. The operative part of the order is as under :

" Considering the representation made by the council for the tenant. I am of the view that finally he can be given chance to pay the arrears of rent so that the respondent/landlady also will be benefited by this, since she is getting the money. Though there is no merit in the civil revision petition, since the tenant is being given a chance I sat aside the order of the lower court so far as the eviction is concerned on condition that the petitioner in the civil revision petition shall pay a sum of Rs.1,10,100/- towards arrears of rent to the respondent herein by way of cash or demand draft within two weeks from today, failing which the civil revision petition shall stand automatically dismissed and the petitioner will not be entitled to seek for any further extension of time. The civil revision petition is ordered accordingly."

8. No argument would appear to be needed to show that the High Court misdirected itself and did not exercise a discretion properly. In spite of the fact that the High Court found that there was no merit in the civil revision petition filed by the tenant yet it save further time to the tenant to deposit the rent even modifying its earlier order dated September 27, 1995 requiring the tenant to pay Rs.1,03,500/- and now requiring him to pay Rs.1,10,100/- when between these two dates ten months had passed. We are unable to comprehend as to what were the relevant considerations which led the High Court to grant further time to the tenant. The tenant had taken two pleas: (1) that on account of the marriage of his daughter he could not make arrangement to pay the rent; and (2) that after July 1992 the sub tenant had directly paid rent to the appellant. Both these pleas are of no effect. That the tenant could not arrange finances on account of his daughter's marriage cannot be a ground to deny the landlord her due rent when the tenant himself had been collecting rent from the sub tenants and

in the case of the sub tenant had themselves defaulted in payment of rent to the respondent he could well have proceeded against them under the Act. Equitable considerations have no place in a case like the present one and that too in face of the express provision of law. While the Act protects the tenant against the eviction and is a departure from the Transfer of Property Act, it is the bounden duty of the tenant to pay rent to the landlord regularly and not to commit default. No sufficient cause was shown by the respondent as to why he failed to pay or to deposit the rent as ordered. Even rent prior to July 1992 was not paid. The High Court was certainly in error in granting time to the tenant to deposit the rent. It did not exercise its jurisdiction properly as envisaged under section 25 of the Act.

9. We may also note that before the High Court the order against which the revision had been filed was one passed under sub-section (4) of Section 11 of the Act but the High Court not only set aside that order but even dismissed the eviction proceedings by the impugned order which to our mind is palpably wrong. We therefore allow the appeal set aside the impugned order of the High Court and would restore that of the Rent Controller and the Appellate Authority. No Costs.