SUPREME COURT OF INDIA

P. M. Punnoose

Vs.

K. M. Munneruddin

C.A.No.3121 of 2000

(R. C. Lahoti and Ashok Bhan, JJ.)

23.07.2003

ORDER

1. The landlord-respondents filed an application seeking eviction of the appellant-tenant from the suit premisses on the ground alleged to be available under clause (i) of sub-section (2) of Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act No. 18 of 1960) (hereinafter referred as 'the Act' for short). The relevant provisions read as under :

"10. Eviction of tenants.-

(2) A landlord who seeks to evict 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 agree-ment, by the last day of the month next following that for which the rent is payable, or

xx xx xx xx

the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application :

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender 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 tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

Explanation - For the purpose of this sub-section, default to pay or tender rent shall be construed 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 landlord claiming the rent.

2. The Controller allowed the application and directed the appellant-tenant to be evicted recording a finding that the tenant had committed a wilful default in the payment of rent. The tenant preferred an appeal which was allowed by the Court of Small Causes, being the appellate authority. The landlord preferred a revision under Section 25 of the Act which has been allowed. The High Court has set aside the judgment of the appellate authority and restored that of the Controller. Feeling aggrieved, the tenant has filed this appeal by special leave.

3. The facts in brief, so far as relevant for the purpose of this appeal, are briefly stated hereinafter. The landlord-respondents, five in number, purchased the suit property from the predecessor in title under the sale deed dated 9-1-1987. On the date of purchase, the appellant was the tenant in the suit premises holding the same on a monthly rent of Rs. 400/- from the predecessor in title of the respondents. On purchase of the property by the respondents the appellant commenced paying rent to the respondents. The rent for the month of January, 1987 was remitted by the appellant to the five respondents by way of five money orders for Rs. 80/- each. Thereafter, the appellant started remitting the rent to the respondents by money orders of Rs. 400/-, each payable to the first respondent. There is some controversy as to the exact amount of the rent paid or tendered but to clearing of such controversy, we will proceed to notice only such facts as have been found proved. After remitting the rent for the month of January, 1987, as stated hereinabove, the appellant-tenant sent seventeen money orders through which rent up to the month of September, 1988 was paid by the appellant and received by the respondents. Thereafter, the dispute erupted.

4. From the judgment of the appellate authority, which is the final Court of facts, three relevant facts are culled out and reproduced in brief as follows:

Firstly, even before 1987, when the respondents purchased the suit property, the predecessor in title of the respondents had initiated several proceedings against the tenant-appellant seeking eviction of the appellant but they were all unsuccessful. Secondly, the owners of the property were liable to remit the water and sewerage taxes of the suit property which, if not remitted by them, could be remitted or paid by the tenants themselves which payments, on being notified to the landlords, could be deducted from out of the amount of rent because if such taxes were not remitted, the supply of drinking water to the premises could be stopped. Thirdly, for the periods November, December, 1988 and January, February, 1989, for four months, the appellant had sent the rent by money order to the respondents, relevant documents in which regard were tendered in evidence and exhibited.

5. From the finding recorded by the High Court, it is clear that on 1-3-1989, under Ext. R-7, an amount of Rs. 400/- was remitted by money order which the respondents refused. Under Exts. R-8 and R-9, each for Rs. 400/-, the amount was remitted on 31-3-1989 which too was returned by the respondents. Admittedly, the appellant did not mention in the money order coupons the months for which the amount of Rs. 400/- each was being remitted by way of rent.

6. The narrow controversy which survived for decision before the Controller was : What was the period for which the tenant was in arrears? The amount which was remitted in the month of December, 1988 was claimed by the appellant to have been tendered on account of arrears for the month of November, 1988 while, according to the respondents, such tender was without any specific directions and the same was appropriated by the landlords as against the rent for the month of October, 1988 which, according to them, was due and payable by the appellant.

7. The application for eviction before the Controller was filed on 17-4-1989. In the written statement, the appellant took the plea that vide exts. R-2, R-3, R-4, R-6 and R-1, respectively dated 2-8-1988, 20-8-1988, 20-9-1988, 25-10-1988 and 18-12-1988, the amount of Rs. 400/- each was remitted. It was submitted that by these money orders, rent up to the month of October, 1988 was paid. Another money order of Rs. 400/- was sent on 31-12-1988, marked as Ext. R-5, whereby, according to the tenant-appellant, rent for the month of December, 1988 was paid. As to the month of November, 1988, the submission of the tenant-appellant was that though rent for the month of November, 1988 was also remitted by money order, but receipts thereof were not traceable and, therefore, to be on safer side, the tenant-appellant offered to deposit the same in the Court. In the eviction application dated 17-4-1989, vide para 6, it is alleged that the tenant-appellant did not pay rent from 1-11-1988 to 31-3-1989 amounting to Rs. 2,000/-. However, in the same para, it is alleged at the end that so far as the liability incurred by the tenant-appellant or wilful default in payment of rent is concerned, it is for the period between 1-11-1988 and 28-2-1989 for which he is liable to be evicted.

8. On 1-3-1989, the appellant remitted by money orders, Exts. R-7 and R-8 and R-9, an amount of

Rs. 400/- each which money orders the landlord-respondents refused to accept. On 12-4-1989, under notice, Ext. R-10, the appellant sent a Demand Draft dated 10-4-1989 for Rs. 1200/- towards rent for January, 1989 to March, 1989. The registered letter containing the demand draft and bearing was received back by the appellant along with an endorsement "not found". On 12-6-1989, the appellant sent another registered letter containing a cheque of Rs. 2000/- being rent for the months of January to May, 1989 and the same received by the respondents. The cheque was also encashed.

9. Prior to the filing of the application for eviction, there was an exchange of notices through lawyers between the parties. The contents of notice dated 1-2-1989 sent by the respondents' lawyer to the appellant shows that the respondents had sent a cheque for Rs. 477.85 ps. by way of reimbursement for the amount of water tax paid by the appellant. There was yet another claim for Rs. 191.10 ps. made by the appellant from the respondents on account of water tax and sewage tax paid by the appellant for which the respondents insisted that the original receipts and not xerox copies thereof be sent to the respondents so as to make the payment. At the end of the letter, the respondents mentioned that the rent sent by the appellant in the month of December, 1988 and received by the respondents on 31-12-1988 would relate to the month of October, 1988 and, therefore, the appellant would remain in default of payment of rent for November, 1988. By a subsequent letter dated 3-10-1989, the respondents disputed their liability for payment of taxes and also made a demand for refund of the amount paid by the respondents to the appellant on that account.

10. The facts as to the payment of taxes and dispute relating thereto have been only incidentally stated as that controversy is not supposed to be resolved in this appeal nor does it arise for decision herein.

11. A perusal of the counter affidavit filed by the landlords in this Court shows that the present one is not the case wherein the appellant is sought to be held a 'wilful defaulter' by reference to the Explanation appended to sub-section (2) of Section 10 of the Act. The singular question arising for decision in this appeal is whether the appellant can be held to have wilfully defaulted in payment or tender of rent within the meaning of Section 10(2) of the Act and, therefore, whether the High Court was justified in reversing the judgment of the appellate authority.

12. The provisions of Section 10(2) of the Act came up for consideration before a three Judge Bench of this Court in S.Sundaram Pillai and others v. V.R. Pattabiraman and others ((1985) 1 SCC 591). On a review of decisions, this Court held that wilful default would mean a deliberate and intentional default knowing full well the legal consequences thereof. The use of the words "wilful default" in the provision is suggestive of the legislative intent that default, in order to be wilful, must be intentional, deliberate, calculated and conscious with full knowledge of legal consequence following therefrom. So is the view taken by this Court in Chordia Automobiles v. S. Moosa and others ((2000) 3 SCC 282). Sundaram Pillai's case (supra) came up for consideration of this Court in Raja Muthukone (dead) by LRs. v. T. Gopalasami and another ((2002) 4 SCC 204) . This Court held

that on a cumulative reading of the provisions of Section 10(2)(i), the proviso and the Explanation appended to sub-section (2), the following consequences follow : AIR 1985 SC 582

AIR 2000 SC 1880 : 2000 AIR SCW 892

AIR 2002 SC 1830 : 2002 AIR SCW 1807

"(1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two months' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord."

13. The explanation appended to sub-section (2) of Section 10 of the Act enacts a rule of eviction. After the issuance of two months' notice claiming the rent, the default by tenant shall be construed as wilful raising a presumption in that regard and it will be for the tenant to show availability of sufficient cause or circumstances beyond his control to escape from the consequence of default. The landlord is not prevented from initiating proceedings for eviction on the ground of default under Section 10(2)(i) of the Act, without serving a notice under the Explanation but in that case it will be for the landlord to make out a case of wilful default by tenant failing which the Controller may exercise his discretion under the proviso giving the tenant a reasonable time, not exceeding fifteen days for payment or tender.

14. As already stated hereinabove, the present one is not a case of the landlord-respondents having served a notice of demand on the appellant and, therefore, the question of holding the appellant a wilful defaulter by reference to the Explanation above-said does not arise. It is still open to the landlords, though a demand notice did not precede the initiation of the proceedings, to plead that the tenant had wilfully defaulted in payment of rent.

15. The facts and circumstances of the case and the manner in which the finding was recorded by the Controller and reversed by the appellate authority indicate that the rent was being paid or tendered by money orders soon after the purchase of the property by the respondents and therein the

month for which the payment of rent was being tendered by money order was not being stated by the appellant. The principal dispute centered around the payment of rent for the month of October, 1988. There was a controversy as to whether the amount for this month was paid or tendered or not and, therefore, the appellant, to be on safer side, had tendered a fresh amount of Rs. 400/- in the Court along with the written statement. Though in the notice dated 1-2-1989, the respondents through their counsel have taken a stand that the rent remitted in the month of December, 1988 was being appropriated towards arrears for the month of October, 1988, however, a perusal of the three decisions rendered up to the High Court does not show the respondents having adduced any evidence in proof of the factum of such appropriation. The statement made in the notice as to appropriation remains an assertion made in the notice but not substantiated by evidence.

16. There appears to be a bona fide dispute as to the quantum of arrears, that is, as to what was the exact amount of rent paid by the tenant-appellant to the landlord-respondents and consequent upon which payment the liability for how many number of months came to be extinguished. The facts found indicate the tenant-appellant remitting the amount of rent by money orders before and after and even during the pendency of the proceedings and some of the money orders having been refused by the landlord-respondents. The present one is a fit case where the Controller should have exercised his power under proviso to sub-section (2) of Section 10 of the Act by passing an order thereunder and giving the tenant-appellant a reasonable time, not exceeding 15 days, to pay or tender the rent due by him to the landlord up to the date of such payment of rent. If such order was complied with by the appellant-tenant, then the application for eviction should have been rejected. The learned Controller has erred in not passing that order.

17. It is true that the revisional jurisdiction conferred on the High Court under Section 25 of the Act is not as narrow as one under Section 115 of the Code of Civil Procedure; nevertheless, a finding of fact arrived at by the appellate authority cannot be lightly interfered with by the High Court acting like a Court of appeal and reappreciating the evidence. A perusal of the order of the High Court shows the High Court proceedings on an erroneous assumption that the tenant had admitted default and there was an admission in the written statement filed by the tenant that he had defaulted in payment of rent for the month of November, 1988 and in view of such admission, it was for the tenant to prove that the default was neither wilful nor wanton nor deliberate. To say the least, the abovesaid observation of the High Court is a misreading of the written statement. The various averments made in the written statement are to be read in their entirety and not in isolation. We have carefully perused the written statement filed by the tenant-appellant before the Controller. The appellant has nowhere admitted himself to be in arrears. What the appellant has stated is that in spite of the plea taken in the written statement that the rent for the month of November, 1988 was remitted by money order inasmuch as the M. O. receipts were not traceable, the amount was being tendered once again with the written statement so as to get rid of the alleged default. The totality of the conduct of the tenant-appellant, as inferred from the dealings between the parties and the documentary and oral evidence adduced, shows that the appellant has always made an effort at paying or tendering the rent and the delay or default, if any, attributable to the appellant-tenant is bona fide and cannot be said to be wilful in any case.

18. Placing reliance on a recent decision of this Court in E. Palanisamy v. Palanisamy (dead) by LRs. and others, ((2003) 1 SCC 123) and various decisions of the Madras High Court, the learned counsel for the respondents submitted that once the tenant is shown to have been in default, then it is for him to prove AIR 2003 SC 153 : 2002 AIR SCW 4578 that the default was not wilful. It is submitted by the learned counsel for the respondents that in E. Palanisamy's case (supra), this Court has referred to the provisions of Section 8 of the Act and held that where the landlord is alleged to have refused or avoided accepting the tender or payment of rent, then the appropriate remedy of the tenant is to have recourse to Section 8 of the Act and pay or tender the rent in the manner contemplated by Section 8 of the Act, failing which the deposit of rent before the Controller would not enure for the benefit of the tenant and the effect of default shall not be washed out.

19. We have carefully perused the judgment relied on by the learned counsel and we are of the opinion that the same has no applicability to the facts of the present case. In E. Palanisamy's case (supra), the proceedings for eviction were initiated after issuing a default notice to the tenant which was served on the tenant and the tenant had responded by denying any default on his part in payment of rent. The question whether in the facts and circumstances of the case, a tenant could be said to have committed wilful default did not arise for consideration of the Court. The submissions made by the parties centered around Section 8 of the Act only. The appellate authority observed in its decision that even after the petition had been filed by the landlords, the tenant did not think of offering the rent to the landlords. In this background, the Court held that where the applicability of Section 8 is attracted, it has to be strictly complied with by the tenant before he can seek benefit under the said provision regarding deposit of rent in the Court.

20. So far as the several decisions from the High Court cited by the learned counsel for the respondents are concerned, without burdening this judgment by dealing with individual judgments, suffice it to observe that the law laid down therein has to be read in the background of the facts of each case. Whether the tenant has committed a wilful default or not would depend on the facts and circumstances of a given case, the issue being primarily one of fact.

21. In the case at hand, we are of the opinion that the High Court, in exercise of revisional jurisdiction, was not justified in interfering with and reversing the findings arrived at by the appellate authority and the reversal recorded by the High Court stands vitiated by misreading of the written statement.

22. The learned counsel for the appellant-tenant stated at the Bar that all the arrears of rent have been cleared and still if there are found to be any arrears, the appellant undertakes to clear the same within a period of two months from today, without raising any other objection to the liability of the tenant to pay the same. In view of that statement, we do not think that the order of eviction passed by the High Court can be sustained.

23. The appeal is allowed. The order of eviction passed by the High Court is set aside. The appellant shall remain liable to clear all the arrears of rent up to date, as stated by the learned counsel for the appellant before us. If there have been defaults in between or during the pendency of the proceedings consequent upon which the appellant-tenant has incurred a fresh liability for eviction, the landlord-respondents shall be free to initiate proceedings in that regard and such right of theirs is not waived by this decision.

24. The costs shall be borne by the parties as incurred throughout.

Appeal allowed.