Hindustan Petroleum Corporation Limited Vs Vummiddi Kannan

Court: Madras High Court

Date of Decision: Feb. 12, 1991

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 23
Madras City Tenants Protection Act, 1922 â€" Section 3, 4, 4(1), 6, 9
Presidency Small Cause Courts Act, 1882 â€" Section 41, 43
Transfer of Property Act, 1882 â€" Section 107

Citation: AIR 1992 Mad 190 : (1992) 1 LW 59 : (1991) 2 MLJ 222

Hon'ble Judges: Thanikkachalam, J; Nainar Sundaram, J

Bench: Division Bench

Advocate: Mr. S. Govindaswaminathan, for M/s.Ramasubramaniam Associates, for the Appellant; Mr. V. Krishnan, Senior, for M/s. K. Srinivasan, V. Kunchithapatham and Raghunathan, for the Respondent

Judgement

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Nainar Sundaram, J.
This appeal is directed against the judgment and decree in O.S. No. 2439 of 1981, on the file of the Second

Additional City civil Judge, Madras. The defendant is the appellant and the plaintiff is the respondent. The facts leading to the appeal may be

traced as follows: On 7-8-1964, an agreement of lease, as Ex.A. 1, was entered into between the plaintiff and Esso Standard Eastern Inc., in and

by which a lease of the suit land was given to the defendant. It is sufficient if we recapitulate only the relevant terms of the lease. The period of

lease was from 1-7-1964 to 30-6-1974. There was a payment of anadvance of Rs. 15,600/- to be adjusted from half of the monthly rent for the

first four years. Clause 3(d) of the lease contemplated the renewal for the lease and since a part of the controversy in this Appeal arises out of this

clause, we feel obliged to extract the said clause as follows :--

That the landlord will on the written request of the tenant made 2 calendar months before the expiry of the term hereby created and if there shall

not at the time of the such request any existing breach of non-observance of any of the covenants on the part of the tenant hereinbefore contained

grant to it a lease of the demised premises for the further term of ten years from the expiration of the said term at the rate of Rs.910/- (Rupees nine

hundred and ten only) per month and containing the like covenants and provisions as are herein contained except the renewal option clause.

On 15-2-194, as per Ex. A. 2, Esso Standard Eastern Inc. by a letter purported to exercise the option for renewal also suggesting the inclusion of

the following clause, in the renewal lease document:

The lessee shall be at liberty to determine this agreement by giving to the lessor three month''s notice in witting expiring at any time during the

currency of this agreement.

On 30-3-1974, as per Ex.A. 3, the plaintiff apprised the defendant thai the renewal of the lease shall be on the same terms and like conditions as in

the original lease excepting the renewal option clause. The plaintiff in the said letter also indicated that mutual negotiations over the terms of renewal

cannot be ruled out. It must be noted here that after, Ex.A. 2 and before Ex.A. 3, the Esso (Acquisition of Undertaking in India) Act 4 of 1974

came into force on 13-3-1974. On 15-4-1974, as per Ex.A. the successor to Esoo Standard Eastern Inc., namely, Esso Standard Refining

Company of India Limited, addressed a letter to the plaintiff in the following terms:

We write with reference to our Reg, Ack. due letter 5150/MVof February 15, 1974 and your reply dated 30-3-74. Inasmuch as you are not in

favour of including a 3 months notice clause determining the agreement, please treat our request as withdrawn. We will be forwarding to you our

draft lease embodying the same terms and covenants as contained in our earlier registered lease. As per Clause 3(d) of the lease, we have also

exercised our option for renewal of the lease for a further period of ten years commencing July 1, 1974 at a rental of Rs. 910/- p.m. on the same

terms and conditions contained in the earlier agreement for lease.

On 4-6-1974, as per Ex.A. 5, the said company forwarded a draft lease in duplicate to the plaintiff. On 20-6-1974, as per Ex.A. 6, the plaintiff

replied to Esso Standard Refining Company of India Limited that without the payment of advance there can be no question of renewal of the lease.

On 5-7-1974, as per ExA. 7, the plaintiff be addressing a letter to the Esso Standard Refining Company of India Limited declined to accept a

cheque purporting to be the rent for the month of July 1974 and pointed out that the draft renewal deed has been rejected by the plaintiff since it

violated the condition precedent for the exercise of the option for renewal with regard to the payment of advance and the plaintiff wanted delivery

of possession of the property. With effect from 12-7-1974, consequent on the merger of LUBE (India) Limited with Esso Standard Refining

Company of India Limited, the name of the amalgamated Corporation stood changed to Hindustan Petroleum Corporation Limited, the defendant

in the suit. On 15-7-1974, as per Ex.A. 8, Esso Standard Refining Company of India Limited, wrote to the plaintiff that no advance need be paid

and they enclosed the draft of the lease deed once again for approval by the plaintiff and return. On 22-7-1974, as per Ex.A. 9, and again on 4-9-

1974, as per Ex.A. 10, the defendant has been requesting for the return of the draft lease deed duly signed to proceed with the matter furher. On

6-1-1975, as per Ex.A. 11, the plaintiff through his counsel issued the notice calling upon the defendant to vacate and deliver vacant possession of

the property before 31-1-1975. On 31-3-1975, the defendant through its counsel replied, as per Ex.A. 12, insisting for approval of the draft

lease. On 13-8-1977, as per Ex. A. 13, the plaintiff''s counsel called upon the defendant to vacate the property by 1-10-1977 and also to pay

damages to the tune of Rs. 40,300/ -. On 18-8-1977, as per Ex.A. 14, the defendant replied Ex.A. 13 declining to accede to the demand put

forth on behalf of the plaintiff in his counsel''s letter. On 11-9-1977, as per Ex.A. 15, realising that a mistake had crept in with reference to a date,

the plaintiff''s counsel issued a fresh notice. On 22-3-1978, the plaintiff filed the suit praying for a decree for delivery of vacant possession by the

defendant and for damages. The defendant filed the written statement on 16-8-1979. Taking advantage of the extension of the provisions of the

Tamil Nadu City Tenants protection Act III of 1922, hereinafter referred to as the Act, to leases entered into prior to March, 1980, by the

amending Act II of 1980, an additional written-statement was filed by the defendant on 9-9-1981. We will have occasion to deal with the

concerned contentions of the defendant while we consider the submisions put forth before us in this Appeal on behalf of the defendant. Suffice it to

state at this juncture that in the additional written-statement a plea as been projected that the defendant is entitled to protection under the Act. The

defendant filed an application under S. 9 of the Act. But, there was an inordinate delay of 500 days in filing that application. The application for

condonation of delay was numbered as I.A. No. 13557 of 1981 and the substantive applicant I.A. No. 13555 of 1981, filed u/s was numbered as

I.A. No. 13557 of 1981 was dismissed and con sequently I.A. No. 13555 of 1981 was also dismissed. So far as the agitation union S. 9 of the

Act is concerned, the matter was allowed to rest there.

2. The Court below, on the pleadings, framed the following issues;

(1) Has there been a valid renewal of the lease?

(2) Are the plaintiffs entitled to claim damages for use and occupation and if so, at what rate?

(3) Has the suit not been properly valued?

(4) To what relief, are the plaintiffs entitled?

Additional Issue :

(1) Whether the defendant is entitled to the benefit of the Madras City Tenants" Protection Act as amended by Act 2/80 and if so, whether the suit

is bad for want of S. 11 notice?

The plaintiff placed his evidence, oral and documentary. The defendant placed only oral evidence and it had no documentary evidence. The Court

below on issue No. 1 held that there has been no valid renewal of the lease. On issue No. 2, the Court below held that the plaintiff is entitled to

claim damages for use and occupation at Rs. 2,000/- per month from 1-10-1977 till the date of delivery. On issue No. 3, the Court below on the

ground that nothing having been demonstrated as to how the suit has not been properly valued, answered that issue in favour of the plaintiff. On

additional issue No. 1, the Court below heid that the defendant is entitled to the benefits of the Act. Besides this finding, the Court below did not

proceed further to ascertain the amount of compensation payable for the superstructure to the defendant and did not follow the other processes as

contemplated under S. 4 of the Act. On issue No. 4, the Court below repelled the plea put forth on behalf of the defendant that Section 53-A of

the Transfer of Property Act could be availed of by it and the Court below also repelled the contention that there was no valid notice to quit. As a

result, the Court below decreed the suit for delivery of possession and for damages at the date of Rs. 2,000/- per month for use and occupation

from 1-10-1977.

3. The main contention put forth by MR S. Govindswaminathan, learned senior counsel appearing for the defendant, appellant herein, is built on the

provisions of S. 4 of the Act. The contention gets projected as follows: Under S. 4(1) of the Act, in any suit for ejectment against the tenant in

which the landlord succeeds, there shall be a determination of the amount of compensation, if any, payable u/s 3 of the Act and the decree shall

declare the amount so found due and direct that on payment by the landlord into Court, within three months from the date of the decree, the tenant

shall put the landlord into possession of the land with the building and trees thereon. If the amount found due is not paid within three months from

the date of the decree, the suit shall stand dismissed. In the instant case, there had been no determination of the amount of compensation and no

declaration of the same in the decree in spite of the fact that a finding has been rendered that the defendant is a tenant within the meaning of the Act

and entitled to the benefits of the same and consequently no payment of . any amount of compensation could be and had been made within the time

limit, and hence the suit has got to be thrown out. Learned senior counsel for the defendant places heavy reliance on the pronouncement of the

Supreme Court in V.K.A. Ranganatha Konar Vs. The Tiruchirappalli Municipal Council, by its Commissioner and Another, . As against the

submissions put forth on behalf of the defendant through its learned senior counsel Mr. V. Krishnan, learned counsel appearing for the plaintiff,

would submit that a proper understanding and construction of the provisions of Section 4 of the Act cannot lead to the proposition as advanced by

the learned senior counsel appearing for the defendant; and there has got to be primarily an ascertainment of the amount of compensation by the

Court and declaration of the same in the decree and only thereafter if there had been no compliance with the payment of the amount of

compensation so ascertained within the period pre- scribed by the provision itself namely, three months the suit shall be dismissed and in the

present case, there had been an omission on the part of the Court below in making the very ascertainment of the amount of compensation and in

that contingency the question of making a payment within the time prescribed by the statute would not at all arise and there could not be an

entailment of the dismissal of the suit on the ground of non-compliance with payment of the amount of compensation ascertained within the

statutory time limit. Learned counsel appearing for the plaintiff would submit that the pronouncement of the Supreme Court in V.K.A. Ranganatha

Konar Vs. The Tiruchirappalli Municipal Council, by its Commissioner and Another, , cannot be construed in the manner, as suggested by the

learned senior counsel appearing for the defendant. Learned counsel for the plaintiff would place reliance on the pronouncement of Srinivasan, J. in

Mahanambal v. Salvanayaki, (1961) 2 MLJ 261.

4. Section 3 of the Act has got to be initially looked into because that alone speaks about the payment of compensation on ejectment. That

provision runs as follows:

Section 3 :-- Payment of compensation on ejectment-

Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of

his predecessors-in-interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which

compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees

which may have been planted by him on the land and of any improvements which may have been made by him.

Section 4 lays down the procedure for disposal of suits for ejectment and it has got four sub-sections and the whole provision runs as follows:--

Section 4. Disposal of suits for ejectment-

(1) In a suit for ejectment against a tenant in which the landlord succeeds, the Courts shall ascertain the amount of compensation, if any, payable

u/s 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into Court, within three months

from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees

thereon.

(2) In an application u/s 41 of the Presidency Small Cause Courts Act, 1882, in which the landlord succeeds, the Court shall ascertain the amount

of compensation payable u/s 3 and shall pass an interim order declaring the amount so found due and slating that, on payment, by the landlord into

Court within three months of the date of the said interim order of the amount so found due, the landlord shall be entitled to the order contemplated

by Section 43 of the Presidency Small Cause Courts Act, 1882.

(3) If in such suit or application the Court finds that any sum of money is due by the tenant to the landlord for rent or otherwise in respect of the

tenancy, the Court shall set off such sum against the sum found due under sub-section (1) or sub-section (2), as the case may be, and shall pass a

decree of interim order declaring as the amount payable to the tenant on ejectment, the amount, if any, remaining due to him after such set-off.

(4) If the amount found due is not paid into Court within three months from the date of the decree under sub-section (1) or of the interim order

under sub-section (2) or if no application is made u/s 6, the suit or application, as the case may be, shall stand dismissed, and the landlord shall not

be entitled to institute a fresh suit for ejectment, or present a fresh application for recovery of possession for a period of five years from the date of

such dismissal.

For the purpose of this case, we arc more concerned with sub-sections (1) and (4) of Section 4 of the Act. As we could sec from the very

languate of sub-section (1) of Section 4, it says that in a suit for ejetment against a tenant in which the landlord succeeds, the Court shall ascertain

the amount of compensation, if any, payable u/s 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by

the landlord into Court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into

possession of the land with the building and tree thereon. Hence, there has got to be first an ascertainment of the amount of compensation and that

is the duty of the Court. It can be stated that there has got to be assistance rendered by the parties with reference to the ascertainment of the

amount of compensation by exposing and placing the requisite evidence therefore before the court. We will keep aside that aspect for the time

being. Then, the amount ascertained as compensation shall be declared in the decree and there shall be a direction that on payment by the landlord

into Court of the amount within three months from the date of the decree, the tenant shall put the landlord into possession of the land with the

building and trees thereon. Sub-section (4) of Section 4 is only supplementary to sub-section (1) when it contemplates that if the amount found due

is not paid into Court within three months from the date of the decree under sub-section (1), the suit shall stand dismissed. But, where there is a

failure or omission on the part of the Court to ascertain the amount of compensation and declare the same in the decree, there is no scope for

considering the other aspect of compliance by the landlord with regard to the payment of the amount so ascertained within the period of three

months as per sub-sec. (1) of Section 4. This is the position plainly visible as per a cogent reading of and as per the express language employed in

the provisions of sub-sections (1) and (4) of Section 4.

5. We shall now resort to the pronouncement of the Supreme Court in V.K.A. Ranganatha Konar Vs. The Tiruchirappalli Municipal Council, by

its Commissioner and Another, . We find there that the decree dated 26-3-1956 passed by the Trial Court omitted to prescribe the time limit,

which is a matter of statutory prescription, though the amount of compensation was ascertained and declared in the decree. An application was

taken out by the defendant to dismiss the suit filed by the plaintiff on the ground that there was no deposit made within three months from the date

of the decree. The plaintiff filed an application for amendment of the decree to specify the time within which the deposit should be made. The trial

Court on 20-11-1956 ordering the amendment of the decree inserted a direction to the effect that the deposit should be made before June 23,

1956 that is to say within three months from March 26, 1956, the date of the original decree. Obviously, the amendment of the decree was not

helpful to the plaintiff and that resulted in the dismissal of the suit u/s 4(4) of the Act. The dismissal of the suit was challenged before this Court and

this Court countenanced the plea that only when the decree makes a direction calling upon the plaintiff to deposit a certain amount by way of

compensation to the defendant-tenant within three months, the requirements of S. 4(1) could be stated to have been complied with and it is only

where a decree has been properly drawn in accordance with the requirements of S. 4(1), that the mandatory provision of Section 4(4) could be

invoked. This Court allowed the appeal and the original decree passed on March, 26, 1956 was confirmed. The result of the decision of this Court

was that the plaintiff had the liberty to take out execution for obtaining possession of the property. On a certificate being granted, the matter went

to the Supreme Court, there was an advertence to the object to the Act and the implications of Section 4(1) and Section 4(4) of the Act have been

discussed in the following terms:

Reverting them to the question of construing S. 4(1) and (4), it would appear that what S. 4(1) purports to do is to require that the decree in the

suit to which it applies shall, in the first instance, declare the amount found due by way of compensation. The said provision also requires that the

decree shall declare that the tenant shall put the landlord into possession of the land on payment by the landlord into Court, within three months

from the date of the decree, of the amount, found due. The two operative parts of the decree as contemplated by S. 4(1) are the declaration of the

amount due to the tenant, and the direction to the tenant to deliver possession of the land to the landlord in case he paid into court within three

months of the date of the decree the amount declared due. It is true that the decree would state that the landlord has to pay the amount within three

months from its date, but having regard to the specific and mandatory terms in which Section 4(4) is couched, it would not be reasonable to

construe S. 4(1) as controlling S. 4(4). The relevant clause provides that the decree shall direct that on payment by the landlord into Court, within

three months, of the amount found due, the tenant shall put the landlord into possession. The clause in respect of the payment by the landlord into

Court within three months, amount to a condition which has to be satisfied by the landlord before the tenant is required to deliver to him possession

of the property in question. In other words, reference to the payment by the landlord of the amount found due within the specified period in S. 4(1)

is not so much a direction issued by the Court as specification of a condition expressly and independently provided by S. 4(4).

The provision of Section 4(4) clearly shows that if the amount found due is not paid within three months, the suit of the landlord shall stand

dismissed. The opening clause of Section 4(4) shows that the amount has to be paid within three months from the date of the decree passed under

sub-section (1). The expression "the decree under sub-section (1)" merely describes the sub-section under which the decree is passed, the

emphasis in the context being on the date of the said decree and not so much on the strict compliance with the form prescribed by S. 4(1). If the

decree is passed under S. 4(1), its date is material for the purpose of deciding the period beyond which S. 4(4) would come into operation. In

other words, as soon as it is shown by a tenant that a decree has been passed under S. 4(1), declaring the amount of compensation due to him

from the landlord, he is entitled to claim that he is no longer under obligation to deliver possession of the property to the landlord, because three

months have passed from the date of the decree and the amount declared as compensation has not been paid to him. If the decree happens to be

defective in the sense that it does not reproduce the requirement of Section 4(1) expressly in its terms, that would not take the case outside the

purview of S. 4(4). We are inclined to think that having regard to the mandatory terms used in S. 4(4), it would he illogical and unseasonable to

suggest that a defective decree like the present enables the landlord to circumvent the provisions of S. 4(4). The applicability of S. 4(4) cannot be

repelled merely on the ground that the decree passed under S. 4(1) does not specify the period of three months within which the amount found due

has to be paid. In our opinion, the logical way to reconcile S. 4(1) and S. 4(4) would be to treat the provision prescribed by S. 4(4) as mandatory

and paramount and read the relevant portion of Section 4(1) accordingly. That is why even if the decree does not mention that the amount has to

be paid within three months, the landlord"s obligation to make the payment within three months is still enforceable u/s 4(4), otherwise defective

decrees would deprive the tenants of the benefit intended to be conferred on them by S. 4(4). We are, therefore, satisfied that the High Court was

in error in reversing the order passed by the trial Court. Respondent No. 1 has not paid the amount within three months from the date of the

decree and the suit instituted by it shall stand dismissed u/s 4(4).

6. We do not think that the ratio expressed by the Supreme Court could have a play beyond the sphere of the question and the facts on the basis

of which the question arose in that case, there was. in fact, an ascertainment of the amount of compensation. But, there was an omission to direct

payment within three months. It was opined construing sub-sections (1) and (4) of S. 4 that time limit of three months is not so much the result of a

direction by the Court, but a specification of a condition expressly and independently provided by Section 4(4); failing which the consequence of

dismissal of the suit will entail. 11 there had been an ascertainment of the amount due by way of compensation and even if there is an omission to

make a provision for payment of the same, within the period of three months, which is a prescript ion and a condition under the statute the

provision of the statute, namely, S. 4(4) will have its play and the plaintiff omitting to make the deposit within the time limit, will have to face the

scathe of S. 4(4) of the Act in having his suit dismissed. The decree not directing payment, and in that sense being defective would not make the

implications of Section 4(4) read with S. 4(3) unworkable, and despite the defect in the decree, they will have their force and effect. In the present

case, there had been no ascertainment of the quantum of compensation and there had been no declaration of the same in the decree and in the said

circumstances, it is not possible to fall back upon S. 4(4) of the Act that on the failure of the plaintiff to pay any amount of compensation, his suit

must be thrown out. The Supreme Court had no occasion to consider a case where there had been no ascertainment of the amount of

compensation at all, as in the present case. The ascertainment is the first step, followed up by a declaration in the decree. Then whether there is a

direction to pay within three months or not, the obligation to do so, arises by the force of the statutory prescription or condition and failure thereof

will lead to dismissal of the suit.

7. In Mohanambal v. Salvanayaki, (1961) 2 MLJ 261, Srinivasan, J., in an ejectment application u/s 41 of the Presidency Small Cause Courts

Act, found that there was no ascertainment at the time of determining the ejectment application in favour of the landlord and there was no

consequent interim order declaring the amount ascertained as per S. 4(2), and an ascertainment done long prior to the determination of the

ejectment application and the failure of the landlord to pay the amount within time after such ascertainment were put against him to throw out the

ejectment application itself. The learned Judge deemed fit to remit the matteer back for ascertainment of compensation and passing of orders as

per S. 4(2). The reasons expressed by the learned Judge run as follows:

It seems to me that the order made on 19th August, 1958 was not an interim order within the meaning of S. 4(2). What this provision

contemplates is that at the time of disposal of the application under S. 41 of the Presidency Small Cause Courts Act, in which "the landlord

succeeds", the Court shall ascertain the amount of compensation payable. It is quite clear that the stage, at which the Court is called upon to

determine the amount of compensation is the date on which it comes to the conclusion that the landlord is entitled to vacant possession of the

premises, and it is at this stage that the Court is under a duty to pass what is called an interim order declaring the amount so found due, and

directing its payment within three months from the date. This obviously amounts to a conditional order in the sense that, if the amount is deposited

as directed the landlord would be entitled to vacant possession, and, if he fails to make the deposit his application for ejectment would stand

dismissed. The provisions of the Act do not contemplate an order, determining compensation, and directing its payment at any point of time

anterior to the determination of the ejectment application itself. Even an application proceeding from a party, plaintiff or defendant is uncalled for in

a matter which comes within the scope of Section 4(2) of the City Tenants'' Protection Act. The Court is under a mandatory duty in such cases to

determine the compensation and make an order in terms of the section. It is clear, therefore, that the order dated the 19th August, 1958, when the

Courts had not thought fit to come to a decision as to the right of the plaintiff-landlord to vacant possession, was wholly beyond the jurisdiction of

the Court.

The proper order under S. 4(2) of the Act is one made when the Court decides that the landlord is entitled to a decree for vacant possession. The

order that was made in this application, the one dated 21st September, 1959, did not incorporate any determination of the compensation or its

payment into Court, as required by S. 4(2). At the stage of disposal of the application for eviction, this matter appears to have been completely

lost sight of by the trial Judge. It is clear, therefore, that the Court has failed to dis- charge a duty that has been statutorily laid upon it.

It must be noted here that a case under S. 4(2) is also covered by S. 4(4) with the same implications as in the case of S. 4(1). Mr. V. Krishnan,

learned counsel for the plaintiff, wants us in the present case to adopt the same reasonings and the course, as done by the learned Judge. This, in

our view, is a legitimate suggestion.

8. In N.A. Munavar Hussain Sahib and Another Vs. E.R. Narayanan and Others, , which is a decision relied on for the defendant, the rigour of S.

4(1) and 4(4) has been generally discussed as follows (at page 56 of AIR):

The three months'' time limit in S. 4(1) of the Act is a rigid, fixed and inflexible, and unalterable one incapable of extension either by court or by

agreement of parties. Even if no time is fixed under a decree, only period of three months will be available u/s 4(1) and failure to deposit the

amount within that time would automatically attract S. 4(4) of the Act resulting in the dismissal of the suit.

This decision could be of no assistance at all to the defendant on the facts of this case. The Bench of this Court was not dealing with a case where

there had been no ascertainment of the amount of compensation, at all.

9. Then the question that relevantly arises for consideration in the present case is what is the proper course to be adopted, when the Court below

has found that the defendant is entitled to the benefits of the Act and yet has not proceeded to ascertain the amount of compensation and declare it

in the decree. Mr. V. Krishnan, learned counsel for the plaintiff, though would complain about the lack of positive move on the part of the

defendant to have the amount of compensation ascertained, yet was not averse to the matter going back to the Court below for ascertainment of

the compensation as per S. 4(1) of the Act and the prosecution of the further processes on that basis under the Act. As opined by Srinivasan, J. in

Mohanambal v. Selvanayaki, (1961) 2 MLJ 261, it is a mandatory duty cast upon the Court by the statute. It would be a different matter, if the

parties wilfully abstain from extending any co-operation in that process. But, such could not be stated to be the case here. In the interests of justice,

we think that we should give this much relief to the defendant, once it is found that it is entitled to the benefits of the Act. Hence, only for this limited

purposes, we are obliged to remit the matter back to the Court below as per our direction to be given hereunder.

10. There is another contention, which, though not vehemently argued, yet has been expressed by the learned senior counsel appearing for the

defendant and that is, the renewal of the lease had come into existence and force by the exercise of option for renewal by the defendant and hence

the suit laid before the lapse of the period of the renewed lease was incompetent. With regard to the exercise of option for renewal, we can

construe Ex. A. 4 as amounting to exercise of the option, dropping the addition of any new clause, as suggested in Ex. A.2. However, Mr. v.

Krishnan, learned counsel for the plaintiff, would submit that the set of expressions "please treat our request as withdrawn" occurring in Ex. A.4

would mean the withdrawal of the very exercise of option for renewal. Strain we may, yet we are not able to fall in line with this thinking of the

learned counsel for the plaintiff. It is only with reference to the new clause suggested in Ex. A.2 the request of the defendant has been withdrawn

and nothing more. Then the learned counsel for the plaintiff would submit that the expressions "we have also exercised our option for renewal of

the lease", are in the past-tense, and would not amount to exercise of option by Ex. A.4 itself. A harmonious reading of the document along with

the preceding correspondence leaves no room for ambiguity in our mind, that by Ex. A.4, there had been a valid exercise of option for renewal.

But, a bare exercise of option for renewal could not be of any avail to the defendant, because the law is well settled that a covenant for renewal

contained in a lease does not ipso facto extend the tenure or term of the lease, but only entitles the lessee to obtain a fresh lease. If there is a clause

for renewal in the original lease, and that clause has been taken advantage of and any option pursuant thereto has been properly exercised it only

gives a lever for the lessee to obtain a new lease in accordance with and in due satisfaction of the law governing the making of leases. If to the

renewed lease, the requirements of the first part of S. 107 of the Transfer of Property Act are attracted, as obviously are in the present case, no

valid lease would come into existence unless the said requirements are satisfied. So far as present case is concerned, even if the defendant is stated

to have exercised its option for renewal, which position we have accepted, it has not improved the lot of the defendant to say that there had been a

renewed lease, which had enured in its favour, because admittedly the requirements of Section 107 of the Transfer of Property Act were not

satisfied. The proposition of law has been clearly recapitulated by Ismail, J., as he then was, after tracing the authorities on the subject, in Rasiklal

M. Mehta and Another Vs. The Hindustan Photo Films Manufacturing Company Ltd., a decision cited by Mr. V. Krishnan, learned counsel for

the plaintiff -- in the following terms:

The result, is, once the option is exercised either by the lessor or by the lessee, a valid lease as such does not come into existence unless a

registered document is executed, if the renewal lease in question satisfies the requirements of S. 107 of the Transfer of Property Act. After all, the

option conferred either on the lessee or on the leaser is more or less in the nature of a pre-emption and neither the conferment of such option itself

nor the exercise thereof automatically or of its own force brings into existence a new lease irrespective of other statutory provisions regarding the

form, procedure or the modalities by which alone such a lease can be brought into existence. Therefore, looked at from any point of view, I am of

the opinion that once a renewed lease comes within the scope of S. 107 of the Transfer of Property Act, such a lease can be made only by a

registered instrument. I am emphasising that notwithstanding the option conferred on the lessor or the lessee, in the light of the judgment of the

Federal Court referred to above, it is a new lease that comes into existence as a result of the exercise of the option for renewal and that too by the

bilateral acts of the parties and consequently the new lease is made within the scope of the expression occurring in S. 107 of the Transfer of

Property Act and therefore it has to be only by a registered instrument. In this case, admittedly the renewed lease was for a period of three years

and if it has not been a renewal lease, the initial lease itself, there was no dispute that it required registration. Simply because ii happcnded to be a

renewed lease, it does not follow that no registered document was necessary to bring into existence such a lease. In this particular case, the

appellants instituted the suit only on the basis of a valid renewed lease for a period three years and the respondent herein having committed a

breach of that contract by surrendering possession or terminating that lease prior to the expiration of the period prescribed thereunder. Once I hold

that such a lease should have been made only by a registered instrument and there being no registered instrument, there was no valid lease for a

period of three years, the appellants were not entitled to institute the suit for recovery of the amounts in question as damages for breach of the

contract alleged to have been committed by the respondent herein.

11. In Delhi Development Authority Vs. Durga Chand Kaushish, , which again is a decision, relied on by Mr. V. Krishnan, learned counsel for the

plaintiff, there are observations as follows indicating that the renewal of a lease is really a fresh lease:

A renewal of a lease is really the grant of a fresh lease. It is called a ''renewal'' simply because it postulates the existence of a prior lease which

generally provided for renewals as of right. In all other respects, it is really a fresh lease.

In the present case, as we could see from the correspondence, the parties were at logger heads even with regard to terms of the lease to be

renewed and no document of fresh lease as per the requirements of S. 107 of the Transfer of Property Act had come into existence to bring about

a renewal lease valid in the eye of law. Hence, we do not think that the defendant through his learned counsel could successfully put forth a plea

that there had been a renewed lease, and hence the suit for ejectment was not competently laid.

12. There was a contention raised with reference to the validity of the notice to quit. Though we did not hear any expatiative submission on this

question by the learned senior counsel for the defendant, yet we must express the view concurring with that of the Court below that no exception

could be taken to the validity of the notice to quit in the present case. No other point was argued before us.

13. As per our above discussion, we allow this Appeal to the extent of remitting the matter back to the Court below for the purpose of the Court

below ascertaining the amount of compensation; to declare the same in the decree; to give directions with regard to deposit of the same; and to

work out further processes as set down u/s 4 of the Act. In the peculiar facts and circumstances of the case, the parties are directed to bear their

costs up to and inclusive of the disposal of this Appeal. Further costs will abide the results before the Court below, pursuant to this order of

remittal. The defendant, appellant herein, is entitled to refund of the Court-fees paid on the memorandum of this Appeal. We make it clear that the

remittal is only for the purposes indicated above and we have not disturbed the findings of the Court below on any of the issues.

14. Appeal partly allowed.