

**(1957) 07 KL CK 0033**

**High Court Of Kerala**

**Case No:** C.R.P. 71 of 1955 (M)

Ramachandra Prabhu

APPELLANT

Vs

Gapala Menon and Others

RESPONDENT

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**Date of Decision:** July 23, 1957

**Citation:** (1957) KLJ 848

**Hon'ble Judges:** G. Kumara Pillai, J

**Bench:** Single Bench

**Advocate:** V.P. Gopalan Nambiar, for the Appellant; K. Kuttikrishna Menon and V. Balakrishna Eradi for 1st Respondent, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

G. Kumara Pillai J.

1. This revision petition arises out of certain proceedings before the Rent Controller, Kozhikode in R.C. 94 of 1953 on his file. The building involved in the said Rent Control case is a non-residential building belonging to the tarwad of respondent 1 here, B. Gopala Menon, and the revision petitioner here, Ramachandra Prabhu, was in possession of it for some years under a lease from Gopala Menon. On the 1st June 1951, Ramachandra Prabhu, agreed to an enhancement of the rent and gave a letter to Gopala Menon undertaking to pay thereafter rent at the rate of Rs. 125 per month and to pay the same by the 30th day of the month. Alleging that Ramachandra Prabhu had paid rent at this rate till the 29th February 1952 and had defaulted to pay rent thereafter and that he had also sub-let the building to a syndicate and two other persons and was collecting a rent of over Rs. 300 per month from the sub-lessees, Gopala Menon filed R.C. 94 of 1953 before the Rent Controller of Kozhikode on 10-3-1953 praying for recovery of possession of the building with arrears of rent. Ramachandra Prabhu as well as the sub-lessees were made parties to the Rent Control Case. Ramachandra Prabhu who was respondent 1 in the Rent Control Proceedings filed a counter-statement on 6-4-1953. He admitted in that statement that on account of a notice issued to him by Gopala Menon he had

agreed to pay rent at the rate of Rs. 125 per month from 1-6-1951 and had also paid rent at that rate for some time. But he contended that the original rent fixed as per a lease deed dated 30th September 1945 was only Rs. 24 per month, that the enhancement in June 1951 was illegal and could not be given effect to as the landlord had not done anything in the property entitling him to claim an enhancement, that there would be no arrears if the excess rent realized from him during the period he was paying rent at the rate of Rs. 125 per month was adjusted towards the rent for the period in respect of which Gopala Menon was claiming arrears, and that the prayer for recovery of possession could not, therefore, be allowed. Subsequently, Gopala Menon asked for eviction of Ramachandra Prabhu and his sub-tenants on the ground that u/s 7 (A) of the Madras Rent Control Act, XXV of 1949 as amended by Act, VIII of 1951 Ramachandra Prabhu and his sub-lessees were not entitled to contest his petition as they had not deposited the arrears of rent [and future rent at the agreed rate after the petition was filed and that, therefore, he should be put in possession of the building. The Rent Controller allowed this petition and passed an order directing Ramachandra Prabhu and his sub tenants to put Gopala Menon in possession of the building. Against this order, Ramachandra Prabhu filed an appeal in the Court of the Subordinate Judge of South Malabar, Kozhikode. That appeal was dismissed by the Subordinate Judge on the 4th August 1953. From the appellate order of the learned Subordinate Judge he then preferred a Civil Revision Petition in the Court of the District Judge of South Malabar, but that Civil Revision Petition also was dismissed by the District Judge on the 15th of April 1954. Thereupon, Ramachandra Prabhu has filed this Civil Revision Petition to revise the orders of the Rent Controller, the Subordinate Judge and the District Judge. Counsel for both sides agreed before me that the case is governed by Section 7-A, clause (1),(3) and 4 of the Madras Act, XXV of 1949, as amended by Act VIII of 1951 which reads as follows :

7-A (1) No tenant against whom an application for eviction has been made by a landlord u/s 7, shall be entitled to contest the application before the Controller under that section, or to prefer any appeal u/s 12 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

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller shall, on application made to him either by the tenant or the landlord, and after making such inquiry as he deems necessary determine summarily the rent to be so paid or deposited.

(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 put the landlord in possession of the building.

2. The contentions of the revision petitioner here were (1) that as the enhancement of the rent on the 1st June 1951 was illegal, the excess rent paid by him during June 1951 to February, 1952 should be adjusted against the arrears of rent payable for the period after February 1952 and that on such adjustment there would be no arrears for him to pay or deposit as required by section 7-A(1); (2) in any case, as there was dispute between the tenant and the landlord as to whether there were arrears and what was the rate of rent to be paid the tenant was not bound to make the payment or deposit as per section 7-A(l) till the Rent Controller had passed an order u/s 7-A(3) determining summarily the rent to be paid or deposited by him and since no such order was passed in this case he was not bound to and could not make the payment or deposit u/s 7-A(l); and (3) even if he was bound to make any payment or deposit u/s 7-A(l) and had defaulted in that matter, this Court should condone his default and allow him make the payment or deposit, and continue the contest in the Rent Control Case.

3. It is plain from Section 7-A that the section was enacted for providing a summary procedure and that the deposit which the tenant has to make u/s 7-A(1) was not to be affected by the maintainability or otherwise of the claim for rent made by the landlord in the Rent Control case or by the Controller's decision on that question. The direction in section 7-A(l) for enabling the tenant to contest the landlord's application is that he should pay or deposit the arrears and future rent at the rate at which rent was last paid or agreed to be paid. Therefore, for determining the arrears to be paid or deposited u/s 7-A(l) there is no necessity to consider what would be the "fair rent" allowable under the Act and whether any amount in excess of such fair rent had been paid in the past and such amount was available for being adjusted against the arrears claimed by the landlord. The arrears of rent to be deposited or paid u/s 7-A(l) is not the arrears calculated on the basis of the fair rent allowable under the Act but the arrears calculated on the basis of the actual rent last paid or agreed to be paid. In the present case, it is admitted by the tenant that the rent agreed to be paid was Rs. 125 per month and that he had also paid rent at that rate till February 1952. Admittedly there has been no payment after February 1952. Therefore, in the view I have taken regarding the interpretation of section 7-(l) the contention that the tenant has paid for some period rent considerably in excess of the fair rent allowable under the Act and that, if the excess thus paid by him is adjusted against the rent for which arrears are claimed, there would be no arrears, is not one which, in the circumstances of this case, can be gone into in considering the question whether there has been default of the payment or (deposit to be made u/s 7-A(l). I am fortified in this view by the decision of a Division Bench of the Madras High Court in *Murugappa Chettiar v. Balasundaram Chetty* (1951 (1) M.L. J. 530). That

was a case u/s 7 of the Madras Buildings (lease and Control) Act, 1946, and related to a slightly different matter; but the principle involved is the same. It was said in that case:

The only point pressed on us by the petitioner's learned counsel, is that there was another application for fixation of fair rent and according to the rent fixed in that application the landlord would have with him sufficient money to discharge the arrears relating to the period of the alleged default. That may be so. But that does not save the tenant from the consequence of the admitted default he has made. It is one thing to say that that the tenant has the right to have the excess amount, on the basis of the fair rent, adjusted towards the arrears: it is another thing to say that he can escape the consequences of not tendering or paying the rent on or before the date allowed u/s 7 of the Act.

The first contention of the revision petitioner here, therefore, fails and has to be overruled.

4. In view of the conclusion I have arrived at on his first contention, the revision petitioner's second contention also cannot be accepted. No doubt, there was a dispute between the landlord and the tenant as to whether there were arrears of rent or not. That dispute arose not because they were not agreed as to the actual amount paid by the tenant or to the period for which he had made the payment but only because of the different views they took regarding the interpretation of section 7-A(l) under which, according to the revision petitioner, the arrears to be paid or deposited were the arrears calculated on the basis of the fair rent allowable under the Act, and, according to the respondent 1, the arrears to be paid or deposited were the arrears calculated on the basis of the rent last paid or agreed to be paid. In view of the clear provision in section 7-A (1) that the payment or deposit had to be made at the rate at which the rent was last paid or agreed to be paid, and the revision petitioner's own admission that he had agreed to pay rent at the rate of Rs. 125 per month and had paid at that rate for some months, there was no scope in this case for any dispute as to the amount of the rent which was to be paid or deposited. Therefore, this is not a case to which section 7-A (3) will apply. Even granting that this is a case in which there was a dispute as to the amount of rent the Controller can make the summary determination u/s 7-A (3) only if the tenant or landlord makes an application in that behalf. Admittedly, neither the landlord nor the tenant has made an application in this case u/s 7-A (3). If the tenant had any genuine doubts as to the amount which he had to pay or deposit he should have made the application u/s 7-A (3). Since from the admissions by the tenant in his written statement it was clear that there was no dispute between him and the landlord as to the rate of the rent last paid or agreed to be paid or as to the period for which rent has been paid the Controller cannot be blamed for not considering that there was any dispute as to the amount of rent to be paid or deposited falling u/s 7-A (3) and the landlord also cannot, therefore, be blamed for not making an

application under that clause. Further, the omission of the landlord to make an application u/s 7-A (3) will not in any way help the tenant as the clause has expressly conferred a right on the tenant also to make an application for summary determination of the amount to be paid or deposited in case he considers there is a dispute as regards the amount. I would, therefore, overrule the revision petitioner's second contention also.

5. Lastly, it was urged by the revision petitioner's counsel that the default to make the payment should be condoned by this Court and he should be allowed to pay or deposit the amount now and in support of this contention reliance was placed upon the decision of the Madras High Court in *Aravamudha Chettiar v. Abdul Kadir Rowther* (1952 (II) M.L.J. 492) wherein it has been held that even after an order made by the Rent Controller for eviction as a result of nonpayment of rent the appellate authority, including the High Court in revision, has power to condone the nonpayment by acceptance of rent because of the provision in section 7-A (4) enabling the tenant to show sufficient cause to the Controller or the appellate authority not to give effect to the order for eviction. In *Aravamudha Chettiar v. Abdul Kadir Rowther* (1952 (ii) M.L.J. 491) the Court proceeded on the ground that the nonpayment was not due to any willful neglect on the part of the revision petitioner and could, therefore, be condoned. I am unable to hold in this case that the default was not wilful, for on the admissions of the revision petitioner himself there was no scope for a dispute as regards the rate of the rent last paid before the application under the Rent Control Act. There was also no offer to pay the amount when the matter was pending in the District Court. It was submitted on behalf of the respondent 1 that he had already obtained possession of the building as per the Rent Controller's order and the correctness of this statement was not disputed by the revision petitioner's counsel. To allow the revision petitioner to make the deposit now and recover possession of the property from the landlord on the basis of that deposit would be to introduce further complications in the matter. In the circumstances I do not think I shall be justified in allowing the revision petitioner to make the deposit at this belated stage. For the reasons stated above, the revision petition fails and is accordingly dismissed with costs.