
(1955) 10 MAD CK 0029

Madras High Court

Case No: C. R.P. No. 567 of 1955

K. R. Kuppuswami Iyer

APPELLANT

Vs

R. R.
Harinarayanachari

RESPONDENT

Date of Decision: Oct. 13, 1955

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Rajagopala Ayyangar, J

Bench: Single Bench

Advocate: K. V. Srinivasa ayyar, for the Appellant; N. S. Srinivasan, for the Respondent

Final Decision: Dismissed

Judgement

Rajagopala Ayyangar, J.

The tenant whose eviction has been ordered by the District Judge of Madurai in C. R. P. No. 448 of 1954 before him is the petitioner here. The respondent landlord filed a petition for the eviction of his tenant on 18th May 1953 on the ground that the latter had not paid the rent for two months totaling Rs. 12-8-0 the rent being Rs. 6-4 0 a month. On 1st June 1953 the petitioner appeared before the Rent Controller and paid the R. 12-8-0 to the landlord who accepted it and made an endorsement on his petition. The tenant who appeared before the Rent Controller and made the payment of arrears referred to filed a statement in which he denied that he ever wilfully defaulted in the payment of run. He pleaded that the rent for Penguin Chitrai, i.e., (for April and May) was not paid because he was 111 and so could not send the amount. In the circumstances he prayed that no eviction should be ordered.

2. The petition was enquired into by the Rent Controller. The landlord's case was that the tenant had been habitually irregular and that in respect of the rent for Penguin and Chitrai there had been a wilful default. The Rent Controller upheld the tenant's case that there had been no wilful default and recorded his finding in these terms:

But from the evidence it is clear that the respondent has been paying the rent due without much default and he is one who has been anxious to not being dubbed as a wilful defaulter of the payment of rent due and hence held liable to be evicted."

3. The landlord filed an appeal to the Appellate authority who confirmed the Rent Controller. It was there stated,

The petitioner-landlord though he stated that the rents were to arrears for -two months had to concede that the rent for only one month was due. It is also seen that the rents had been paid a little irregularly and apart from the usual threat to take action the landlord had been receiving the rents Having regard to the circumstances of the case I agree with the Additional Rent Controller that there was no wilful default."

4. From this order the landlord took the matter in revision to the learned District Judge who reversed this decision and directed eviction. It is this order that is the subject of revision before me.

5. The reasoning on which the learned District Judge set aside the order was on these lines. The fact that the landlord had accepted billed payments in the past would not confer upon the tenant a right to make such payments for ever. That at rent for only one or two months was in arrears and otherwise there had been payment of rent was not sufficient to hold that there had been no "wilful" default on the part of the tenant.

The District Judge then extracted a passage from the order of the appellate authority and held that no reasons had been given or the circumstances indicated which would prevent default being considered "wilful". He then referred to the Vol. 69-10 decision of Ramaswami, J, in Ramalinga Iyer v. Sivarama Iyer (1), that "wilfulness is a state of mind starting from to pine indifference upwards"" and held that this definition was satisfied in the present case by the failure on the part of the tenant to pay the rent during April May and on this ground directed eviction.

6. The primary question addressed to me was whether the learned District Judge acted properly in setting aside the order of the Rent Controller and the appellate authority who held that there was no wilful default. In C.R.P. No. 1420 of 1954, I have copiously poured to define the scope of the power of a revisional Court under S. 12 (B) of the Madras Buildings (Lease and Rent Control) Act, I stated there:

The only proper way of defining the relative jurisdiction of the appellate and revisional authorities constituted under the Madras Buildings (Lease and Rent Control) Act is to hold that while an appellate authority is entitled to examine every question of fact and law dealt with in or arising out of an order of the Rent Controller, a revisional authority, while undoubtedly can interfere with questions of law where the Rent Control Act or any provision has been misconstrued, cannot normally interfere with findings of fact unless (a) there were no other materials on which such a finding could be based or (b) the finding has been reached by a consideration of irrelevant or inadmissible matter (c) or it is so

perverse that no reasonable person could have reached that conclusion (d) or the finding had been reached by an erroneous understanding of the law applicable to the matter. To hold that a revisional authority could interfere with findings of fact of an appellate authority without regard to these limitations would be to convert a revision into a regular appeal and to obliterate the distinction between appeals and revisions which the Act has taken care to provide."

I shall approach the order of the District Judge in the light of these principles. The question whether the default is wilful involves the determination of the state of mind of the tenant and is thus primarily a question of fact. Of course this has to be gathered from the circumstance as no direct evidence is possible in regard to this matter. But in considering it one has to take note of the fact that the condition that the default

(1) (1934) 2 M.L.J. 768-67 L. W, 929, in the payment of rent should be "wilful" has been introduced by way of amendment in the place of a provision with permitted eviction on mere default. Therefore if there are circumstances from which it can be gathered that there was really no intention deliberately to withhold the payment, I am of opinion that there cannot be any wilful default which is necessary to constitute a ground for eviction under the Act as now amended. In other words, the distinction has to be drawn between mere failure to pay and a wilful default in payment. If any other construction were adopted it would be tantamount to saying that the amendment effected by Act VIII of 1951 has not achieved any purpose.

In the present case there were materials before the Court in the shape of the evidence of the tenant's illness as well as the alacrity with which he paid the rent immediately the notice went to him which though not conclusive was certainly evidence negating "wilfulness" in the default. If, there were materials on which the conclusion of the Rent Controller could be based and that finding was not disturbed by the appellate authority, I hold that the learned District Judge was not justified in setting aside that order.

Learned Counsel for the respondent urged before me that the District Judge had under S. 12 (B) of the Madras Buildings (Lease and Rent Control) Act jurisdiction to interfere where in his opinion the order of the appellate authority was not regular or proper, and that in consequence this Court should approach the order of the District Judge in the same manner in which this Court dealt with orders of the Government under S. 64-A of the Motor Vehicles Act when its jurisdiction is invoked by applications under Art. 226. I do not consider the analogy useful as the District Court is a Court subordinate to the High Court and there is basic difference between the powers of a revisional Court under S. 115, C. P. C. and the powers exercisable by this Court when acting under Art. 226 of the Constitution. In the light of this I do not consider it useful to discuss this in any detail. "

The civil revision petition succeeds. The order of the District Judge is vacated and that of the Rent Controller restored. The petitioner will have to pay costs of this revision from the respondent