

(2013) 11 MAD CK 0109

Madras High Court

Case No: C.R.P. (NPD) No. 3934 of 2010 and M.P. No. 1 of 2010

Shabbir Roshan Zaveri

APPELLANT

Vs

Mrs. Sakinabai Mohsanbhoy

RESPONDENT

Date of Decision: Nov. 12, 2013

Citation: (2014) 1 LW 548 : (2014) 2 MLJ 300

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: V. Bhiman for M/s. Sampathkumar Associates, for the Appellant; P.K. Siva Subramaniam in CRP No. 3934/2010 and for Respondent 1 in CRP No. 3935/2010, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J.

The revision petitioner, who is the tenant, filed C.R.P. No. 3934 of 2010 challenging the order of the appellate authority under the Tamil Nadu Buildings (Lease and Rent Control) Act (for short "the Act") reversing the order of the Rent Controller permitting the petitioner to deposit rent before the Court u/s 8(5) of the Act. He also filed C.R.P. No. 3935 of 2010 challenging the said order of eviction on the ground of willful default. The revision petitioner filed an application under 8(5) of the Act seeking permission of the Rent Controller for depositing the rent before the Court. Pending that application, the landlady filed an application for eviction of the petitioner on the ground of willful default and also claiming that he is the subtenant. She claimed rent for the period from 01.04.1998 to 31.10.1998. The Rent Controller allowed the application of the petitioner u/s 8(5) of the Act and dismissed the application of the landlady for eviction on the ground of willful default.

2. Aggrieved against the same, the landlady preferred two appeals, namely, one against allowing the petition u/s 8(5) of the Act and another against dismissal of the

application for eviction. The appellate Court under the Act allowed the appeals and set aside the orders of the Rent Controller permitting the petitioner to deposit the rent and refusing eviction thereby ordered eviction of the petitioner. Aggrieved against the same, the present revision petitions are filed.

3. The learned counsel for the petitioner mainly would contend that insofar as the application u/s 8(5) of the Act is concerned, it was allowed by the Rent Controller and he had complied with the order by paying the rent. Thereafter, when the appeal was allowed and his request for deposit of rent was rejected, he has no forum to deposit the rent and therefore, he was prohibited from paying rent. Hence, there is no default, much less, willful default. The appellate court erred in the passing the order. Hence, he seeks for allowing these revision petitions. He would also contend in open court, when these revisions posted under the caption "for orders" were taken up for hearing, that he is willing to deposit the arrears of rent today, if the court directs him to pay the same.

4. The learned counsel for the respondent/landlady would contend that the petitioner, even after coming to this Court by way of filing revision after failing before the appellate court, has failed to pay any rent. It is submitted that admittedly the application filed by him u/s 8(5) of the Act was allowed by the Rent Controller, but the appeal preferred by her was allowed by the appellate authority dismissing the application u/s 8(5) of the Act and ordering eviction. Even from the date of that order, at least as per the law, the petitioner ought to have paid the rent. But he failed to pay rent even after dismissal of 8(5) application. The learned counsel brought to the notice of the Court that the first respondent in C.R.P. No. 3935 of 2010 has filed a memo stating that he was the partner in the partnership firm and he paid the rent for the tenancy and he retired from the firm, which was not informed to the landlady and no consent was obtained to continue the tenancy by the proprietorship and also admitted that the second respondent is a tenant claiming under him and thereby it is clear that the present revision petitioner is the sub-tenant. The learned counsel submitted that even assuming but not admitting the present revision petitioner is the tenant, as claimed by him to be the tenant, he has not deposited any amount, at least, after the dismissal of the 8(5) application and therefore, he is liable for eviction as per the order of this Court in 2007-4-L.W. 435, V. Kannadasan v. K. Swaminatha Pathar, wherein, it was held that the conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to willful default and such subsequent conduct of the tenant can be taken into consideration in deciding the matter. He also relied on the judgment of the Apex Court in [Mohammedkasam Haji Gulambhai Vs. Bakerali Fatehali \(D\) By Lrs.,](#) .

5. Heard both sides and considered the entire materials available on record.

6. The short point for consideration is whether the petitioner, who claims to be the tenant, having not paid the rent even after the dismissal of the application filed u/s

8(5) of the Act can be allowed to continue in the tenancy?

7. The admitted fact of the parties is that the application filed by the petitioner u/s 8(5) of the Act was originally allowed by the Rent Controller and thereafter, in the appeal filed by the landlady, it was dismissed and eviction was ordered on the ground of willful default. The rent is due from 01.04.1998. He is the second respondent in the Rent Control Original Petition. In the eviction application filed by the landlady, the first respondent has filed a counter stating that he alone is the tenant and the second respondent is a sub-tenant. He has already vacated. For this the submission of the learned counsel for the revision petitioner is that the revision petitioner is the tenant, as it was a partnership firm and it was dissolved and thereafter, even though the partnership firm was dissolved, he continued in the business and he became the proprietor and therefore, he cannot be called as a sub-tenant. Be it as it may, admittedly the fact remains, the revision petitioner now claims that, in his capacity as a tenant, he is living there. If he is claiming to be the tenant, his first and foremost duty is to pay rent regularly. It is an admitted case that in the appeal filed by the landlady, the application u/s 8(5) was dismissed on 14.09.2010. At least on and from that date, he is liable to pay the rent to the landlady, if he is still a tenant, by virtue of partnership firm being dissolved and thereby proprietorship firm came into existence, as a duty is cast upon him to pay rent regularly. But admittedly, there is arrears of rent and if the Court directs him he is willing to deposit it.

8. The petitioner ought to have filed an application before this Court, while filing the revision seeking permission to deposit the arrears, and he should have filed challan for payment of rent. But even in this appeal he neither deposited the arrears nor filed an application seeking permission to deposit the rent to show his intention and nothing has been done, whereas, the learned counsel for the respondent clearly proved that he was in willful default of payment of rent from the beginning.

9. This Court in the judgment in *V. Kannadasan v. K. Swaminatha Pathar*, reported in 2007-4-L.W. 435, has held that the conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to willful default and such subsequent conduct of the tenant can be taken into consideration in deciding the matter. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to willful default. In the said decision, this Court in paragraph Nos. 21 and 22 has held as under:-

21. The learned counsel for the petitioners/tenants vehemently contended that when there is no willful default prior to the filing of the petition, the subsequent arrears cannot be taken as willful default. This contention does not merit acceptance. Let us take a case when the tenant committed default and continued to commit default or being irregular in paying the rent during the pendency of proceedings. Is it fair to hold that there was no willful default. This is all the more so,

where the tenants have challenged the sale deed in favour of the respondent landlady.

22. The conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to willful default and such subsequent conduct of the tenant can be taken into consideration in deciding the matter. In the decision reported in [B. Anraj Pipada Vs. V. Umayal](#), , S. Jagadeesan, J. has held that when the eviction proceedings have been initiated on the ground of willful default, one would expect the tenant to pay the rent regularly every month at least after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to willful default.

10. The appellate authority under the Act has clearly pointed this factor and also given clear findings that there is willful default. The tenant from 01.04.1998 for a period of fifteen years continued to occupy the premises without even depositing the rent. Hence, it is clear that he is a willful defaulter in paying rent.

11. In [Mohammedkasam Haji Gulambhai Vs. Bakerali Fatehali \(D\) By Lrs.](#), , relied on by the learned counsel for the respondent/landlady, the Apex Court held as follows:

13. To restate in the present case facts do not show that Bakerali could exercise his power throughout the suit premises at his pleasure to the exclusion of his two sons who were running their business in partnership there and it cannot be said that he continued to exercise control over the suit premises. Bakerali had no concern with the partnership business now being carried on under the partnership deeds dated 14.11.1974 and 6.03.1979 in the suit premises. In the absence of records of the partnership business which the respondents failed to produce, it has to be presumed that rent was paid by one of the sons of Bakerali in the new partnership from the partnership account. It is now the sons of Bakerali who are in complete control of the suit premises and were exercising exclusive possession for the same to the exclusion of Bakerali. That Bakerali would occasionally visit the shop premises does not advance the case of the respondents that he could exercise his rights over the shop premises. He had handed over the shop premises to his sons who were exercising their independent right over the same and conducting their business thereat. Bakerali completely divested himself of the suit premises as well as the business. Clause (7) of the first partnership deed dated 15.11.1955 negated any contention that Bakerali had taken the suit premises on lease for the benefit of the family. Bakerali never paid rent of the shop premises which, as noted above, was paid from the partnership of his two sons. Bakerali was not exercising any physical control over shop premises. Record does not show that he had either the power or the intention at any given time to exercise his right of possession over the shop premises. It cannot even be said that he was exercising control over the shop premises through his sons who were carrying on then-independent business in the shop premises and paying rent therefore. Bakerali was neither in physical nor in

actual or constructive possession of the shop premises. Physical control over the shop premises was now exercised by his two sons to the exclusion of Bakerali. It is not that Bakerali could just walk in and assert his right of possession to the shop premises. His sons were not in occupation of the shop premises and running their business as agents of Bakerali. We do not think that High Court in the present case approached the question raised in the revision before it properly. It relied on the judgment of his Court in [Jagan Nath \(Deceased\) through Lrs. Vs. Chander Bhan and Others,](#) which was under the provision of Delhi Rent Control Act and was confined to the facts of that case which were not applicable in the present case.

12. Applying the facts of that case to the case on hand, it is clear that the revision petitioner has no locus standi to seek the relief at all. Hence, the Appellate authority has passed a fair, reasoned and correct order and I do not find any reason to interfere with the reasoned order of the appellate court. Accordingly, these civil revision petitions are dismissed and the common order dated 14.09.2010 passed by the appellate authority under the Act, namely, the VII Judge, Court of Small Causes, Chennai, in R.C.A. Nos. 10 and 11 of 2002 is confirmed. The petitioner is directed to vacate and hand over the vacant possession of the property to the landlady within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.