PETITIONER:
J.JERMONS

Vs.

RESPONDENT:
ALIAMMAL & ORS.

DATE OF JUDGMENT: 16/08/1999

BENCH:
Syed Shah Mohammed Quadri, V.N.Khare

JUDGMENT:

SYED SHAH MOHAMMED QUADRI,J.

This appeal arises from the common order of the High Court of Madras in CRP Nos.1582, 1705/93 and CMP No.13064/96 in CRP No.1705/93 passed on March 27, 1997. The appellant is the tenant and the respondents are the landlords of the cycle shop bearing No.70, Main Road, Eruvadi (hereinafter referred to as 'the premises').

The appellant took the premises on monthly rent of Rs.60/- from one Shahul Hameed, predecessor-in-interest of the respondents, in 1974. On March 6, 1979, the appellant was served with a prohibitory order by the Tax Recovery Officer, Income Tax Department, Tirunelveli, which was followed by another order issued by the same authority under Section 226(3) of the Income Tax Act on January 18, 1988. From the date of service of the prohibitory order the appellant stopped payment of monthly rent to the respondents. But on receiving the notice on January 18, 1988, he paid rent for the entire period to the Tax Recovery Officer.

On the ground that the appellant had committed wilful default in payment of rent for the periods : (A) March 6, 1979 to February 24, 1988 and (B) February 24, 1988 to February 15, 1990 and on the ground that he required the premises for his own use and occupation, the said Shahul Hameed (landlord) filed R.C.O.P.No.2 of 1990 for eviction of the appellant (tenant) before the Rent Controller (District Munsiff Court) Valliyur under Sections 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short 'the Act') on August 17, 1990. The appellant contested the petition denying the pleas of wilful default in payment of rent as well as of personal requirement of the landlord. The learned Rent Controller dismissed that petition on April 30, 1991. Aggrieved thereby, the respondents filed R.C.A.No.43 of 1991 before the Appellate Authority, Tirunelveli. In appeal, it was held that the ground of bona fide requirement of the respondents- landlords was not proved; however, the ground of wilful default in payment of rent was found against the

appellant-tenant and accordingly eviction of the appellant was ordered on April 12, 1993. Against that order both the appellant and the respondents filed Revisions before the High Court -- CRP No.1582 of 1993 was filed by the appellant and CRP No.1705 of 1993 was filed by the respondents. In their C.R.P. the respondents filed CMP No.13064 of 1996 seeking permission to amend the grounds of revision and to raise the additional ground under Section 10(3)(c) of the Act for additional accommodation. The petition was opposed by the appellant. However, the High Court allowed the CMP. In the CRPs it was held that the appellant committed wilful default in payment of rent and the additional ground under Section 10(3)(c) was established. Thus, the High Court confirmed the order of eviction by the common order, referred to above. It is against that order, the present appeal is filed by special leave.

Dr.A.F.Julian, learned counsel for the appellant, urged that by virtue of the prohibitory order issued by the Income Tax Department on March 6, 1979, the appellant was prevented from paying the rent to the landlord and, therefore, non-payment of rent to the landlord after that date cannot be termed as 'wilful default'. He submitted that after receiving notice under Section 226(3) of the Income Tax Act on January 18, 1988, the appellant paid the rent to the Income Tax Department on February 24, 1988. He next contended that having lost on the plea of bona fide personal requirement under Section 10(3)(a)(iii), the landlord could not have been permitted to make out an entirely new case by way of additional ground under Section 10(3)(c) of the Act and in any event as the High Court did not consider the requirements of the proviso to Section 10(3)(c) of the Act, the order under appeal deserved to be set aside.

Mr.B.Kumar, learned counsel for the respondents, argued that wilful default in payment of rent by the appellant relates to various periods, the prohibitory order of March 6, 1979, is confined to the rent that was due on that date and as it did not require the appellant to pay future monthly rent to the Income Tax Department so nothing prevented him to discharge his obligation of payment of rent to the respondents thereafter. As such the plea of payment of rent to the Income Tax Department on February 24, 1988, long after the rent became due will not relieve him of the consequences of the wilful default in payment of the rent. He has submitted that the High Court considered the application of the proviso and found that great prejudice would be caused to the landlord if their petition was dismissed.

On the above contentions, the following points arise for determination :

(i) What is the effect of the prohibitory order dated March 6, 1979 and notice dated January 18, 1988 issued under Section 226(3) of the Income Tax Act by the Tax Recovery Officer?

(ii) Whether non-payment of rent by the appellant to the landlord after service of the said order/notice of Tax Recovery Officer on him, amounts to wilful default within the meaning of the proviso to Section 10(2)(i) of the Act?

(iii) Whether the High Court is correct in law in

allowing CMP No.13064 of 1996 filed by the respondents and in ordering the eviction of the appellant under Section 10(3)(c) of the Act?

Points (i) and (ii) may be conveniently considered together.

To appreciate the question of wilful default in payment of rent, Section 10(2)(i) and the proviso thereto may be noticed here :

"10(2)(i). 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 agreement by the last day of the month next following that for which the rent is payable.

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."

A combined reading of the provisions, extracted above, shows that a tenant will be in default of payment of the rent due by him in respect of the building if (a) he has not paid or tendered the rent due within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord; or (b) in the absence of such agreement he has not paid or tendered the rent due by him by the last day of the month next following that for which the rent is payable, e.g., the rent for the month of January is not paid by February 28. But a default simplicitor in payment of rent is not a ground to order eviction of the tenant because the tenant is entitled to satisfy the Court/Controller that his default in paying or tendering the rent was not wilful. If the Court/Controller is satisfied that non-payment/tendering of rent was not wilful, it has to give the tenant a reasonable time which should not exceed fifteen days, for payment/tendering of the rent due up to the date of such payment to the landlord and on the tenant so paying/tendering it has to reject the application seeking eviction of the tenant. But if the Court/Controller is not so satisfied, the default will be termed as 'wilful default' and the tenant will be liable to be evicted on that ground.

The wilful default in payment of rent, complained of against the appellant, comprises of the following periods :

(A) from March 6, 1979 to February 24, 1988; (B) from February 25, 1988 to February 15, 1990; and (C) February 16, 1990 to February 28, 1991.

The appellant, admittedly, did not pay the rent to the landlord after service of prohibitory order issued by the Tax Recovery Officer, Income Tax Department on March 6, 1979 (Ex.B-2). That order appears to have been issued under Section 222(1)(a) read with Rule 26(1)(a) of Second Schedule of the Income Tax Act. Those provisions may be quoted here for ready reference :

"222(1)(a). Certificate to Tax Recovery Officer --

(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee (such statement being hereafter in this Chapter and in the Second Schedule referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule --

(a) attachment and sale of the assessee's movable property."

Rule 26(1)(a)(i) of Second Schedule of Income Tax Act insofar as it is relevant for our purpose reads as under :

"26(1)(a)(i). Debts and shares, etc. --

(1) In the case of --

(a) a debt not secured by a negotiable instrument,

(b) *** *** *** (c) *** *** *** the attachment shall be made by a written order prohibiting --

(i) in the case of the debt - the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer."

Section 222(1)(a) of the Income Tax Act speaks of drawing up of tax recovery certificate and prescribes the modes of recovery of tax specified therein. Clause (a) deals with the recovery of tax due by an assessee by attachment and sale of his moveable property in accordance with the rules laid down in the Second Schedule. Rule 26 which falls in Part II of the Second Schedule, takes care of attachment and sale of moveable property being debts and shares etc. Clause (a) says that in case of debt not secured by negotiable instrument, the attachment shall be made by a written order prohibiting the creditor from recovering the debt and the debtor from making payment thereof until further order of the Tax Recovery Officer.

The relevant extract of Ex.B-2 - the prohibitory order of March 6, 1979 - is as follows :

"Prohibitory order, where the property consists of debts not secured by negotiable instruments.

Office of the Tax Recovery Officer, Tirunelveli.

To

Sri T.M.Germans Fernandes, Hire Cycle Shop, 70, Main Road, Eravadi.

Whereas Sri S.A.Sahaul Hameed, Eravadi has failed to pay arrears due from him in respect of certificate No.47-026-Py.7428 dated 26.3.1978 forwarded by the Income-tax Officer, Special at Madurai amounting to Rs.81,877/- and the interest payable under Section 220(2) of the Income-tax Act, 1961 for the period commencing immediately after the said date :

*** *** *** *** ***

It is ordered that T.M.Germans Fernandes, Hire Cycle Shop, Eravadi, be and is hereby prohibited and restrained until the further orders of the undersigned from receiving from you a certain debt alleged now to be due from you to T.M.Germans Fernandes, Hire Cycle Shop, Eravadi.

And that you the said T.M.Germans Fernandes, Hire Cycle Shop, Eravadi be and you are hereby prohibited and restrained, until the further orders of the undersigned, from making payment of the said debt or any part thereof, to any person whomsoever or otherwise than to the undersigned."

There appears to be some obvious mistake in the penultimate para. Be that as it may, the purport of the prohibitory order is that the predecessor-in-interest of the respondents (landlord) was prohibited from receiving and the appellant (tenant) was prohibited and restrained from making payment of 'a certain debt alleged now to be due' or any part thereof to any person other than to the Tax Recovery Officer.

Mr.B. Kumar has contended that the order is confined to "a certain debt alleged now to be due" from the appellant and that he was prohibited and restrained from making payment of the said debt or any part thereof to any person other than the Tax Recovery Officer; as on 6th March, 1979, if any rent was due by the appellant to the respondents the said order operated only in respect of that amount and that it did not cover future rent as and when it became due as future rent does not fall within the meaning of debt.

The word 'debt' is used in the order/notice issued under Income Tax Act in the same meaning in which it is used in Section 60 C.P.C. Ordinarily, 'debt' means money that is owed; an existing obligation to pay certain amount; a sum of money due from one person to another. Debts can be classified, having regard to criteria for payment, into three categories : (i) debt which has become due and is payable at present (Debitum in presenti) e.g. in monthly

tenancy, rent becomes due after the expiry of each month like rent for the month of January becoming due and payable on February 1; (ii) debt which has become due but is payable at a future date (Debitum in presenti, solvendum in future); in the above example if under agreement of tenancy rent is payable on 15th of the following month, the rent for January becomes due on February 1, but is payable on February 15); and (iii) contingent debt which becomes payable on the happening of certain event which may or may not occur; in the above instance the rent for the month of January will not be a debt in the preceding month of December for the tenant may or may not reside in the next month. Thus, rent that has not become due is not debt. It follows that rent for the unexpired period of lease is not debt. In Lachman vs. Jarbandhan [AIR 1928 Allahabad 193], a Division Bench of Allahabad High Court, for the purpose of Section 60 C.P.C. correctly held : "Rent in respect of a period still in existence is thus not a debt at all as the obligation is not complete."

In our view, the word 'debt' in the said prohibitory order is used in the first and the second sense. In that sense of the word, rent that would become due and payable in future is in the nature of contingent debt and will not be covered by it. This conclusion disposes of one aspect, whether there was default in payment of rent by the appellant for period (A), referred to above.

But then the more important aspect is, was the default wilful within the meaning of proviso to Section 10(2) of the Act? It has already been noted above that it enjoins upon the Court/Rent Controller to reject the application for eviction if he is satisfied that the default is not wilful.

Here 'wilful default' implies intentional or conscious violation of obligation to pay the rent due; it may also be on account of supine indifference or callous or recalcitrant conduct. But if the default has occasioned on account of ignorance, accident or compulsion or circumstances beyond the control of the tenant, it cannot be termed as 'wilful default'. This has to be determined as a question of fact on the facts and in the circumstances of each case.

In this case it is true that there is no direction in Ex.B-2 to the appellant not to pay future rent to the landlord from that date. But the tenant believed that, by virtue of the prohibitory order of the Tax Recovery Officer, he was directed not to pay the rent to the landlord who was also injuncted from receiving the rent until further orders of that authority. If there are reasonable grounds for his belief that he was prohibited and restrained from paying rent under Ex.B-2, and so the default has occurred due to statutory compulsion it cannot be said that he has committed wilful default in payment of rent. But if such an assumption is without any basis it would not relieve him of the consequences of wilful default. Now, we shall examine this facet.

In his deposition as R.W.1 the appellant states :

"I received a letter from the Income Tax Officer that letter is Ex.B-2. As per Ex.B-2 till further orders I was stopped from paying the rent."

He has further stated :

"As per orders of the Government I did not pay the rent."

In his cross-examination he answered that at the time of Ex.B-2 there was no rent due or arrears from 1979 onwards and that he kept the rents in bank deposits. Further after Ex.B-2 the respondents also did not demand rent. However, the appellant paid the rent for the period commencing from the date of receipt of Ex.B-2 till the date of receipt of Ex.B-3, notice under Section 226(3) of the Income Tax Act dated January 18, 1988. Ex.B-3 reads thus:

"To

Sri. T. Jermons, S/o. Sri Thommai Fernando, 70, North Main Road, Eravadi-627103, Nanguneri Taluk.

A sum of Rs.3,91,067/- is due from Sri.S.A. Shahul Hameed of 87, 7th Street, Eravadi on account if Income-Tax/ super-tax/ penalty/ interest/fine. You are hereby required under Section 226(3) of the Income- tax Act, 1961, to pay to me forthwith any amount due from you to, or, held by you, for or on account of the said S.A. Shahul Hameed of Eravadi upto the amount of arrears shown above, and also request you to pay any money which may subsequently become due from you to him or which you may subsequently hold for on account of him upto the amount of arrears still remaining unpaid, forthwith on the money becoming due, or being held by you as aforesaid as such payment is required to meet the amount due by the tax payer in respect of arrears of income-tax/ super-tax/ penalty/ interest/ fine. I am to say that any payment made by you in compliance with this notice is in law deemed to have been made under the authority of the tax-payer and my receipt will constitute a good and sufficient discharge of your liability to the person to the extent of the amount referred to in the receipt.

(Emphasis supplied)

I am to observe that if you discharge any liability to the tax payer after the receipt of this notice, you will be personally liable to me as Income-tax Officer I, Tirunelveli, to the extent of the liability discharged, or to the extent of the liability of the tax-payer for tax/ penalty/ interest/ fine referred to in the preceding para, whichever is less.

Further, if you fail to make payment in pursuance of this notice to me as Income-tax Officer, you shall be deemed to be an assessee in default in respect of the amount specified on the notice and further proceedings may be taken against you for the realisation of the amount as if it were an arrears of tax due from you in the manner provided in Sections 222 to 225 of the Income-tax Act, 1961, and this notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under Section 222 of the said Act.

The necessary challans for depositing the money to the credit of the Central Government may be obtained from me.

A copy is this notice is being sent to Sri. S.A. Shahul Hameed, 87, 7th street, Eravadi (tax payer).

Sd/- Ist Income-tax officer, Tirunelveli."

From a perusal of Ex.B-3, it is evident that the appellant was required to pay to the Tax Recovery Officer the amount due (rent) to the landlord and, accordingly, he paid the rent due for the period (A) commencing from Ex.B-2 to B-3 - 107 months.

Section 226(3) of the Income Tax Act is identical to Order 21 Rule 46, C.P.C.

This Court in V.N.Vasudeva vs. Kiroi Mal Luhariwala [AIR 1965 SC 440], while considering effect of notice under Section 46(5A) of the Income-tax Act, 1922 which is a precursor of Section 226(3) of the Income-tax Act, 1961 held that it was in the nature of garnishee order and the tenant (the person on whom the notice was served) could not, so long as the notice stood, make any payment whatsoever to the landlord.

On the above facts, we are satisfied that there was reasonable basis for the tenant to assume that he was prohibited from paying the rent. It is also strengthened by the fact that during this period the landlord also did not make any demand. From the above discussion it becomes clear that non-payment of the rent due by the appellant during the aforementioned period is on account of the fact that the appellant believed that under Ex.B-2 he was prohibited from paying any rent to the respondents. In such a situation, the default in payment of rent to the landlord during the period 'A', in our view, cannot be said to be wilful default. Therefore, this can not entail in the appellant's eviction from the suit premises.

So far as the periods 'B' and 'C' aforementioned are concerned, they are admittedly after Ex.B-3 under Section 226(3) dated 18.01.1988. Under Ex.B-3 the right of the respondents/landlord to receive the rent stood suspended till the entire amount of Income tax due by him was cleared. It is not the case of landlord that he paid the tax due to the concerned Income tax Authority and informed the same to the tenant, nor is there any material to the effect that during the said period the authorities withdrew Ex.B-3. Therefore, non-payment of rent regularly to the respondents after receipt of Ex.B-3 and while Ex.B is in force, would not give any cause of action to the respondents/landlord to file eviction petition against the appellant on the ground of wilful default in payment of rent.

It is, however, contended that the rent was not paid to the Tax Recovery Officer regularly by the appellant, consequently, the respondents were put to the risk of facing various proceedings under the Income Tax Act, therefore, they can take advantage of wilful default in payment of rent due by him and sue him for eviction. We are afraid, we cannot accede to this contention. The respondents exposed themselves to the risk of facing various proceedings under Income Tax Act by their own conduct of not paying the income tax due by them. On service of Ex.B-3 on the appellant and the respondents (the assessee in default) the respondents'

right to claim or receive the rents from the appellant stood suspended till the arrears of income tax specified therein was paid by them. As on the date of filing eviction petition also they did not satisfy the demand of the Tax Recovery Officer. So, they cannot proceed against the appellant for irregular payment/non-payment of rent to the Tax Recovery Officer for his eviction from the suit premises albeit by his conduct he has made himself liable under the provisions of the Income Tax Act.

Mr.B. Kumar next contended that the provisions of the Income-tax Act had no overriding effect over the provisions of the Rent Control Act and payment of rent to the Income-tax Officer pursuant to Ex.B-2 and Ex.B-3 would not relieve the appellant of his obligation to pay the rent to the landlord. He relied upon a judgment of Calcutta high Court in Dhunseri Tea & Industries Ltd. Vs. The Hanuman Estates Private Ltd. [AIR 1976 Calcutta 328].

We are unable to accept the contention of the learned counsel; first, because the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, are not identical with the provisions of the West Bengal Premises Tenancy Act, 1956 (for short 'the West Bengal Act') and secondly, because we are not persuaded to accept the view taken by the Calcutta High Court.

We have already pointed out the requirements of Section 10(2)(i) of the Act. There is nothing in the Act which comes in the way of the tenant in complying with the prohibitory order/order under Section 266(3) of the Income Tax Act issued by the Tax Recovery Officer without exposing himself to the risk of being treated as wilful defaulter. Under the rental agreement as well as under the Act the tenant is bound to pay the rent to the landlord. By virtue of the statutory notice of the Tax Recovery Officer the tenant is directed to pay the rent to the Tax Recovery Officer instead of paying it to the landlord in discharge of his liability to pay the income tax due by him. Clause (viii) of sub- Section (3) of Section 266 of the Income Tax Act declares that the person paying any amount in compliance with a notice issued under that section shall be fully discharged from his liability to the assessee to the extent of the amount so paid. In view of this provision, payment of rent by the tenant to the Tax Recovery Officer instead of to the landlord is indeed a payment not only in discharge of his contractual obligation and statutory obligation under the Act but also under the said provision of the Income Tax Act. In such a case no landlord can be heard to say that though the tenant has paid the rent in compliance with the notice of attachment and notice under Section 266(3) of the Income Tax Act towards the discharge of income tax due by him covered by the certificate issued under Section 222 of the Income Tax Act, yet such payment will have to be ignored for the purpose of the Act and the tenant will have to be treated as a wilful defaulter.

In Dhunseri Tea & Industries Ltd. Vs. The Hanuman Estates Private Ltd. (supra), the tenant failed to pay rent from June 1970. On that ground the landlord filed the suit for ejectment of the tenant. Under Section 17(1) of the West Bengal Act, the tenant is under an obligation to deposit in Court or with the Controller or pay to the landlord the rent due within one month of the receipt of summons or if he appears in the suit or proceeding without

the writ of summons being served on him, within one month of his appearance, and shall thereafter continue to deposit or pay month by month if he intends to get the benefit of protection against eviction under sub-section (4) of Section 17 of that Act. It is a beneficial provision enacted to provide relief to the tenant in proceeding taken against him for eviction on the ground of default in payment of rent to the landlord. After service of summons on the tenant an application under Section 17(3) of the West Bengal Act was filed by the landlord to strike out the defence. The tenant contested the petition taking the plea that pursuant to the notice under Section 226(3) of the Income Tax Act, he paid the rent to the concerned authority so he would be deemed to have discharged his obligation under Section 17(1) of that Act. It was a common ground that had the tenant deposited the rent in the Court or paid it to the landlord within the period specified in Section 17(1), it would have operated a complete discharge of his liability under that Act. The Trial Court did not accept the plea of the tenant and struck out his defence. On revision to the High Court of Calcutta, a Division Bench held that the notice under Section 226(3) of the Income Tax Act could not have the effect of overriding sub-sections (1) or (2) of Section 17 and that the tenant in order to avail protection against eviction must show that the payment to the Income Tax Authority was strictly in accordance with the said provisions of the West Bengal Act which the tenant failed to do. The revision was thus dismissed. Once it is concluded that there is no apparent conflict between the provisions of Sections 222 and 226(3) of the Income Tax Act and Sections 17(1) & (2) of the West Bengal Act and that the said provisions of the Income Tax Act could not have the effect of overriding sub-Section (1) or (2) of Section 17, it becomes necessary for the Court to construe the said provisions harmoniously. Thus construed it becomes clear that if in compliance of the order of prohibition or notice under Section 226(3) the tenant pays the amount to the Tax Recovery Officer in discharge of landlords' liability to pay income tax due and such payment completely discharges the tenant of his obligation by virtue of Section 226(3)(viii), it cannot be said that there is non-compliance of the provisions of the West Bengal Act. The payment to the Income Tax Authority will have to be treated as payment to landlord for purposes of that Act as well.

The last point which remains to be considered is the ground of bona fide requirement of the respondents.

The learned Rent Controller did not accept the plea under Section 10(3)(a)(iii) of the Act (bona fide requirement of the landlord) with which the Appellate Authority agreed. In view of the admitted fact that during the pendency of the eviction proceedings the landlord has secured possession of two non-residential buildings, he could not have persuaded the High Court to grant eviction on the ground of personal requirement under Section 10(3)(a)(iii). In this connection it has to be noted that clause (ii) of the Second proviso to Section (3)(a) imposes a complete ban upon a landlord who has obtained possession of a non-residential building under clause (a) of sub-Section (3) of Section 10, on applying to the Rent Controller under that clause. Faced with this situation the respondents filed application for raising additional grounds in the revision under Section (10)(3)(c) of the Act. That petition was opposed by the appellant/tenant. However, the

High Court allowed the application for raising additional grounds and proceeded to pass the impugned order of eviction against the appellant under Section 10(3)(c).

It may be noted here that there is a fundamental difference between a case of raising additional ground based on the pleadings and the material available on record and a case of taking a new plea not borne out by the pleadings. In the former case no amendment of pleadings is required whereas in the latter it is necessary to amend the pleadings. The Court/Rent Controller in its discretion, with a view to do complete justice between the parties, may allow a party either to raise additional ground or take a new plea, as the case may be, if the circumstances so justify like a plea based on subsequent events. Whereas in the former situation, the case can be disposed on the material on record but in the latter case the pleadings will have to be amended and for that reason the parties have to be given reasonable opportunity to file further pleadings and adduce necessary evidence.

No exception can be taken to the order of the High Court allowing CMP to raise additional grounds in the C.R.P. But it would be of no consequence as there has been no application for amendment of the pleadings. The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision.

Now, we may profitably refer to Section 10(3)(c) and the provisos thereto to notice as to what is required to be proved by a landlord thereunder. Section 10(3)(c) is as follows:

"10(3)(c). A landlord who is occupying only a part of a building whether residential or non- residential may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord :

Provided further that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may be extend such time so as not to exceed three months in the aggregate."

On an analysis of these provisions the following points emerge :

(1) The provisions of clause (c) have overriding effect over clause (a); (2) Clause (c) applies to a case where, (i) the landlord is occupying only a part of building;, (ii) the tenant is occupying the whole or any portion of the remaining part of the building; (iii)the landlord requires additional accommodation for residential or for non-residential purposes of a business which he is

carrying on; (iv) the landlord is seeking an order from the Rent Controller directing the the landlord be put in possession of that portion or part of the building which is in possession of the tenant; (3) if the landlord makes out a case under clause (c) the Controller has to evaluate the hardship that will be caused to the tenant if he is evicted from the portion in his occupation and the advantage that will be gained by the landlord; if he is satisfied that the hardship to the tenant will outweigh the advantage to the landlord, the Controller has to reject the application for eviction of tenant; and (4) in the event of the Controller ordering eviction he is empowered to give the tenant a reasonable time for putting the landlord in possession of that portion or part of the building of which eviction is ordered and to extend the same from time to time but not exceeding three months.

It may be noticed that under Section (3)(a) it is incumbent on the landlord to show that he or any member of his family is not occupying any building (residential or non-residential, as the case may be) for his own occupation or for the purpose of keeping a vehicle or for purposes of a business (as the case may be) which he or any member of his family is carrying on, in the city, town or village concerned which is his own. But for the purpose of clause (c) the landlord will indeed be occupying a part of a building of which the remaining part is in occupation of the tenant. Further whereas recovery of possession of a non-residential building under Section (3)(a) bars a second application under that clause, no such bar exists in case of clause (c). For granting relief to the tenant under clause (a) the aspect of hardship to the tenant is alien but under clause (c) the Controller is enjoined to reject the application of the landlord for eviction if he is satisfied that the hardship which may be caused to the tenant by directing the tenant to put the landlord in possession of the portion of the building in possession of the tenant, will outweigh the advantage to the landlord. Under clause (c) the tenant is also entitled to the indulgence of being granted reasonable time for putting the landlord in possession of the building, which may be extended from time to time up to the maximum period of three months. From the above discussion, it is evident that the requirements of clause (a) are different from the requirements of clause (c). For purposes of clause (c), the following additional facts will be necessary viz. - whether the landlord is occupying only a part of the building whether residential or non-residential and whether the tenant is occupying the whole or any portion of the remaining part of the building and the facts relevant to the consideration with regard to comparative hardship to the landlord and tenant. Such facts are to be brought on record because they are not subject-matter of consideration in an application filed under sub-section (3)(a). In a case where original application for eviction is based, inter alia, on the ground in clause (a) of sub-section (3) and an application for amendment of eviction petition is allowed permitting to raise further ground under clause (c) either by the Appellate Authority or the Revisional Authority, the appropriate course will be to remand the case to the Rent Controller for giving opportunity to the opposite party to file further pleadings and adduce such evidence relevant to the issue, as they desire. Inasmuch as the petition filed by the respondents and allowed by the High Court was to raise additional ground in the revision and not to amend the

eviction petition, we are of the view it is not a fit case to remand the matter to the Rent Controller. We have already pointed out that it is incumbent upon the authority, considering an application for eviction of a tenant under clause (c) of Section 10(3), to record a finding under proviso to Section (3)(c). In this case the High Court while granting application under Section 10(3)(c) failed to do so. This Court in B.Kandasamy Reddiar & Ors. vs. O.Gomathi Ammal [(1998) 7 SCC 138] expressed the view that order passed without considering the proviso is unsustainable and with respect we are in entire agreement with it. For these reasons, we set aside the impugned order of the High Court and restore the judgment and order of the Appellate Authority. We, however, make it clear that this judgment does not preclude the landlord from seeking eviction of the tenant under clause (c) of sub- section (3) of Section 10 of the Act, if otherwise permissible in law. The appeal is accordingly allowed. There shall be no order as to costs.