PETITIONER:
V. KRISHNA MUDALIAR

Vs.

RESPONDENT:
LAKSHMI AMMAL

DATE OF JUDGMENT18/09/1995

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 AIR 129 1995 SCC (5) 689
1995 SCALE (5)398

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This is tenant's appeal. Respondent-landlord filed eviction-petition against the appellant under Section 10(2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the Act) on the ground that the tenant committed willful default in the payment of rent. The application was allowed by the Rent Controller. The appellate court upheld the findings of the Rent Controller. The High Court dismissed the revision petition filed by the appellant.

The respondent purchased the premises in dispute on March 30, 1977. It is not disputed that at that time the appellant was occupying the said premises as a tenant on a monthly rent of Rs.60/-. The respondent filed a suit for declaration and injunction against the appellant alleging that after the purchase of the property by him the appellant surrendered the possession of the premises to him but later on tress-passed into the property. The appellant, in the suit, contended that he was a tenant in the property and had never surrendered possession of the building to anyone. The suit was dismissed. The appeal filed by the respondent against the said order was also dismissed.

The respondent served a notice dated August 12, 1981 on the appellant demanding arrears of rent for the period from March 30, 1977 to August 12, 1981. Section 10(2) (i) and the proviso thereunder which are relevant are as under:

> "10. Eviction of tenants.-(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16 :
> Provided that nothing contained in the said sections shall apply to a tenant whose landlord is the Government:
> Provided further that where the tenant denies the title of the landlord or

> claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.
>
> (2) A landlord who seek's 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, or
>
> .....
>
> 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 upto 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.]"

It is not disputed that in October, 1981 the appellant deposited all the arrears of rent before the Rent Controller.

The only contention raised before us by learned counsel for the appellant is that the default in the payment of rent by the appellant, if any, was not wilful and as such he was entitled to the benefit of the proviso to Section 10(2) (i) of the Act. According to him the Rent Controller should have given time not exceeding 15 days to pay or tender the rent due by him to the landlord. It is further contended that the appellant had in fact deposited the rent immediately after the ejectment-application was filed by the respondent. We see force in the contention of the learned counsel. Despite the fact that the appellant was tenant of the property in dispute under the earlier owner, the respondent dragged the appellant to the civil court on the allegations that he was a tress-passer. The civil court decided the controversy in favour of the appellant and held that he was a tenant in the

property purchased by the respondent. In reply to the notice dated August 12, 1981 the appellant stated that he could not pay the rent because the respondent never accepted him as his tenant and refused to accept the rent till the proceedings were finally decided by the civil courts. In the reply it was further stated that the non-payment of rent was not due to any fault on the part of the appellant and he was prepared to pay the same in easy instalments. We are of the view that the courts below have not taken into consideration these facts in the right perspective. Keeping in view the peculiar facts and circumstances of this case, we hold that the default in the payment of rent on the part of the appellant was not wilful. Admittedly the appellant had deposited the rent in the court of the Rent Controller within one month of the institution of the application.

We allow the appeal and set aside the impugned judgment of the courts below and dismiss the application filed by the respondent before the Rent Controller. No costs.

JUDIS