

CASE NO.:
Appeal (civil) 537 of 1998

PETITIONER:
M. K. MUNTHAN

Vs.

RESPONDENT:
M. PASUPATHI

DATE OF JUDGMENT: 13/07/2001

BENCH:
S.N.Variava, S.S.M.Quadri

JUDGMENT:

S. N. VARIAVA, J.

This Appeal is against an Order dated 4th November, 1997.

Briefly stated the facts are as follows:

The Appellant was inducted by the Respondent as a tenant in the concerned premises with effect from 1st July, 1988. A sum of Rs. 3,000/- was paid as advance. The Appellant was to pay every month a rent Rs. 300/-. The Respondent filed R.C.O.P. No. 2210 of 1989 before the Rent Controller, Madras under Section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the said Act). The Respondent claimed that the Appellant had defaulted in making the payment of rent from the very first month itself. The Respondent claimed that there were arrears of rent in the sum of Rs. 3,600/-. The Appellant contested this application. The Appellant claimed that he had sent a money order which was refused by the Respondent. The Appellant claimed that he had sent a Notice dated 13th November, 1988 calling upon the landlord to disclose his bank account into which rent may be deposited. The Appellant claimed that the landlord had not replied and thus he had thereafter filed R.C.O.P. No. 1643 of 1989 for depositing rent in the Court.

By an Order dated 19th December, 1998 the Rent Controller passed an order of eviction. Against this Order the Appellant filed R.C.A. No. 306 of 1991 which was allowed by an Order dated 13th April, 1993. The Respondent then filed a Revision in the High Court which has been allowed by the impugned Order dated 4th November, 1997. By this Order it has been held that the Appellant had defaulted in payment of rent. The Order of the Rent Controller directing eviction has been restored. The Appellant was given 3 months time to vacate.

Mr. Sampath submitted that the tenant had done everything possible to pay the rent. He submitted that it was the Respondent who was refusing to accept rent. Mr. Sampath submitted that the tenant had sent a money order which had been refused by the Respondent. He submitted that thereafter the Appellant gave a Notice to the Respondent asking for the number of Bank A/c in which the rent could be deposited. He submitted that the landlord refused to reply to that notice. He submitted that the Appellant had, therefore, filed an Application for depositing the rent in Court. He submitted that under these circumstances it could not be said that the tenant had committed any default. He submitted that it was the landlord who made it impossible for the tenant to pay the rent.

On the other hand, Mr. Setia has supported the impugned Order and submitted that on facts it is clear that the tenant had been continuously

committing the defaults and has not paid the rent.

We have considered the submissions of the parties. To decide whether there is any default, facts need to be looked at in detail. Admittedly, the tenancy commences with effect from 1st July, 1988. The monthly rent was Rs. 300/-. The Appellant should have started paying rent from the month of July itself. No reason has been disclosed as to why rent was not paid in July, August and September even though it was to be paid every month. For the first time, in November a money order is sent for the rent for the months of July, August and September. The money order comes back with the endorsement "Addressee not found". From that it is clear that the Respondent has not refused to accept the money order. It is very pertinent to note, at this stage, that the Respondent and the Appellant are staying in the same building. The Respondent has proved that, at time when money order was sent, he had gone out of town to attend the funeral of his mother-in-law. It appears that, knowing that the Respondent was not in town, the money order has been sent. Even otherwise it is impossible to believe that the Respondent/landlord would refuse to accept rent from the very first month after having let out the premises to the Appellant.

Even though the money order was returned with the endorsement "addressee not found" no attempt has been made by the tenant to repay the rent. A Notice is then sent on 3rd November, 1988. Of course the landlord does not reply to this Notice. The Appellant then does nothing. It is only after the landlord files an Eviction Petition that the Appellant files an Application to deposit the rent in Court. In our view the High Court was quite right in concluding, on these facts, that the tenant had defaulted in payment of rent.

It was next submitted that in any event an advance of Rs. 3,000/- had been paid and the landlord could have adjusted the same. However, even with an advance of Rs. 3,000/- there is still default. The advance would cover only 10 months rent, whereas the rent has not been paid for a period of 12 months.

Under these circumstances, we find no infirmity in the Order of the High Court. We see no reason to interfere. The Appeal stands dismissed.