

PETITIONER:
KANNAN & ANR.

Vs.

RESPONDENT:
TAMIL TALIR KALVI KAZHAGAM

DATE OF JUDGMENT: 15/05/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Misra, J.

Since both the aforesaid appeals arise out of a common order, the subject matter of dispute including pleadings and documents being the same with common evidence resulting into a common order, hence they are being disposed of by means of this common judgment.

The present appellants are the tenants and respondent, the landlord. The short question raised is whether, on the facts and circumstances of this case, the appellants are validly depositing the rent under Section 9(3) of the Pondicherry Buildings (Lease And Rent Control) Act, 1969, (hereinafter referred to as 'the act'), could they be treated as defaulters liable for eviction, when they continued to deposit the said rent as aforesaid in spite of inter se dispute between the landlord culminating by dismissal of the suit for default?

To appreciate this point, it is necessary to dwell on the facts of this case. Out of the two appellants, one appellant is a tenant in respect of the demised premises running the cycle store business in HRCOP No. 132 of 1986 for a monthly rent of Rs. 75/- and the other appellant-tenant is running an Engineering Workshop for a monthly rent of Rs. 85/- in HRCOP No. 133 of 1986. It is not in dispute that some internal squabbles arose in the administration of Tamil Thalir Kalvi Kazhagam (hereinafter referred to as 'Kazhagam') who, in fact, is the landlord receiving rent through its President. The appellants took the demised premises on lease from one Mr. Kogilasamy, the then President of the said Kazhagam. Later, on 10th August, 1980 one Mr. Thirumurgugan is said to have replaced the said Mr. Kogilasamy as he was elected to be the new President. This led to an election dispute between the outgoing and the incoming President. Thereafter, on 7th September, 1980 Mr. Thirumurgan, as the President, issued a notice to the appellants directing them to pay the rent to the treasurer in future, though the name of the treasurer was not indicated therein. On the other hand, the earlier President Mr. Kogilasamy still demanded rent to be paid to him. In this background, a bona fide doubt arose in the mind of the

appellants as to whom they should pay the rent. Hence, they filed RCOP Nos. 55 and 56 of 1982 before the Rent Controller under Section 9 (3) of the Act for permitting them to deposit the present and the future rent. The appellants impleaded both the outgoing President Mr. Kogilasamy and the incoming President Mr. Thirumurugan. In spite of notice, none appeared. The Rent Controller consequently permitted the appellants to deposit the rent. The order of the Rent Controller reveals that many other persons also claimed right to collect the rent of the demised property. Though the election of the President, as aforesaid, was on 10th August, 1980 and the dispute erupting immediately thereafter but the earlier President Mr. Kogilasamy filed a suit only in the year 1983, being O.S. No. 92 of 1983, before the Second Additional Sub-Judge, Pondicherry, for declaring the election held on 10th August, 1980 as null and void and for permanent injunction restraining the office bearers from carrying out the administration. The said suit was dismissed for default on the 6th February, 1984.

The submission of the respondent-landlord is, the period of limitation being 30 years for setting aside the said order, it was not necessary to wait for the said period of expiry, hence, notice dated 8th August, 1985 was issued by the incoming President to the appellants to pay the arrears of rent within a week. Instead of paying the rent, as a part of dilatory tactics, in reply, sought for certain clarifications which were also replied back on 25th November, 1985. The submission is, at least from the date of the aforesaid suit of 1983 coming to an end and in any case from the date of the said notice there being no dispute it was obligatory for the appellants-tenants to have tendered the rent to the respondent-landlord, in not doing so, they defaulted by continuing to deposit the rent as before the Rent Controller.

Section 9 of the said Act creates an avenue to a tenant to deposit the rent with the Controller in certain circumstances. Section 10 deals with grounds of eviction of a tenant. It is not in dispute that a defaulting tenant is liable for eviction. The respondent-landlord filed an application under Section 10(2)(i) of the aforesaid Act for the eviction of appellants-tenants on the ground of willful default. The Rent Controller dismissed the said petition holding no default. The First Appellate Court, while considering the question of default, allowed the appeal on the sole ground that the appellants have not followed the correct procedure by not depositing the rent to the prescribed authority. Under the Act, as amended, it was the Deputy Collector, who was prescribed Authority, hence, deposit made before the Rent Controller could not be proper deposit to save them from the default. In revision before the High Court, it held the default on a different ground. It held that when the present eviction proceedings being initiated in 1986, no dispute inter se between the landlords being pending, thus there was no justification for the appellants to initiate proceedings under Section 9(3) of the Act. This finding of the First Appellate Court, approved by the High Court, is quoted hereunder :-

"Eviction proceeding was initiated only in 1986, when there was no dispute between the landlords and hence there was no justification on the part of the tenant for initiating proceedings under Section 9(3) of the Act."

This finding, on the face of it, is perverse. There was

no initiation of any proceeding afresh in 1986, in fact, proceeding was initiated only in the year 1982, it was continuing only. This by itself changes the complexion of the interpretation. There was not initiation of proceedings after the eviction proceedings in the year 1986. To adjudicate and appreciate the controversy, Section 9 (3), (4) and (5) are quoted hereunder :-

" Section 9 (3): Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building, the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Controller the circumstances under which such deposit was made by him and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by a settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4), as the case may be.

(4) (a) : The controller to whom a report is made under sub-section (3) shall, if satisfied that a bona fide doubt or dispute exists in the matter, direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned.

(4) (b) : If the Controller is not so satisfied, he shall forthwith order payment of the amount deposited to the landlord.

(5) : Where the Controller passes an order under clause (a) of sub-section (4) any amount deposited under sub-section (3) may be withdrawn only by the person who is declared by a competent Court to be entitled thereto, or in case the doubt or dispute is removed by settlement between the parties, only by the person who is held by the Controller to be entitled to the amount or amounts in accordance with such settlement."

Under sub-section (3) where any bona fide doubt in the mind of the tenant or dispute about a landlord arises as to the person who is entitled to receive the rent, to save the tenant of the consequences of default, a tenant is permitted to deposit the rent in such manner as prescribed through an application before the Controller. It is within the premises of this said sub-section, learned senior counsel, Sh. S. Sivasubramaniam, appearing for the appellants, submits that after the said election of the President in 1980 a dispute erupted between the two or more than two claimants to receive the rent and such a situation persisted almost for two years, hence a bonafide doubt arose in the mind of the

appellants, so they made an application under this sub-section for lending rent after complying with all the procedures as prescribed. On this, the Controller issued notices to both the contesting claimants for the post of the President but in spite of this notice, none appeared. Thereafter, as ordered, the appellants deposited the arrear of rent and continued to deposit the rent regularly in terms of the order. Hence, in such circumstances it was submitted that it would not constitute to be a default for their eviction.

On the other hand learned senior counsel appearing for the landlord-respondent, Mr. R. Venkataramani, repelling the arguments submitted with great vehemence, the dispute, if at all, which precipitated in filing the aforesaid suit in the year 1983 by Mr. Kogilasamy, was really dismissed for default on the 6th February, 1984. Thereafter, no dispute remained, hence non-tendering of rent to the landlord by the appellants-tenants, who were also parties to the same, in spite of the notice dated 8th August, 1985 through counsel, clearly constitutes to be a default liable for eviction. For this, strong reliance is placed on the following words of the said sub-section (3) :-

".....until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4),....."

The submission is that sub-section (3) only permits continuing deposits until the doubt is removed or dispute is settled by the decision of a competent court which, in the present case, is by the dismissal of the aforesaid suit.

Having heard learned counsel for the parties and having considered the submissions, we find that this submission has no force. The use of the words "...the dispute is settled by the decision of a competent court" refer to settlement of dispute by a competent court not dismissal of a suit for default. In this case, it is not disputed that a dispute did arise inter se between the landlords and if that be, it could only be said to have been settled by a competent court by adjudication of the lis between the two. Not where suit is dismissed for default. A dismissal for default is not a settlement of a dispute by a competent court. Further the very sub-section uses the words; ".... by a settlement between the parties or until Controller makes an order".

The present is not a case of settlement between the parties. The simple option left with the respondent was to have approached the Controller (prescribed Authority), where the matter was pending, for an order and on it being passed the respondent would have received back all the deposited rent and thereafter would have obligated the appellants to pay the future rent to the landlord. In view of this, the dispute not being settled by any competent court, the preceding words; "until the doubt is removed", are of significance. In a case of this kind, is it inferable that merely on dismissal of suit for default, the doubt would be said to have been removed from the mind of a tenant, even if he was a party to such a suit. On the contrary, hope of removal of all possible doubts by decision in the suit was dismissed for default. The doubt, which was prior to the suit, returned back. The preamble of the Act states :-

"to regulate the letting of residential and non-residential buildings and the control of rents

of such buildings and the prevention of unreasonable eviction of tenants therefrom in the Union Territory of Pondicherry."

This refers to regulate the letting of building and control of rents and prevention of unreasonable eviction of tenants. This primarily confers benefit to the tenants. This is to protect any tenant from the exploitation of landlords. However, this Act also ensures that landlord regularly receives the rent due to him and in case nay tenant defaults under the Act he renders himself liable for eviction. It ensures that if any rent payable to the landlord is not paid without any reasonable cause or on mere pretext to whom to pay the rent, is not paid, such tenant is evicted from the premises in question. So the act balances the interest of both, the tenant and the landlords. That is why the tender of rent under sub-section (3)) is only when there is a bona fide doubt as to whom the rent is payable. Whether there is or there is no bona fide doubt or dispute, the Controller can adjudicate in case a tenant approaches. In case, there is no bona fide doubt or dispute or the Controller does not reach such conclusion, he cannot get protection under the Act. But it protects the tenant otherwise. Hence, a channel was devised to protect the tenants from being treated as defaulters. In such circumstances, a tenant can continue to pay the rent to the prescribed authority instead of the landlord. On the facts of this case, it is not in dispute that in the year 1980 a dispute did arose which caused the appellants to doubt as to whom rent be payable, hence tender of the rent to the Controller in the year 1982 was bona fide and valid. The question which remains for adjudication is, as submitted by the learned counsel Mr. Venkataramani, whether after the aforesaid 1983 suit came to an end, the rent should have been tendered to the landlord or not? We have already recorded our findings above, mere culmination of the suit in the present case would have no effect as to create any obligation on the tenant to stop tendering rent under Section 9(3) and start paying to the landlord. In other words, in case he continues to deposit the rent regularly with the Prescribed Authority it would not constitute to be a case of default under the Act.

In the background of this case, the way the suit culminated without adjudication of the rights between the parties, on dismissal of the suit for default and period for setting aside still subsisting even on the date when the said notice was sent, in such circumstances it cannot be said that there could not be any doubt in the mind of the tenants or earlier doubt stands removed. If submission for the respondent is accepted, the very object of the Act and protecting interest of tenant under sub- section (3) of Section 9, would be defeated. It would be against the very spirit and the objective of the Act which is to prevent the unreasonable eviction of tenants. It is not a case that he has not tendered the rent. He is a tenant in the demised premises since the year 1969. He has never defaulted and is paying the rent regularly. He has continued to pay the rent even after dispute arose after waiting for some time and after making an application under Section 9(3) before the Rent Controller.

When two or more interpretations are possible, the one which subserves to the object should be accepted. We find sub-section (3) of Section 9 contemplates deposit of rent in case of bona fide doubt or dispute. This is to salvage tenant from eviction. However, this would depend on the facts of each case. Thus, where there are two possible

interpretations, the one which prevents a tenant from unreasonable eviction be accepted.

Learned counsel for the respondent strongly relied upon the case *Kameshwar Singh Srivastava Vs. IV Addl. Distt. Judge, Lucknow and Others* (1986) (4) SCC 661) :-

"We should not be understood to have laid down that the tenant should deposit rent in court instead of paying the same to the landlord. Primarily a tenant is under a legal obligation to pay rent to the landlord as and when due and if he fails to pay the same on demand from the landlord and if he is in arrears for a period of more than four months he would be liable to ejection. Where there is a bona fide dispute regarding the landlord's right to receive rent on account of there being several claimants or if the landlord refuses to accept the rent without being several claimants or if the landlord refuses to accept the rent without there being any justification for the same, the tenant would be entitled to take proceedings under Section 30 of the Act and deposit the rent in paid the rent to the landlord, consequently he would be relieved of his liability of eviction. It does not however follow that the tenant is entitled to disregard the landlord or ignore his demand for payment of rent to him. The provisions of the Act safeguard tenant's interest but it must be kept in mind that the landlord's right to receive rent and in the event of the tenant's being in arrears of rent for a period of more than four months, his right to evict the tenant is preserved. If the tenant makes the deposit in court without there being any justification for the same or if he refuses to pay the rent even on the service of notice of demand by the landlord, he would be liable to eviction. However the question whether the tenant is justified in depositing the rent in court and whether deeming provision of Section 30(6) would be available, to relieve him from the liability of eviction would depend upon facts of each case. As noted earlier on the special facts of the instant case we have no doubt in our mind that the appellant had relieved himself from the liability of eviction and he was not in arrears of rent for a period of more than four months."

On the facts of this case, this decision is of no help to the respondent. This refers to a case where the deposit of rent in Court in without any justification or refusal to pay the rent even after notice in a case where there is no bona fide doubt in the mind of a tenant in terms of Section 9(3) or even after removal of such doubt. However, on the facts of this case, as aforesaid, we come to irresistible conclusion that the appellants-tenants had not defaulted in the payment of rent and they could not be held to be defaulters liable for eviction as doubt could not be said to have been erased.

So far decision of the First Appellate Court that rent was not deposited before proper authority, hence constituted to be default is also not sustainable. It is an admitted case, when appellants-tenants made an application for deposit of rent in the year 1982 the proper authority was the Rent Controller before whom the rent was deposited regularly. The respondent's contention is based on amendment to Section 9(3) of the Act brought in the year 1984 where the Prescribed Authority became the Deputy Collector. We feel that in the absence of any submission made by the respondent either before the authorities whose orders are impugned or even before us with reference to the Amending Act as to the consequences of pending proceeding initiated prior to the Amending Act, inference contrary to the appellants cannot be drawn. This apart, the matter was still pending before the prescribed Authority of which respondent had notice that they could have raised this issue there. Hence we do not find any merit even to this submission of the respondent.

Hence, for the aforesaid reasons, both the judgment and order dated 28th November, 1988 passed by the First Principal District Judge, Pondicherry, the first Appellate Authority, and the revisional orders of the High Court dated 17th September, 1988, are hereby quashed. However, the landlord-respondent can withdraw the rent deposited with the prescribed Authority by obtaining orders from it. Both the appeals are allowed. Cost on the parties.