

MR. P. SRIRAMAMURTHY

v.

MRS. VASANTHA RAMAN

FEBRUARY 7, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Rent and Eviction :*

*Tamil Nadu Building Lease and Rent Control Act, 1960:*

*S.10(2)—Eviction of tenant—Moulding the relief—Landlady filed petition for eviction of tenant for default in payment of rent—Subsequent events showed that landlady needed the accommodation for personal occupation—Need for personal occupation not pleaded—Held, for moulding the relief subsequent events can be taken note of—In the circumstances relief of eviction granted on ground of personal occupation—Six months' time granted to tenant to deliver vacant possession of premises on filing usual undertaking—Landlady directed to file certain undertakings, on default of which tenant would be at liberty to seek possession of premises.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3153 of 1995.

From the Judgment and Order dated 6.1.95 of the Madras High Court in C.R.P. No. 404 of 1993.

S. Srinivasan for the Appellant.

C.S. Vaidyanathan and S.R. Setia for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the Madras High Court, made on 6.1.1995 in C.R.P. No. 404 of 1993.

The appellant is the tenant and the respondent is the landlady. Admittedly, a lease for 11 month was executed on 18.2.1988 at a rent in a sum of Rs. 2,800 per month. Notice was given on June 13, 1988 on the

A ground that the appellant had committed wilful default in the payment of the rent for three months. Reply thereto was given on June 20, 1988 denying the allegations. By the time, the petition came to be filed by the respondent, the default came to be for six months. As a consequence, O.A. No. 2709/88 was filed for eviction of the respondent under Sections B 10(2)(i) and 10(ii)(b) of Tamil Nadu Building Lease and Rent Control Act, 1960. The Rent Controller ordered eviction on the ground of wilful default and also for using the premises for purpose other than for which it was let out. On appeal, it was reversed. But in the revision, the High Court held that the appellant has committed wilful default in the payment of the rent. Thus, it confirmed the order of eviction passed by the C Rent Controller.

The question is: whether the appellant has committed wilful default of payment? In the counter-affidavit filed in this Court, it is specifically stated that lease for 11 months was granted with an intention D that after the retirement of the respondent's husband they could come back from the United States of America and settled down permanently in Madras the demised premises. It is also stated in paragraph 12 of the counter-affidavit that wife and the husband sustained injuries in a car accident and due to the severe back pain, particularly during winter E season, they had decided to come back. In fact, her husband retired from service on April 15, 1995. When the respondent's husband retired from service, they decided to permanently come back and settle down in Madras. Thus it is obvious that they needed their house for personal occupation. It is true that the need for personal occupation was not F pleaded. It is settled law that for moulding the relief, subsequent events can be taken note of. Under those circumstances, the relief of eviction could be granted on the ground of personal occupation. The amount of Rs. 24,000 deposited by the appellant shall be adjusted towards the arrears of the rent. If there is any arrears to be paid, time is given to the appellant to pay the same. Six months' time from today is granted G to the appellant to deliver the vacant possession of the premises on filing usual undertaking within a period of four weeks from today. The respondent is also directed to file an affidavit within a period of six weeks from today that after their coming back from the States, they shall neither let out the building to the third party nor induct any party and H shall personally stay in the building and shall not leave back for the

United States of America within a period of ten years from today. In the event of their leaving for the United States within the said period, the tenant would be at liberty to seek possession of the premises. A

The appeal is disposed of accordingly. No costs.

R.P.

Appeal disposed of. B