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MARAGATHAMMAL

v.

KAMALAMMAL

SEPTEMBER 11, 2006

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[ASHOK BHAN AND MARKANDEY KATJU, JJ.]

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*Rent and Eviction: Tamil Nadu Buildings (Lease and Rent Control) Act, 1960—Sections 10 and 11—Default in payment of rent—Rent Controller directed tenant u/s.11 to deposit rent in Court, failing compliance of which, his defence would be struck off—Deposit not made within stipulated time—Defence struck off and eviction ordered—Challenge to—Held: Eviction rightly ordered as tenant had been deliberately avoiding payment of rent as and when it fell due.*

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The appellant-landlord filed eviction petition against the respondent-tenant on the ground of default in payment of rent from March 1990 to 1997. Appellant filed an application under Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 in which an order dated 9.11.1995 was passed directing the tenant to deposit the entire admitted arrears of rent in Court on or before 22.11.1995, failing compliance of which her defence would be struck off. The respondent did not deposit the arrears of rent on the due date and instead lodged a schedule on 21.11.1995. In this lodgment schedule, the respondents stated that she wanted to deposit the rent from the month of June, 1992 to October 1995. This lodgment schedule came to be considered and the issue of challan was ordered on 29.11.1995.

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The Rent Controller passed order on 1.12.1995 that the respondent failed to deposit the admitted arrears inspite of ample opportunities extended to her and, therefore, her defence stood struck off. On 22.3.1996, Rent Controller passed eviction order. On appeal, the appellate authority held that the respondent was not showing due diligence to discharge a liability in the payment of rents. Respondent preferred revision petitions. High Court held that the tenant should be given an opportunity to contest the main eviction petition on merits. Hence the present appeal.

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Allowing the appeal, the Court

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**HELD:** There is no reason why the respondent lodged the schedule as late as on 21.11.1995, i.e. just the previous day prior to 22.11.1995 by which date she was to deposit the entire admitted arrears in court under Section 11 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The respondent could have lodged this schedule on the very next day after the order dated 9.11.1995 i.e. on 10.11.1995 or within a day or two thereafter. It is admitted that the respondent-tenant has been deliberately avoiding the payment of the rent as and when it fell due. Thus, the orders of the Rent Controller dated 9.11.1995 and 22.3.1996 are upheld. The impugned judgment of the High Court is set aside and the respondent-tenant is granted two months time to vacate the premises in question, failing which she will be evicted by Police force. [903-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4053 of 2006.

From the Judgment and Order dated 30.3.2004 of the High Court of Madras in CRP No. 1981-82/2000.

Ranjit Kumar and V. Mohana for the Appellant.

T. Raja for the Respondent.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** Leave granted.

This appeal has been filed against the Judgment dated 30.2.2004 passed by the Madras High Court in CRP Nos. 1981 and 1982 of 2000.

Heard the learned counsel for the parties and perused the record.

The impugned judgment of the Madras High Court was delivered in two revisions arising out of eviction order by the Rent Controller and an application filed under Section 11 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Act") dated 9.11.1995 and the consequential order dated 22.3.1996.

The appellant herein filed R.C.O.P. No.162 of 1992 against the respondent for eviction on the grounds of willful default, demolition and reconstruction and also subletting. The respondents premises is a non-residential one and the monthly rent is stated to be Rs. 650/-. According to the appellant, the respondent failed to pay the rent from March 1990 to 1997 apart from having

- A sublet the premises. It was also claimed that the building required demolition and reconstruction. According to the respondent, the rents were paid regularly till June 1992 and the first appellant refused to receive the rents from the month of July 1992 as he demanded an enhanced rent. It was also claimed that the rents from the month of July 1992 were deposited in a bank account.
- B The respondent also contended that the requirement of demolition and reconstruction was not *bona fide*. While the main R.C.O.P. was pending the first appellant filed an application vide I.A. No.523 of 1993 under Section 11 of the Act in which an order was passed on 9.11.1995, directing the respondent to deposit the entire admitted arrears of rent into court on or before 22.11.1995 failing compliance of which the respondent's defence would be struck off.
- C The respondent is stated to have filed a lodgment schedule on 21.11.1995, as disclosed from the court seal found in the copy of the lodgment schedule filed by the respondent. In the said lodgment schedule, the respondent wanted to deposit the rents from the months of June 1992 onwards up to October 1995, in all, a sum of Rs.26,650/- covering 41 months. The said lodgment schedule came to be considered and issue of challan for depositing the sum of Rs.26,650/- was ordered only on 29.11.1995.

- In the above stated circumstance, the Rent Controller passed orders on 1.12.1995 holding that the respondent failed to deposit the admitted arrears in spite of ample opportunities extended to her and, therefore, her defence stood struck off and the I.A. was allowed. In view of the order passed in the said I.A. No.523 of 1993, the Rent Controller also passed an order in the main R.C.O.P. itself on 22.3.1996 ordering eviction. As against the above said orders, the respondent preferred R.C.A. Nos. 63 of 1997 and 96 of 1998. R.C.A. No.63 of 1997 is the appeal preferred against the order passed in I.A. No.523 of 1993. In fact, the respondent is stated to have filed the said appeal belatedly and for that purpose I.A. No.22 of 1996 in R.C.A. CFR No.27 4 of 1996 was filed on her behalf to condone the delay in filing the appeal. In the said I.A. No.22 of 1996, the appellate authority directed the respondent to deposit the arrears of rent from June 1992 to July 1997, in all, a sum of Rs.39,650/- on or before 16.7.1997. The order in I.A. No.22 of 1996 was passed on 8.7.1997. The respondent also deposited the sum of Rs.39,650/- on 14.7.1997.
- G Thereafter, the appeal came to be numbered as R.C.A. No.63 of 1997. Both the appeals were disposed of by a common order dated 4.7.2000.

- Against the appellate's order dated 4.7.2000, two Revision Petitions were filed before the Madras High Court, which were disposed of by the
- H impugned judgment.

The High Court in the impugned judgment has observed: "A perusal of the order of the appellate authority dated 4.7.2000 discloses that the appellate authority was under the impression that the respondent failed to deposit the past arrears covering the period June 1992 onwards in spite of the orders passed in I.A. No.523 of 1993 and also the subsequent order passed by the appellate authority. Apparently, the said conclusion seems to have been made without really appreciating the correct facts relating to the deposit of rent. In fact, the learned counsel for the respondent has placed before this court the memo filed by the respondent pursuant to the order passed in I.A. No.22 of 1996, which memo was filed on 17.7.1997 confirming the deposit of the sum of Rs.39,650/- vide challan No. 4044, dated 14.7.1997. Therefore, by the time, the appellate authority was seized off the matter, the respondent is stated to have deposited the past arrears from the month of June 1992 onwards up to July 1997 within the time granted by the appellate authority. The further fact remains that the respondent has been meticulously depositing the rents for the period subsequent to July 1997 onwards regularly to the credit of the R.C.O.P. and that the appellant is also withdrawing the rents so deposited by the respondent.

In such circumstances, in all fairness, the respondent should be given an opportunity to contest the main R.C.O.P. on merits, as I am of the view that the respondent has displayed her *bona fide* in so far as the payment of rent during the pendency of the appeal proceedings. Viewed in that respect, the order of the appellate authority holding that the respondent was not showing her due diligence to discharge her liability in the payment of rents, cannot be affirmed".

We are afraid that we cannot agree with the view taken by the High Court.

In this case the landlady had filed the Eviction Petition in 1992, and the respondent-tenant has defaulted in paying the rent from March 1990 up to July 1997.

A petition dated 19.8.1993 was filed under Section 11 of the Act praying for a direction to the respondent to deposit the arrears of rent from March 1990 and to continue to deposit the monthly rents failing which, the defence of the respondent in R.C.O.P. No.162 of 1992, should be struck off.

The relevant portions of Sections 10 and 11 of the Act are as follows:

A "Section 10 : *Eviction of tenants-*

(1) .....

(2) 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 -

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(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

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(ii)-(vii) .....

the controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:

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Provided that in any case falling under clause (1) if the Controller is satisfied that the tenant's default to pay or tender rent was not willful, 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.

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*Explanation* : For the purpose of this sub-section, default to pay or tender rent shall be construed as willful, 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.

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(3)-(8) .....

Section 11 : *Payment or deposit of rent during the pendency of proceedings for eviction -*

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(1) No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under Section 23 against any order made by the Controller on

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the application, unless he has paid or pays to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continuous to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the case may be.”

In this case an order was passed under Section 11 dated 9.11.1995, directing the respondent-tenant to deposit the entire admitted arrears of rent in court on or before 22.11.1995 failing compliance of which the respondent's defence would be struck off. Admittedly, the respondent-tenant did not deposit the arrears of rent on or before 22.11.1995 and instead of that lodged a schedule on 21.11.1995. In this lodgment schedule the respondent stated that she wanted to deposit the rents from the month of June 1992 to October, 1995, i.e. a sum of Rs.26,650/- covering 41 months. This lodgment schedule came to be considered and the issue of challan for depositing the sum of Rs.26,650/- was ordered on 29.11.1995.

We see no reason why the respondent lodged the schedule as late as on 21.11.1995, i.e. just the previous day prior to 22.11.1995 by which date when she was directed to deposit the entire admitted arrears in court under Section 11. The respondent could have lodged this schedule on the very next day after the order dated 9.11.1995 i.e. on 10.11.1995 or within a day or two thereafter. We see no reason why she waited till the eve of 22.11.1995, which was the last date of depositing the entire rent in Court. It is admitted that the respondent-tenant has been deliberately avoiding the payment of the rent as and when it fell due. Thus, we respectfully disagree with the view taken by the Madras High Court and we uphold the orders of the Rent Controller dated 9.11.1995 and 22.3.1996. The impugned judgment of the High Court is set aside and the respondent-tenant is granted two months time to vacate the premises in question, failing which she will be evicted by Police force. The appeal is allowed. No costs.

D.G.

Appeal allowed. G