

**Bench: A.Selvam**

Mr.T.R.Rajaraman

^For respondents . . . Mr.S.Subbiah

: ORDER

The concurrent orders passed in Rent Control Original Petition No.4 of 1993 and in Rent Control Appeal No.33 of 1998 by the Rent Controller (Principal District Munsif Court), and by the Rent Control Appellate Authority (Principal Subordinate Court), Madurai, respectively, are now under challenge.

2. The respondents herein as petitioners have filed the present petition under Section 10(2)(i), 10(2)(ii)(b) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960, wherein the present revision petitioner has been shown as the respondent/tenant.

3. It is averred in the petition that the petitioners are the owners of the demised premises and the respondent has been enjoying the same for monthly rental of Rs.850/- and the same should be paid according to English calendar month. The respondent is a chronic defaulter in paying monthly rents and he has shown supine indifference and callousness in payment of rent. The respondent has committed wilful default in paying monthly rents from February 1992 to May 1992. The petitioners have sent a letter dated 02.06.1992 to the respondent and thereby directed him to pay arrears of rent. Despite of the said letter, the respondent has continued his wilful default. The respondent has committed wilful default in paying monthly rents from July 1992 to December 1992. The respondent has taken the demised premises only for the purpose of running printing press and now he is doing film distribution business in the demised premises and thereby violated the condition of lease. The petitioners are doing stationery business at Door No.36 East Chithirai Street, Madurai-1 and now the demised premises is required for their own use and occupation, and under the said circumstances, the present petition has been filed.

4. It has been contended that on the side of the respondent that the respondent has taken the demised premises for non-residential purpose and he has agreed to give monthly rental of Rs.450/-. It is false to say that the monthly rental is Rs.850/-. It is also equally false to say that the respondent has committed wilful default in paying monthly rents from July 1992 to December 1992. It is also equally false to say that the demised premises is required for the own use and occupation of the petitioners. The respondent has not changed his business and there is no merit in the petition and the same deserves dismissal.

5. On the basis of rival contentions raised by either party, the Rent Controller has allowed the petition on the grounds of different user. Against the order passed by the Rent Controller, the respondent as appellant has preferred Rent Control Appeal No.33 of 1998 on the file of the Rent Control Appellate Authority (Principal Subordinate Court), Madurai. The Rent Control Appellate Authority after reappraising the evidence, has allowed the appeal on the ground of wilful default. Against the concurrent orders of eviction passed by the Authorities below, the present civil revision

petition has been filed.

6. Before perpending the rival submissions made by either counsel, it has become indefeasible to look into M.P.No.2 of 2007. On the side of the revision petitioner, M.P.No.2 of 2007 has been filed under Order 41 Rule 27 of the Code of Civil Procedure, praying to receive rental agreement dated 21.07.1990 as additional document. On the side of the respondents, a detailed counter has been filed, wherein it has been specifically stated that M.P.No.2 of 2007 is not maintainable.

7. As adverted to earlier, along with M.P.No.2 of 2007, rental agreement dated 21.07.1990 has been filed and this Court has perused the same and the same has come into existence betwixt the parties. The said rental agreement has been entered into for a period of 24 months, but the same has not been registered as per Section 107 of the Transfer of Property Act. Since the said document has not been registered as per Section 107 of the Transfer of Property Act, the same cannot be admitted. Therefore, M.P.No.2 of 2007 deserves dismissal and accordingly is dismissed.

8. The present petition has been filed on three grounds viz., (a) wilful default; (b) different user; and (c) for own use and occupation. The Rent Controller has ordered eviction on the ground of different user, but the Rent Control Appellate Authority has set aside the said finding and ordered eviction on the ground of wilful default.

9. The learned senior counsel Mr.S.Parthasarathy has advanced a wee bit specious argument to the effect that the revision petitioner has tried to pay monthly rents from July 1992 to December 1992, but the first petitioner has gone to Kerala for getting treatment and due to that the revision petitioner has not been able to pay monthly rents from July 1992 to December 1992 and the same cannot be construed as wilful default and after filing the petition, he has given entire arrears of rent and therefore, the Court cannot come to a conclusion that the revision petitioner has committed wilful default in paying monthly rents and the Rent Controller has rightly negated the ground of wilful default, but the Appellate Authority has erroneously found that the revision petitioner has committed wilful default and therefore, the conclusion arrived at by the Appellate Authority is liable to be set aside.

10. In support of his contention, he has drawn the attention of the Court to the decision reported in 1996 (2) Law Weekly 525 (Abdul Hameed Vs. M.Sultan Abdul Kader) wherein this Court has held that the payment of 12 months defaulted rent at the first hearing, and plea by tenant that landlord was receiving rent paid in lump sum for 4 to 6 months, plea accepted and the eviction order is set aside.

11. In order to remonstrate the argument advanced by the learned senior counsel appearing for the revision petitioner, the learned counsel appearing for the respondents has ingeniously contended that the revision petitioner has committed wilful default in paying monthly rents from February 1992 to May 1992 and the first petitioner has sent a letter dated 02.06.1992 to the revision petitioner and thereby directed him to pay arrears of rents and despite of letter dated 02.06.1992, the revision petitioner has failed to pay monthly rents from July 1992 to December 1992 and therefore, he has committed clear wilful default and further, the agreed rent is Rs.850/-, but the

revision petitioner has paid only arrears of rent on the basis of monthly rental of Rs.450/- and therefore, the revision petitioner has committed a clear wilful default and the Rent Control Appellate Authority has clearly found that the revision petitioner has committed wilful default and therefore, there is no inkling nor vantage to interfere with the finding given by the Rent Control Appellate Authority and under the said circumstances, the present civil revision petition deserves dismissal.

12. In support of his contention, he has drawn the attention of the Court to the following decisions;

(a) The first and foremost decision is reported in 1991(15) Law Weekly 231 (Reethalammal Vs. K.Arumugham Pillai and others) wherein this Court has held that failure to pay rent in spite of notice, amounts to wilful default.

(b) The second decision is reported in 1999(1) C.T.C. 221 (T.Easwara Rao Vs. N.E.Ansari (deed) and six others) wherein this Court has held that merely because tenant deposits arrears of rent on first date of hearing, it cannot be said that landlord cannot sustain petition for eviction if it is otherwise established that tenant committed wilful default in payment of rent.

13. In the instant case, as rightly pointed out by the learned counsel appearing for the respondents that on 02.06.1992, Ex.P1, notice has been issued to the revision petitioner and thereby directed to pay arrears of monthly rents accrued from February 1992 to May 1992. Even after receipt of the said notice, the revision petitioner has failed to pay arrears of monthly rents from July 1992 to December 1992. Therefore, it is very clear that the revision petitioner has committed wilful default and he has been shown supine indifference and callousness in paying monthly rents.

14. At this juncture, the court has to look into the oral evidence adduced by the revision petitioner. The revision petitioner has been examined as R.W.1. He has stated in his evidence that he has sent money order to the tune of monthly rental of Rs.450/-. The specific contention urged on the side of the revision petitioner is that monthly rental is only Rs.450/- and not 850/-. It has been candidly admitted on the side of the revision petitioner that monthly rent has been fixed at Rs.450/- and for amenities, the revision petitioner has to pay Rs.400/- and in aggregation he is bound to pay Rs.850/- per mensem. The specific stand taken by the revision petitioner is that since the respondents have not provided amenities, he is not bound to pay the said sum of Rs.400/- towards amenities. But, there is no worthwhile evidence to the effect that the respondents have not provided amenities.

15. At this juncture, the learned counsel appearing for the respondents has drawn the attention of the Court to the decision reported in 1972 (2) MLJ 44 (Sakuntala Rajappa Vs. K.Kamala) wherein this Court has held that the term 'rent' used in the Madras Rent Control Act, 1960 would include all payments agreed to be paid by the tenant to his landlord for the use and occupation not only of the building and furniture but also for rates, electricity, water and other amenities including services.

16. Therefore, it is very clear that the revision petitioner is bound to pay Rs.850/- per mensem by way of monthly rent, but he has not done it. On that ground also the Court can very well come to a

conclusion that the revision petitioner has committed a clear wilful default in paying monthly rents.

17. The only defence taken by the revision petitioner is that he has made several attempts to pay monthly rents from July 1992 to December 1992 and since the first petitioner has gone to Kerala for getting treatment, he has not been able to pay the same and therefore, he has not committed any wilful default. In fact, the revision petitioner has adduced the evidence to that effect. But, in the counter no such pleading is available. Therefore, it is needless to say that the defence taken on the side of the revision petitioner is nothing, but his brainwave and the same cannot be given adherence and further it has already been stated in several places that the revision petitioner has committed clear wilful default in paying monthly rents and in fact he has shown supine indifference and callousness in paying monthly rents. Simply because the revision petitioner has paid arrears of rents after filing of the petition, the Court cannot come to a conclusion that he has not committed wilful default in paying monthly rents. Therefore, it is needless to say that the argument advanced by the learned senior counsel appearing for the revision petitioner is nothing but hazy and the same cannot be accepted and whereas the argument advanced by the learned counsel appearing for the respondents is really having subsisting force and further the Rent control Appellate Authority has rightly found that the revision petitioner has committed wilful default.

18. As adverted to earlier, the Rent Controller has allowed the petition on the ground of different user, but the Rent Control Appellate Authority has negatived the same. Even though the Rent Control Appellate Authority has negatived the ground of different user, the respondents/petitioners/landlords have not preferred any revision.

19. At this juncture, the learned counsel appearing for the respondents has befittingly drawn the attention of the Court to the decision reported in 1986 (1) MLJ 16 (M/s.Shelat Brothers represented by its Partner, Rohitkumar Vs. Lodd Narendradas) wherein this Court has held that it is open to the parties to sustain the order on grounds found against him without filing an independent proceeding.

20. Therefore, it is pellucid that the ground of different user can very well be put forth on the side of the respondents. The contention of the respondents is that the demised premises has been let out to the revision petitioner only for doing printing business and now, he is doing film distribution business. But, the said aspect has been candidly denied on the side of the revision petitioner. At this juncture, it would be more useful to look into the evidence adduced by the revision petitioner. He has stated in his evidence that he is doing film business under the name and style of "Manikkavinayagar Film" and he has given paper publication on 10.05.1997 to that effect and in the said paper publication Telephone No.623353 has been given. Further he has candidly admitted in his evidence that the said Phone number is related to the demised premises. Further he has stated in his evidence that in respect of the same film business he is having independent bank account and the said business is at Door No.24 Anumantharayar Kovil Street. Since the revision petitioner has given telephone number which is related to the demised premises for the said film business, there is no incertitude in coming to a conclusion that the revision petitioner is doing his film business in the demised premises and if really the said film business is being run in Door No.24 Anumantharayar Kovil Street, definitely he would have produced all the relevant documents so as to disprove the contention urged on the side of the respondents, but he has not done it. Therefore, it is very clear

that the revision petitioner is doing his film business in the demised premises.

21. The learned counsel appearing for the respondents has also drawn the attention of the Court to the decision reported in 2000 (5) Supreme Court Cases (Jagdish Lal Vs. Parma Nand) wherein the Apex Court has held that the premises in question was let out to the appellant for general merchant (readymade business) and the setting up of a restaurant therein and serving tea and cold drinks would, in the circumstances of this case, amount to change of user.

22. In the instant case, as stated in many places, the demised premiss has been let out to the revision petitioner only for the purpose of running printing press, but the revision petitioner has been doing film business in the demised premises and the film business is not an allied business of printing business and therefore, in view of the decision rendered by the Apex Court, the Court would safely come to a conclusion that the revision petitioner has changed the demised premises for different user and on that ground also he is liable to be evicted.

23. It has already been held that the revision petitioner has committed wilful default in paying monthly rents from July 1992 to December 1992. The mere payment of arrears of rent in lump sum after filing the petition would not cure the wilful default committed by the revision petitioner. Further it has already been held that the revision petitioner is doing film business in the demised premises and thereby he has committed change of user. Therefore, viewing from any angle, the present civil revision petition deserves dismissal.

24. In fine, this civil revision petition deserves dismissal and accordingly is dismissed with costs. The concurrent orders of eviction passed in Rent Control Original Petition No.4 of 1993 and in Rent Control Appeal No.33 of 1998 are confirmed. The revision petitioner is directed to vacate the demised premises within two months from today. Consequently, connected M.P.No.1 of 2007 is also dismissed.

gcg To

1.The Rent Control Appellate Authority, Principal Subordinate Judge, Madurai.

2.The Rent Controller, Principal District Munsif, Madurai.