

PETITIONER:
M/S CHORDIA AUTOMOBILES

Vs.

RESPONDENT:
S. MOOSA & ORS.

DATE OF JUDGMENT: 29/02/2000

BENCH:
A.P.Misra, N.S.Hegde

JUDGMENT:

MISRA, J.

This appeal is directed against the eviction of the appellant on account of default of payment of rent under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

The appellant took the disputed shop situated at 71, Usman Road, T. Nagar, Madras on rent in the year 1972 from the erstwhile owner who sold this property to the present respondents in the year 1977. The rent then paid by the appellant was at the rate of Rs.275/- p.m. Thereafter, it was raised to Rs. 343.75 p.m. from 1.4.1979. Next enhanced to Rs.500/- p.m. w.e.f. 1.9.1985. In the year 1988 the appellant desired to change his business from spare parts of two-wheelers to sale of tyres, then the rent was again increased to Rs.750/- p.m. The appellant desired that for selling of tyres he needs to install air-conditioner and compressor with water connection for checking of tubes and fitment of tyres. This also requires additional electricity load, a water tap and a separate lavatory. For doing these, the appellant offered and respondent agreed on condition that the rent be further enhanced from Rs.750/- to Rs.1,000/- p.m. On this oral agreement the appellant spent about Rs.1,00,000/- on renovation. However, the respondent failed to discharge their obligations for providing the aforesaid additional facilities despite repeated requests. On respondents failure to do so, the appellant filed a suit against him that the landlord was not entitled to claim this enhanced rent of Rs.1,000/- p.m. In support he stated that on the ground floor there are nine shops including the one with the appellant, similarly situated, but none of these shops have any rental of Rs.1,000/- p.m.

Instead of complying with the said conditions, the appellant received respondents notice dated 9.8.1989 through his advocate that the agreed rent of Rs.1,000/- p.m. from 1.4.1989 has not been paid in spite of demands. Before any reply could be sent the appellant was served with a copy of the eviction proceedings dated 27.9.1989 under Section 10(2)(i) of the aforesaid Act. The appellant contested this claim that enhancement agreed to pay Rs. 1,000/- was on a clear understanding that the respondent would provide separate toilet, water connection, additional electricity

load etc. In fact, during the pendency of the said petition the counsel for the appellant wrote a letter dated 17.1.1990 to the counsel of the respondent for getting the three-phase electric connection for the shop in question.

Since there was a dispute in respect of rate of rent the Rent Controller passed an order under Section 11 on 30.7.1990 directing the appellant to deposit Rs.17,250/- towards the rent for the period 1.1.1989 to 31.7.1990. The aforesaid amount was directed to be paid by 16.8.1990. The appellant deposited the said amount in the treasury of the court on 13.8.1990 and thereafter continued to pay/deposit the rent at the rate of Rs.750/- p.m. initially in the court and then directly to the respondents who thereafter accepted the same. Thus, there has been no conceivable default. However, the Rent Controller decreed the petition of the respondent. The Rent Controller held that the respondent did not pay the arrears of rent even till filing of the counter in the said petition and it was paid only when Order under Section 11 was passed which constitutes to be wilful default. On appeal, the Appellate Authority confirmed the said order. The Appellate Authority records, in spite of receiving the aforesaid notice, Ex. P-2, the appellant did not send any reply to contradict the contents of the said notice. Finally the revision was also dismissed by the High Court against which the present appeal has been preferred.

Learned counsel for the appellant submits that the Rent Controller without application of mind held, appellant to be wilful defaulter. The Appellate Authority also fell into the same error, while confirming the order. It records not sending any reply to the said notice dated 9.8.1989 amounts to non-controverting the facts and not depositing the rent within the time stated therein constitute a case of wilful default. Submission is, the authorities did not properly construe Explanation I to Section 10 (2)(i) of the Act. The said notice is dated 9.8.1989, thus wilful default under the aforesaid provisions could only mature after expiry of 60 days from the date of the notice and since before the expiry of that period, the landlord filed eviction petition on 20.9.1989, hence on that date the appellant could not be said to be a wilful defaulter nor it was possible for the appellant to send any reply, as the eviction suit itself was filed before the expiry of the said 60 days. For ready reference Section 10(2)(i) is quoted hereunder:-

10. Eviction of tenants.(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16:

(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

(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

.. Provided that in any case falling under clause (i) if the Controller is satisfied that the tenants default to pay or tender rent was not wilful, 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.

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

{Emphasis supplied}

In support that there was no default, it is submitted that always in the past, the rent was regularly collected by the agent of the landlord as for some reasons he did not come to collect the amount fell in arrears. Further, as dispute arose of the hike of the rent with effect from 1.4.1989, the arrears fell due, thus on these facts, it would not constitute to be a case of wilful default. Further, Explanation to Proviso of Section 10(2) makes it clear that the wilful default could only be if the tenant defaults after the expiry of two months from the date of the notice, and as this period did not expire when the suit was filed, the finding of wilful default is liable to be set aside. However, when an order was passed under Section 11(4) fixing tentative rent the amount so determined was paid within the period granted. For all these reasons, even if it could be said that there was default, it would not a wilful default. This aspect had not been considered by any of the authorities including High Court, which summarily dismissed the revision. He has also taken us to the chart filed by the appellant, to show that he never defaulted in the past except the disputed one since the year 1972. The default referred to in the notice is for the period 1.1.1989 to 31.3.1989 at the rate of Rs.750/- p.m. and from 1.4.1989 to 31.7.1989 at the rate of Rs.1,000/- p.m. So far arrears for the second period 1.4.1989 to 31.7.1989, admittedly there was a dispute of rate of rent. For the first period, i.e., from 1.1.1989 to 31.3.1989, for a period of three months, the case is that as rent was being collected regularly earlier by the agent of the landlord and as he did not come to collect the same, the arrears fell due. It is further submitted, the chart shows for the subsequent period also that appellant has been paying rent regularly without any default.

On the other hand, learned counsel for the respondent submits that fixation of rent under Section 11 and payment thereafter is no defence for the default. This adjudication is interim in nature and is subject to the final decision by the court. Further, in spite of notice, neither any reply was sent by the appellant nor the amount was tendered. Even thereafter he took number of adjournments before the Rent Controller, hence all this constitute to be a case of a wilful default.

We have heard learned counsel for the parties and examined their submissions and made overall assessment to judge, whether any wilful default was committed or not by the tenant. It is not disputed by the landlord that the appellant is a tenant of this accommodation since 1972 and was regularly paying the rent in the past. The only default is, as aforesaid, for the disputed period from 1.1.1989 to 31.3.1989 at the rate of Rs.750/- p.m. and from 1.4.1989 to 31.7.1989 at the rate of Rs. 1000/- p.m. These facts reveal that there is a default towards payment of rent by the tenant for the aforesaid period. The only question is, whether this default on these facts would constitute to be or could be construed to be a wilful default? We proceed to examine the law on these facts. The statute has given a benefit to a tenant viz., if there is default in payment of rent and a notice is sent by the landlord of such default, then the default would mature into a wilful default only if the default continues in other words the defaulted amount is not paid within a period of two months from the date of notice. In the present case, notice was sent on 9.8.1989, thus the said two months would have expired only on the 9.10.1989. In other words, in case the tenant could have paid the said amount within this period, it would not be a case of wilful default. We find in the present case after sending the said notice, the landlord did not wait for the expiry of the said period and before that filed the eviction petition R.C.O.P. No. 2963 of 1989 on 20.9.1989 alleging the wilful default and further if the suit itself was filed before the said period there could be no question of sending any reply to the said notice. Next, we find notice contained amount which fell into arrears is of two periods. The amount for the period 1.4.1989 to 31.7.1989 was admittedly in dispute. In fact for this reason during pendency, a proceeding to fix interim rent under section 11 was initiated. The tenant reasonably thought to pay the same after its adjudication and in fact deposited the same the moment it was adjudicated. So far the earlier period, i.e. 1.1.1989 to 31.3.1989 for three months, the case of the appellant is that tenants long dependency in the past, on the agent of the landlord to collect the rent and as he did not come, thus rent could not be tendered, thus this could not be a case of wilfully not paying the rent. It may be, as enhancement of rent came in dispute, the agent did not come to collect the rent. We have given our full consideration, and find submission for the appellant has force, which has not been adverted to by any of the three courts below. This coupled with Explanation to the proviso of Section 10 (2)(I) as two months did not expire from the date of notice when suit was filed it could not to be a case of wilful default.

Wilful default means an act consciously or deliberately done with open defiance and intent not to pay the rent. In the present case the amount of rent defaulted firstly is on account of fact that the agent of the landlord did not come to collect the rent for some reason. Further, notice of default contained disputed rent. This fact coupled with the fact that eviction suit was filed before maturing a case of wilful default in terms of the Explanation to the proviso of Section 10(2). The dispute of rent admittedly was genuine. Further, we find conduct of the appellant throughout in the past being not of a defaulter or irregular payer of rent. Thus, all these circumstances cumulatively come to only one conclusion that the appellant cannot be held to be a wilful defaulter.

In S. Sundaram Pillai and Ors. Vs. V.R. Pattabiraman and Ors. (1985 [1] SCC 591) this Court had occasion to consider the word Wilful default under Section 10(2) of the aforesaid of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which is reproduced below:-

Before, however, going into this question further, let us find out the real meaning and content of the word wilful or the words wilful default. In the book A Dictionary of Law by L.b. Curzon, at page 361 the words wilful and wilful default have been defined thus:

Wilful- deliberate conduct of a person who is a free agent, knows that he is doing and intends to do what he is doing.

Wilful default Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.

In other words, wilful default would mean a deliberate and intentional default knowing full well the legal consequences thereof. In Words and Phrases, Volume 11-A (Permanent Edition) at page 268 the word default has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In volume 45 of Words and Phrases, the word wilful has been very clearly defined thus:

Wilful intentional; not incidental or involuntary;

- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;

- in common parlance word wilful is used in sense of intentional, as distinguished from accidental or involuntary.

P. 296 Wilful refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

In Volume III of Websters Third New International Dictionary at page 2617, the word wilful has been defined thus :

governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed.

The word default has been defined in Vol. I of Websters Third New International Dictionary at page 590 thus :

to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation.

In Blacks Law Dictionary (Fourth Edn.), at page 1773 the word wilful has been defined thus:

Wilfulness implies an act done intentionally and designedly; a conscious failure to observe care;

conscious; knowing; done with stubborn purpose, but not with malice.

The word reckless as applied to negligence, is the legal equivalent of wilful or wanton.

Thus, a consensus of the meaning of the words wilful default appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or other Acts referred to above.

For the foregoing reasons and as per our findings we come to the irresistible conclusion that all the three courts below committed error in law in holding tenant to be a wilful defaulter. So, we hold even if he was in default it is not a case of wilful default. We hold that the appellant committed no wilful default. Accordingly, the impugned orders and judgments of all the three courts are hereby set aside. The appeal is allowed. However, on the facts and circumstances of the case, the costs on the parties.