



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD) No.2245 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

M.Jeyaraman

: Petitioner

vs.

Muthulakshmi

: Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decreetal order passed in R.C.A.No.4 of 2013, dated 30.08.2013, on the file of the Rent Control Appellate Tribunal (Principal Sub-Court), Tirunelveli, confirming the fair and decreetal order passed in R.C.O.P.No.92 of 2009, dated 12.09.2012, on the file of the learned Additional Rent Controller (1st Additional District Munsif), Tirunelveli.

For Petitioner

: Mr.H.Arumugam

For Respondent

: Mr.S.Meenakshi Sundaram

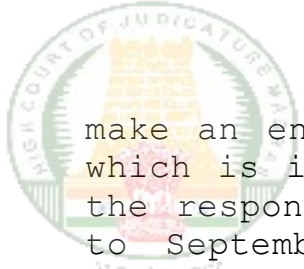
Senior Counsel

for Mr.R.Manimaran

ORDER

The revision petitioner is the tenant in this petition. The respondent / landlady in this civil revision petition filed a petition for eviction, under Sections 10(2)(i), 10(2)(iv) and 10(2)(v) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in R.C.O.P.No.92 of 2009, before the Rent Controller (1st Additional District Munsif), Tirunelveli.

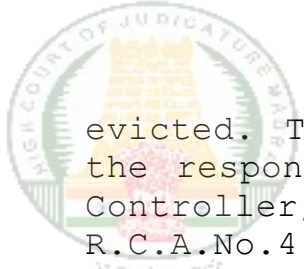
2.In the petition filed by the respondent, it is stated that the demised property is in two portions, bearing D.No.14 and the annexure portion with tiled roof superstructure bearing D.No.14-A. According to the respondent, the rent originally fixed was Rs.200/- and Rs.100 for the two portions respectively and that thereafter, the rent was increased to Rs.1,500/- for the demised building consisting of two portions. It is the specific case of the respondent that when the tenant pay rent to her, she used to



make an endorsement regarding the payment of rent in a passbook, which is in the custody of the tenant. It is the further case of the respondent that the tenant did not pay rent from August'2008 to September'2009 and that the default is wilful. It is the further case of the respondent that the demised building was let out to the revision petitioner for residential purpose and that in violation of the terms, the revision petitioner has converted the schedule property for a non-residential purpose without any prior permission from her. It is further stated that the tenant has no right to conduct any business in the demised building and that the same has resulted in assessment of property tax for the property by treating the same as a non-residential building. It is also the case of the respondent that the tenant has caused nuisance to the neighbors by illegal activities in the petition mentioned property and that the same had been complained by the other tenants of the respondent. Since the tenant did not heed to stop but threatened her husband, the tenant is liable to be evicted on the ground of causing nuisance to the neighbors. Originally, the tenant issued a notice on 24.09.2009, through his Counsel, alleging forcible dispossession. It was thereafter, the landlord issued a reply notice on 10.10.2009, calling upon the tenant to vacate the premises on all the three grounds, for which, the petition was filed.

3.The revision petitioner has filed a detailed counter affidavit, denying the allegations that he had committed wilful default. It is the specific case of the tenant that the quantum of rent is only Rs.600/- per month for the two buildings and that there was no default as alleged as the tenant has been periodically paying the rent without any default. Since the landlady was not in the habit of issuing any receipts, it was contended that the respondent/landlady has come forwarded with a false case. The tenant further, categorically, admitted that he is doing a commercial activity by selling curd to shops for his livelihood and that the landlady, feeling jealous about this, had approached him to pay rent at Rs.1,500/- per month and threatened him to face eviction, if he does not pay the enhanced rent of Rs.1,500/- per month. With regard to the different use, it is the definite case of the tenant that he has also obtained oral permission from the landlady to carry on business by selling and supplying curd to shops. With regard to nuisance, the contention of the landlady in the petition was specifically denied by the tenant.

4.The Rent Controller after framing necessary issues, found that the tenant has committed wilful default and he is liable to be evicted. The Rent Controller also found in favour of the landlady that the tenant is using the property for non-residential purpose without getting prior permission from the landlady and that therefore, on that ground also the tenant is liable to be



evicted. The question of nuisance was also decided in favour of the respondent / landlady. Aggrieved by the findings of the Rent Controller, the revision petitioner has preferred an appeal in R.C.A.No.4 of 2013, before the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli. The lower appellate Court also dismissed the appeal, confirming the findings of Rent Controller to order eviction on all the three grounds, namely, wilful default, for different use and for causing nuisance. It is against the order of the lower appellate Court, the above civil revision petition has been filed by the tenant.

5.The learned Counsel for the revision petitioner submitted that the eviction petition itself is not maintainable, since the same was filed on 25.09.2009, even before the expiry of two months period from the date of issuing notice claiming rent under Ex-P2, dated 10.10.2009. The learned Counsel for the revision petitioner further submitted that the Courts below failed to properly appreciate the fact that the respondent was not in a habit of issuing receipt for payment of rent. Since the findings of the Courts below with regard to the quantum of rent, the period of default are on the basis of the order passed earlier in a petition filed by the landlady under Section 11(4) of the Act, it is further submitted by the revision petitioner that the Courts below have not decided the said issues on the basis of available materials and that therefore, the findings of the Rent Controller and lower appellate Court are vitiated. Stating that the landlady has not produced any record to show that the tenant has committed any default, the findings of the Courts below are described as perverse by the learned Counsel for the revision petitioner. Since the revision petitioner has produced records to show that the money sent was referred in the proceedings initiated under Section 8(5) of the Act, it is further contended by the learned Counsel for the revision petitioner that the Courts have not considered the relevant materials and the decisions are on surmises rather than on the basis of any materials. Stating that the tenant was doing the business of preparing and selling curd in the properties upon an oral permission, it is further contended that the petition for eviction on the ground of different user is unsustainable. Finally, with regard to nuisance, the learned Counsel for the revision petitioner submitted that no specific incident of nuisance was pleaded by the respondent / landlady and that the landlady cannot succeed without proper pleadings.

6.The learned Counsel for the revision petitioner relied upon a judgment of the Honourable Supreme Court in the case of **M/s.Chordia Automobiles vs. S.Moosa and others**, reported in **2000 (1) CTC 742**, wherein, the Honourable Supreme Court has held as follows:

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"....7.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.

8. 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....."

7. The learned Counsel for the revision petitioner then relied upon a judgment of the Honourable Supreme Court, in the case of **Raja MuthuKone vs. T. Gopalasami and another**, reported in **2003-1-L.W. 134**, wherein, it has been held as follows:

".....5. The submission of the learned counsel for the tenant finds support from the Three-Judge Bench decision in *S. Sundaram Pillai and Ors. v. V.R. Pattabiraman and Ors.*, [1985] 1 SCC 591. Having taken into consideration the provisions of Section 10(2)(i), and the Proviso and the Explanation to sub-section (2) Fazal Ali, J., speaking for the majority, stated his conclusions as under :

"(1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two months' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by



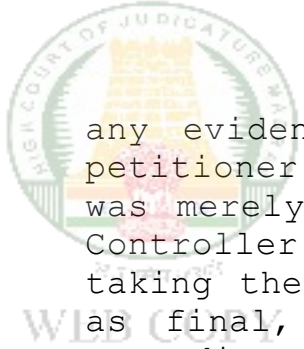
sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord."

Vide para 63, His Lordship observed:

"Indeed, if the landlord chooses to give two months' notice to his tenant and he does not pay the rent, then, in the absence of substantial and compelling reasons, the Controller or the court can certainly presume that the default is wilful and order his eviction straightaway. We are unable to accept the view that whether two months' notice for .payment of rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because that would render the very object of explanation otiose and nugatory."

6.The submission made on behalf of the landlord that even if two months' notice for payment of rent is given still it will be open to the Controller under proviso to determine the question of default, was discarded by Fazal Ali, J. by placing on record his opinion that such a view, if accepted, would render the very object of explanation otiose and nugatory. The same submission which was expressly discarded in the case of S. Sundaram Pillai (supra) has been advanced before us and obviously we cannot entertain the same. In the case at hand, once the landlord gave a notice to the tenant claiming the rent in arrears, he should have waited for a period of two months from the date of service of notice and it is only on non-payment of non-tender of rent within the period of two months that the landlord could have initiated the proceedings for eviction on the ground of wilful default and then it would have been for the tenant to satisfy the Rent Controller that inspite of non-payment of rent for a period of two months from the date of service of notice, he was not a defaulter for reasons. In the present case, there is the additional fact that before the initiation of the proceedings for eviction, the factum of the tenant having deposited the rent in the Court, though in the proceedings which had stood terminated, was brought to the notice of the landlord and the landlord having initiated the proceeding for eviction withdrew the amount of rent and on the date when he sought for withdrawal, a period of two months from the date of notice had not expired. In such circumstances, in view of the law laid down in the case of S. Sundaram Pillai (supra) the tenant cannot be held to be a wilful defaulter...."

8.In this case, the learned Counsel appearing for the revision petitioner submitted that the period of default and quantum of rent has been accepted merely on the basis of pleadings, without



any evidence, whatsoever. The learned Counsel for the revision petitioner pointed out that the findings of the Rent Controller was merely on the basis of the earlier order passed by the Rent Controller in a petition filed under Section 11(4) of the Act by taking the order that was passed under Section 11(4) of the Act, as final, as regards quantum of rent and period of default. Regarding nuisance, the learned Counsel for the revision petitioner referred to the pleadings and submitted that the respondent / landlady has not even pleaded as to how and by what act the nuisance was caused by the revision petitioner. It is further submitted that the Courts below have given a finding against the tenant by referring to the Curd business in the demised premises, though it is not pleaded that preparing and selling of curd in the demised premises has caused nuisance. Finally with reference to the ground that building is put to different use, the learned Counsel for the revision petitioner submitted that business was conducted only after getting oral permission from the landlady. It is submitted that though the tenant has obtained licence and doing business for his livelihood, the Courts below have failed to appreciate the case of the tenant.

9. On the contrary, Mr. S. Meenakshi Sundaram, learned Senior Counsel appearing for the respondent, after going through the findings of the Courts below, submitted that both the Courts below have concurrently held that the tenant has committed wilful default in payment of rent and that the respondent / landlady has made out a case for eviction on all the three grounds, based on materials. Since the learned Counsel for the petitioner has relied upon the judgment of the the Honourable Supreme Court, in the cases of **Raja Muthukone vs. T. Gopalasami and another**, and **M/s. Chordia Automobiles vs. S. Moosa and others**, regarding the maintainability of petition, the learned Senior Counsel referred to the judgment of the Honourable Supreme Court, in the case of **S. Sundaram Pillai and others vs. V. R. Pattabiraman and others**, reported in (1985) 1 SCC 591, wherein, the Honourable Supreme Court had occasion to consider Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and submitted that the first two judgments of Honourable Supreme Court are contrary to the plain language of Section 10(2)(i) and on a wrong understanding of the earlier judgments of Honourable Supreme Court in the case of **S. Sundaram Pillai and others vs. V. R. Pattabiraman and others** case. Para 63 to 65 of the judgment in the case of **S. Sundaram Pillai and others vs. V. R. Pattabiraman and others** is extracted to appreciate the arguments of learned Senior Counsel Mr. S. Meenakshi Sundaram:

.....63. The argument of the counsel for landlords was that even if a notice under the Explanation is given that does not take away the jurisdiction of the proviso to determine whether or not the default has been wilful if



it contains the qualities and attributes referred to above because what the Explanation does is merely to incorporate an instance of a wilful default and is not conclusive on the point and would have to be construed by the court in conjunction with the conditions mentioned in the proviso. We are, however unable to go to this extreme extent because that will actually thwart the object of the Explanation. As we read the Explanation, it does not at all take away the mandatory duty cast on the Controller in the proviso to decide if a default is wilful or not. Indeed, if the landlord chooses to give two months' notice to his tenant and he does not pay the rent, then, in the absence of substantial and compelling reasons, the controller or the court can certainly presume that the default is wilful and order his eviction straightaway. We are unable to accept the view that whether two months' notice for payment of rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because that would render the very object of Explanation otiose and nugatory. We express our view in the matter in the following terms:

(1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus paenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two months' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord.

64. We would, however, refer to some case law on the question of wilful default as interpreted by the Madras High Court because there appear to be three decisions of the Madras High Court taking some what contrary views. In *Rajeswari v. Vasumal Lalchand*(1) it was held that non-payment of rent amounted to such supine and callous indifference on the part of the tenant as to amount to a

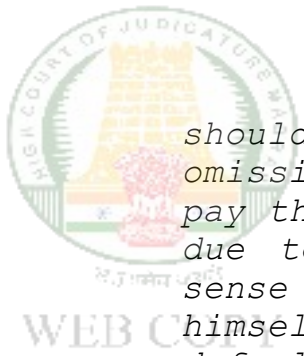


wilful default. However, the learned Judge does not appear to have noticed the effect of the Explanation to s. 10 (2) introduced in 1973. This decision undoubtedly supports the view that a wilful default is not merely a pure and simple default but a default which is per se deliberate and intentional. In *N. Ramaswami Reddiar v. S.N. Periamuthu Nadar*, (2) Explanation to the proviso to s. 10 (2) of the Act was expressly considered and Ratnam, J. Observed as follows:

"A reading of the Explanation indicates that it is not exhaustive of all cases of wilful default, but it specifies only one instance where the default should be construed as wilful. If a tenant does not pay the rents at all for a considerable time and the landlord files a petition for an order of eviction on the basis that the tenant had committed wilful default without issuing any notice, then, in the absence of any other explanation by the tenant, the default should be construed as wilful, in spite of the fact that the landlord had not chosen to issue a notice to the tenant claiming the rents. In this view, I hold that counsel for the petitioner cannot be of any assistance to him."

65. We feel ourselves in complete agreement with the view taken by the learned Judge on the interpretation of the proviso read with the Explanation. In the case of *Khivraj Chordia v. G. Maniklal Bhattad*, (3) Ramamurti, J. has drawn a very apt and clearcut distinction (1) AIR 1983 Madras 97. (2) [1980] Law Weekly (vol. 93) 577 (3) AIR 1966 Madras 67 between a simple default and a wilful default and has pointed out A that in order to be a 'wilful default' it must be proved that the conduct of the tenant was such as would lead to the inference that his omission was a conscious violation of his obligation to pay the rent. In this connection, the learned Judge observed thus:

"The decisions of this court have reportedly pointed B` out that there is a clear difference in law between default and wilful default and that non-payment of rent within the time specified by the Act, though would amount to default, cannot by itself be treated as wilful default, and that if the rent was paid after the expiry of the time in the following month within a short time thereafter, the default cannot be said to be wilful to warrant the punishment of eviction Keeping in mind the main object of the enactment, namely, prevention of unreasonable eviction of tenants, the principle that emerges from the several decisions is that for default to be regarded as wilful default, the conduct of the tenant



should be such as to lead to the inference that his omission was a conscious violation of his obligation to pay the rent or reckless indifference. If the default was due to accident or inadvertence or erroneous or false sense of security based upon the conduct of the landlord himself, the default cannot be said to be wilful default.".....

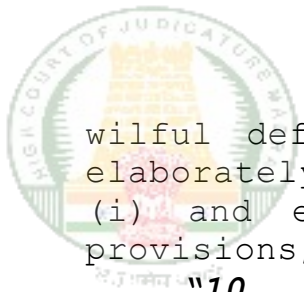
10. The learned Senior Counsel for the respondent further submitted that the judgment of Honourable Supreme Court in the case of **Raja MuthuKone vs. T.Gopalasami and another**, has no application in this case, as the revision petitioner has submitted a reply before the eviction petition was filed, disputing the quantum as well as the period of default. In the case of **Victor Devabalan vs S. Joseph Sagayaraj**, reported in **2012 (1) CTC 536**, after referring to the judgment of the Honourable Supreme Court in the case of **Raja MuthuKone vs. T.Gopalasami and another**, reported in **2003-1-L.W.134**, it has been held that the said judgment has no application to a case where the tenant had denied that there is default by way of reply before filing petition. The relevant portion of the judgment is in paragraph 8 and 9, which read as follows:

"....8. It is the contention of the learned counsel Mr.V.Srikandh appearing for the respondent/landlord that the facts of the decision in the Apex Court relied upon by the revision petitioner does not applicable to the facts of the present case.

9. In respect of the notice dated 10.02.2006 issued by the Landlord, the revision petitioner has sent a reply dated 24.02.2006 refuting the claim of default in payment of rent. Therefore, the explanation to proviso of Section 10(2)(i) of the Act is not attracted. The revision petitioner/tenant denied the default in his immediately reply to the notice by the landlord. In view of the above, the landlord filed petition under Section 10(2)(i) of the Act pleading wilful default....."

11. The learned Senior Counsel for the respondent then relied upon a judgment of a learned Single Judge of this Court in the case of **Balu vs Jawahar and others**, reported in **2000 (1) MLJ 535**, for the proposition that the burden lies on the tenant to prove that he has paid rent to avoid eviction on the ground of wilful default. He also pointed out that the tenant, who pleaded that he had paid rent for the period of default alleged in the petition, has failed to prove payment.

12. Having regard to the legal submissions on both sides with regard to the maintainability of the petition before the expiry of two months from the date of notice for eviction on the ground of



wilful default, this Court is inclined to deal with the issue elaborately. For convenience and to appreciate the scope of 10(2) (i) and explanation, it is relevant to extract the relevant provisions, as under:

"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.

Provided that nothing contained in the said sections, shall apply to a tenant whose landlord is the Government .

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

"(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 tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a seasonable 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.

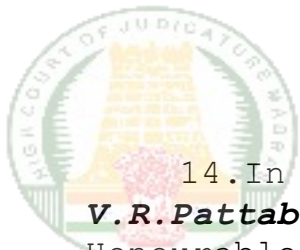
[Explanation.-For the purpose of this sub-section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continuous after the issue of two month's notice by the landlord claiming the rent .]"



13. From the plain reading of Section 10(2)(i), it can be seen that in every case, where there is default in payment of rent, the Rent Controller has to decide whether the default is wilful or not. In case, the Rent Controller finds that the default is wilful, order of eviction would follow. In case, the Rent Controller is satisfied that the default to pay or tender rent was not wilful, he may give a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to landlord upto the date of payment or tender and on payment or tender, the application can be rejected. The explanation talks about a situation where the default continues, even after the issue of two month's notice by the landlord claiming the rent. No other provision under Section 10, mandates issuance of two month's notice prior to filing the petition for eviction on the ground of wilful default. In the case of **M/s.Chordia Automobiles vs. S.Moosa and others**, the Honourable Supreme Court dealt with a case, where there was a dispute in respect of quantum of rent. Since arrears of rent was not paid till filing of counter and the arrears of rent was paid only in compliance of an order under Section 11 of the Act on 13.08.1990, the Rent Controller allowed the petition for eviction and the order of the Rent Controller was confirmed by Appellate Authority and High Court. The landlord in that case issued a notice dated 09.08.1989 and the petition for eviction was filed on 27.09.1989, even before any reply. However, in the stated circumstances, the Honourable Supreme Court has held as follows:

"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 for 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."

The Honourable Supreme Court has further observed that if the petition is filed before the period, there could be no question of sending any reply and that as two months did not expire from the date of notice. When petition was filed before the expiry of two months, it could not be a case of wilful default. The above judgment cannot be understood as one to mandate the issuance of two month's notice prior to the petition or to support the submission of learned Counsel for the revision petitioner that no petition for eviction can be filed on the ground of wilful default before the expiry of two months period, in every case, where a notice is issued by landlord before filing of eviction petition. The Honourable Supreme Court has decided the issue whether the default of tenant was wilful or not, on merits. Hence the judgment of Honourable Supreme Court cannot be expanded to advance the argument of learned Counsel for the revision petitioner that the petition for eviction is not maintainable.



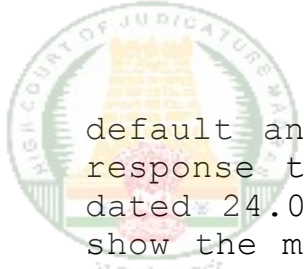
14. In the case of **S.Sundaram Pillai and others vs. V.R.Pattabiraman and others**, reported in (1985) 1 SCC 591, the Honourable Supreme Court has elaborately considered the scope of proviso to Section 10(2)(i) and the explanation. The position is explained in para 63 of the judgment. The Honourable Supreme Court rejected the contention of landlord that it will always be open to the Controller under the proviso to determine the question of wilful default, whether two months notice for payment of rent is given or not. In a case where notice is given by landlord and the tenant has paid the arrears, it has been held that there could be no question of wilful default in view of the explanation to Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Para 72 of the judgment clarifies the position. Hence this judgment cannot support the proposition that in a case where notice is given, no petition can be filed for eviction before the expiry of two months from the date of notice.

15. However after referring to **S.Sundaram Pillai and others vs. V.R.Pattabiraman and others** case reported in (1985) 1 SCC 591, the Honourable Supreme Court, in the case of **Raja Muthukone vs. T.Gopalasami and another**, reported in 2003-1-L.W.134, it has been held as follows:

"In the case at hand, once the landlord gave a notice to the tenant claiming the rent in arrears, he should have waited for a period of two months from the date of service of notice and it is only on non-payment or non-tender of rent within the period of two months that the landlord could have initiated the proceedings for eviction on the ground of wilful default and then it would have been for the tenant to satisfy the Rent Controller that inspite of non-payment of rent for a period of two months from the date of service of notice, he was not a defaulter for reasons."

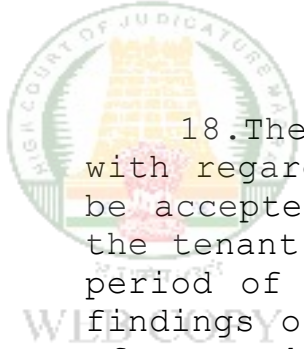
With great respect to the Honourable Supreme Court, this Court is unable to follow the above judgment as this Court find that the proposition is contrary to the plain language of Section 10(2)(i) and the proviso and explanation apart from being contrary to several judgments of Honourable Supreme Court on the interpretation of statute and on the scope and true intent and application of Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Further this judgment has no application to the present case and hence this Court is not inclined to elaborate further.

16. In the case on hand, it is not in dispute that the landlord had issued a notice under Ex-P2, dated 10.10.2009, demanding arrears of rent for 13 months at the rate of Rs.1,500/- per month. To this notice, a reply was sent by the tenant on 13.10.2009 and on 12.10.2009 under Ex-P3 and Ex-P4 disputing the period of



default and quantum of rent. Even the notice under Ex-P2 was in response to an earlier notice issued by the tenant under Ex-P1, dated 24.09.2009. The reply under Ex-P3 and Ex-P4 would clearly show the mind of tenant that he is not inclined to pay arrears as he did not admit any arrears. Hence petition for eviction in R.C.O.P.No.92 of 2009 was filed on 30.10.2009. The landlord need not wait for two months to file an eviction petition, if the tenant express his stand that there is no arrears. Similar situation was considered in **Victor Devabalan's** case reported in **2003-1-LW-134** and it is held that in a case where the tenant has sent a reply refuting the claim of default in payment of rent, the explanation to proviso of Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is not attracted. Though this Court prefers to use a different expression, having regard to the scope of explanation to the proviso of Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this Court has no hesitation to hold that the judgment of Honourable Supreme Court reported in **2003-1-LW-134** has no application to the present case, where the landlord has filed eviction petition after receiving reply from tenant disputing arrears and expressing unequivocally an intention not to pay arrears.

17.It is the definite case of landlady that the tenant has committed default from August'2008 at the rate of Rs.1,500/- per month. The burden lies on the tenant to prove payment. The case of the tenant that he has not committed any default and that the rent is only Rs.600/- is not substantiated by any independent evidence. The learned Counsel for the revision petitioner submitted that the landlady has examined PW-2, who is none other than a different tenant of the landlady and that the witness in his evidence has deposed to the effect that the landlady was in the habit of acknowledging receipt of rent in a note book maintained by the tenant. It is pointed out that the said witness, PW-2, has not produced such note book, even though he had admitted that he was in possession of the note book. It is then submitted that adverse inference should be drawn against the landlady for non production of the note book, which was available with PW-2. This argument has no legal basis as adverse inference cannot be drawn on the basis of conduct alleged against a person, who is not a party to the proceedings. Secondly, PW-2 was examined as a person to support the case of landlady. His evidence to the fact that he was in possession and maintaining a note book, in which the landlady used to acknowledge the receipt of rent, if disputed, it is open to the tenant to issue notice for the production of documents, namely, the note book. Without adopting this course, the tenant cannot now state before this Court that adverse inference should be drawn against the landlady for non-production of such pass book or note book, stated to have been maintained by PW-2.



18. The contention of the learned Counsel for the petitioner with regard to the earlier order passed under 11(4) petition, may be accepted. This Court is of the view that the question whether the tenant has committed wilful default or the issue regarding the period of default cannot be decided, merely based on the earlier findings of the Rent Controller in a petition under Section 11(4) of Act. The power of Rent Controller to decide the admitted rent summarily under Section 11(4) is only for the purpose of Section 11 and no finality can be attached to an order passed under Section 11, either regarding quantum or period of default.

19. This Court is able to see that Section 11(4) of the Act is to compel the tenant to pay the admitted arrears to avoid summary eviction as contemplated under 11(4) of the Act. When there is a dispute, the Rent Controller is the authority to determine summarily the rent to be paid or deposited by the tenant under Section 11(4) of the Act, during the pendency of eviction on any ground available under Section 10 of the Act. It does not mean that the order passed by the Rent Controller under Section 11(4) is final as regards the quantum of rent or period of default. However, it does not carry the tenant anywhere as other circumstances and evidence in this case clearly show that the default is wilful. When the burden lies on the tenant to prove that he has not committed wilful default, he cannot shift the burden on the landlady to show that he has committed wilful default. Though it is the case of the tenant that the landlady was not in the habit of issuing receipts, that does not lead to a conclusion that the tenant has proved his case that he has paid rent regularly without any wilful default.

20. It is not disputed that the landlady was not in the habit of issuing receipt. It is the case of the landlady that she was acknowledging such receipt of payment by making endorsement in a note book, which was maintained by the tenant. The evidence of PW-2, corroborates the case of landlady. Though the tenant examined a witness as RW-2, it appears that the said witness turned hostile and the revision petitioner did not thereafter, take any effort to prove his case by examining other witness except cross examining his own witness. It is also admitted that there is no other evidence except his version. It is an accepted position that the tenant has every right to demand receipt and the respondent / landlady cannot deny receipt. In case the landlady is not in the habit of issuing any receipt, it is open to the tenant to pay rent, by other modes and to insist receipt for payment, apart from filing a petition before the Rent Controller, for deposit of rent. Having regard to the findings of the Courts below and the fact that the tenant has also committed wilful default even after filing of the revision petition, this Court is not inclined to interfere with the findings of the Courts below on the question of wilful default. Having regard to the conduct of the tenant in not



paying the entire rental arrears immediately or after the order was passed under Section 11(4) of the Act, the findings of the authorities below that the rent was not deposited regularly is relevant. The subsequent conduct is also a relevant factor, which can be considered, whether the tenant has committed wilful default or not. With regard to the quantum of rent, the Rent Controller as well as the Rent Control Appellate Authority accepted the case of landlady by considering the fact that the demised premises is located in a busy commercial area in Tirunelveli Town. This Court has no other option, but to accept the findings of the Courts below, with regard to the quantum of rent. Since the revision petitioner has failed to establish that the quantum of rent was only Rs.600/- as against the sum of Rs.1,500/-, this Court can also deduce from the stand taken by the tenant that he has committed default in payment of rent and that his default is wilful.

21. Even in the counter affidavit filed before the Court below, in paragraph 3, the revision petitioner has stated as follows:

“iii. கடந்த மூன்று ஆண்டுகளாக எதிர்மனுதார் வயிற்று பிழைப்புக் காக அரசிடம் உரிய உரிமம் பெற்று மனுதார் மற்றும் மனுதார் கணவரிடம் வாய்மொழியாக அனுமதி பெற்று, சிறியளவில் தயிர் மோர் பாக்கெட் தயார் செய்து கடைகளுக்கு கொடுத்து வருகிறார். இதனைக்கண்டு பொறாமை கொண்ட மனுதார் மற்றும் மனுதார் கணவர் மனு தபசில் சொத்திற்கு வாடகையை ரூ.1,500 - என்று உயர்த்தி தர வேண்டும் என்று எதிர் மனுதாரரை நிர் பந்தித்துள்ளார்கள்.”

22. When the revision petitioner admitted that he is doing a commercial activity for his livelihood, it can be said that the tenant is not using the premises for residential purposes. It is not in dispute that the premises were let out for a residential purpose. Though the tenant has stated that he had obtained an oral permission from the landlady, there was nothing on record indicating that the landlady has permitted the tenant to do such business. Under Section 10 of the Act, written permission of the landlord is required. Under Section 10(2)(b), the tenant, who wants to use the building for the purposes other than the one, for which it was leased out, has to get the written consent of the landlady. In this case, since written consent was not obtained, there is no scope for interfering with the findings of the Courts below with regard to different use.

23. As regard nuisance, this Court is unable to see any specific ground in the petition. In the petition, the landlady has stated as follows:

“6. The respondent has caused nuisance to the neighbor/occupiers of the petitioner by executing illegal activities in the petitioner schedule properties, which was complained by the occupiers to the petitioner. The petitioner's husband had severely warned the respondent



that not to indulge any illegal activities in the petition schedule properties. But the respondent did not hear off and threatened the petitioner's husband. Hence, the respondent is liable to be evicted from the schedule properties on the ground of cause nuisance to the neighbor/occupier. The respondent had suppressed the entire facts and sent a legal notice to the petitioner and her husband on 24.09.2009 and the petitioner has sent a reply notice to the respondent's counsel through her advocate on 10.10.2009. In which there was a correction in the reply notice, the petitioner has sent another notice to the respondent's counsel on 13.10.2009. the respondent had also instructed his counsel to send a rejoinder notice dated 12.10.2009 and 14.10.2009. All the notices are produced herewith and the same may be read as part and parcel of this petition"

24.From the averments in the petition, no specific incident or event is mentioned as the cause for nuisance. Except referring to 'illegal activity', there is no clarity. Carrying on commercial business is not an illegal activity. The trial Court as well as the appellate Court further found that the tenant has caused nuisance because of the fact that he is producing curd by using special chemicals and has given some reasons, which are not even pleaded. In these circumstances, this Court is unable to concur with the view of the Rent Controller as well as the Rent Control Appellate Authority, as regards nuisance. As a result, except with regard to nuisance, the order of eviction against the revision petitioner on the other two grounds, namely, wilful default and different use is confirmed and this Civil Revision Petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

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

2.The 1st Additional District Munsif,
Additional Rent Controller,
Tirunelveli.



3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

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+ 1 cc TO Mr.H.Arumugam , Advocate in SR No. 63140
+ 2 ccs TO Mr.R.Manimaran , Advocate in SR No. 63174

cmr

AE/SKN RSK/SAR4/24.05.2018/18P/8C

C.R.P. (NPD) (MD) No.2245 of 2013
23.04.2018