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C.A.No. 1509 OF 2000

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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Item No.103

Court No.6

Section XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 1509 OF 2000.@@

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Kanchana

...Appellant(s)

Vs.

P. Manian

...Respondent(s)

[With office report]

Date:28/02/2002 This matter(s) was called on for hearing today.

CORAM:

HON'BLE MR.JUSTICE SYED SHAH MOHAMMED QUADRI

HON'BLE MR.JUSTICE DORAISWAMY RAJU

For the appellant(s) : Mr.KK Mani,Adv.

For the respondent(s) : Mr.LN Rao,Sr.Adv.

M/s V.Krishnamurthy,V.Rama Subramaniam,
T.Harish Kumar,Advs.

UPON hearing counsel the Court made the following
O R D E R

.SP2

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Heard the learned counsel for the parties for about 10 minutes each.

The appeal is allowed in terms of the signed order. There shall be no order as to costs.

.SP1

[Naresh Kumar]
Court Master

[Kanwal Singh]
Court Master

[Signed order is placed on the file.]

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.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1509 OF 2000@@
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Kanchana ...Appellant

Vs.

P. Manian ...Respondent

O R D E R@@
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.SP2

This appeal is from the judgment and order of the High Court of Judicature at Madras in CRP No.2674/93 dated July 29, 1998. The appellant is the landlady of a non-residential building comprising of two shops of which the respondent is the tenant.

The appellant filed an eviction petition before the Principal District Munsif, Coimbatore, for eviction of the respondent on the ground that he committed wilful default in payment of rent for the shops from March 1985 to August 1985. The application was later amended to read that the rent was due for the period from March 1985 to February 1986. The respondent contested the claim and denied that he committed wilful default in payment of rent for the said period. The learned trial court, by its order dated August 11, 1992, found that the respondent committed wilful default in payment of rent and accordingly ordered eviction of the respondent from the shops. He challenged the

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correctness of that order before the Court of the Rent Control Appellate Authority (IInd Additional sub Judge, Coimbatore) in Rent Control Appeal No.148/92. The learned Appellate Authority agreed with the finding recorded by the trial court and dismissed the appeal on July 14, 1993. Dissatisfied with the order of the Appellate Authority the respondent filed CRP No.2674/93 in the High Court, which was allowed on July 29, 1998 and the orders of the authorities below were set aside. The appellant is in appeal assailing the said order of the High Court.

Mr.KK Mani, learned counsel appearing for the appellant, contends that when both the learned Rent Controller as well as the learned Appellate Authority recorded the finding that the respondent has committed wilful default the High Court erred in allowing the revision petition without even reversing the finding of those authorities. Mr. LN Rao, learned senior counsel appearing for the respondent, submits that the default committed by the respondent could not be said to be a wilful default and that as the appellant did not file an application under Section 11(4) of The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 for claiming the rent alleged to be due during the pendency of the rent proceedings, the High Court was right in arriving at the conclusion that the appellant had waived his claim for relief under Section 11(4).

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The short point that arises for consideration is:

whether the High Court was right in setting aside the order of the Appellate Authority confirming the order of the learned Rent Controller that the respondent committed wilful default in payment of the rent for the aforementioned period.

We must observe that whether there has been a wilful default in payment of rent by the respondent is primarily a question of fact which should not ordinarily be disturbed by a revisional court unless the order suffers from non-consideration of important evidence, or misreading of the evidence or recording a conclusion which no reasonable man in the given facts could have arrived at. A perusal of the Order of the High Court, under challenge, does not show that the order was interfered with on any of the aforementioned grounds. By a curious reasoning which we are unable to appreciate the High Court concluded:-

.SP1

"10. In my considered opinion, the decision in Vijayakumar v. Ravindaran reported in 1997 (III) CTC 476 is not applicable to the facts and circumstances of this case as the question of adjusting the deposit of advance available with the respondent-landlady does not arise. However, I am obliged to apply the decision of the Apex Court in K.A. Ramesh & Ors. v. Smt.Susheela Bai & Ors. reported in 1998 (2) L.W. 300 wherein, it is clearly held that even if there was any default during the pendency of such proceeding, it was open to the respondents to enforce the statutory right available to them. Therefore, the

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respondent-landlady having failed to avail such statutory right, is not entitled to complain against the revision petitioner-tenant for an alleged wilful default.

11.....Hence I am satisfied that both the authorities below erred in holding that the revision petitioner-tenant has committed wilful default and ordered eviction. Therefore, the order of eviction of the Courts below are set aside and the revision is allowed."

.SP2

We have noted above that the default in payment of rent relates to the period before filing the eviction petition and by amendment subsequent period is also added. The High Court did not examine the correctness of the finding recorded by the Courts below much less did it give any reason to set aside the same.

For the aforementioned reasons we are unable to sustain the order of the High Court, it is accordingly set aside and the order of the learned Rent Controller as confirmed by the Appellate Authority is restored. The appeal is allowed. But in the circumstances of the case there shall be no order as to costs.

Mr. Rao, has submitted that as the shops are business premises the respondent may be granted reasonable time to vacate and hand over possession of the same to the appellant. Having regard to the facts and circumstances of the case, in our view, interest of justice would be met if

a period of six months is granted to the respondent. Accordingly, we grant time till August 31, 2002 to the respondent to vacate and handover peaceful possession of the shops to the appellant, subject to his filing an usual undertaking within four weeks from today.

.SP1

.....J.
[SYED SHAH MOHAMMED QUADRI]

New Delhi,
February 28, 2002.@@
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.....J.
[DORAISWAMY RAJU]