A S.A. RAMACHANDRAN

v.

S. NEELAVATHY

DECEMBER 20, 1996

B [KULDIP SINGH AND S. SAGHIR AHMAD, JJ.]

Rent Control Laws : Tamil Nadu City Tenant's Protection Act, 1921: Section 3,9 and 11—Suit for Eviction—Tenant directed to be evicted—Right to object—Waiver of—Earlier the tenant filed application under Section 9—Ap-
C *plication rejected being beyond time—Separate application for condonation of delay in filing the application also rejected—Tenant unable to invoke Section 9—Application of the principle of waiver by the High Court against the tenant—Validity of—Held, requirements under Section 11 are in the nature of conditions precedent, their non-compliance will render suit liable to be dismissed at the threshold—Since the application was rejected being beyond time,*
D *tenant cannot be said to have waived his right to object to the irregularity or illegality in the institution of the suit.*

Code of Civil Procedure, 1908 : Section 80—Intent of—Explained vis-a-vis Section 11 of Tamil Nadu City Tenant's Protection Act, 1921.

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Appellant was a tenant on a plot owned by the respondent, A suit for eviction of the appellant was field by the Respondent. The suit was dismissed on the ground that it was instituted without first issuing notice to the appellant under Section 11 of the Tamil Nadu City Tenant's Protection Act, 1921. The first appellate Court dismissed the appeal of the respon-
F **dent. The second appeals was allowed by the High Court on the ground that the appellant by invoking the provisions of Section 9 of the Act by making an application that the property in dispute may be directed to be sold in his favour had waived his right to object to the institution of the suit without issuing a notice under Section 11 of the Act.**

G **Earlier,the appellant had filed an application under Section 9 of the Act for a direction of the respondent to sell the property in question for a price to be fixed by the Court. As the application had been filed beyond time, he had filed a separate application for condonation of delay. This application for condonation was rejected by the Trial Court, the Civil**
H **Revision against which was dismissed by the High Court. The result was**

that the appellant could not invoke Section 9 of the Act. A

In appeal to this Court, on behalf of the appellant it was contended that the appellant was not permitted by the Court to invoke Section 9 as his application for condonation of delay was rejected by the Trial Court and the Trial Court's judgment was upheld by the High Court. The High Court, therefore, was in error in invoking the principle of waiver. B

On behalf of the respondent it was contended that the appellant had preferred to take advantage of the institution of the suit and had made an application under Section 9 of the Act (though beyond time) and, therefore, he could not invoke Section 11 and contend that the suit was not maintainable for want of notice. C

Allowing the appeal, this Court

HELD : 1.1 Section 11 of the Tamil Nadu City Tenant's Protection Act, 1921 provides that no suit for ejectment shall be instituted against the D tenant without first giving him a notice, in writing. Another prohibition is that the suit shall not be instituted until the expiration of three months next after notice in writing has been given to the tenant. It is obvious that if a suit is instituted without giving notice or if a notice is given but the suit filed before the expiry of three months, it would be in violition of the prohibitions E set-out in Section 11 and such a suit cannot proceed. [877-A-D]

1.2 The prohibitions set out in the Section work against the plaintiff. They also create a right in favour of the tenant so that he may not be directly drawn into litigation before a court. If an opportunity is given to him to surrender possession with the offer that he would be duly compen- F sated for the building and the trees and the amount of compensation is also disclosed to him, he may, during the period of three months, before the expiry of which the suit cannot be instituted, consider the offer and decide whether to litigate with the landlord or quit. If he decides to contest the suit, he gets another opportunity under Section 9 by making an G application to the Court for a direction to the landlord to sell the property in his favour for a price which may be fixed by the Court. [877-E-G]

2.1 The requirements under Section 11 are in the nature of conditions precedent which have to be complied with before instituting a suit, the non-compl-iance would be fatal and such suit would be liable to be H

A **dismissed at the threshold. [878-G]**

2.2 The requirements under Section 11 cannot be compared with the requirements under Section 80 C.P.C. The right of a tenant who may be poor cannot be compared with the mighty Governments regarding whom it has been observed times out of number by the Courts that they should not
B **litigate with their citizens on technicalities and should not endeavour to defeat the suit by pleading technical questions, as for example, want of notice under Section 80 C.P.C. or limitation in cases which are eminently just, proper and equitable. [878-G; 879-B]**

C *Vedachal Naicker* **v.** *Duraiswami Mudalair*, **(1950)1 M.L.J. 732;** *Vellayan Chettiar* **v.** *The Government of Madras,* **74 I.A. 223 AIR (1947) PC 197;** *Mohamed Hussain Rowther* **v.** *Tirupathi Chettiar*, **(1966) 1 M.L.J. 206;** *Ranganatham* **v.** *Mariappa*, **(1942) 1 M.L.J. 92 AIR (1942) Madras 334, and** *Sri Agatheeswarar Prasanna Venkatesa Perumal Devasthnam by its Hereditary Trustee P. Valliamal* **v.** *M.Narasimhan*, **(1982) 2 M.L.J. 70, referred to.**

D

3. In the instant case, on facts there is no waiver, since, the application filed by the appellant was beyond time and was rejected, the appellant cannot be said to have taken advantage of Section 9 of the Act and consequently, it cannot be said that by filing an application under Section 9 he waived his right to object to the irregularity or illegality in the
E **institution of the suit. [879-B; 879-D-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8760 of 1994.

F From the Judgment and Order dated 5.4.94 of the Madras High Court in S.A. No. 52 of 1990.

R.K. Jain and S. Menon for the Appellant.

M. Kalyansundram and M.A. Krishnamoorthy for the Respondent.

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The Judgment of the Court was delivered by

S. SAGHIR AHMED, J. The appellant who is the tenant of a vacant plot of land owned by the respondent has approached this Court against the judgment dated 5.4.1994 passed by the Madras High Court by which
H the respondent's second appeal was allowed and the appellant was directed

to be evicted from that plot. A

2. The Suit (O.S. No. 110 of 1981) which was filed by the respondent in the court of the District Munsif, Poonamalle for the eviction of the appellant was dismissed by that court on 5.5.1988 on the ground that the suit was instituted without first issuing notice to the appellant under Section 11 of the Tamil Nadu City Tenant's protection Act. 1921 (for short. the Act). The Sub-ordinate Judge, Poonamalle before whom first appeal (A.S. No. 26 of 1989) was filed by the respondent, dismissed the appeal on 20. 9. 1989 and upheld the judgment of the trial court. The respondent, thereafter, field second appeal (25 of 1990) in the High Court which, as pointed out above, was allowed by the High Court by the Judgment dated 5.4.1994 on the ground that the appellant had invoked the provisions of Section 9 of the Act by making an application that the property in dispute may be directed to be sold in his favour and has thus waived his right to object to the institution of the suit without issuing a notice under Section 11 of the Act. B C D

3. It may be pointed out that the appellant had filed an application under Section 9 of the Act for a direction to the respondent to sell the property in question on a price to be fixed by the Court. The application was filed beyond time prescribed under the Act and consequently, he had filed a separate application for condonation of 20 days delay in filing that application. The application for condonation of delay was rejected by the District Munsif by his order dated 12.7.1982 against which the appellant filed a Civil Revision (C.R.P. No. 1349 of 1983) in the High Court of Madras which by its order dated 9.9.83 dismissed the Revision with the result that the appellant could not invoke the provisions of Section 9 of the Act. Thereafter, the appellant, who had already filled a written statement in the suit, sought permission of the District Munsif to file an additional written statement in O.S. No. 110 of 1981 which was allowed and the appellant filed the additional written statement in which he raised the plea that suit instituted by the respondent was not maintainable for want of notice under Section 11 of the Act. This plea, as pointed out earlier, was accepted by the trial court as well as by the first appellate Court. But the High Court in second appeal reversed the judgment and held that the appellant having waived his right to object to the maintainability of the suit for want of notice under Section 11 of the Act was liable to be evicted from the plot in question over which he had, admittedly, raised super-structures. E F G H

A 4. The learned counsel for the appellant has contended that the judgment passed by the High Court is erroneous as the appellant was not permitted by the court itself to invoke the provisions of Section 9 as his application for condonation of delay was rejected by the trial court and the trial court's judgment ws upheld by the High Court. The High Court was, therefore, in error in invoking the principles of waiver and decreeing the B suit of the respondent for his eviction. The respondent's counsel, on the contrary, contended that the appellant had preferred to take advantage of the institution of the suit and had made an application under Section 9 of the Act (though beyond time) for a direction for the sale of the property in his favour and, therefore, he could not invoke the provisions of Section C 11 and contend that the suit was not maintainable for want of notice under that Section was not given to him. Section 3 of the Act provides as under:

> "3. Payment of compensation on ejectment"-Every tenant shall on ejectment be entitled to be as compensation the value of any building, which may have been erected by him, by any of his D predecessors-in-interest, or by any person not in occupation at the time of the ejectment who derived title from either of them and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on E the land (and of any improvements which may have been made by him.)"

5. Section 9 provides as under :

> "Application of Court for directing the landlord to sell land-
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> [(1) (a) (i) Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the presidency Small Causes Courts Act. 1882, taken by the landlord may, [within one month of the date of the publication of Madras City tenants, Protection G (Amendment) Act, 1978, if the Tamil Nadu Government Gazette of the the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate or within. [One month] after the service on him of summory; apply to the Court for an order that the landlord shall be directed [to H sell for a price to be fixed by the Court, the whole or part of, the

extent of land specified in the application.] A

(ii) Notwithstanding anything contained in clause (a) (i) of this sub-Section, any such tenant as is referred to in sub-Clause (ii) (b) of Clause (4) sub-Section 2 or his heirs, may within a period of two months from the date of the publication of the Madras City Tenants Protection (Amendment) Act. 1973 apply to the Court B (Whether or not a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act. 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such suit proceeding is pending having jurisdiction to entertain a suit for ejectment or in the City of Madras either C to such Court or to the Presidency Small Cause Court, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the Court the whole or part of the extent of land specified in the application.

[(b) On such application, the Court shall first decide the minimum D extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court, shall, then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under Clause (a) whichever is less. The price aforesaid shall be the average market value of E the three years immediately preceding the date of the order. The Court shall order that within a period to be determined by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more installments with or without interest.] F

(2) In default of payment by the tenant of any one instalment, the application under Clause (a) of sub-Section (1) shall stand dismissed. Provided that on sufficient cause being shown, the Court may excuse the delay and pass such orders as it may think fit, but G not so as to extend the time for payment beyond three years above mentioned. On the application being dismissed, the Court shall order the amount of the instalment or installments, if any, paid by the tenant to be re-paid to him without any interest.

[(3) (a) On payment of the price fixed under Clause (b) or sub- H

A Section (1) the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

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(b) On the order referred to in Clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated.]

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6. Section 11 Provides as under:-

"Notice before institution of suits or applications against tenants- No suits in ejectment or applications under Section 41 of the Presidency Small Causes Courts Act, 1882, shall be instituted or

D presented against a tenant until the expiration of three months next after notice in writing has been giving to him requiring him to surrender possession of the land and building, and offering to pay compensation for the building and trees, if any and stating the amount thereof.

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A copy of such notice shall at the same time be sent, in the case of property situated in the City of Madras, to the Commissioner or the City of Madras, or in the case of property situated in any municipal town, (township) or village to which this Act is extended, to the executive officer of the panchayat, as the case may

F be or any other authority as may be notified by the Government."

7. The appellant is the tenant of a plot of land over which he raised super-structures and consequently, he is entitled to compensation. Section 9 which has been reproduced above indicates that a tenant who is entitled to compensation under Section 3 and against whom suit for ejectment is

G filed may apply to the court for an order that the landlord be directed to sell, for a price to be fixed by the court, the whole or part of the land specified in the application. The court shall, then, fix the price and direct the tenant to pay the price in one or more instalments with or without interest. If, however, the tenant commits any default in payment of any of

H the instalments, his application for sale of the property shall stand dis-

missed. Otherwise the court would direct the landlord to execute the conveyance in favour of the tenant. A

8. Section 11 contains the prohibition to the institution of the suit for ejectment. It specifically provides that no suit for ejectment shall be instituted against the tenant without first giving him a notice, in writing, requiring him to surrender possession of the land and building and offering to pay compensation for the building and trees and stating clearly the amount offered therefor. Another prohibition is that the suit shall not be instituted until the expiration of three months next after notice in writing has been given to the tenant. B

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9. It is obvious that if a suit is instituted without giving notice or if a notice is given but the suit is filed before the expirty of three months, it would be in violaton of the prohibitions set out in Section 11. Such a suit cannot proceed. Even the cause of action, which consists of a bundle of facts, apart from other facts, would depend upon giving a notice to the tenant and waiting for a period of three months before instituting the suit. From the tenor of Section 11, it appears that in every suit instituted under Section 11 of the Act, it will have to be mentioned in the plaint that the plaintiff had given a notice (contemplated by that Section) in writing to the tenant and that the suit was being instituted after the expiry of three months from the notice. D

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10. The prohibitions set out in the Section work against the plaintiff. They also create a right in favour of the tenant so that he may not be directly drawn into litigation before a court. If an opportunity is given to him to surrender possession with the offer that he would be duly compensated for the building and the trees and the amount of compensation is also disclosed to him, he may, during the period of three months, before the expiry of which the suit cannot be instituted, consider the offer and decide whether to litigate with the landlord or to quit. F

11. If he decides to contest the suit instituted against him, he gets another opportunity under Section 9 of the Act by making an application to the court for a direction to the landlord to sell the property in his favour for a price which may be fixed by the court. G

12. The High Court after having come to the conclusion that the provisions of Section 11 were mandatory has held that the notice con- H

templated by Section 11 of the Act which is required to be given to the tenant can be waived expressly or impliedly by the tenant by his conduct and it is on the ground of waiver that the High Court has, in the instant case, interferred and decreed the suit of the respondent for the appellant's eviction from the premises in question as the High Court was of the opinion that the appellant having made an application under Section 9, waived his right to object to the institution of suit which, admittedly, was filed without giving notice contemplated by Section 11 of the Act.

13. The High Court has relied upon its earlier decision in *vedachala Naicker* v. *Durajswami*, (1950) 1 M.L.J. 732 to come to the conclusion that by invoking the provisions of Section 9, the appellant waived his right to object to the institution of suit for want of notice under Section 11. In that case, the High Court has relied upon the Privy Council decision in *Vellayan Chettiar* v. *The Government of Madras,* 74 I.A. 223, = AIR (1947) PC 197 in which it was held that the requirement a notice under Section 80 C.P.C before instituting a suit against the Government can be waived by the Government. A similar view was also taken by the Madras High Court in *Mohamed Hussain Rowther* v. *Tirupathi Chettiar,* (1966) 1 M.L.J. 206. In *Ranganatham* v. *Mariappa*, (1942) 1 M.L.J 92 = AIR (1942) Madras 334, it was held by Patanjali Sastri, J. (as he then was) that Section 11 was mandatory and imposed an unqualified obligation upon the court not to entertain a suit for ejectment in the absence of compliances with its provisions. These decisions as also a few others were considered by a Division Bench of the Madras High Court in *Sri Agatheeswrar Prasanna Venkatesa Perumal Devasthanam by its hereditary Trustee P. Valliammal* v. *M.Narasimhan*, (1982) 2 M.L.J. 70 and it was laid down that although the provisions of Section 11 were mandatory and the suit for ejectment of the tenant could not be instituted without a prior notice, the requirement of notice could be waived by the tenant expressly or impliedely by his conduct.

14. We are of the view that since the requirements under Section 11 are in the nature of conditions precedent which had to be complied with before instituting a suit in a court, the non- compliance would be fatal and such suit would be liable to be dismissed at the threshold. The requirements under Section 11 cannot be compared with the requirements under Section 80 C.P.C. The right of the tenant who may, if not always. be a poor tenant, cannot be compared with the mighty Government regarding whom it has been observed times out of number by the courts that they should

not litigate with their citizens on technicalities and should not endeavour to defeat the suit by pleading the technical questions, as for example, want of notice under Section 80 C.P.C. or limitation in cases which are eminently just, proper and equitable. The Act essentially is for the protection of the tenants whereas no such protection for the Government is contemplated by Section 80 of the Code of Civil Procedure. But without entering into this controversy any further and leaving the question of waiver open, we may, in this case, observe that on facts there is no waiver.

15. The appellant, in the instant case, at no stage, was allowed to invoke the provisions of Section 9 of the Act as he had filed an application under that Section beyond time. His application for condonation of delay was rejected not only by the trial court but also by the High Court in Revision. The occasion to invoke the provisions of Section 9, therefore, did not come. In the meantime, the appellant filed the additional written statement and pleaded that the suit was liable to be dismissed for want of notice under Section 11 of the Act. Since the application filed by the appellant was beyond time and was rejected, the appellant cannot be said to have taken advantage of Section 9 of the Act and consequently, it cannot be said that by filing an application under Section 9, he waived his right to object to the irregularity or illegality in the institution of the suit.

16. For the reasons stated above, the appeal is allowed and the judgment and order dated 5.4.1994 passed in the second appeal by the High Court is set aside and those of the trial court and the Sub-ordinate judge (Appellate Court) are restored and the suit of the respondent is dismissed with costs which are quantified at Rs. 15,000.

S.S. Appeal allowed.