REPORTABLE

2025 INSC 1309

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2561 OF 2025

K. SUBRAMANIAM (DIED) THROUGH LRS
K.S. BALAKRISHNAN & ORS. ... APPELLANTS

VERSUS

M/S KRISHNA MILLS PVT.LTD. ... RESPONDENT

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. This is an appeal by the heirs of a lessee seeking reversal of a revisional judgment and order dated 22.06.2021[1] of the High Court of Judicature at Madras[2]. The impugned order affirmed an appellate order of eviction dated 25.02.2020 which, in turn, had reversed the original order of dismissal of the eviction petition dated 06.02.2019.

[1] impugned order
[2] High Court

FACTUAL MATRIX

2. The basic facts giving rise to the impugned order are not in dispute. To the extent germane for disposal of the present appeal, the same are adverted to in brief hereunder:

a. The sole respondent, M/s. Krishna Mills Pvt. Ltd.[3], is the owner of a godown bearing D. No. 1084, Avinashi Road, Pappanaickenpalayam, Coimbatore, Tamil Nadu, and the adjacent building[4].

b. The three appellants are the sons and heirs of K. Subramanian (since deceased), (proprietor of M/s. Royal Agencies).[5] The petition property consists of three portions of buildings measuring 5000 sq. ft. each, totalling to 15000. sq. ft., and a separate shed on the western side measuring 500 sq. ft.

c. A lease agreement, dated 11.10.1999, was executed by and between M/s. Krishna and the lessee, whereby a portion of the petition property, measuring 5000 sq. ft. was leased out at a monthly rent of Rs. 15,000/- for a period of 15 years. In October 2000, another 5000 sq. ft. of land and building was taken on lease for a monthly rent of Rs. 15,000. From 01.05.2000, the separate shed of 500 sq. ft. was taken on lease for a monthly rent of Rs. 3000. Subsequently, in October 2001, another 5000 sq. ft. was taken on lease for a monthly rent of Rs. 15,000. Thus, the total extent of 15,500 sq. ft. of land and

[3] M/s. Krishna, hereafter
[4] petition property
[5] Lessee, hereafter

building was leased for an aggregate monthly rent of Rs. 48,000/-. However, the lessee contended that the rent payable was Rs. 33,000/- p.m.

d. In 2004, M/s. Krishna filed an application for fixation of fair rent[6] before the Rent Controller, Coimbatore, alleging that the original rent was Rs. 48,000/- p.m. and not Rs. 33,000/- as claimed by the lessee; and consequently, fixation of Rs. 3,76,800/- p.m. as fair rent was sought. The Rent Controller allowed the application in part on 10.01.2007, and fixed the fair rent at Rs. 2,43,600/- p.m., payable from 01.02.2005.

e. M/s. Krishna then filed an application[7] on 17.07.2007 seeking eviction of the lessee on the ground of wilful default. While it was alleged that an extent of 15,500 sq. ft. had been given on lease at a monthly rent of Rs.48,000/- p.m., the lessee contended that the rent was only Rs.33,000/- p.m. Earlier, as noted above, on M/s. Krishna's application, the Rent Controller by its order dated 10.01.2007 had fixed the fair rent at Rs.2,43,600/- p.m. and subsequently, a demand of Rs.68,87,400/- was claimed towards arrears.

f. The lessee challenged the fixation of fair rent by carrying it in an appeal[8] before the Rent Control Appellate Authority, Coimbatore, which came to be dismissed on 20.02.2008, thereby confirming the fair rent.

[6] RCOP No. 44 of 2005
[7] RCOP No.134 of 2007
[8] RCA No.21 of 2007

g. Against such dismissal, the lessee filed a revisional application[9] before the High Court. By an interim order, the High Court directed deposit of Rs.25,00,000/- before the Rent Controller and further payment of Rs.75,000/- p.m. without prejudice to the parties' contentions. Complying with the said order, the lessee deposited the sum, as directed, and commenced paying Rs.75,000/- p.m.

h. On 09.09.2011, the High Court partly allowed the revisional application and reduced the rent to Rs.2,37,500/- p.m.

i. A legal notice dated 01.10.2011 followed, whereby M/s. Krishna demanded arrears of Rs.1,22,22,000/- after giving credit for Rs.25,00,000/-. The lessee, under protest, remitted Rs.2,13,750/- (after TDS) on 21.10.2011 towards rent for September, 2011 and thereafter preferred special leave petitions[10] before this Court. During the pendency of these petitions, M/s. Krishna filed a revised memo of calculation on 23.12.2011.

j. By an order dated 23.03.2012, this Court dismissed the special leave petitions but directed the lessee to pay arrears in instalments of Rs.15,00,000/- by the 15th of each month, along with regular rent of Rs.2,37,500/- p.m., clarifying that such arrangement was without prejudice to the rights of the parties in the pending proceedings.

[9] CRP (NPD) No.2511 of 2008
[10] SLP (C) Nos.6500-6501 of 2012

k. In compliance therewith, the lessee remitted Rs.13,50,000/- (after TDS) on 05.05.2012 and tendered two further cheques of Rs. 2,13,750/- (after TDS) and Rs. 13,50,000/- (after TDS) on 09.06.2012 towards arrears and rent.

l. The lessee sought a statement of accounts for audit purposes on 02.01.2013, and on 11.01.2013 sent a cheque of Rs.2,22,000/- (after TDS) in full settlement of arrears, asserting that all dues stood discharged. M/s. Krishna, by reply dated 05.02.2013, confirmed receipt of the arrears but stated that the same was received without prejudice to their rights in RCOP No. 134 of 2007.

m. On 06.02.2013, M/s. Krishna raised invoices claiming service tax and interest from 01.06.2007 to 31.12.2012. By letter dated 17.04.2013, the lessee reiterated that all dues had been cleared and denied wilful default, further contending that service tax liability did not fall upon him under the lease.

n. Following the demise of the lessee, M/s. Krishna filed an amended application on 23.10.2017 under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960[11], impleading the appellants (i.e., the heirs of the deceased lessee). Appellants filed their additional counter in February 2018, contending that no arrears were outstanding.

o. By an order dated 06.02.2019, the Rent Controller, Coimbatore, dismissed RCOP No.134 of 2007, holding that M/s. Krishna had

[11] Rent Control Act, 1960

failed to establish that original rent was Rs.48,000/- p.m. and further that since the lessee had paid fair rent in terms of the orders of this Court, no wilful default was made out.

p. Aggrieved thereby, M/s. Krishna preferred an appeal[12]. By a judgment and order dated 25.02.2020, the Principal Subordinate Judge, Coimbatore, reversed the Rent Controller's finding, observing that despite fair rent proceedings attaining finality, the lessee had failed to tender arrears promptly and that clearance in instalments, even after dismissal of the special leave petitions, amounted to wilful default. The Principal Subordinate Judge finally held that the appellants were liable to be evicted on the ground of wilful default.

q. Appellants then mounted a challenge to the judgment and order of reversal dated 25.02.2020 in a revisional application[13]. Upon hearing the parties, *vide* the impugned order, the High Court on 22.06.2021 dismissed such application holding that the interim direction to deposit Rs.25,00,000/- and to pay Rs.75,000/- p.m. was only for the purpose of admission of the civil revision petition and that the Court had not granted any stay of the order.

r. Although the appellants commenced paying rent as fixed by the High Court from 21.10.2011, belated payment of accumulated arrears nonetheless constituted wilful default.

[12] RCA No.32 of 2019
[13] CRP No.2053 of 2020

ARGUMENTS ON BEHALF OF THE APPELLANTS

3. Mr. Jaideep Gupta, learned senior counsel appearing for the appellants, contended that the eviction petition as originally filed was untenable. According to him, no notice had been issued by M/s. Krishna prior to the filing of RCOP No.44 of 2005, wherein wilful default in payment of rent was alleged on the ground that the monthly rent was Rs.48,000/- p.m., whereas the lessee consistently asserted that the rent was Rs.33,000/- p.m. He further contended that until disposal of CRP (NPD) No.2511 of 2008, no notice was ever served calling upon the lessee to pay arrears based on fixation of Rs.2,43,600/- p.m. as the fair rent by the Rent Controller with effect from 01.02.2005, covering the period up to 30.06.2007. He invited our attention to the letter dated 05.02.2013 of M/s. Krishna, wherein it acknowledged that the arrears had been received at the rate of Rs.2,37,500/- p.m., i.e., the fair rent as modified by the High Court on 09.09.2011. In such circumstances, it was urged that the belated amendment in RCOP No.134 of 2007, filed in the year 2017 after the demise of the lessee, impleading the present appellants and resurrecting the ground of wilful default for the very same arrears, was nothing but an afterthought and liable to be rejected.

4. Mr. Gupta maintained that the conduct of the lessee or the appellants was not that of a defaulter or an irregular payer of rent, since they continued to pay the originally agreed rent in compliance with the orders of various fora. Reliance was placed on the decision in ***Chordia***

Automobiles v. S Moosa[14] to contend that when the arrear amount was in dispute and the proceedings were pending, it was reasonable for the lessee to follow the interim arrangements, and the same could not be held to be a case of wilful default.

5. It was next contended by Mr. Gupta that pursuant to the interim order dated 30.07.2008 in CRP (NPD) No.2511 of 2008, the lessee had, without delay, started remitting the rent in consonance with the directions of the High Court. While arrears were not cleared in a lump sum immediately, this was on account of the pendency of SLP (C) Nos.6500-6501 of 2012 preferred against the order of the High Court dated 09.09.2011. The matter attained finality only upon the dismissal of the said special leave petitions by this Court on 23.03.2012 and, thereafter, the appellants' father scrupulously adhered to the directions of this Court by paying instalments of Rs.15,00,000/- towards arrears along with the monthly rent of Rs.2,37,500/-. To address the issue of finality in the fixation of fair rent, he placed reliance on the decision in ***Visalakshi Ammal v. T.B. Sathyanarayana***[15]*,* wherein it was held that the liability to pay fair rent would arise only upon the passing of the fair rent order by the Rent Controller, and that such liability would not attain finality so long as the order remained under challenge in appeal or revision. It was, therefore, submitted that the appellants cannot be branded wilful defaulters when the arrears were paid strictly in terms of the orders of this Court.

[14] (2000) 3 SCC 282
[15] (1997) 2 MLJ 453

6. Mr. Gupta contended, by placing reliance on ***PM Punnoose v. KM Munneruddin***[16]*,* that whenever there is a *bona fide* dispute on the quantum of arrears, the Controller should exercise his power under the proviso to sub-section (2) of Section 10 of the Rent Control Act, 1960 by passing an order thereunder and giving the tenant a reasonable time, not exceeding 15 days, to pay or tender the amount due to the landlord up to the date of such payment of rent. He also contended that the tenant had cleared the entire arrears and is willing to repay the outstanding arrears if any in two months, arguing against the order of eviction.

7. Reliance was further placed on ***N. Velmurugan v. K.N. Govindarajan***[17] to contend that once the execution petition was filed and the High Court had, by an interim order, permitted deposit and extended time for payment, there was no scope to allege wilful default. The expression "without prejudice" occurring in the order of this Court dated 23.03.2012 in SLP (C) Nos.6500-6501 of 2012, it was argued, could not be interpreted to enable M/s. Krishna, after having accepted arrears and rent pursuant to this Court's directions, to revive proceedings for wilful default in respect of the very same arrears.

8. Mr. Gupta next placed reliance on the decision of this Court in ***Rupa Ashok Hurra v. Ashok Hurra***[18] to urge that the principle of finality attaches only to the judgment of the Court of last resort, namely, this Court. It was argued that until the dismissal of SLP (C) Nos. 6500–

[16] (2003) 10 SCC 610
[17] (2002) 2 SCC 500
[18] (2002) 4 SCC 388

6501 of 2012 on 23.03.2012, the issue of fixation of fair rent remained *sub judice* and, consequently, any alleged default prior thereto could not, in law, be characterised as "wilful". According to him, it was only after the dismissal of the said special leave petitions that the determination of fair rent at Rs.2,37,500/- p.m. attained finality, and from that stage onwards the lessee continued to make regular payments without fail. He further contended that reliance placed on the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017[19] was wholly misplaced, inasmuch as Section 4 of the said enactment expressly exempts tenancies governed by written agreements, which was the case here. It was also argued by him that a unilateral termination letter issued by the landlord could not by itself oust the jurisdiction of the civil court to entertain a tenant's defence under the governing rent control legislation.

9. Furthermore, on the issue of precedents concerning Order XLI Rule 5 of the Code of Civil Procedure, 1908, Mr. Gupta submitted that such authorities were of no relevance in the present context. He contended that those decisions merely recognise the appellate court's discretion to grant conditional stay of execution pending appeal, whereas the question before the Court in the present case was whether the lessee could be held guilty of "wilful default" within the meaning of Section 10(2)(i) of the Rent Control Act, 1960. According to him, the principle governing determination of wilful default is distinct: liability of the lessee is to be assessed with reference to whether he neglected to pay

[19] 2017 Act

rent from the date it became due despite the opportunity to do so, and not with reference to interlocutory directions issued by appellate courts while entertaining appeals.

10. Mr. Gupta then referred to the own pleadings of M/s. Krishna in RCOP No.134 of 2007, where the period of alleged default was stated to be from 01.10.2000 to 31.01.2005, quantified at Rs.7,80,000/-, computed at a monthly rent of Rs.15,000/-. He pointed out that such a claim was never substantiated by M/s. Krishna at any stage of the proceedings. In this regard, reliance was placed upon the findings recorded in the order dated 06.02.2019 in RCOP No.134 of 2007, wherein the Rent Controller itself noted the absence of evidence establishing Rs.15,000/- p.m. as the rent for the relevant period.

11. Finally, as regards the quantum of arrears claimed in the eviction petition, Mr. Gupta submitted that the figure of Rs.61,07,400/- as averred by M/s. Krishna was untenable. His submission was twofold: first, that the amount was computed on the basis of the fair rent of Rs.2,43,600/- p.m. fixed by the Rent Controller on 10.01.2007, whereas the revisional court, by its order dated 09.09.2011, had reduced the fair rent to Rs.2,37,500/- p.m.; and secondly, that the said fair rent determination reached finality only upon dismissal of the special leave petitions by this Court on 23.03.2012. Thus, it was contended that any claim predicated upon the figure of Rs.2,43,600/- p.m. or upon a demand raised prior to the finality of the proceedings was legally unsustainable.

12. Resting on the aforesaid arguments, Mr. Gupta prayed that the civil appeal be allowed by setting aside the impugned order passed by the High Court in CRP No. 2053 of 2020.

ARGUMENTS OF THE RESPONDENT (M/S. KRISHNA)

13. *Per contra*, Ms. V. Mohana, learned senior counsel appearing for M/s. Krishna, contended that the dispute was initially governed by the Rent Control Act, 1960, but with the enactment of the 2017 Act the jurisdiction of the civil courts stood excluded and landlord-tenant disputes could thereafter be adjudicated only by Rent Courts and Rent Tribunals. She urged that the appellants had wilfully defaulted in payment of fair rent, a finding concurrently recorded by the Appellate Authority and the High Court, since fair rent was determined on 10.01.2007, yet, the lessee cleared the arrears only on 11.01.2013. Relying on ***J. Vishalakshmi Ammal v. T.B. Sathyanarayana***[20]*,* Ms. Mohana contended that the expression "rent" in Section 10(2)(i) of the Rent Control Act, 1960 includes fair rent fixed by the court, and non-payment thereof amounts to wilful default.

14. Ms. Mohana next heavily relied on the decision of a learned Judge of the High Court in ***Giridharilal Chandak & Bros. v. Mehdi Ispahani***[21]*.* On the anvil thereof, she vehemently submitted that mere filing of an appeal does not by itself operate as a stay, and unless specifically prayed, the appellate court may in its discretion either grant or refuse stay; hence, pendency of proceedings cannot

[20] 1996-2-L.W. 849
[21] 2011 (5) CTC 252

excuse non-payment of rent. She referred to the dismissal of the special leave petitions by this Court on 23.03.2012, whereby the lessee was directed to pay arrears at Rs.15,00,000/- p.m. along with the regular rent of Rs.2,37,500/- p.m. by the 15th of each succeeding month until the arrears were cleared, the said payment being directed without prejudice to the rights of the parties in the pending eviction proceedings. According to her, the appellants chose to pay only in instalments and failed to comply fully.

15. It was urged that the pendency of eviction proceedings foreclosed any plea of ignorance on the part of the appellants as to the consequences of default, and that mere deposit of arrears pursuant to interim orders could not absolve them of wilful default within the meaning of Section 10(2)(i) of the Rent Control Act, 1960.

16. Ms. Mohana submitted the details of the wilful default committed by the appellants, as follows:

a. The monthly rent agreed upon by and between the parties was Rs. 48,000/- p.m.; however, the lessee paid only Rs. 33,000/- p.m. from 01.07.2007.

b. The Rent Controller fixed the fair rent *vide* order dated 10.01.2007, whereas the full and final settlement of dues as per the fair rent happened only on 11.01.2013. Appellants wilfully withheld payment of rent during the pendency of the eviction petition.

c. Even in an appeal filed by the appellants against the order of the Rent Controller fixing fair rent, the Appellate Authority did

not grant a stay of the order of the Rent Controller, *vide* order dated 20.02.2008. Even after this order refusing to stay the Rent Controller's order, the appellants did not settle the fair rent until 11.01.2013.

17. It was then brought to our notice by Ms. Mohana that M/s. Krishna had filed I.A. No.100 of 2008 under Section 11(4) of the Rent Control Act, 1960 before the Rent Controller, seeking a direction to the lessee to deposit the arrears, failing which an order of eviction be passed. Even after the High Court fixed fair rent at Rs.2,37,500/- p.m. by its order dated 09.09.2011 passed in the revisional proceedings, and despite subsequent notices issued by M/s. Krishna demanding the arrears, the appellants continued to remain in default.

18. Ms. Mohana further argued that Section 10(2) of the Rent Control Act, 1960 does not contemplate a prior notice by the landlord as a pre-condition for seeking eviction. Reliance was placed on ***Sundaram Pillai & Ors. v. V.R. Pattabiraman***[22] to submit that issuance of such notice is discretionary, not mandatory. In any event, the appellants neither raised the plea of want of notice in the eviction petition nor objected to the proceedings on that ground at any earlier stage, and are therefore estopped from so objecting at this belated stage.

19. In the sequence of these submissions, Ms. Mohana urged that the appellants had been persistent defaulters, and that no ground for interference was made out with the concurrent findings of the

[22] (1985) 1 SCC 591

appellate court and the High Court. Accordingly, she prayed that the appeal be dismissed.

QUESTION

20. The sole question arising for decision is, whether the High Court was right in the exercise of its revisional jurisdiction in declining to reverse the appellate order of eviction obtained by M/s. Krishna against the appellants on the ground of wilful default in payment of rent initially by the lessee and then by the appellants?

REASONING

21. We consider it appropriate to first address the question of wilful default, which constitutes the principal ground on which the decree of eviction rests. It is not in dispute that by its order dated 10.01.2007, the Rent Controller, Coimbatore fixed the fair rent at Rs. 2,43,600/- p.m., payable with effect from 01.02.2005. Despite this order, the lessee continued to pay only the earlier contractual rent at the rate of Rs. 48,000 p.m., leading to an accumulation of arrears from 01.02.2005 to 30.06.2007, amounting to Rs. 68,87,400/-, exclusive of subsequent dues. The lessee, however, neither sought nor obtained a stay of the said order before the appellate or revisional fora. Despite the appellate authority having dismissed his appeal on 20.02.2008, thereby confirming the fair rent, the lessee persisted in paying only a fraction thereof. The situation continued even after the High Court, by order dated 09.09.2011, modified the fair rent marginally to Rs.2,37,500 p.m. A legal notice dated 01.10.2011 was thereafter issued by the

landlord demanding arrears of Rs.1,22,22,000/-, after giving credit for the deposit of Rs.25,00,000/- earlier made under the interim direction of the High Court. Instead of settling the arrears, the tenant merely remitted Rs.2,13,750/- (after TDS) on 21.10.2011 towards rent for September 2011 and allowed the arrears to mount.

22. After the accumulation of arrears for over five years and the matter had traversed through multiple fora, it was only after this Court, by order dated 23.03.2012 dismissed SLP (C) Nos. 6500–6501 of 2012 that the lessee commenced remitting arrears in May and June 2012 by issuing cheques of Rs.13,50,000/- and Rs.2,13,750/-, after deduction of TDS. Even then, full and final settlement was effected belatedly on 11.01.2013, nearly six years after the fixation of fair rent and ten months after the dismissal of the special leave petitions. In our opinion, the plea that pendency of proceedings created uncertainty as to the quantum payable is of no avail to the appellants.

23. At this juncture, a profitable reference can be made to the decision in ***Girdharilal Chandak and Bros. (HUF)*** (supra). While considering the Rent Control Act, 1960, Justice V. Ramasubramanian (as His Lordship then was) speaking for the High Court held as follows:

> **14.** Irrespective of whether the order passed by this Court on 28.10.2005 in CRP (NPD) Nos. 1657 & 1658 of 2005 was a conditional order or not, it is an admitted fact that the Petitioner himself did not seek a stay of the orders passed by the Rent Controller and the Appellate Authority, while challenging the same by way of Revision. If a person does not seek stay of an order passed by a Court below, it would only indicate either of the two things viz., (i) that he is willing to comply with the order, or (ii) that he has no objection to the orders of the Court below being put into execution. The failure of a person to seek from an Appellate forum, a stay of the order of a subordinate forum, cannot mean anything else than the above two factors.
> ***

> **15.** Order 41, Rule 5(1), C.P.C, makes it clear that an Appeal shall not operate as a stay of the proceedings under a decree or order appealed from, except so far as the Appellate Court may order. It also makes it clear that the execution of a decree need not be stayed merely by reason of an Appeal having been preferred from the decree.
> ***
> **21.** As a matter of fact, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, enables the Appellate Authority under Section 23(2) to grant stay of further proceedings pending decision on the Appeal. There is no similar provision under Section 25. What is worse is the fact that under Section 23(4), the decision of the Appellate Authority is final and is not liable to be called in question in any Court of Law, except as provided in Section 25. Therefore, finality is reached in every proceeding under the Act, the moment an order is passed by the Appellate Authority. But it is made subject to the Revisional jurisdiction of this Court. Therefore, in the absence of a stay, by this Court in a Revision, the order of the Appellate Authority becomes final until it is modified or set aside by this Court. Moreover, Rule 12 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, prescribes the procedure for the disposal of the Applications. The Third Proviso to sub-rule (3) of Rule 12, states that whenever an Application for setting aside an *ex parte* order is received for the first time, all Execution proceedings would stand stayed till the disposal of that Application. In other words, the Act contains one provision for stay under Section 23(2), subject to the discretion of the Appellate Authority. The Rules contain one provision for automatic stay of execution, under the Third Proviso to Rule 12(3). Therefore, the construction that the admission of a Revision, without any order of stay, would automatically take away the finality conferred under Section 23(4) to an order of the Appellate Authority, would do violence to the Act and the Rules. Hence, the second contention is also unacceptable.

24. In the present case, the lessee challenged the fixation of fair rent but did not seek a stay of its operation before the appellate or revisional fora. Mere filing of an appeal does not operate as a stay of the decree/order under appeal is the statutory ordainment in sub-rule (1) of Rule 5 of Order XLI, CPC. Payments were made belatedly and only after protracted litigation. Such conduct cannot be reconciled with *bona fide* doubt as to liability. Appellants, it is clear, defaulted in payment of rent and such default, on facts and in the circumstances, is undoubtedly a wilful default. The concurrent finding of the appellate authority, affirmed by the High Court, that the lessee and thereafter the appellants had been in wilful default, rests on sound appreciation of the legal position and the appellants' own admissions.

25. Furthermore, as regards the import and effect of Section 10(2)(i) of the Rent Control Act, 1960, along with its proviso and explanation, we need to refer to the decision in ***Sundaram Pillai*** (supra) relied upon by Ms. Mohana. The said decision is by a three-Judge Bench of this Court. The majority view was authored by Hon'ble A. Varadarajan, J. (as His Lordship then was). The relevant paragraphs from it read as follows:

> **56.** We may, therefore, extract the Explanation again to find out what it really means and to what extent does it affect the provisions of the proviso: "*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 continues after the issue of two months' notice by the landlord claiming the rent."
> **57.** If we analyse the various concomitants of the Explanation, the position seems to be that—
> (*a*) there should be a default to pay or tender rent,
> (*b*) the default should continue even after the landlord has issued two months' notice claiming the arrears of rent,
> (*c*) if, despite notice, the arrears are not paid the tenant is said to have committed a wilful default and consequently liable to be evicted forthwith.
> ***
> **59.** Another aspect that must be stressed at this stage is that where a tenant has committed default after default without any lawful or reasonable cause and the said defaults contain all the qualities of a wilful default viz. deliberate, intentional, calculated and conscious, should he be given a further chance of *locus poenitentiae*? After hearing counsel for the parties at great length, we feel that although the question is a difficult one yet it is not beyond solution. If we keep the objects of the proviso and the Explanation separate, there would be no difficulty in deciding these cases.
>
> **60.** To begin with, Section 10(2)(*i*) of the Act lays down that where the Controller is satisfied that the tenant has not paid or tendered the rent within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement, by the last date of the month next following that for which the rent is payable, he (tenant) undoubtedly commits a default. Two factors mentioned in Section 10(2)(*i*) seem to give a clear notice to a tenant as to the mode of payment as also the last date by which he is legally supposed to pay the rent. This, however, does not put the matter beyond controversy because before pacing (*sic, passing)* an order of eviction under the proviso, it must also be proved that the default was *wilful* and if the Controller is of the opinion that the default in the circumstances and facts of the case was not wilful, in the sense that it did not contain any of the qualities or attributes of a wilful default as indicated by us above, he may give the tenant a reasonable time, not exceeding 15 days, to pay the entire rent and if this is complied with, the application for ejectment would stand rejected. The difficulty, however, is created by the

Explanation which says that once a landlord gives a two months' notice to his tenant for paying the arrears of rent but the tenant continues in default even thereafter, then he is liable to be evicted. There is a good deal of force in this argument which has its own advantages. In the first place, it protects the court from going into the intricate question as to what is a wilful default and whether or not the conditions of a wilful default have been satisfied which, if permitted would differ from case to case and court to court. But the difficulty is that if such a blanket ban is put on the court for not examining the question of wilful default once the conditions laid down in the Explanation are satisfied then it would undoubtedly lead to serious injustice to the tenant. A subsidiary consequence of such an interpretation would be that even though the tenant, after receipt of the notice, may be wanting to pay the arrears of rent but is unable to do so because of unforeseen circumstances like, death, accident, robbery, etc., which prevent him from paying the arrears, yet under the Explanation he has to be evicted.

61. Another view which, in our opinion, is a more acceptable one and flows from the actual words used by the proviso is that where the Explanation does not apply in the sense that the landlord has not issued two months' notice, it will be for the court to determine in each case whether the default is wilful having regard to the tests laid down by us and if the court finds that the default is wilful then a decree for eviction can be passed without any difficulty.

62. ***

A correct interpretation, in our opinion, would be that where—

(*1*) no notice, as required by the Explanation, is given to the tenant, the Controller or the court can certainly examine the question whether the default has been wilful and to such a case the Explanation would have no application,

(*2*) the landlord chooses to issue two months' notice and the rent is not paid then that would be a conclusive proof of the default being wilful unless the tenant proves his incapability of paying the rent due to unavoidable circumstances.

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 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."

26. Hon'ble Sabyasachi Mukharji, J. (as the Chief Justice then was) dissented. Although we find His Lordship's opinion expressed in paragraphs 79, 81, 83, 84, 86, 87 and 90 of the report to be logical, the same pales into insignificance in view of the same being the minority view. Having regard to the Constitution Bench decision of this Court in ***Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi***[23], the decision in ***Sundaram Pillai*** (supra) has to be regarded as a judgment of a three-Judge Bench which binds us sitting in a combination of two.

27. Thus, on consideration of the proposition of law laid down by the majority in ***Sundaram Pillai*** (supra), this Court is not persuaded to accept the contention of the appellants that the absence of a two months' notice under the Explanation to Section 10(2)(i) of the Rent Control Act, 1960 would *ipso facto* disentitle the landlord from maintaining the proceedings for eviction on the ground of wilful default. The statute, when read as a whole, does not render such notice an indispensable condition precedent to the assumption of jurisdiction by the Rent Controller. The Explanation merely provides an

[23] 2022 SCC OnLine SC 1247

additional instance where, upon service of notice and continued non-payment, the default may be presumed to be wilful; it does not, by necessary implication, obliterate the discretion vested in the Controller under the proviso to determine wilfulness even in the absence of such notice.

28. That apart, the nature of default committed by the lessee satisfies the attributes of a wilful default as explained in ***Sundaram Pillai*** (supra) and leaves little room for us to hold that no wilful default had been committed.

29. Further, we have perused the brief order dated 23.03.2012 dismissing the special leave petitions of the lessee. This Court was careful in using the words "without prejudice". The implication of "without prejudice" used in the order of dismissal would mean, in the circumstances, that notwithstanding the liberty granted to the lessee to make payment, as per liberty granted, such payments were not to be seen as a waiver of M/s. Krishna's rights to realise unpaid rent and even to proceed for the lessee's ejectment owing to wilful default committed by him. The position seems to be absolutely clear on this front and no advantage can be derived by the appellants by contending that payments having been made in terms of this Court's order, the issue stood closed.

30. We are also not impressed by the argument of Mr. Gupta based on the principle of law laid down in ***Rupa Ashok Hurra*** (supra). Judicial proceedings attain finality upon a decision being rendered by the apex court in the hierarchy of courts. There is, as such, no quarrel with the said proposition of law. Nonetheless, proceedings do attain finality

even at the level of the high courts, or the district courts or the trial courts if the immediate next superior forum is not approached by the party suffering the decree/order of the court seized of the lis. However, the principle of finality of a judicial decision would have no applicability in a situation where a party, despite owing money (unpaid rent, here) to his adversary in terms of a judicial determination, approaches the superior forum but prefers not to seek a stay of such determination pending the proceedings leaving the other party deprived of the benefits flowing from the said judicial determination. The bogey of judicial finality cannot, thus, be pressed into service to unfairly deny a party the benefits of a judicial decision, operation of which does not suffer from any interdiction by the superior court.

31. Having bestowed anxious consideration to the rival submissions and on perusal of the materials placed on record, we find ourselves in agreement with Ms. Mohana that the lessee, and subsequently the appellants, taking shelter of the pending appeal against the order fixing fair rent without, however, seeking a stay thereof and also in light of the parting observation made by this Court while disposing of SLP (C) Nos. 6500–6501 of 2012, had no protective umbrella over him/them so as to remain absolved from tendering payment to M/s. Krishna.

32. Having regard to the afore-canvassed factual and legal position and on acceptance of the instances of default referred to by Ms. Mohana, we answer the question arising for decision in the affirmative. We conclude that the High Court, in exercise of its revisional jurisdiction, rightly

refrained from re-examining factual determinations and such an approach being reasonable and unexceptionable, it committed no error in affirming the appellate order of eviction passed against the appellants on the ground of wilful default.

33. The appeal, in our view, is unmeritorious. It is liable to be and is, accordingly, dismissed.

34. The appellants are, however, granted time of six months from the date of this order to vacate and hand over vacant possession of the decretal property to M/s. Krishna, subject to the usual undertakings being filed within a fortnight from date positively. In default, grant of time of six months shall stand vacated and M/s. Krishna would be at liberty to institute execution proceedings in accordance with law to recover possession.

35. Parties shall, however, bear their own costs.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI;
NOVEMBER 11, 2025.