

S.N	Held
1.	Question of Law- <i>The appeals involved point of law relating to the interpretation of the term 'wilful default' appearing in the proviso to section 10 (2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as the 'Act' coupled with the Explanation which seeks to explain the intent or the proviso.</i>
2.	Provision Involved- <i>(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> <i>(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..</i> 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 reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected. [Explanation. - 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 months' notice by the landlord claiming the rent
3.	Meaning of Wilful Defaulter explained - <i>Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above.</i> Reference to the decision in Khivraj Chordia v. G. Maniklal Bhattad AIR 1966 Madras 67 to highlight difference between a simple default and wilful default- <i>The decisions of this court have reportedly pointed 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 of false sense of security based upon the conduct of the landlord himself, the default cannot be said to be wilful default. It is not possible to lay down any hard and fast rule applicable to all cases. But the basic and essential distinction between mere default and wilful default should be borne in mind and the totality and cumulative effect of all the circumstances should be taken into account and not any particular feature of the case in isolation. In certain cases the prior conduct of the tenant consisting of chronic defaults taken along with a totally false and reckless plea of discharge or any other wholly untenable plea may amount to wilful default. But at the same time, certain pleas raised by the tenant, but negated by the court on assessment of the evidence adduced by the landlord and the tenant, may constituted proof of bona fides on the part of the tenant, as to rule out any theory of wilful default.</i>
4.	How to Interpret Proviso Explained- <i>The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.</i>
5.	How to Interpret Explanation Explained- <i>The object of an Explanation to a statutory provision is-</i> (a) to explain the meaning and intendment of the Act itself, <i>(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so a- to make it consistent with the dominant object which it seems to subserve,</i> <i>(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,</i> <i>(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and</i> <i>(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in interpretation of the same.</i>
6.	Reading provision of 10(2)(i)- <i>To begin with, s. 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 s.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.</i>
7.	Combined interpretation of Explanation and Proviso- <i>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 ejection would have to be rejected.</i> (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.