

(2012) 08 KL CK 0183
In the High Court Of Kerala
Case No : R.C.R. No. 180 of 2012

Aluminium Glass Ware Emporium and Another

APPELLANT

Vs

Umanath Shenoy and Another

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 11(4)(iii), 18

Citation : (2012) 4 KLJ 352

Hon'ble Judges : M.L. Joseph Francis, J;K. T. Sankaran, J

Bench : Division Bench

Advocate : V.V. Asokan and Rukhiyabi Mohd. Kunhi, for the Appellant; S. Sachithananda Pai, for the Respondent

Judgement

K.T. Sankaran, J.—The respondents filed R.C.P. No. 114 of 2008 before the Court of the III Additional Munsiff and Rent Control Court, Ernakulam against the revision petitioners under Sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, "the Act"). The Rent Control Court allowed the application u/s 11(3), but rejected the claim u/s 11(4)(iii) of the Act. The petitioners/tenants filed R.C.A. No. 67 of 2010 before the Rent Control Appellate Authority, Ernakulam, challenging the order passed by the Rent Control Court. The Appellate Authority confirmed the finding u/s 11(3) of the Act. The Appellate Authority reversed the finding of the Rent Control Court u/s 11 (4)(iii) of the Act and the prayer for eviction on that ground was also allowed. Challenging the judgment of the Appellate Authority, the tenants have "filed this Revision. The case of the respondents is that the first petitioner firm is the tenant, of which the second petitioner is a partner. The second respondent is a Homoeo Doctor by profession, working in Mumbai. He has decided to settle at Ernakulam with his family and to start his practice as Homoeo Doctor. For the purpose of setting up his practice, the petition schedule building is required bonafide. It is stated that the respondents have no other building in the city to satisfy their need. The respondents also raised a contention that the first petitioner firm is not engaged in any business in the petition schedule building.

The second "petitioner has started another business at Iyyattu Junction, Ernakulam, under the name and style "Jalarams". Iyyattu Junction is very near to the petition schedule building.

2. The petitioners contended that the bonafide need set up by the respondents is not genuine. The rent originally fixed was Rs. 400/- and it was being enhanced periodically and at present, the petitioners are paying Rs. 3,000/- per month. The respondents had filed R.CP. No. 147 of 1983 and that case was settled and it was withdrawn on the petitioners agreeing to pay enhanced rent. On 29.5.2008, the first respondent issued Ext.B1 notice to the petitioners, demanding enhancement of rent from Rs. 3,000/- to Rs. 7,500/-. In that notice, no bonafide need was set up. The attempt of the respondents is to somehow evict the petitioners and to let out the building for higher rent. The building is not suitable for residential purpose. The business at Iyyattu Junction is run by another partnership firm, in which the second petitioner is also a partner. The firm, which is the tenant in respect of the petition schedule building is not the firm which is conducting the business at Iyyattu Junction under the name and style "Jalarams".

3. Before the Rent Control Court, oral evidence and documentary evidence were adduced by both parties. "The Rent Control Court held that the bonafide need set up by the second respondent to start his practice as Homoeo Doctor and to reside in the petition schedule building is bonafide. This finding was arrived at on an appreciation of the evidence available in the case. The Rent Control Court also noticed that the tenants have no case that the landlord is having another building in the same city. It was also held that the need set up by the respondents is not a ruse for eviction. As regards Ext.B1 letter, the Rent Control Court held that demand for higher rent by the landlord, by itself, would not be a sufficient ground to hold that the bonafide need set up is not genuine. The Rent Control Court also held that the petitioners are not entitled to the benefit of the second proviso to Section 11 of the Act. It was noticed by the Rent Control Court that the petitioners have no case that they are depending for their livelihood mainly on the income derived from any trade or business carried on in the building in question. The ingredients of the second proviso to Section 11(3) of the Act being cumulative, proof of both the ingredients therein is required to claim the benefit of the said second proviso. It was held that the petitioners have to establish both the limbs of the second proviso to Section 11(3) of the Act. That finding under the second proviso to Section 11(3) was also arrived at on the basis of the facts and evidence in the case.

4. The Rent Control Court held that the landlord is not entitled to an order of eviction u/s 11(4)(iii) of the Act on the following grounds : (a) The 10 partners of "Jalarams" are the family members of the second respondent (second petitioner herein), (b) The details regarding the tenant firm and "Jalarams" were not furnished, (c) The petitioners (respondents herein) have no case either in the petition or in the evidence that the tenant firm is having another building in its possession, (d) Acquisition of another building was by a firm in which the second

respondent (second petitioner herein) is a partner and it is not a ground to allow the application u/s 11(4)(iii), so long as the partners in the two firms are different.

5. The Appellate Authority confirmed, on facts, the finding of the trial court u/s 11(3) of the Act. However, as stated above, the finding u/s 11(4)(iii) was reversed by the Appellate Authority on the following grounds : (a) Practically, the business in the petition schedule building and at "Jalarams" is conducted by the same persons. (b) Constitution of different firms cannot be given much importance. (c) Identity of the persons who constitute the two firms is more important. (d) If different partnerships are constituted, in order to make it appear that the business activities in both the buildings are not being conducted by the same persons, the same cannot be accepted. (e) The evidence of RW1 would disclose that the petition schedule building is being used as a godown in respect of the business godown of "Jalarams", the business conducted at Iyyattil Junction. (f) The burden of proof is on the tenants to prove that the two firms have no connection with each other. On these grounds, the Appellate Authority held that the appellants (petitioners herein) are in possession of another building at Iyyattil Junction, which is reasonably sufficient for their requirements and therefore, the respondents (respondents herein) are entitled to get an order of eviction u/s 11(4)(iii) of the Act.

6. The learned counsel for the revision petitioners submitted that the respondents had not challenged the finding of the Rent Control Court u/s 11(4)(iii) of the Act by filing an appeal and therefore, the Appellate Authority was not justified in reversing the finding of the Rent Control Court u/s 11(4)(iii). The learned counsel for the respondents/landlord submitted that in view of the decision of the Division Bench in Ganesh Vs. Varghese, , without there being any appeal, the Appellate Authority was justified in interfering with the finding u/s 11(4)(iii), in the appeal filed by the tenants against the order u/s 11(3) of the Act. It was held by the Division Bench that even without filing an appeal u/s 18 of the Act, the landlord would be entitled to challenge the findings adverse to him, in the appeal filed by the tenant. In view of the decision in Ganesh Vs. Varghese, , we are not inclined to accept this contention raised by the tenants.

7. Section 11(4)(iii) of the Act provides for eviction, if the tenant already has in his possession a building or subsequently acquires possession of or puts up a building, reasonably sufficient for his requirements in the same city, town or village. From the available materials in the case, it is clear that "Jalarams", which runs business at Iyyattil Junction, is a partnership firm, in which there are ten partners, including the second petitioner, whereas, the firm which runs the business in the petition schedule building is another firm, viz., M/s. Aluminium Glassware Emporium. The fact that the second petitioner is a partner in both the firms is not a ground to hold that Section 11(4)(iii) of the Act is attracted in the case. The finding rendered by the Appellate Authority on this ground is unsustainable. We set aside that finding.

8. As regards the bonafide need u/s 11(3) of the Act, both the authorities concurrently held that the need put forward by the respondents/landlord is genuine. The second respondent is a practitioner in Homoeopathy. At present, he is in Mumbai. He wants to set up his practice in Kochi. The petition schedule building is suitable for that purpose. The second respondent also wants to reside in that building. It has come out in evidence that RW1 was residing for quite some time in a portion of the petition schedule building. Therefore, the contention raised by the tenants that the building is not suitable for residence cannot be accepted.

9. Another contention raised by the petitioners/tenants is that the second respondent does not know Malayalam and therefore, he will not be able to carry on his profession in Kochi. It has come out in evidence that the second petitioner also does not know Malayalam and for the last several years, he has been doing business in Kochi. The lack of proficiency in the local language by itself would not disentitle the landlord to claim eviction on the ground of bonafide need for residence and for practising a profession. Whether he would be successful or not is not a criterion to be taken into account while considering the question u/s 11(3) of the Act. Even if the second respondent does not know Malayalam, there is no impediment for him to reside in the petition schedule building belonging to him. Lack of proficiency in a language as such is not a barrier for residence or for carrying on an avocation or profession at a particular place.

10. The petitioners/tenants contended that the bonafide need set up by the landlord is a ruse to evict the tenants. The respondents contended that Ext.B1 notice was issued on 29.5.2008 demanding enhanced rent and the Rent Control Petition was filed on 13.10.2008, claiming eviction on the ground of bonafide need. In *Kurian K. Kuriakose Vs. Usha Cherian and Others*, , a Division Bench of this Court held that demand for increased rent by itself is not a ground to reject a claim for eviction on the ground of bonafide need. In *Kurian K. Kuriakose's* case(supra), the Division Bench held thus:

Demand for increased rent by itself is not a ground to reject a claim for eviction on the ground of bonafide need. A landlord may legitimately expect a reasonable return of his investment. Demand for periodical increase in rent, taking into account the prevailing economic conditions, cannot be said to be so unreasonable and unjust so as to deny an otherwise just and genuine claim for vacant possession on the ground of bonafide need. The courts cannot shut its eyes to the practical realities in life. The prevailing market conditions, escalation in prices, prevailing rates of rent and other socio economic factors are relevant in considering such a case.

11. For the aforesaid reasons, we do not find any ground to interfere with the concurrent findings of the Rent Control Court and the Appellate Authority u/s 11(3) of the Act.

12. The Rent Control Revision is allowed in part and the finding of the Appellate

Authority u/s 11(4)(iii) of the Act is set aside. The Rent Control Revision is dismissed in so far as it relates to the finding of the authorities below u/s 11(3) of the Act. The learned counsel for the petitioners/tenants contended that a breathing time may be granted to vacate the premises. The learned counsel for the respondents contended that it has come out in evidence that no business is being run in the petition schedule building and the building is used as a godown of "Jalarams", which is another firm. Taking into account the facts and circumstances of the case, we are inclined to grant three months' time to the tenants to vacate the petition schedule building. The grant of time is on condition that the petitioners/tenants shall file an unconditional undertaking, within a period of six weeks, before the Rent Control Court, undertaking to vacate the premises before the expiry of the period of three months. The tenants shall also pay the monthly rent to the landlord within time, till the date of vacating the premises.