

(2009) 05 KL CK 0115

In the High Court Of Kerala

Case No : R.C. Rev. No's. 227 and 290 of 2008

Annamma Mathew and Shiji Mathew

APPELLANT

Vs

Rajappan

RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(3), 11(8)

Citation : (2009) 05 KL CK 0115

Hon'ble Judges : Pius C. Kuriakose, J;P.Q. Barkath Ali, J

Bench : Division Bench

Advocate : P. Gopinath Menon, for the Appellant; Liju. M.P., for the Respondent

Judgement

Pius C. Kuriakose, J.—The landlord and the tenant are aggrieved by the judgment of the Rent Control Appellate Authority. Rent Control Petition was filed by the landlord invoking the grounds under Sub-section 3 of Section 11 (bonafide own occupation) and Clause 1 of Sub-section 4 of Section 11(sub letting or transfer). The need projected by the landlord under Sub-section 3 of Section 11 was that the landlord is presently conducting his business under the name and style of "Navaratna Jewellery" in a staircase room which forms part of a larger building of which the petition schedule building is also a part and that he needs the petition schedule building so that the business of Navaratna Jewellery can be conducted more conveniently in that room which is more spacious than the staircase room.

2. The allegation of the landlord in the context of the ground under Clause 1 of Sub-section 4 of Section 11 was that the tenant (the first respondent in the R.C.P.) has unauthorisedly transferred possession of the petition schedule room to the second respondent in the R.C.P. who is none other than the tenant's only daughter.

3. The bonafides of the need and the claim u/s 11 (3) was stiffly resisted by the tenant through her statement of objections. The tenant also claimed protection

of the second proviso to Section 11(3). The defence of the tenant to the ground under Clause 1 of Sub-section 4 of Section 11 was that there is no sub lease or transfer. The relationship between the parties is that of mother and daughter. It is a medical shop that is being conducted in the petition schedule building. A Pharmacist with licence is indispensable for the conduct of medical shop business. The daughter holds a pharmacist's licence. Therefore the mother and daughter are conducting medical shop business jointly in the schedule room on the strength of the Pharmacist's licence held by the daughter.

4. The evidence at trial consisted of Exts.A1 to A3 and testimonies of PW1 and PW2 on the side of the landlord. On the side of the tenant, the same consisted of documents Exts.B1 to B5(i) and the testimonies of RWs 1 to 4. Report submitted by the Advocate Commissioner who was deputed at the instance of the landlord was also marked in evidence as Ext.C1. The Rent Control Court on an evaluation of the evidence would conclude that both the eviction grounds invoked in the rent control petition stood established. Accordingly eviction was ordered on the ground of sub letting as well as bonafide own occupation.

5. In the appeal preferred by the tenant, the rent control appellate authority after re-appreciation of the evidence would concur with the conclusions of the rent control court in the context of ground under Clause 1 of Sub-section 4 of Section 11. Further that authority noticed that in the fact situation which obtained in the case the apposite ground which may be available to the landlord is the ground of additional accommodation under Sub-section 8 of Section 11. The eviction order granted u/s 11(3) was set aside. The appellate authority did not order eviction under Sub-section (8) of Section 11 since there was no pleadings to grant eviction under that ground.

6. R.C.R. No. 227/2008 is preferred by the tenant and the alleged sub tenant and R.C.R. No. 290/2008 is preferred by the landlord. We have heard the submissions of Sri.P.Gopinath Menon, learned Counsel for the petitioner in R.C.R. No. 227/2008 and also those of Sri.Liju.M.P., learned Counsel for the petitioner in R.C.R. No. 290/2008. Both the learned Counsel would address us on the basis of the various grounds raised in the respective memoranda of revisions.

7. The question to be considered by us in these revisions is whether the order passed by the rent control Appellate Authority warrants interference under the revisional jurisdiction of this Court u/s 20 of Act 2 of 1965. Since the findings of the rent control court and the appellate authority are divergent in the context of the ground for eviction u/s 11(3), we have reappraised the entire evidence including the evidence which pertains to ground u/s 11(4)(i). Sri.Liju submitted that it was admitted by RW1 that the medical shop business is being carried on by the second respondent in the rent control petition and that the licence for that business stands in the name of the second respondent only. Sri.Gopinath Menon would dispute that submission and place before us the photostat copies of licence No. 377 of 2001 and 2002 dated 30-01- 2002 issued by the Trikkakara Panchayat to the first respondent for conduct of medical shop by name

Cherukara Medicals in the petition schedule building and also photocopy of the licence issued by the Assistant Drugs Controller for storage and sale of drugs in form No. 20 and another licence in form No. 21 issued by the Assistant Drugs Controller himself for operating a Pharmacy in the petition schedule building. He highlighted that all these licences stand in the name of Annamma Mathew, the tenant herself and that in the licence issued in Form No. 21, name of the alleged sub lessee is also mentioned as qualified person in charge of the business. Learned Counsel submitted that the tenant did not get sufficient opportunity for producing these documents before the Rent Control Court.

8. We have very anxiously considered the rival submissions made at the Bar. We shall deal first with the order of eviction granted by the Authorities concurrently under Clause 1 of Sub-section 4 of Section 11. To maintain a petition for eviction on the ground of Section 11(4)(1), it is mandatory that the landlord issues a notice to the tenant intimating the tenant of the objectionable sub lease or transfer in contravention of the terms of the lease and the tenant is given option to terminate the sub lease or transfer within thirty days of receiving the notice. We have gone through Ext.A1 and the averments in the rent control petition. We will only observe that both in Ext.A1 and in the rent control petition, the averments in the context of the ground of sub letting are vague and nonspecific unlike the averments in the context of ground under Sub-section (3) of Section 11. It would appear as if the landlord was more concerned with the eviction ground u/s 11(3) than the ground u/s 11(4)(1). The tenant's defence was that there is no sub letting or transfer. It is not disputed that it is a medical shop that is being conducted in the petition schedule building and that the tenant does not have a Pharmacist's licence. The defence was that since the second respondent in the rent control petition, the only daughter who is a physically handicapped person to the extent of 40% was holding a Pharmacist's licence, the medical shop is being conducted by the mother and the daughter on the strength of the daughter's pharmacist licence. When a daughter is seen carrying on business in a building taken on lease by her mother, it may not be safe to jump into a conclusion that the arrangement between the mother and the daughter is that of objectionable sub lease or transfer. After all, the intimate blood relationship between the mother and the daughter cannot be lost sight off. We will only observe that the defence of the mother that the daughter's services were solicited in the medical shop in view of the Pharmacist licence held by the daughter is a plausible one.

9. Having gone through the evidence of RW1, we do not find any fatal admission having been made by her that the licence of the business stands in the name of the daughter and that the business is conducted by the daughter alone. Admission if at all was in respect of the Pharmacist licence. The documents which were handed over to us by Sri.P.Gopinath Menon across the Bar today during the course of hearing will establish prima facie that the business belongs to the mother and that the same is carried on on the basis of licence issued by the local authority and statutory authorities like the Drugs Controller. Whatever that be,

we feel that the evidence on record falls short of holding that the tenant is guilty of objectionable sub lease or transfer. The issue is liable to be decided afresh by the Rent Control Court.

10. We shall now examine the case under Sub-section (3) of Section 11. We have gone through the findings of the Rent Control Court and the Appellate Authority regarding the bonafides of the landlord's need and claim to conduct his Navaratna Jewellery in a larger scale, in the petition schedule building. It has been concurrently found by both those authorities that the need is bonafide. According to us, the said finding is founded on evidence and there is no warrant for interfering with that finding within the contours of this Court's narrow jurisdiction u/s 20. At the same time, the question which arises is whether the landlord's case falls u/s 11(3) or Section 11(8) as found by the appellate authority. On our scrutiny of the pleadings including Ext.A1 lawyer notice, we have to state that in as much as the landlord does not state that the business which is presently carried on by him in the staircase room will be discontinued and the said business will be transplanted to the petition schedule building, the view of the appellate authority that the ideal ground to be invoked by the landlord is the ground u/s 11(8) cannot be said to be illegal, irregular or improper. It is trite that the standards for establishing the ground for eviction u/s 11(8) are not so rigorous as the standards for establishing the ground for eviction u/s 11(3). We have already found that whether it be u/s 11(3) or Section 11(8), the need and the claim is bonafide. Since the pleadings, the evidence adduced and the fact situation which obtains in this case will indicate that the claim of the landlord is to expand his activities presently carried on in the staircase room to the petition schedule building and the other building wherein "Kalapurackal Hardwares" is being conducted now, Sub-section 8 of Section 11 appears to be the apposite ground. Sub-section (8) of Section 11 is qualified unlike Sub-section 3 of Section 11 by Sub-section 10 of Section 11 and its first proviso. In other words, before the Rent Control Court orders eviction u/s 11(8) that court has to enquire into the question whether the hardship which may be caused to the tenant by the eviction will out weigh the advantages which may enure to the landlord. The above aspect of the matter has not been considered at all by any of the authorities below. The Rent Control Appellate Authority having found that the need projected is bonafide, in our opinion ought not have dismissed the rent control petition on the ground that Sub-section (8) of Section 11 has not specifically been invoked. It should have remanded the matter to the Rent Control Court giving opportunity to the landlord, if necessary to amend his pleadings and directing the Rent control Court to examine the question of comparative hardship and advantages under the proviso to Sub-section (10) of Section 11.

11. Our discussion as above will lead these revisions to the following result:

The judgments of the Rent Control Court and Appellate Authority are set aside. The Rent Control Petition is remanded to the Rent Control Court. That court will

permit the landlord to amend the pleadings and if pleadings are amended, opportunity will be given to the tenant to raise counter pleadings. Enquiry will be conducted regarding the existence of eviction ground u/s 11(4)(1) and also Section 11(8). Sufficient opportunity will be given to both sides for adducing evidence. Enquiry pursuant to this order will be completed and revised judgment will be passed by the Rent Control Court at the earliest and at any rate by 30/09/2009. Both sides are directed to suffer their costs.