
(2010) 10 KL CK 0099
In the High Court Of Kerala
Case No : R.C. Rev. No. 202 of 2010

C.P. Haridas Chettian

APPELLANT

Vs

Naduvilakandyil Leela and Others

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0099

Hon'ble Judges : Pius C. Kuriakose, J;P.S. Gopinathan, J

Bench : Division Bench

Advocate : P.V. Kunhikrishnan, for the Appellant; P.V. Surendranath, for the Respondent

Judgement

Pius C. Kuriakose, J.—Under challenge in this revision petition filed by the tenant is order of eviction concurrently passed against him by the Rent Control Court and the Appellate Authority on the ground under Sub-section 3 of Section 11. The need projected in the Rent Control Petition which was filed by six sisters (respondents 1 to 6) was that the building which is situated in Perambra town is needed bona fide for the occupation of Babu, the son of the third respondent Santha. The landladies had invoked the ground of arrears of rent also. But it is conceded at the Bar that the said ground no longer survives for consideration.

2. The revision petitioner resisted the Rent Control Petition by filing objections. The bona fides of the need projected was strongly disputed. It was contended inter alia that Sri. Babu, the dependant family member was already conducting the same line of business in Kannur and that the claim u/s 11(3) has been projected as a ruse for getting enhancement. It was also contended that the tenant is entitled for the protection of the second proviso to Sub-section 3 of Section 11. The RCP was enquired into by the Rent Control Court and in the enquiry the evidence consisted of Exts.A1 to A6, B1 to B9 PWs.1 and 2 and RW1. PW1 was the sixth respondent and PW2 was none other than Babu the de facto claimant. RW1 was the tenant. It came out in evidence that the third respondent, mother of PW2 was having at Kannur, textile business under the name and style

"Puthuma Textiles". The Rent Control Court on evaluating the evidence came to the conclusion that the need projected in the RCP is bona fide. According to that court even if PW2's mother was having her own textile business in Kannur that is not a circumstance militating against the bona fides of the need projected. The court also came to the conclusion that the tenant was unsuccessful in showing that the two ingredients of the second proviso to Sub-section 3 are satisfied in favour of the tenant. Accordingly, order of eviction was passed under Sub-section 3 of Section 11. The Rent Control Appellate Authority considered the appeal filed by the revision petitioner. That authority re-appraised the entire evidence and would concur with all the conclusions of the Rent Control Court. Accordingly, order of eviction was confirmed and the appeal was dismissed.

3. In this revision u/s 20, the tenant has raised various grounds assailing the judgment of the Appellate Authority. Sri. P.V. Kunhikrishnan, the learned Counsel for the revision petitioner addressed very strenuous arguments before us on the basis of the grounds raised. All the arguments of Mr. Kunhikrishnan were stiffly resisted by Sri. P.V. Surendranath, the learned Counsel for the respondents. Sri. Kunhikrishnan drew our attention to the averments in the Rent Control Petition and submitted that the case projected in the Rent Control Petition is that Babu/PW2 was without any job or avocation whereas the case which became evident is that Babu was looking after his mother's textile business in Kannur. According to Mr. Kunhikrishnan since the evident is different from the case that was pleaded, prejudice has been caused to the revision petitioner. It is not the case which has been proved and accepted that was pleaded and the revision petitioner was called upon to answer. If the pleading was that Babu is looking after his mother's business at Kannur then it would have been possible for the revision petitioner to raise proper pleadings to substantiate that the need projected in the RCP is not bona fide. For want of proper pleadings on the part of the revision petitioner, prejudice has been caused and hence, eviction order passed against the revision petitioner has become vitiated. In support of his argument Mr. Kunhikrishnan relied on the judgment of this Court in *Vimala R. Thampi v. Hashim* 1986 KLT Short Notes 20 and argued that it has been clearly laid down in that decision that the factual foundation for the grounds taken up by a landlord must find a place in a petition, as, otherwise the tenant will be prejudiced by the absence of such facts in the petition. Mr. Kunhikrishnan also relied on the un-reported judgment of this Court in RCR.89/07 to which one among us [PCK(J)] was party and submitted that the judgment of the Appellate Authority and the order of the Rent Control Court be set aside and the matter be at least remitted back to the Rent Control Court giving opportunity to both sides to amend their pleadings.

4. Mr. P.V. Surendranath, the learned Counsel for the revision petitioner would resist the submissions of Mr. Kunhikrishnan. Strong reliance was placed by Sri. P.V. Surendranath on the judgment of the Supreme Court in *V. Radhakrishnan Vs. S.N. Loganatha Mudaliar*, to argue that the circumstance that the mother was conducting her own business in another building in the home town will not be a reason for negating the mother's need for accommodating her son in another

building in a far away town. Relying on the judgment of a Division Bench of this Court in *Jerry Joseph v. Selvaraj* 2002(2) KLT 129 Mr. Surendranath submitted that it has been held that even if the landlord fails to mention in the petition for eviction about the other premises belonging to him, if materials about those alternate accommodation have been placed before the court and the matter has been adequately considered by the court without causing any prejudice to the tenant, the non-disclosure of the availability of buildings in the petition is immaterial. According to Mr. Surendranath, the question is whether any legal prejudice has been occasioned to the tenant due to the non-disclosure of conduct of business of mother in Kannur and that question can be answered only against the tenant.

5. We have very anxiously considered the rival submissions addressed at the Bar. We have perused the pleadings, copies of which were supplied to us by the learned Counsel. On going through the counter statement filed by the revision petitioner of the Rent Control Petition, we find that bona fides of the need projected in the RCP has been challenged by the tenant on various reasons including the prominent reason that PW2/Babu is conducting textile business in Kannur - i.e. the business which as per Ext.B4 stands in the name of his mother. The tenant having specifically raised a pleading with reference to Puthuma Textiles standing in the name of PW2's mother that it is PW2 who is conducting that business and that the need projected in the RCP is not bona fide for that reason we are of the considered view that the revision petitioner cannot complain that for want of a pleading in the Rent Control Petition that PW2 is looking after the mother's business in Kannur prejudice has not been caused to the revision petitioner. We also find from the judgment of the Appellate Authority that the argument which was seriously urged before us by Mr. Kunhikrishnan based on the prejudice due to insufficiency of the pleadings raised by the landlord was not addressed before the Appellate Authority.

6. We should now remind ourselves of the contours of the present jurisdiction u/s 20 which is revisional in nature. This Court in this jurisdiction is not expected to make a de novo re-appraisal of the entire evidence for the purpose of substituting factual conclusions arrived at by the final fact finding authority under the statute namely the Appellate Authority. On going through the judgment of the Appellate Authority we find that the finding entered therein that the landladies have a bona fide need to accommodate PW2 who is aged 40 and still remaining as a bachelor for the purpose of conducting his own textile business in Perambra Town, has been entered on the basis of evidence available on record. PW2 is the de facto claimant. Even though he was thoroughly cross examined, we find that on all material particulars he stood firm and his testimony was not shaken. When the evidence adduced by PW2 inspired the two final fact finding authorities we do not find justification for taking a different view. In short, we do not find any illegality, irregularity or impropriety with the finding concurrently entered by the statutory authorities both in the context of bona fides of the need and on the question of eligibility of protection of the second proviso. As for the

two decisions cited at the Bar by Mr. Kunhikrishnan we feel that the facts which obtain the present case are distinct and different. The result is that the RCR fails and will stand dismissed. However, considering the appealing request of Mr. Kunhikrishnan that an unusually long period be granted to the revision petitioner to surrender the premises (a request which was opposed by tooth and nail by Mr. Surendranath), we are inclined to grant time till 15/07/11 subject to the following conditions:

The revision petitioner shall file an affidavit within three weeks from today before the execution court or the Rent Control Court, as the case may be, undertaking to give peaceful surrender of the building on or before 15/07/11 and undertaking further through the same affidavit that arrears of rent, if any, will be discharged within one month and that occupational charges at the current rent rate will also be paid without fail as and when the same falls due. We make it clear that unless the affidavit is filed as directed above on time the revision petitioner will not get benefit of time and if there is violation of the conditions, the respondents will be entitled to levy execution of the eviction order and take delivery forthwith.