

(2010) 07 KL CK 0100
In the High Court Of Kerala
Case No : R.C. Rev. No. 207 of 2010

Divakaran Vaidhyan

APPELLANT

Vs

Santhakumary Amma and Muraleedharan Pillai

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 11(3), 11(4)

Citation : (2010) 07 KL CK 0100

Hon'ble Judges : Pius C. Kuriakose, J; C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : K. Harilal, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Abdul Rehman, J.—Tenant of the petition schedule building, who suffered concurrent orders of eviction u/s 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act 1965 (for short "the Act") is in revision. The need projected by the landlady for seeking eviction u/s 11(3) is that the second petitioner (2nd respondent herein) who is her dependent son requires the petition schedule room for starting a Pan shop-cum-Fruit stall. The tenant is conducting a pharmacy and dispensary dealing in Ayurveda Medicines. It is also contended that the tenant as well as his wife are in ownership and possession of various other building within the same locality situated near to the schedule premises which is suitable for conduct of the business carried on in the scheduled premises and hence the tenant is liable to be evicted u/s 11(4)(iii). It is also contended that the tenant had defaulted payment of rent from November 1994 onwards inspite of receipt of the demand notice. The rent control petition was resisted by the tenant contending that the need projected by the landlady is not genuine and bona fide. It was stated that the predecessor of the landlady had filed another rent control petition on an earlier occasion and the same was dismissed. The tenant had also sought protection under the second proviso to Section 11(3). With respect to the ground u/s 11(4)(iii), it is contended that

even though the tenant is the owner of other shop buildings, those are already in occupation of other tenants and no room is lying vacant in ownership and possession of the tenant. The allegation regarding default in payment of rent was also disputed.

2. Evidence before the trial court consisted of oral testimony of the dependent family member of the landlady as well as an independent witness and also the Advocate Commissioner examined as PW1 to 3 and Ext.A1 to A9 from the side of the landlady. The tenant was examined as RW1 and Exts.B1 and B2 documents were marked on his behalf. Ext.C1 is the report of the Advocate Commissioner. The evidence adduced from the side of the landlady inspired the rent control court to find that the need projected is genuine and bona fide. It is also found that the tenant was not successful in proving necessary ingredients to claim protection under the second proviso to Section 11(3). The rent control court further found that two vacant rooms are available in the possession of the tenant which is sufficient enough to shift the business which is being conducted in the tenanted premises. The rent control court also found that the tenant had defaulted payment of rent as claimed, inspite of receipt of statutory notice. Therefore, eviction was ordered u/s 11(2)(b), 11(3) and 11(4)(iii) of the Act.

3. The appellate authority after elaborate reappraisal of the entire evidence on record, had concurred with the findings of the Rent Control Court.

4. Even though various grounds were raised in the revision petition and Sri. K. Harilal learned Counsel for the revision petitioner had advanced arguments based on those grounds, we are not satisfied that there exist any meritorious ground warranting interference. In the statutory scheme of hierarchy of authorities, the appellate authority is the final fact finding court. On a perusal of the order of the rent control court as well as the judgment of the appellate authority, we do not find any material omission or manifest misappreciation of any piece of evidence. The revision petitioner is not able to convince us that there is any material illegality, irregularity or impropriety with respect to findings of the appellate authority. Therefore, revision petition deserves no merit and the same is accordingly dismissed.