
(2016) 03 KL CK 0069
In the High Court Of Kerala
Case No : R.C. Rev. No. 63 of 2016

K.P. Sreedevi

APPELLANT

Vs

C.P. Javed and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11 (4)(iii), Section 11(2)(b), Section 11(2)(c), Section 11(3), Section 11(4)(i), Section 11(4)(iii), Section 20, Section 9

Citation : (2016) 03 KL CK 0069

Hon'ble Judges : P.N. Ravindran and K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : T. Sethumadhavan, Sr. Adv., Pushparajan Kodoth, K. Jayesh Mohankumar, Vandana Menon and N. Deepa, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

K. Ramakrishnan, J.—1. The first respondent/tenant in R.C.P. No. 137 of 2011 on the file of the Rent Control Court - I, Kozhikode is the revision petitioner herein. Respondents 1 and 2 herein are the landlords of the building. The petition schedule building originally belonged to the mother of the landlords, viz. C.P. Nasreena. She was conducting a business in flour mill in the said building. After the death of the mother, respondents 1 and 2 became the owners of the property. The revision petitioner obtained the petition schedule building from the mother of the landlords on 31.10.1989 with liability to pay rent at the rate of Rs. 750/- per month and the same was subsequently enhanced to Rs. 800/- per month. After the death of the landlords' mother, the tenant attorned to the petitioners who are the respondents herein and she was paying rent to them. At the time of obtaining the building, the tenant had given Rs. 20,000/- as advance with a stipulation to adjust Rs. 100/- towards the monthly rent of the building till the advance is exhausted. The tenant paid rent upto 30.6.2004 and thereafter kept the rent in arrears from 1.7.2004. The petitioners sent a notice earlier and in spite of that the rent has not been paid. The first respondent herein who is the

first petitioner in the rent control court requires the petition schedule building bonafide to start a business in plywood and he has no other buildings in his possession for this purpose. The revision petitioner is not using the petition schedule building and she had sublet the building to the third respondent and she is not eking out her livelihood from the income derived from the business being conducted in the petition schedule building. She is conducting another shop by name "Jeevan Tea" at Unity building and she is also working as LIC Agent and there are other buildings available in the locality to shift her business. She had also acquired another building which is sufficient for her purpose. So, again a notice has been issued on 31.12.2009 stating the above reasons and asking the tenant to vacate the petition schedule premises after terminating the sub lease and clearing the arrears of rent but she did not vacate the premises. So, the petitioners/landlords have no other remedy except to file an application for eviction under sections 11(2)(b), 11(3), 11(4)(i) and 11 (4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short.

2. The second respondent before the rent control court did not appear. The first respondent who is the revision petitioner herein entered appearance and filed a counter statement contending that she had obtained the petition schedule building from the mother of the petitioners with liability to pay monthly rent at the rate of Rs. 750/- and an amount of Rs. 20,000/- was given as advance with a right to adjust Rs. 100/- per month towards the rent till the advance amount is exhausted. Thereafter rent has been enhanced to Rs. 800/- per month. She had obtained the building with machineries from one T.P. Badhrudeen, son of K.P. Moidu about 5 years prior to the execution of the rent deed in favour of the petitioners" mother. It was obtained by paying consideration to Badhrudeen and so the petitioners are not the owner of the machineries. She is running a business by name M/s. "Diana Food Products" in the petition schedule building. It was after obtaining the business premises from Badhrudeen, she obtained a room from the petitioners" mother by executing a rent deed. There is denial of title in respect of the machineries and so the rent control court has no jurisdiction to entertain the petition. She had paid Rs. 45,197/- to the petitioners" mother Nasreena in July 2001 by way of cheque drawn on Canara Bank, Cherooty Branch towards advance payment of the rent as demanded by her. Apart from that, an amount of Rs. 4,803/- was paid as property tax payable by the petitioners" mother. Till February 2009 she had paid the rent. The last payment was by way of a cheque dated 7.3.2009 for Rs. 1,900/- of Oriental Bank of Commerce. After deducting Rs. 100/- per month, the revision petitioner is entitled for the balance amount out of the total advance amount of Rs. 20,000/- from the petitioners/landlords. The rent arrears from February, 2009 has to be adjusted from the advance amount in the hands of the petitioners. The first petitioner had sent a notice two years back when he was studying. They are immensely rich and there is no necessity to start a business. The first respondent has not sub let the building. She was conducting a flour mill by name "Diana

Food Products" and the second respondent is only her employee. She is not an LIC Agent at present. She stopped the LIC business five years back and there is no building available in the locality to shift her business. So, she prayed for dismissal of the application.

3. The first petitioner before the rent control court was examined as PW1 and the Advocate Commissioner was examined as PW2. Exts.A1 to A6 were produced and marked on the side of the petitioners. Exts.C1 and C2 were marked through the Advocate Commissioner. The revision petitioner who was the first respondent in the rent control court was examined as RW1 and Exts.B1 to B10(a) were produced and marked on her side.

4. After considering the evidence on record, the rent control court found that the landlords are entitled to get an order of eviction under section 11(2)(b) of the Act as the discharge pleaded by the tenant has not been established. The rent control court also found that the need alleged is bonafide. The tenant is not entitled to get the proviso protection and ordered eviction under section 11(3) of the Act. The rent control court also found that there was sub lease and eviction was ordered under section 11(4)(i) of the Act also but denied eviction under section 11(4)(iii) of the Act. Aggrieved by the order of eviction passed by the rent control court, the tenant filed R.C.A. No. 44 of 2014 on the file of the Rent Control Appellate Authority, Kozhikode which was made over to Additional District Court - IV, Kozhikode for disposal and the appellate authority had allowed the appeal in part setting aside the order of eviction under section 11(4)(i) of the Act but confirmed the order of eviction under sections 11(2)(b) and 11(3) of the Act. Aggrieved by the same, the above revision petition has been filed by the revision petitioner/tenant-first respondent in the court below under section 20 of the Act.

5. Heard Smt. N. Deepa, learned counsel for the revision petitioner.

6. Learned counsel for the revision petitioner submitted that the revision petitioner had challenged the ownership of the machineries and as such the rent control court had no jurisdiction to entertain the application. There was no rent arrears. PW1 had admitted that they were not in the habit of issuing receipt to some of the other tenants. Further, though in 2006, a notice was issued earlier stating the same reasons, the same was not pursued. That shows that there is no necessity for the landlords to evict the revision petitioner and that there is malafides on the part of the landlords in filing the present petition. The courts below have not properly considered the proviso protection in favour of the tenant.

7. We have gone through the order of the rent control court as well as the judgment of the appellate authority. The allegation in the petition was that rent from July, 2004 was in arrears and the first petitioner in the rent control court bonafide requires the petition schedule building for starting a business in plywood. The first petitioner was examined as PW1. He deposed in support of his case in the application. Though an attempt was made on the part of the revision petitioner to show that there are other buildings in the possession of the

landlords and the first petitioner before the rent control court is doing some other job, she had failed to establish those facts. Further, PW1 categorically stated that after sending Ext. B10 notice, since they did not get the petition schedule building vacated, he had pursued his studies and after completion of his studies, he is helping his father in conducting his business and thereby he acquired experience and so he wants to start a business by himself which cannot be said to be a mere wish or irrational desire, especially when he is without any employment at present. Merely because he is paying income tax is not sufficient to come to the conclusion that he has no necessity to start a business. Even if there is no professional income or business income, if they have got other income of taxable nature, a person has to file a return before the Income-tax Department if he has got taxable income. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the need alleged by the landlords is bonafide.

8. As regards the second proviso protection is concerned, the revision petitioner had not produced any document to prove that she is solely depending on the income derived from the business conducted in the petition schedule building for her livelihood especially when the landlords had stated that she is having some other business and also doing LIC agency and getting good income from that. Further, the landlords had deposed that there are other buildings available in the locality to shift her business. The Commission report also will go to show that other buildings are available in the locality for shifting the business of the tenant and the tenant had no case that there is no building available in the locality. In the circumstances, the courts below were perfectly justified in denying the second proviso protection to the tenant and ordering eviction under section 11(3) of the Act.

9. As regards denial of title is concerned, it was admitted by RW1 that in the rent deed executed by her, she had admitted the ownership of the landlords over the machineries. The tenant had not produced any acceptable evidence to show that she is having any independent right over the machineries. Though documents were produced, in view of the admission on the part of the tenant that the landlords are the owners of the machineries and the building along with the machines were taken by the tenant on rent for conducting business, she is estopped from contending later that she is the owner of the machineries. So, the courts below were perfectly justified in coming to the conclusion that the denial of title regarding machineries raised by the tenant is not bonafide and rightly found that the application is maintainable.

10. As regards rent is concerned, except the fact that she had stated that rent has been paid upto February, 2009, absolutely there is no document produced to prove the discharge as pleaded. It is true that some cheques were issued but that was not accepted by the landlords. But thereafter no steps have been taken by the tenant to deposit the rent in court. Under section 9 of the Act, it is the duty of the tenant to insist for receipt and if it is not issued by the landlord, the

tenant can deposit the rent in bank after getting the bank account particulars from the landlord. Such a step has not been taken by the tenant in this case. So, in the absence of proof of discharge of rent as claimed by the tenant, the courts below were perfectly justified in ordering eviction under section 11(2)(b) of the Act which is subject to be vacated under section 11(2)(c) of the Act. If the revision petitioner wants to have the order under section 11(2)(b) of the Act vacated, she is at liberty to file an application under section 11(2)(c) of the Act stating the payments, if any made to prove discharge of rent to the satisfaction of the court below and if that is done, it is for the court below to consider that aspect and pass appropriate orders in the application. We do not find any reason to interfere with the concurrent findings of fact on these aspects invoking the power under section 20 of the Act.

11. Before disposing the revision petition, learned counsel for the petitioner sought nine months time to vacate the petition schedule premises. Considering the fact that the revision petitioner is conducting business in the petition schedule building from 1989 onwards, we feel that some reasonable time can be granted to her to surrender vacant possession of the petition schedule building. So, six months time from today is granted to the revision petitioner to vacate the petition schedule premises. She is directed to surrender vacant possession of the petition schedule building on or before 11.9.2016 and time will be granted on condition that she shall file an undertaking in the form of an affidavit before the rent control court or before the execution court if any execution petition is pending, that she will vacate the premises within the time provided by this court without any objection and on further condition that she will deposit the arrears of rent, if any, within one month and also continue to pay the rent at the rate agreed between the parties till she vacate the premises as directed by this court. She shall further undertake that she will not induct strangers in the petition schedule building or alienate, sub let or commit any act of waste therein. The undertaking shall be filed within a period of three weeks from today. If the undertaking is not filed within that time, then the petitioner is not entitled to the benefit of extension of time to surrender the building as directed by this court.

The revision petition is dismissed with the above directions and observations.