

(2010) 08 KL CK 0171
In the High Court Of Kerala
Case No : RC Rev. No. 139 of 2007

Mathoor Chamunghal Shylaja

APPELLANT

Vs

Cherupadikkal Abdul Khader and V.C. Prakash Babu

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Citation : (2010) 08 KL CK 0171

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

Bench : Division Bench

Advocate : T.A. Ramadasan, for the Appellant; R. Ramadas, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—Under challenge in this revision u/s 20 filed by the tenant is order of eviction passed against him on the ground of arrears of rent u/s 11(2) (b) and subletting u/s 11(4)(1). As regards the eviction passed on the ground of arrears of rent it was submitted by Sri.Cibi Thomas, the learned Counsel for the petitioner at the very outset that it will suffice if this Court grants time to the revision petitioner for getting that order vacated by filing application u/s 11(2) (c). Under the above circumstances, we in this revision need be concerned only with the order of eviction passed u/s 11(4)(i).

2. The building in question was let out to the revision petitioner/the first respondent in the RCP under Ext.A1 rent chit for the purpose of conducting electroplating works. Evidently and even admittedly the building is now divided into three portions i.e. "a", "b", and "c". Concededly in portion (b) which is the middle portion, the patch works of autorikshaws is being conducted by the second respondent, the alleged sub lessee. The allegation in the RCP is that the first respondent/tenant has sublet or transferred the middle portion of the building to the alleged sub lessee unauthorisedly. RCP is instituted after issuing the statutory notice under the proviso to Section 11(4)(i). The revision petitioner and the alleged sub lessee filed separate counter statements. It was contended

by them that there is no sublease or transfer. However, the physical presence of the alleged sub lessee in portion (b) was conceded. The defence was that the alleged sub lessee is only an employee engaged by the revision petitioner for conducting patch works of autorikshaws. The evidence at trial by the Rent Control Court consisted of Exts.A1 to A8, B1 and B2 oral evidence of PW1 and RWs.1 to 3. significantly, the alleged sub lessee despite his filing a separate counter statements did not mount the box for substantiating the contentions raised by him. The revision petitioner did not produce any documentary evidence to show that the jural relationship between him and the alleged sub lessee was that of an employer-employee. The learned Rent Control Court on appreciating the evidence would refer to various decisions including the judgment of the Supreme Court in Shama Prashant Raje Vs. Ganpatrao and Others, ; the judgment in Sadasivan Chettiar Vs. Rajendran, ; Karshaka Union v. Bhahuleyan 1996(2) KLT 747 and Abdul Khader Vs. Ali, and observe that the ratio of all these decisions is to the effect that unless there is transfer of exclusive possession and the existence of a landlord-tenant relationship between the tenant and the alleged sub tenant order of eviction on the ground of subletting cannot be passed. Accordingly, the Rent Control Court declined order of eviction u/s 11(4) (i) finding that in the present case objectionable subletting or transfer is not established. The Rent Control Appellate Authority considered the appeal preferred by the landlord, made a thorough re-appraisal of the evidence as well as analysis of the law relating to eviction on the ground of subletting u/s 11(4)(i) and would interfere with the decision of the Rent Control Court and would order eviction u/s 11(4)(i).

3. In this revision u/s 20, the judgment of the Appellate Authority is assailed by the revision petitioner/the tenant on various grounds. We have heard Sri. Cibi Thomas, the learned Counsel for the revision petitioner in extenso. We have also heard Sri. R. Ramadas, the learned Counsel for the respondents. According to Sri. Cibi Thomas, the judgment of the Rent Control Appellate Authority is vitiated by illegality, irregularity or impropriety as envisaged by Section 20 of Act 2 of 1965. He submitted that "b" portion of the building is the middle portion and "a" and "c" portions are admittedly retained by the revision petitioner himself. According to him, it will be possible for the revision petitioner to access "c" portion only through portion "b". This means that the revision petitioner/tenant is retaining possession of "b" portion also. According to Sri. Cibi when exclusive possession of the building or a portion of the building is not transferred to the alleged sub lessee, there cannot be any objectionable transfer at all. The submissions of Sri. Cibi were resisted by Sri. Ramadas who read over to us the judgment of the Appellate Authority and argued that the reasons stated by the Appellate Authority are excellent reasons which did not warrant interference.

4. We have anxiously considered the rival submissions. We have scanned the judgment of the Appellate Authority which under the statutory scheme is the final court on facts. According to us, the learned Appellate Authority was right in interfering with the view expressed by the Rent Control Court that in order that

the ground u/s 11(4)(i) is established there must be transfer of exclusive possession of the building as well as the existence of the landlord-tenant relationship between the tenant and the alleged sub tenant. According to us, eviction ground u/s 11(4)(i) will stand established if there is unauthorised transfer of possession of the entire building or a portion of the building. It will stand established if the building is unauthorisedly sublet. It is to establish subletting that there requires existence of a landlord-tenant relationship between the tenant and the alleged sub tenant. In the present case, subletting in the technical sense has not been established. However, in our opinion, unauthorised transfer of a portion of the building ("b" portion) which is in fact larger portion than "a" and "c" portions retained by the revision petitioner, in favour of the alleged sub lessee, second respondent in the RCP has been abundantly established by the oral evidence of RW1 himself. Importantly, the alleged sub lessee did not mount the witness box for substantiating his counter. When the building in question or a portion of that building is found to be in physical possession of somebody other than the tenant, it is for the tenant to plead and prove as to what is the jural relationship between him and the other persons in possession. What is pleaded is that other person in possession is an employee. The evidence in the case falls completely short of holding that there is employer-employee relationship between the revision petitioner and the second respondent in the RCP. In fact, RW1/the revision petitioner in his evidence stated that he was having the licence from the local authority for conducting patch works of autorikshaws in the middle portion. Despite such claim, no document was produced to prove the same.

5. Another significant aspect of the evidence adduced by RW1 has been highlighted by the learned Appellate Authority. RW1 stated in his evidence despite his plea that R2 in the RCP is his employee, that he is taking contracts from his customers for doing patch works of autorikshaws at a particular rate and thereafter he gives sub contract to the alleged sub lessee on a lesser rate. According to us, the learned Rent Control Appellate Authority was perfectly justified in taking the view that the revision petitioner's plea stood demolished by his own oral evidence as RW1. According to us, it is a reasonable finding founded on evidence which has been entered by the Appellate Authority regarding existence of objectionable sublet/transfer. We do not find any warrant for interference with the judgment of the Appellate Authority. The revision necessarily will fail and will stand dismissed.

6. As a last plea, Sri. Cibi Thomas requested that an years" time be granted to the revision petitioner to surrender the premises. The request was very stiffly opposed by Sri. Ramadas. He said it was not equitable to award so much of time to the tenant who has sublet. Even though we find some force in the submission of Sri. Ramadas, we feel that on the totality of circumstances attending on this case there is justification for grant of time till 31/03/11. The result of the above discussion, therefore is as follows:

7. The RCR is dismissed. The execution court is directed not to order and effect delivery of the building till 31/03/11 subject to the following conditions:

1) The revision petitioner discharges the entire arrears of rent found by the Rent Control Court to be due from him till date after adjusting the security deposit admittedly received by the landlord within six weeks from today.

2) He will file an undertaking before the execution court in the form of an affidavit that he will give peaceful surrender of the building to the first respondent on or before 31/03/11 and further that he will pay occupational charges to the first respondent at the current rent rate till such time actual surrender is made. We make it clear that the revision petitioner will get the benefit of time as granted above only when he files the affidavit on time.