

(2012) 11 KL CK 0206

In the High Court Of Kerala

Case No : Regular Second Appeal No. 1150 of 2012

M/S. Lissy Rubbers (P) Ltd.

APPELLANT

Vs

Meenachil Taluk Co-Operative Employees Co-Operative
Society Ltd.

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2012) 11 KL CK 0206

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : S.V. Balakrishna Iyer, Sri. P.B. Krishnan, Smt. Geetha P. Menon, Sri. N. Ajith and Sri. P.B. Subramanyan, for the Appellant;

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—The Second Appeal arises from the judgment and decree of learned Sub Judge, Pala in A.S. No. 10 of 2011 confirming the decree for eviction with damages for use and occupation granted by the learned Munsiff, Pala in O.S. No. 229 of 2009. The respondent is a co-operative society and acquired the tenanted building as per sale deed No. 3042 of 2004. It claimed that the appellant is the tenant of building paying rent at the rate of Rs. 360/- per month. It issued Ext. A1, notice dated 02.07.2009 terminating the tenancy and demanding vacant possession of the building. That notice was served on the appellant on 04.09.2009 to which it sent Ext. A3, reply. Since the demand in the notice was not complied, the respondent filed the suit.

2. The appellant contended that the signatory to the plaint has no right to do so and that the building originally belonged to George Thomas from whom the appellant had taken it on rent. It was later that the respondent purchased the building as per sale deed No. 3042 of 2004. Its further contention is that the notice terminating tenancy is not valid.

3. The learned Munsiff found that in view of the notification, SRO No. 1225 of 1979 issued under Sec. 25 of Act 2 of 1965 the building owned by the co-operative societies are exempted from the purview of the said Act, that the tenancy is validly terminated and even otherwise, the amendment brought to Sec. 106 of the Transfer of Property Act (for short, "the Act & quot;;) would save the situation. Other contentions raised by the appellant were negatived and a decree was granted in favour of the respondent. That was confirmed by the first appellate court.

4. The learned Senior Advocate for the appellant has contended that in so far as tenancy was created at a time when the building belonged to a private individual, though later that building was acquired by the respondent, SRO No. 1225 of 1979 has no application. A further contention raised is that termination of tenancy as per Ext. A1 is not valid and that at any rate, receipt of rent subsequent to Ext. A1, notice would amount to creation of new tenancy.

5. So far as the first contention is concerned, This Court had occasion to consider that on a prior occasion when there was challenge to the dismissal of an application for amendment of the written statement to incorporate such a contention. This Court had held that as per notification No. 1225 of 1979 what is exempted is "the building owned by co-operative societies" and hence it is irrelevant whether the society had acquired the tenanted building. Having regard to the wordings used in SRO No. 1225 of 1979, I am inclined to hold again the fact that appellant had obtained tenancy from the prior owner of the building and later, the building was acquired by the respondent makes no difference so far as the application of notification No. 1225 of 1979 is concerned. The notification exempts building "owned" by the societies.

6. The other contention raised is regarding the (alleged) invalidity of Ext. A1, notice. In Ext. A1, notice dated 02.07.2009 it is stated that the tenancy is terminated and that the appellant is to vacate the building on the last day of the month of the tenancy coming after the 15th day of receipt of the notice Assuming that there is any invalidity to the notice as contended, Sub-sec. (3) of Sec. 106 of the Act introduced with effect from 31.12.2002 would take care of the situation since that provision says that a notice under Sub-sec. (1) of Sec. 106 of the Act shall not be deemed invalid merely because the period mentioned therein falls short of the period specified under that Sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that Sub-section. Here, the suit is instituted as the learned Senior Advocate submits, on 16.10.2009. Hence the question of invalidity to Ext. A1, notice as contended defeating the suit does not arise.

7. So far as acceptance of rent subsequent to Ext. A1, notice is concerned, the courts below have referred to the relevant decisions to hold that the mere acceptance of rent after termination of the tenancy by itself would not amount to creation of a new tenancy. At the best, acceptance of the rent after termination of the tenancy would change the nature and character of occupation of the

appellant to one with consent rather than of a trespass.

8. On hearing the learned Senior Advocate I do not find any substantial question of law involved in the Second Appeal requiring its admission.

9. The learned Senior Advocate has submitted that the appellant is engaged in rubber business in the building in question and since it is a running business, its continuance in the said premises for some time is required since it has to collect the dues from its customers. It has also to find out some alternative accommodation. The learned Senior Advocate has requested 12 months time to vacate the premises. The respondent is not before me. Hence the request for 12 months time cannot be accepted. However, having regard to the difficulties of the appellant expressed by the learned Senior Advocate I am inclined to grant four (4) months time to the appellant to vacate the premises. I make it clear that if any further time is required, the appellant has to request the executing court to grant further time. If any such request is made, the executing court shall consider that request having regard to the facts and circumstances of the case and take appropriate decision after hearing both sides, if necessary subject to the appropriate terms and conditions including that the appellant shall continue to pay damages for use and occupation at the contract rate of rent and file necessary affidavit undertaking to vacate the premises on the expiry of the time the executing court may grant without putting forth any claim or objection. I make it clear that it is for the executing court to decide whether further time is to be granted or not having regard to the circumstances.

The Second Appeal is dismissed with the above directions.

All pending interlocutory applications will stand dismissed.