

(1996) 09 KL CK 0059
In the High Court Of Kerala
Case No : C.R.P. No. 1811 of 1996

N. Anandan

APPELLANT

Vs

K.P. Valsan

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 11(3), 11(4)(i), 18(2)

Citation : (1996) 2 KLJ 441

Hon'ble Judges : T.V. Ramakrishnan, J; J.B. Koshy, J

Bench : Division Bench

Advocate : Grashious Kuriakose, for the Appellant; E.V. Nayanar, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Ramakrishnan, J.—At the time when the Civil Revision Petition came up for admission, we have heard the learned counsel for the petitioners and respondents 2 to 5 who have filed a caveat in the matter. Sixth respondent is one of the daughters of the original landlord whose other legal representatives are respondents 2 to 5, Since she has the same contentions it was submitted that counsel for respondents 2 to 5 takes notice for her also. We are admitting the CRP and disposing of the same by this order. In the manner in which we propose of dispose of the CRP, it is unnecessary to issue notice to the first respondent-tenant who has not filed any appeal against the order of eviction. The main question arising for consideration in the revision is whether a person impleaded as a subtenant in an eviction petition under the Kerala Buildings (Lease and Rent Control) Act (for short "the Act") and who has specifically pleaded that he is only a paid employee of the tenant, can prefer an appeal against the order passed in the petition accepting his contention in toto and ordering eviction on the ground of bona fide need against the tenant alone? A further question also arises for consideration as to whether in a cross appeal or cross objection filed in an appeal which is found to be not maintainable is maintainable in law?

2. Revision petitioners were impleaded as respondents 2 and 3 in the RCP filed u/s 11(2), 11(3) and 11(4)(i) of the Act on the allegation that they are sublessees put in possession of the building without the consent and knowledge of the landlord by the tenant first respondent in the CRP. Petitioners and the tenant refuted the allegation that the petitioners are sublessees and contended that they are paid employees of the first respondent-tenant. The said contention was accepted by the rent control Court. The rent control Court, however, on the basis of the evidence on record passed an order of eviction finding bona fide need and declined to pass an order u/s 11(4)(i) of the Act.

3. Against the order of eviction, as already pointed out, the petitioners alone filed an appeal impleading the tenant and the landlord as respondents. On entering appearance in the appeal, the landlord in his turn filed a cross objection challenging the finding recorded against him on the question of sublease set up by him in the RCP. The Appellate Authority on the basis of the contention that the appellants, petitioners herein, are only mere employees of the tenant found the appeal filed by them as not maintainable. At the same time the Appellate Authority allowed the cross objection finding that there is objectionable sublease in favour of the appellants and that they are sublessees. An order of eviction was accordingly passed u/s 11(4)(i) of the Act also.

4. The specific contention put forward by the petitioners in their counter affidavit in the RCP and reiterated in the memorandum of revision is that they are paid employees of the first respondent-tenant. They have specifically refuted the contention of the landlord that they are sublessees. The rent Controller has fully accepted the above contention of the petitioners and has ordered eviction only against the tenant u/s 11(3) of the Act. Eviction u/s 11(4)(i) was specifically declined. In the circumstances, it is difficult to hold that the petitioners were in any way aggrieved by the order of eviction passed against the tenant directing him to surrender the building to the landlord. u/s 18(2) of the Act only "a person aggrieved by an order passed by the rent control Court" can prefer an appeal. By no stretch of imagination one can say that the petitioners whose contention was fully accepted by the rent control Court and against whom no order of eviction was passed by the Court are persons aggrieved by the order passed in the RCP. There is absolutely no case for the petitioners that they have any independent right to set up any defence against the claim for eviction made against the tenant. The learned counsel for the petitioners has also not pointed out any principle of law on the basis of which, as employees of the tenant, the petitioners are entitled to raise any contention which the tenant is entitled to take opposing the prayer for eviction. In the circumstances, we are of the view that the petitioners cannot be considered as persons aggrieved by the order of eviction passed by the rent control Court against the tenant. We find full support for the view which we have taken on the above point in the decision of Viswanatha Iyer, J. in *Balan v. Zainabi* (1988 (1) KLT 695) where the question considered was whether a person who was occupying a residential house along with the tenant can independently file an appeal against an order of eviction passed against the

tenant even if the tenant for his own reasons chooses not to challenge the order of eviction. Relying upon the supreme Court decision in *Sarla Narula Vs. Raghbir Kaur Rehal and Another*, it was held thus:

The order of the Appellate Authority is one by which the tenant has been ordered to be evicted. The petitioner has no case that he is a sub-tenant. In fact, he wants to establish that he is not a sub-tenant and thereby to get the order of eviction vacated. He lays claim to challenge the order of the Appellate Authority only on the ground that he is residing in the house along with the tenant. Here residence with the tenant is not sufficient to vest any right in the occupier to challenge the order of eviction against the tenant. The position may be different where the occupier accepts that he is a sub lessee and nevertheless claims immunity from eviction for some other reasons. The contractual relationship of lease is between the landlord and the tenant. That is being terminated by the order of eviction. The tenant may acquiesce in the order and he may not, for his own reasons be willing to continue the tenancy or to perform his obligations under the rental arrangement. He may therefore vacate or be prepared to be evicted. That in fact is the effect of his not pursuing the remedies available to him to challenge the order of eviction. It is not open to strangers to the contract (like the petitioner) to compel the tenant to continue the contractual relationship, with the liability of performing his obligation under the contract.....

We find that the status of the petitioners herein though not the same is similar to that of the petitioners in *Balan's* case (*Supra*). In fact the Appellate Authority has specifically referred to the above decision and has taken the same view expressed therein while holding that the appeal filed by the petitioners is not maintainable. We find absolutely no ground to take a different view on the point and would hold that the appeal filed by the petitioners was incompetent and not maintainable since the petitioners cannot in any way be considered as persons aggrieved in law by the order of eviction passed against the tenant in the RCP.

5. In the light of the finding entered by the Appellate Authority that the appeal filed is not maintainable which has been confirmed by us, it has to be held that the cross objection filed by the landlord was also not maintainable.

6. Considering the question of maintainability of a cross objection in an appeal which is found to be not maintainable in law, *Subramanyan Poti, C.J.* speaking for a Division Bench of the Gujarat High Court in *Chanchalgauri Ramanlal and Others Vs. Narendrakumar Chandulal and Others*, has held thus: Suffice to say that if an appeal does not lie and such an appeal has been filed, any cross objection in such an appeal does not call for adjudication on the merits. If there is a properly instituted appeal which is entertainable by a court and is entertained by the Court, the cross objection filed therein would be as good as an appeal against a decree and that will have to be disposed of on the merits even in cases where the appellant thereafter seeks to withdraw the appeal or the appeal is dismissed for default.

Same is the view taken in *Malhati Tea Syndicate Limited Vs. Revenue Officer, Jalpaiguri and Others*, and *Ram Chand v. Ramku* (AIR 1977 M.P. 82). In this connection it is relevant to note that Chief Justice Chagla speaking for the Bench in the decision reported in *Charity Commissioner Vs. Padmavati and Others*, has expressed the view that the cross objection filed in an appeal cannot survive when once the appeal is found to be time barred. We are in respectful agreement with the view expressed in *Chanchalgauri's* case (*supra*) and would follow the same and hold that the cross objection filed by the landlord was also not maintainable. In the light of the view which we have taken regarding the maintainability of the cross objection, we would set aside the order passed by the Appellate Authority u/s 11(4)(i) of the Act and confirm the order of eviction passed by the Rent Controller u/s 11(3) of the Act.

As we are setting aside the order of eviction passed u/s 11 (4) (i) and the same is in his favour, it is unnecessary to issue notice to the first respondent-tenant who has not filed any appeal against order of eviction passed by the rent Controller u/s 11 (3) of the Act which has already become final against the tenant. C.R.P. is accordingly dismissed. No costs.