
(2010) 10 KL CK 0201
In the High Court Of Kerala
Case No : R.C. Rev. No. 319 of 2010

Padoli Kunhikrishnan

APPELLANT

Vs

Soopiyadath Thekke Purayil Muhammed

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0201

Hon'ble Judges : Pius C. Kuriakose, J;P.S. Gopinathan, J

Bench : Division Bench

Advocate : M. Sasindran, for the Appellant; No Appearance, for the Respondent

Judgement

Pius C. Kuriakose, J.—Under challenge in this revision filed u/s 20 of Act 2 of 1965 by the unsuccessful tenant is the judgment of the Rent Control Appellate Authority confirming the order of eviction passed against him by the Rent Control Court on the ground of cessation of occupation u/s 11(4)(v). The parties will be referred to as "landlord "and "tenant".

2. The case of the landlord was that the petition schedule building, which was let out to the respondent for making metal vessels, is not being used for the above purpose by the tenant continuously for more than 10 years and that his non user is without any reasonable cause. The tenant by a statement of objections denied the above allegation and contended that it is with oblique motives that the landlord has instituted the rent control petition.

3. The Rent Control Court enquired into the rent control petition. In the rent control petition, the evidence consisted of Pws1 to 3, RW1, CW1 and Exts.A1 to A9 and Ext.C1. Ext.C1 is the report submitted by an advocate commissioner who conducted an inspection of the petition schedule building as well as the tharwad building of the revision petitioner with notice to the revision petitioner. Ext.C1 report was to the effect that heaps of settled dust and cluster of cobwebs were noticed by him inside the building which at the time of inspection was found closed with two locks. The advocate commissioner clearly reported that by all

indications, the building was not being used for any purpose. It was further reported by the commissioner that vessel making activity is being conducted by the tenant in his tharwad house, which is not far away from the petition schedule building. The commissioner himself was examined as CW1. PW2, a neighbouring shop keeper, also deposed that the premises have not been opened even by the tenant continuously for years. The Rent Control Court was very much inspired by the evidence adduced on the side of the landlord. It was noticed by the Court that as against the evidence adduced by the landlord the tenant had not produced even a scrap of paper to support his claim that he was actually conducting vessel making work in the petition schedule building. In that view of the matter, the Rent Control Court held that eviction ground u/s 11(4)(v) stood established and accordingly order of eviction was passed.

4. The Appellate Authority considering the appeal preferred by the revision petitioner, reappraised the entire evidence and concurred with all the conclusions of the Rent Control Court and accordingly, the appeal was dismissed.

5. In this revision various grounds are raised assailing the judgment of the Appellate authority. One of the grounds seen raised prominently is that, before the Rent Control Court the tenant had filed an interlocutory application seeking admittance of an additional document and that the court without assigning any good reason dismissed that application.

6. We have heard the submissions of Sri. M. Sasindran, learned Counsel for the revision petitioner and those of Sri. Muhammed Mustaque, learned Counsel for the respondent, who had lodged a caveat in anticipation of the RCR.

7. The learned Counsel for the revision petitioner submitted that the Rent Control Court as well as the appellate authority went wrong in dismissing the interlocutory application which had been filed by the revision petitioner for reception of an additional evidence and that the appellate authority went wrong in not upholding the grounds raised before that authority in respect of the dismissal of the above I.A. The learned Counsel vehemently requested that the matter be remitted back to the Rent Control Court, so that additional evidence, which was sought to be produced by the tenant, can be placed on record and fresh decision can be rendered. The learned Counsel submitted that the evidence of PW1, the landlord, will not inspire any confidence in the mind of the Court. The evidence of PW1 is to the effect that he has no idea as to the visit by the advocate commissioner even.

8. All the submissions of the learned Counsel for the petitioner were opposed by Mr. Muhammed Mustaque, who supported the judgment of the Appellate Authority on the various reasons stated therein. The learned Counsel would remind us of the contours of our present jurisdiction.

9. As directed by us, a copy of the appeal memorandum, which was filed by the revision petitioner before the appellate authority, was placed before us and we have perused the same. We have considered the rival submissions addressed at

the Bar. In the present jurisdiction u/s 20, we are not expected to make a reappraisal of the evidence for the purpose of substituting factual conclusions arrived at by the statutory fact finding authorities, especially when they are reasonable findings founded on evidence. Having gone through the order of the Rent Control Court and the judgment of the Appellate authority, we find that the finding entered therein that the revision petitioner has ceased to occupy the building for more than the statutory period without any reasonable cause is a finding entered on the basis of acceptable legal evidence consisting of report by an advocate commissioner on the basis of inspection conducted by him. It is noticed by the statutory authorities that credit of CW1 was not shaken in cross examination. Ext.C1 commission report and the deposition of CW1 are to the effect that the heaps of dust and cluster of cobwebs were noticed inside the petition schedule building, all indicating that the petition schedule building was not even being opened by the tenant. In this context, the contention of the respondent is to be noted. The contention is that he is conducting metallic works of a nature different from the works conducted by him in the tharwad house. If, as a matter of fact, any such work is being conducted by the tenant, there must be documents issued by the local authority to support the claim. One of the arguments, which were addressed before us by the learned Counsel for the petitioner, was that the Rent Control Court ought to have allowed the application filed by the petitioner for reception of evidence. It is not disputed that interlocutory application was filed only after evidence was closed and the case was posted for hearing. It is true that in the appeal submitted to the appellate authority that ground was raised. But, as we go through the impugned judgment of the appellate authority, we find that no arguments were raised with reference to that ground.

10. The learned Counsel for the revision petitioner submitted before us that the document, which the petitioner wanted to bring on record, is the account books pertaining to the business. Those books, according to the learned Counsel, will show that the revision petitioner is conducting metallic works in the petition schedule building. Accounts books after all are only self serving documents. But, the statutory licence issued by the local authority will have more probative value than the accounts books. At any rate, within the contours of our jurisdiction u/s 20, we find it extremely difficult to say that the impugned judgment of the appellate authority is vitiated by illegality, irregularity or impropriety of the nature contemplated by Section 20.

11. The revision petition fails and will stand dismissed. However, without any order as to costs.

12. After we pronounced the above order, the learned Counsel for the revision petitioner requested that at least six months time be granted to vacate the premises. This request is opposed by Mr. Mustaque saying that the revision petitioner is not conducting any business at all in the petition schedule building and no useful purpose will be served by granting time to the revision petitioner.

13. Even though we find force in the submissions of Mr. Mustaque, we are of the view that four months time can be granted to the revision petitioner for surrendering the premises on the following conditions;

i). The revision petitioner shall file an affidavit before the Execution Court or the Rent Control Court undertaking to give peaceful surrender of the petition schedule building to the respondent landlord within four months from today and undertaking further that the entire arrears of rent, which has fallen due in respect of the building, will be discharged within one month and that occupational charges at the current rent rate will also be paid as and when the same falls.

ii). Affidavit as directed above will be filed within three months.

We make it clear that the revision petitioner will get the benefit of time granted above only if he files the affidavit and honours the undertakings contained therein.