
(2010) 09 KL CK 0208
In the High Court Of Kerala
Case No : R.C. Rev. No. 88 of 2010

Patteri Janardhanan

APPELLANT

Vs

Pothirakath Jaleela and Pothirakath Kunhaleema

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0208

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

Bench : Division Bench

Advocate : P.M. Pareeth, for the Appellant; Mohammed Mustaque, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—Under challenge in this revision filed u/s 20 is the judgment of the Rent Control Appellate Authority ordering eviction against the revision petitioner tenant on the ground under Sub-section (3) of Section 11 in reversal of the order of the Rent Control Court dismissing the RCP. The need projected by the landlady was that the building is required bona fide for conduct of business in plastic and stationery by her husband Abdul Kalam Azad. The bona fides of the need was disputed by the revision petitioner. He also contended that the rent control petition is liable to fail by virtue of the first proviso to Sub-section (3) of Section 11. It was further contended by him that he is entitled to the protection of the second proviso to Sub-section (3) of Section 11. At trial by the Rent Control Court, the landlady got herself examined as PW1 and the further evidence consisted of Exts.A1 to A7, Exts.B1 to B5 and RWs 1 & 2. RW1 was the revision petitioner tenant himself and RW2 was an advocate. The Rent Control Court, on appreciating the evidence, came to the conclusion that the need projected by the landlady is not bona fide. One of the reasons that weighed with the Rent Control Court was that the husband of the landlady Sri. Abdul Kalam Azad had not mounted the box to testify regarding his need. However, that Court found that the rent control petition was not liable to fail by virtue of

first proviso to Sub-section (3) of Section 11. It was found that the tenant was unsuccessful in proving that he is entitled for the benefit of second proviso to Sub-section (3) of Section 11.

2. The Rent Control Appellate Authority considered the appeal preferred by the landlady and has allowed the appeal under the impugned judgment. Before the Appellate Authority, the landlady filed an interlocutory application producing the passport of her husband. It was averred that husband has come back from the foreign country where he was previously employed and that he has no intention to go back. The learned Appellate Authority allowed that application and received the passport as an evidence in the case. The Appellate Authority made a reappraisal of the evidence. The Appellate Authority also referred to the various judicial precedents governing the facts situation similar to the one which obtained in the present case and would conclude that the need projected by the landlady is bona fide. On the basis of that conclusion, the finding of the Rent Control Court that the need is not bona fide was reversed. The Appellate Authority concurred with the rent control court on the findings regarding the first and second proviso of Sub-section (3) of Section 11.

3. In this revision various grounds have been raised assailing the judgment of the Appellate Authority and Sri. P.M. Pareeth learned Counsel for the petitioner addressed very strenuous arguments before us on the basis of all those grounds. All the arguments of Sri. Pareeth were resisted by Sri. A. Mohammed Mustaque, learned Counsel for the respondents.

4. We have anxiously considered the rival submissions. We have gone through the order of the Rent Control Court as well as the judgment of the Appellate Authority. We have also kept in mind the various judicial precedents governing the issue. The one aspect, which weighed mostly with the Rent control Court for holding that the need is not bona fide, is that Sri. Abdul Kalam Azad, the husband of the landlady- the really needy person, did not mount the box. But, as rightly noticed by the learned Rent Control Appellate Authority by the time the appeal came up for decision by the Appellate Authority, Sri. Abdul Kalam Azad had admittedly come back to his home town. He produced passport and thereby demonstrated that he has no intention to go back. At the Bar also, Sri. Mohammed Mustaque, learned Counsel for the landlady submitted that Sri. Abdul Kalam Azad, the husband of the landlady, has no intention to go back to any foreign country and his intention is only to conduct the proposed business in the petition schedule building. Under the above circumstances, we are of the view that non examination of Sri. Abdul Kalam Azad, the really needy person, cannot be fatal to the landlady's case. We also notice that PW1 was the spouse of the needy person and in that way also a competent witness for the needy husband's need.

5. In this jurisdiction u/s 20, we are not ordinarily expected to substitute factual conclusions arrived at by the final fact finding Authority i.e. the Rent Control Appellate Authority. On going through the impugned judgment, we are of the

view that the finding entered therein that the need is bona fide is a reasonable one.

6. The learned Counsel for the respondents submitted that Sri. Abdul Kalam Azad is presently conducting similar business in an adjacent building. But, he conceded that the said building does not belong to the landlady. According to us, the fact that Sri. Abdul Kalam Azad presently conducting some business in an adjacent building belonging to his brother, is a circumstance which further demonstrate that the need projected by the landlady is bona fide one. As for the findings that the RCP is not liable to fail by virtue of the first proviso to Sub-section(3) of Section 11, those findings are concurred and we do not find any illegality, irregularity or impropriety warranting corrections u/s 20.

7. We enquired of Sri. Pareeth, learned Counsel for the revision petitioner, as to what exactly is the apprehension in the mind of his client. The learned Counsel submitted that the apprehension is that after eviction the landlady will let out the building to somebody else on a much higher rent. Sri. Mohammed Mustaque counsel for the landlady would take very strong exception to the above submission. He submitted that landlady has no objection in this Court incorporating any safeguard to prevent such a situation apart from the statutory safeguards under Sub-section (12) of Section 11.

8. Under the above circumstances, we are of the view that the judgment of the Appellate Authority can be sustained. However, we feel that, on the totality of the facts and circumstances which attend on this case, there is justification for granting an unusually long period of time to the revision petitioner for surrendering the premises.

9. The result of the above discussion is, therefore, as follows.

(i). The RCR is dismissed. However, there will be an order restraining the landlady from letting out the building to anybody else and from otherwise disposing of the building for a period of three years from today.

(ii). If Sri. Abdul Kalam Azad, the husband of the landlady, does not occupy the building within a period of three months of obtaining the possession of the petition schedule building, it will be open to the revision petitioner to apply under Sub-section (12) of Section 11, in which case the learned Rent control Court will be justified in ordering immediate orders.

(iii). The Execution Court is directed not to order and effect delivery of the building for a period of one year from today subject to the following conditions; The Revision petitioner will file an affidavit before the Rent Control Court or the Execution Court as the case may be within three weeks from today undertaking to give peaceful surrender of the building to the landlady or her husband within one year from today and undertaking further that arrears of rent, if any will be discharged within one month and occupational charges at the current rent rate will also be paid as and when the same falls due.

We make it clear that the revision petitioner will get the benefit of time granted above only if the affidavit as directed above is filed on time.