

(2011) 05 KL CK 0175
In the High Court Of Kerala
Case No : RC Rev. No. 148 of 2011

P.K. Gopan

APPELLANT

Vs

Rasheeda Sulaiman and Sulaiman Aboobacker Sait

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Citation : (2011) 05 KL CK 0175

Hon'ble Judges : Pius C. Kuriakose, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : Zakeer Hussain, for the Appellant; Babu Karukapadath, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—The tenant challenges in this revision an order of eviction concurrently passed by the statutory authorities on the ground under Sub-section (3) of Section 11 of the Act. The need projected by the landlords was that the petition schedule building is needed bona fide, so that the landlords can conduct business in opticals in the petition schedule building bearing door number 9 and in adjacent room bearing door number 10 and in the hind room having door number 4 which were at the time of commencement of the rent control petition in the possession of the other tenants.

2. The bona fides of the need was disputed and the tenant contended that he is entitled to the protection of the second proviso to Sub-section (3) of Section 11. Contention was raised based on the first proviso to Sub-section (3) of Section also. The Rent Control Court enquired into the matter and on appreciating the evidence, would enter a finding that the need projected is bona fide and that the rent control petition is not liable to fail by virtue of either the first proviso or second proviso to Sub-section (3) of Section 11. Accordingly, the order of eviction was passed.

3. The tenant preferred an appeal to the Rent Control Appellate Authority.

Stating that during the pendency of the appeal another room fell vacant and it is possible for the landlords to accomplish their projected need by occupying that room, the tenant filed an application for issuance of commission so as to obtain a report regarding the details of the rooms allegedly under the vacant possession of the landlords. The learned Appellate Authority did not allow that application. In stead, after deciding the appeal against the tenant on merits, the Appellate Authority dismissed that application by a cryptic order.

4. In this revision u/s 20 various grounds are raised challenging the judgment of the Appellate Authority. Smt. K.A. Sanjeetha, learned Counsel for the revision Petitioner addressed before us on the basis of the various grounds raised. The learned Counsel highlighted that during the pendency of the appeal a room in the ground floor, which was being occupied by M/s. Ideal Electronics fell vacant and that room has now been let out by the landlords to M/s. Fab Electronics. The landlords is yet to occupy that room. According to Smt. Sanjeetha, if the need projected was bona fide one, the landlords would not have let out that room to M/s. Fab Electronics. She would assail the findings of the statutory authorities in the context of the first and second provisos to Sub-section (3) of Section 11.

5. Sri. Babu Karukapadath, learned Counsel for the Respondents/landlords drew our attention to the pleadings raised in the rent control petition . He submitted that the specific plea was that optical business is needed to be conducted not only in the petition schedule building but also in the adjacent room bearing door number 10 and the hind room having area of 60 sq. feet. Room No. 10 and the hind room have now been got vacated and the landlords are keeping those two rooms under their vacant possession. The landlords are unable to commence the proposed business for want of the petition schedule building. Once the petition schedule room is also got vacated, the landlords will commence the proposed business. Since the specific pleading of the landlords was that the need is to be accomplished by utilising the adjacent room and the hind room, the landlords cannot be blamed at all even if the room previously occupied by Ideal Electronics actually fell vacant and the same is let out to Fab Electronics. The landlords have special reason for insisting of getting the petition schedule building and the other two rooms presently got vacated as they are adjacent rooms.

6. We have given our anxious consideration to the submissions addressed. We have gone through the judgment of the Appellate Authority and the order of the Rent Control Court. The question which arises before us is whether there is warrant for invocation of the jurisdiction u/s 20 which is in revisional in nature. Having gone through the judgment of the Appellate Authority and the order of the Rent Control Court, we find that the findings entered therein in favour of the landlords are findings based on the legal evidence available on record. When reasonable findings are entered by the statutory authorities founded on evidence, this Court will not be justified in interfering with those findings by venturing upon reappraisal of the evidence. Though Smt. Sanjeetha addressed several arguments, the only argument which had initial appeal to us was the

argument that the landlords did not occupy the building previously occupied by M/s. Ideal electronics. This argument has been convincingly met by the learned Counsel for the Respondent with reference to the pleadings. The specific case pleaded by the landlords was that need of the landlords is to occupy the petition schedule room and the room having door number 10 and also hind room. It is not disputed that room having door number 10 and hind room have been got vacated by initiating proceedings against the tenants who are in occupation. Under the above circumstances the landlords cannot be blamed for not occupying the room which was previously occupied by the Ideal electronics. In short, there is no illegality, irregularity or impropriety about the findings concurrently entered to the effect that the need is bona fide. The same is the position as regards the tenant's eligibility for the protection of the second proviso to Sub-section (3) of Section 11 and the liability of the RCP to be rejected by virtue of the first proviso. The finding entered in favour of the landlords in the context of the first and second provisos are quite reasonable. The revision necessarily will have to fail and will stand dismissed.

7. As a last submission, Smt. Sanjeetha requested for a period of at least one year to surrender the premises. This request is opposed very stiffly by Sri. Babu Karukapadath. Mr. Babu Karukapadath submitted that the landlords have got room bearing door number 10 as well as hind room vacant long ago. It will be unjust to insist that the landlords should wait for further periods. Notwithstanding the stiffness of the opposition, we feel that there is justification for granting reasonable time to the revision Petitioner for surrendering the premises. Hence, we are inclined to grant time till 31/1/2012 subject to certain conditions:

The revision Petitioner shall file an affidavit before the Execution Court or the Rent Control Court as the case may be within three weeks from today undertaking as follows:

- a). that he will give peaceful surrender of the petition schedule building to the Respondents/landlords on or before 31/1/2012.
- b). that he will discharge arrears of rent if any within one month and that he will pay occupational charges at the exiting rent rate promptly and regularly till the date of actual surrender.

We make it clear that the revision Petitioner will get benefit of time allowed as above only if he files the affidavit on time and honours the undertakings therein.

8. Under challenge in this revision filed u/s 20 is the judgment of the Rent Control Appellate Authority confirming the order of eviction passed by the Rent Control Court under Sub-section (3) of Section 11. One point, which was highlighted before us by Smt. K.A. Sanjeetha learned Counsel for the revision Petitioner, was that during the pendency of the appeal, another room having door number 10 belongs to the Respondents fell vacant and that the Appellate Authority dismissed the application for issuance of commission which the

Petitioner filed to prove such vacancy.

9. Sri. Jagan Abraham, learned Counsel for the Respondents/landlords would submit that availability of room No. 10 during the pendency of the appeal cannot be of any consequence as it is the specific pleading of the landlords that room Nos. 9 & 10 are to be utilised for accomplishing the projected need. Smt. Sanjeetha would now submit that yet another room has fallen vacant and there is no pleadings in the Rent Control Petition that more than two rooms are necessary. Sri. Jagan Abraham would now submit that the other room is a small corner room which is an extent of just 60 sq. feet.

10. We direct both sides to seek instructions from their respective parties as to whether the above corner room having an area of 60 sq. feet can be given to the revision Petitioner.

Post tomorrow.