
(2011) 07 KL CK 0152
In the High Court Of Kerala
Case No : R.C. Rev. No. 89 of 2011

Purushothaman

APPELLANT

Vs

Radhakrishnan and C.R. Rohit Krishnan

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2011) 07 KL CK 0152

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : K.P. Dandapani, S.R, for the Appellant; K.A. Satheesa Babu, for the Respondent

Judgement

Pius C. Kuriakose, J.—Under challenge in this revision filed by the tenant is the judgment of the Appellate Authority, Thrissur confirming the order of eviction passed by the Rent Control Court on the ground under Sub-Section 3 of Section 11. The case of the landlord/first Petitioner in the RCP is that the building is required for occupation by the second Petitioner in the RCP (the second Respondent herein), his son who at that time was a student of Engineering to start an automobile spare parts shop. The bona fides of the need was disputed and it was contended that the landlord is in possession of another building adjacent to the petition schedule building. It was also contended that at any rate, the tenant is entitled for the protection of the second proviso to Sub-Section 3 of Section 11. In the enquiry conducted by the Rent Control Court, the evidence consisted of the oral evidence of P Ws.1 to 3, Ext.B1 order of this Court in C.R.P.843/01 under which the previous Rent Control Petition filed by the landlord seeking eviction on the ground of additional accommodation was dismissed finally and the oral evidence of RW1, the tenant. Significantly Sri.C.R. Rohit Krishnan, the second Petitioner in the RCP, son for whom the building was sought for was not examined as a witness. The Rent Control Court on evaluating the evidence came to the conclusion that the eviction ground under Sub-Section 3 of Section 11 stood established. It was also concluded that the tenant was

unsuccessful in showing that he satisfies either of the ingredients of the second proviso to Sub-Section 3 of Section 11. It was also concluded that the landlord was not in possession of any other vacant building entailing rejection of the RCP by virtue of the first proviso to Sub-Section 3 of Section 11. Accordingly, order of eviction was passed under Sub-Section 3 of Section 11. Tenant preferred an appeal to the Rent Control Appellate Authority. The learned Appellate Authority made a reappraisal of the evidence and passed the impugned judgment confirming the order of the Rent Control Court.

2. In this revision various grounds are raised assailing the judgment of the Appellate Authority and the various findings entered therein. Sri. Mathew Kuriakose the learned Counsel for the revision Petitioner addressed arguments on the basis of all those grounds. Even though Sri. Mathew addressed arguments on the basis of those grounds raised in the Revision Petition, the one ground which appeals to us within the contours of this Court's jurisdiction u/s 20 was the ground that the non-examination of Rohit Krishnan, the second Respondent, the de facto claimant of the building is fatal. Sri. Mathew submitted that during the course of the proceeding Rohit Krishnan graduated in Engineering and has secured a lucrative job as an Engineer in a foreign going vessel. According to Sri. Mathew whether Sri. Rohit Krishnan has an honest need or necessity to occupy the subject building for the purpose of conducting automobile business and whether he will be willing to give up his employment for the purpose of starting business in his home town - is an aspect on which only he can adduce authentic and responsible evidence. In this context reliance was placed by Sri. Mathew on various decisions of this Court. Sri.K.A. Satheesa Babu, the learned Counsel for the first Respondent/landlord submitted that it is not obligatory that in all cases where Sub-Section 3 of Section 11 is invoked for the purpose of accommodating a dependent family member that the family member the prospective occupant of the building should be examined. PW1 who has been examined is the father and it is the father's need that the son should do business in the petition schedule building. Rohit Krishnan, the second Respondent is the only son of PW1 and the insistence on adduction of oral evidence by Rohit Krishnan himself is not justified. Sri. Babu also relied on various judicial precedents. Sri. Babu reminded us of the attenuated nature of the present jurisdiction u/s 20 and submitted that in the present jurisdiction, we will not be justified in making a re-appraisal of the evidence for the purpose of substituting factual conclusions arrived at by the Rent Control Appellate Authority which under the statutory scheme is the final court on facts. He also submitted that at any rate there is no warrant for interference with the findings concurrently entered by the two authorities that the RCP is not liable to fail by virtue of either the first proviso or the second proviso to Sub-Section 3 of Section 11.

3. We have very anxiously considered the rival submissions addressed at the Bar. We have carefully gone through the order of the Rent Control Court as well as the judgment of the Appellate Authority. True the jurisdiction u/s 20 of Act 2 of 1965 is an attenuated one. However, it is wider than the regular civil jurisdiction

u/s 115 of the Code of Civil Procedure. In this jurisdiction, it is fully within the power of this Court to make at least a survey of the evidence for the purpose of ascertaining whether the judgment of the Rent Control Appellate Authority is legal, regular or proper. As already indicated the core question which arises for decision is whether the non-examination of Sri.C.R. Rohit Krishnan, the second Respondent in this case is fatal to the landlord's claim. True, Rohit Krishnan is the only son of PW1. But then, he completed graduation in Engineering and secured employment as Engineer in the Merchant Navy on a foreign going vessel during the pendency of the Rent Control Appeal. It cannot be disputed that Rohit Krishnan is deriving very attractive income from his employment in the Merchant Navy. As a father PW1 may be longing to have the company of his only son, Rohit Krishnan and the son doing business in a premises near to the premises where he himself is conducting business. But the question is whether a new generation youngster Sri. Rohit Krishnan is willing to give up his employment which he has already secured in a foreign going vessel is a matter on which authentic and responsible evidence can be given by him only and not by his father, the intimacy of his relationship with PW1 notwithstanding. For that reason, we are inclined to interfere with the finding concurrently entered by the two authorities that the need is bona fide.

4. At the same time, we make it clear that the further findings that the RCR is not liable to fail by virtue of the second proviso do not suffer from any illegality, irregularity or impropriety as they are founded on cogent evidence available on record. We confirm those findings. We set aside the judgment of the Appellate Authority only to the extent it confirms the finding of the Rent Control Court that the need is bona fide. RCA is remanded to the Rent Control Appellate Authority. The learned Rent Control Appellate Authority is directed to post the RCA for evidence giving opportunity to the first Respondent for examining the second Respondent in the appeal, the de facto claimant as a witness on the side of the Petitioners. If the second Respondent is examined as a witness one opportunity will be given to the revision Petitioner for adducing counter documentary evidence (not oral evidence). The learned Appellate Authority will pass revised judgment on the basis of the evidence already on record and the evidence which comes to be on record.

5. We notice another aspect of the matter. The building is situated very near to the Amala Hospital and Medical College and is fetching to the landlord only a sum of Rs. 400/- by way of monthly rent. We are sure that the above rate is far below the rent which the building will fetch if the same is let out today. We are inclined to re-fix the rent tentatively at Rs. 1,000/- per mensem with effect from 01/08/11. We make it clear that this re-fixation is tentative and if either party is aggrieved they are free to move the Rent Control Court u/s 5 for regular fixation of fair rent. Till fair rent is fixed regularly the first Respondent shall pay rent at the rate of Rs. 1,000/- per mensem. The parties will enter appearance before the Rent Control Appellate Authority on 16/08/11. Rent Control Appellate Authority is directed to expedite matters and to pass the revised judgment early and at any

rate within 90 days of the parties entering appearance pursuant to this order of remand.