

(2015) 10 KL CK 0091
In the High Court Of Kerala
Case No : OP (RC) No. 86 of 2015 (O)

Ramakrishna Subrahmanya Kochi

APPELLANT

Vs

Vazhikke Veettil Dayananadan

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2015) 10 KL CK 0091

Hon'ble Judges : P.N. Ravindran and Babu Mathew P. Joseph, JJ.

Bench : Division Bench

Advocate : M. Sasindran and V. Venugopal, Advocates, for the Appellant; Kodoth Sreedharan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The petitioner is the tenant in R.C.P. No. 47 of 2014 on the file of the Rent Control Court, Payyannur, a petition for eviction filed by the respondent herein under sections 11(2) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965, herein after referred to as "the Act" for short. The respondent herein has, in the petition for eviction filed by him averred that the tenant took the petition schedule building bearing door No. KP X/458 of Karivellur Gramapanchayath on lease as per lease agreement dated 23.4.2010, on a monthly rent of Rs. 7475/- for the purpose of starting a clinic, that as per the terms of the entrustment, the rent agreed upon was to be paid on the first of every English calender month, that the rent was thereafter enhanced and the rent payable as on the date of the institution of the rent control petition was Rs. 8595/- per mensem, that the tenant has paid the rent only upto and inclusive of February, 2014 and that the rent is in arrears from March, 2014. The landlord had in the rent control petition which was instituted on 13.6.2014 further averred as follows:

"4. After the entrustment the respondent never open the room nor he started the

clinic as mentioned in the agreement. The petitioner further submits that on 23.4.2012 onwards the respondent closed the room and he is not at all running his clinic in the petition schedule room and thus the respondent has ceased to occupy the petition schedule building continuously without any reasonable cause. The respondent has ceased to occupy the petition schedule room and has not paid electricity charges which has resulted in disconnection of electricity power by Electricity board. The respondent had locked the room without opening continuously more than 2 years. The petitioners issued a lawyer notice on 25.4.2014 to the respondent demanding him to vacate the petition schedule room within 30 days of the receipt of the notice. The notice was not served on the respondent. The notice is returned as unserved with an endorsement Left India. Thus it is clear that the respondent has not been doing any business in the schedule room. It is very clear that the respondent would not give vacant possession without recourse to a court of law. If the respondent is evicted from the petition room, the respondent will not cause any difficulties. The respondent is not depending upon his livelihood from the income derived from the business in the petition schedule room, since he is now employed abroad."

2. Shorn of details, the substance of averments in paragraph 4 of R.C.P. No. 47 of 2014 is to the effect that after the entrustment, the tenant has not even opened the room and started the clinic, that he has not paid the electricity charges and consequently, the electricity connection was disconnected. In other words, the contention is to the effect that the tenant has not occupied the room for the purpose for which it was taken on lease.

3. Upon receipt of summons, the tenant entered appearance through counsel and filed a counter statement dated 13.10.2014. As regards the allegation that the rent is in arrears from March, 2014, the tenant contended in paragraph 5 of the said counter statement that the landlord did not receive the rent when it was tendered with a view to create a ground for instituting a petition for eviction. He had also averred that he is ready to pay the entire arrears of rent. As regards the averments in paragraph 4 of the rent control petition extracted above, the tenant had in the counter statement averred as follows:

"6. The contention in para 4 of the petition that this respondent has never opened the room after its entrustment and that from 23-4-2012 onwards this respondent has closed the room and is not running the Clinic and has ceased to occupy the room without reasonable cause and locked the room without opening the room continuously for the last more than 2 years etc are all false baseless and twisted. Though the period of tenancy was stipulated as 11 months in the lease deed the terms and conditions in the lease agreement like enhancement of rent etc will make it clear that it was a long term project. After taking possession of the vacant building specifically for the purpose of starting a full fledged Clinic, Lab and Pharmacy this respondent had to complete its interiors of a Super Specialty Clinic. After the entrustment of the building to the respondent this respondent was doing the interiors and furnishing of the Clinic and now the said

work is almost over.

7. In the meanwhile, this respondent had to approach the self-Government and Government authorities for getting necessary license and permits to start a Clinic, Lab and Pharmacy in that building. For applying for those permits and licenses this respondent require the consent letters of the petitioner. This respondent repeatedly sent his representations to the petitioner and requested him to hand over the consent letters signed in its proper form. But the petitioner did not accede to it.

8. The contention in the petition that this respondent has intentionally kept the room closed without using it is incorrect and baseless. He was doing the interior work for the purpose of starting the Clinic, Lab and Pharmacy and now he has already spent an amount of Rs. 15 lakhs in that room. Another contention that his respondent has ceased to occupy the petition schedule building continuously without any reasonable cause and that he has not paid electricity charges resulting disconnection of the electric connection etc are also false and baseless."

4. The substance of the aforesaid averments is to the effect that after the entrustment, the tenant has done interior works after expending a sum of Rs. 15,00,000/-. In paragraph 10 of the counter statement, the tenant had further averred as follows:

"10. Now this respondent is in India packing up from USA for starting the Clinic, Lab and Pharmacy here. He will start the same immediately. There is absolutely no reason for the petitioner to evict this respondent. After entrusting the room and making him spend a huge amount around Rs. 15 lakhs specifically for the purpose of starting a Clinic as stipulated in the lease agreement the petitioner cannot oust this respondent on flimsy reasons."

5. A few months after the counter statement was filed, the tenant filed I.A. No. 1177 of 2015 in R.C.P. No. 47 of 2014 praying for the appointment of an Advocate Commissioner to inspect the petition schedule building for the purpose of ascertaining the interior works done by the tenant and the expenses incurred in that regard. The power of attorney of the tenant had in paragraph 2 of the affidavit filed in support of the aforesaid application averred that for the purpose of establishing a clinic, the tenant had done interior works after expending the sum of Rs. 15,00,000/-.

6. The landlord opposed the said application by filing a counter affidavit, a copy of which is on record as Ext. P4. In paragraph 3 of the said counter affidavit, the landlord denied and disputed the averment in paragraph 2 of the affidavit sworn to by the power of attorney of the tenant in the affidavit filed in support of I.A. No. 1177 of 2015 and contended that after the entrustment, the tenant has not done any interior works in the building as alleged and that it was after the petition for eviction was filed, that the interior works commenced. The landlord further contended that the tenant has not obtained the requisite permits and licences. In paragraph 3 of Ext. P4 counter affidavit the landlord also contended

that on application filed by him, an Advocate Commissioner was appointed and that when the Advocate Commissioner inspected the petition schedule building, there was no activity there. He also contended that the application is belated and bereft of bona fides and that such an application has been filed at the instance of the power of attorney of the tenant who had approached him for lease of the petition schedule rooms in her favour so as to enable her to start a business.

7. The rent control court considered the rival contentions and dismissed I.A. No. 1177 of 2015 by Ext. P5 order passed on 10.7.2015. The rent control court held that the petition for eviction was filed on 13.06.2014, that on the very same day the landlord had taken out a commission to inspect the petition schedule building, that the Commissioner has reported that the room seemed to be closed, that the respondent entered appearance and filed a counter statement on 11.07.2014, that thereafter the case was posted for steps, but he did not take steps to apply for the appointment of a Commissioner to inspect the petition schedule property, that if his contention is bona fide he could have taken steps to apply for the appointment of an Advocate Commissioner earlier and that as the application has been filed after the case is posted for evidence, the relief prayed for therein cannot be granted. The tenant has, aggrieved thereby filed this original petition under Article 227 of the Constitution of India.

8. We heard Sri. M. Sasindran, learned counsel appearing for the petitioner and Sri. Kodoth Sreedharan, learned counsel appearing for the respondent. Sri. M. Sasindran, learned counsel appearing for the petitioner-tenant submitted that even if there is cessation of occupation, a tenant can be evicted under section 11(4)(v) of the Act, only if there has been cessation of occupation without reasonable cause, that the tenant has in paragraph 7 of the counter statement filed by him averred that the landlord did not give his consent for obtaining the necessary licences and permits to start the clinic, that the tenant had taken the room on rent for the purpose of starting a clinic, that the tenant had in his counter statement filed by him averred that he has done interior works in the petition schedule building after expending the sum of Rs. 15,00,000/- and therefore, the court below erred in dismissing the application for appointment of an Advocate Commissioner to inspect the petition schedule building for the purpose of noting the aforesaid facts on the ground that it is a belated application. Learned counsel appearing for the petitioner also submitted that the tenant could obtain the requisite registration under the Travancore Cochin Medical Practitioners Act, 1953 only on 19.2.2015, that without obtaining such a registration, the tenant who is a Doctor by profession and had earned his medical degree from the Mysore Medical College, Mysore affiliated to the Mysore University and had not practiced in the State of Kerala, could not have commenced the clinic and that was one of the reasons why the clinic and the facilities attached to it could not be opened till date. Learned counsel submitted that having regard to the facts set out in the counter statement, which was filed within time, unless an Advocate Commissioner is appointed to prove the case set out therein, the tenant will be seriously prejudiced and will be disabled from

proving his case that he was prevented by reasonable cause from starting a clinic in the petition schedule building.

9. Per contra, Sri. Kodoth Sreedharan, learned counsel appearing for the respondent-landlord submitted that the landlord had along with the petition for eviction filed a petition seeking the appointment of an Advocate Commissioner, that the said application was allowed by order passed on 13.6.2014, that pursuant thereto the Advocate Commissioner inspected the petition schedule building on 17.6.2014 and submitted a report dated 11.07.2014, that the Advocate Commissioner has in the said report stated that at the time of the inspection the petition schedule room was closed and that it appeared to him that it had not been opened for several months, that the tenant has not, notwithstanding the fact that a report adverse to him was filed on 11.7.2014, filed objections to said report and therefore, the attempt now belatedly made to get over the observations in the said report was rightly not entertained by the rent control court. Learned counsel contended that the tenant could have, if he was desirous of proving the case set out by him in paragraph 6 of the counter statement, applied for the appointment of an Advocate Commissioner immediately after the counter statement was filed and therefore, the rent control court was perfectly right in holding that the attempt now made after the case was posted for evidence, to apply for the appointment of an Advocate Commissioner is belated. Referring to the averments in paragraph 3 of Ext. P4 counter affidavit filed by the landlord in I.A. No. 1177 of 2015, learned counsel for the landlord contended that the landlord had raised a specific contention in the counter affidavit filed by him that the interior works were done after the petition for eviction was filed and therefore, the mere fact that the tenant might have spend money to carry out interior works after the rent control petition was filed is not a reason to hold that the relief sought by him in I.A. No. 1177 of 2015 should have been granted by the court below. Learned counsel lastly submitted that if Ext. P5 order dismissing I.A. No. 1177 of 2015 is set aside and the relief prayed for therein is granted at this stage, the landlord will be seriously prejudiced.

10. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through the pleadings and the materials on record, as also a copy of the report dated 11.7.2014 submitted by the Advocate Commissioner appointed on application filed by the landlord, after inspection of the petition schedule premises on 17.06.2014. Shorn of details, the petition for eviction is instituted on the allegation that the tenant has not, after the entrustment to him of the petition schedule building, opened it or started a clinic. The case of the landlord is that ever since the date of the entrustment, the room is not being used and that the tenant has ceased to occupy the building continuously and without reasonable cause. The case of the landlord is that the room is continuously locked for more than two years. The stand taken by the tenant in the counter statement filed by him is that, there has been no cessation of occupation and that after the entrustment, for the purpose of starting a full-

fledged clinic, a lab and a pharmacy, he had done interior works expending the sum of Rs. 15,00,000/-. The landlord and the tenant are also in agreement that as stipulated in the rent deed the rent was enhanced from Rs. 7475/- per mensem to Rs. 8595/- per mensem. The landlord has also admitted the fact that the rent was being paid at the agreed rates upto and inclusive of February, 2014. The tenant has a case that the landlord has also not given the requisite consent so as to enable him to apply for the requisite licences and permits to start a clinic, lab and pharmacy in the petition schedule building. The tenant has also contended that there has been no cessation of occupation without reasonable cause. It is in this background that we have to consider the question whether the impugned order merits interference.

11. It is no doubt true that the tenant could have applied for the appointment of an Advocate Commissioner at an earlier point of time. It is equally true that an Advocate Commissioner had been appointed for inspecting the petition schedule building and the Advocate Commissioner submitted a report dated 11.7.2014. The report does not however disclose that the Advocate Commissioner had inspected the interior of the shop room. On the other hand, the report which runs only to two paragraphs is to the effect that at the time of the inspection by the Advocate Commissioner on 17.06.2014, which was admittedly without notice to the tenant, the room was found to be closed. It is evident from the very report submitted by the Advocate Commissioner on 11.7.2014 that the room was not opened for the inspection by the Advocate Commissioner. The landlord has no such case in Ext. P4 counter affidavit filed by him in I.A. No. 1177 of 2015. His contention is that the interior works were done after the petition for eviction was filed. As a matter of fact, the averments in paragraph 3 of Ext. P4 counter affidavit would support the case of the tenant that interior works had been done in the petition schedule rooms. The dispute is only as regards the point of time at which the interior works were done.

12. The question whether the tenant had ceased to occupy the building or had never occupied the building for the purpose for which it was entrusted or taken by him on rent without reasonable cause or whether there was reasonable cause for such non-occupation or cessation of occupation, is a matter which will have to be proved by evidence. Having regard to the stipulations contained in clause (v) of sub section (3) of section 11 of the Act, if the tenant is in a position to show reasonable cause, it will be a relevant factor to be taken into account by the rent control court for the purpose of considering whether an order of eviction should follow. That again is a matter of evidence and in the realm of appreciation of facts. However, having regard to the fact that even going by the landlords version, the interior works were done after the date on which petition for eviction was filed viz; after 11.6.2014, and the further fact that the Advocate Commissioner appointed on application filed by the landlord had not opened the shop room and inspected it, we are of the opinion that the rent control court should have afforded the tenant an opportunity to have the shop room including its interior inspected by an Advocate Commissioner for the purpose of

ascertaining whether the tenant has, as contended by him in paragraph 6 of the counter statement filed in the rent control petition, done interior works.

13. As regards the contention of tenant that he has expended the sum of Rs. 15,00,000/-, for carrying out the interior works we are of the opinion that the report of the Advocate Commissioner cannot be a substitute for proof of the actual expenses incurred by the tenant for carrying out the interior work and that the tenant will have to prove the expenditure incurred in that behalf by producing the bills for purchase of materials and also receipts issued by the person or persons who had done the interior works. Unless the tenant is given an opportunity to take out a commission and to have the interior of the building examined, he will in our opinion, be disabled from proving that cessation of occupation or non-occupation was not without reasonable cause.

For the reasons stated above, we allow this original petition, set aside Ext. P5 order passed by the Rent Control Court, Payyannur on 10.7.2015 on I.A. No. 1177 of 2015 in R.C.P. No. 47 of 2014 and direct the rent control court to pass fresh orders allowing the said application and appointing an Advocate Commissioner (preferably an Advocate other than the Advocate Commissioner earlier appointed by the rent control court) within two weeks from the date of receipt of a copy of this judgment. The Advocate Commissioner shall be directed to inspect the petition schedule building and to submit a report within one month from the date on which orders as directed above are passed. The rent control court shall thereupon try and dispose of R.C.P. No. 47 of 2014 within an outer limit of three months from the date of receipt of the Advocate Commissioner's report. We make it clear that we have not expressed any opinion as regards the merits of the rival contentions in the rent control petition or in the counter statement filed by the tenant and that the rent control court will be free to come to its own conclusions and findings, having regard to the pleadings and the materials on record. We also further clarify that the observations made herein are only for the limited purpose of considering the validity and legality of Ext. P5 order and that we have not pronounced upon the merits of the rival contentions in the rent control petition. No costs.