
(2013) 03 KL CK 0097
In the High Court Of Kerala
Case No : RC Rev. No. 151 of 2012

Shamshad M.H.

APPELLANT

Vs

Dr. P.A. Paul

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 20

Citation : (2013) 03 KL CK 0097

Hon'ble Judges : T.R. Ramachandran Nair, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Varghese C. Kuriakose, Sri. Praveen K. Joy and Smt. Renjini Rajendran, for the Appellant; C.T. Joseph (Caveator), Sri. Joe Pollayil and Sri. Roshin Ipe Joseph, for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—The revision petitioner is the tenant. The respondent/landlord lodged the rent control petition invoking Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, (hereinafter referred to as, the Act, for short) alleging that he wanted to start a business of toys and books in the tenanted premises. This was disputed by the revision petitioner, who claimed the benefits under the first and second provisos to Section 11(3) of the Act. The Rent Control Court, after collecting the evidence, found that the alleged need is bona fide and ordered eviction. The revision petitioner carried the matter in appeal to the Rent Control Appellate Authority, who concurred with the findings of the Rent Control Court and dismissed the appeal. Thus, this revision petition.

2. Briefly put the case of the respondent/landlord, is as follows:-

The respondent is the owner of the petition schedule shop room, having an area of 150 sq. ft., bearing Door No. CC 4339/39 which is located in the ground floor of a two storied line building. Originally, the building belonged to his wife and two brothers, who later in the year 1993, transferred their rights in the building in favour of the respondent. The shop room was let out to the revision petitioner on 20.1.1983 on a monthly rent of Rs. 290/- by Rosiline Thomas, who was one of

the prior owners. The present rent is Rs. 723/- per month. The respondent was working as an Anesthesiologist in Medical Trust Hospital, Ernakulam. In December, 2001, he had undergone the procedure of Defibrillator implantation to his heart. As a result, he discontinued his profession and at present, he is jobless. Hence, he has decided to start business of toys and books in the tenanted premises and two adjoining rooms, after effecting necessary internal modifications. This process would augment his income. His wife, who is an educated lady, would help him in the business. Though a room having 100 sq. ft. is lying vacant in the first floor of the same building, it is not suitable for his need. The revision petitioner is not depending for her livelihood on the income derived from the business. Other rooms are available in the locality to shift her business.

3. The revision petitioner contended as follows:-

The respondent is not the absolute owner of the petition schedule room. The cardiac disease made mention of by the respondent does not disable him to continue his profession. If the respondent is ill, he would not be in a position to sit and manage the proposed business. Therefore, the need put forward by the respondent is not bona fide and is only a ruse for eviction. The wife of the respondent demanded an exorbitant rent at the rate of Rs. 5,000/- per month, which was refused by her. This refusal has prompted the respondent to initiate the proceedings. There is absolutely no necessity for the respondent to augment his income as he is immensely rich. His intention is to let out the building after vacating the revision petitioner. The vacant room available in the first floor is convenient for the alleged need. It is having road frontage also. The revision petitioner is mainly depending upon the income derived from the said business and no alternate sites are available in the locality to re-locate the business.

4. Before the Rent Control Court, the respondent/landlord gave evidence as PW1 and Exts. A1 to A14 were marked on his side. The revision petitioner gave evidence as RW1 and Exts. B1 to B3 were marked on her side. The Rent Control Court as well as the Rent Control Appellate Authority concurrently ordered eviction u/s 11(3).

5. Arguments have been heard and the lower court records, including the impugned judgment as well as the order of the Rent Control Court were perused.

6. While the learned counsel for the petitioner attacked the impugned judgment on various grounds, the learned counsel for the respondent supported the impugned judgment and prayed for a dismissal of the revision petition.

7. Following are the main arguments advanced by the learned counsel for the revision petitioner:-

(a) It is highly improbable that a qualified and experienced Doctor like the respondent would indulge in a business activity contrary to the requirement of his profession.

(b) The respondent has not become unfit by health to practice the medical profession. If he is unfit to do medical practice then, he is unfit to do any activity.

(c) There is total dearth of evidence, including documentary evidence, to indicate that the respondent has ceased to continue his medical profession.

(d) Had the respondent had any genuine intention to start the proposed business at least in a small way, he could have utilised the vacant area on the first floor.

(e) The ground floor area surrendered by the other tenants has not been utilised by the landlord yet.

(f) Both the authorities failed to note that the respondent is very rich and he does not need the petition schedule room for starting any business.

(g) The cumulative effect of the entire evidence is that the need projected by the landlord is not at all real. Neither the respondent nor his wife has any idea about the business proposed to be started in the tenanted premises.

8. Before meeting the arguments advanced by both sides, we would like to note that the respondent instituted three proceedings against three tenants, including the revision petitioner herein viz., R.C.P. Nos. 173, 174 & 175 of 2006. The three rooms, which are the subject matter of these petitions, are lying adjacent. R.C.P. Nos. 173 and 174 of 2006 also resulted in eviction orders. The tenant in R.C.P.No. 174 of 2006 surrendered the room relating to the said petition. The tenant in R.C.P.No. 173 of 2006 though filed an appeal against the order of the Rent Control Court, the same was dismissed and he filed an undertaking for vacating the premises within a time frame. Thus, two rooms are available in the ground floor. The third room is the subject matter of this revision. All the three rooms are on the ground floor of a larger building. The respondent wants to use the space covered by all the three rooms after making necessary modifications. The respondent claims title to the premises as per Ext. A1 which relates to 11 rooms in the building, including the premises in the occupation of the revision petitioner. Out of these 11 rooms, the respondent had sold two rooms in the ground floor and two rooms in the first floor to his wife as per Ext. A12. The revision petitioner has denied the title of the respondent on the ground that she had availed the tenanted premises from Rosline Thomas in the year 1982. We notice that one of the executants of Ext. A1 title deed relied on by the respondent is the said Rosline Thomas. Moreover, the revision petitioner while examining as RW1 admitted that the tenanted premises belongs to the respondent and she was paying rent to him also. Hence, we need not give much weight to the contentions put forward by the revision petitioner denying the title of the respondent/landlord.

9. To prove the need projected, the respondent gave evidence as PW1. Certain medical records were also pressed into service which would go to show that the respondent had a cardiac arrest in the year 2001. He was an Anesthesiologist by profession and was working in the Medical Trust Hospital, Ernakulam at the

relevant time. It was pointed out by the learned counsel for the revision petitioner that the respondent is closely related to the Director of Medical Trust Hospital. Therefore, it was argued by him that the claim of the respondent that he has not attended the duties of Anesthesiologist after his ailment, can be viewed only with suspicion. It was argued that the case of the respondent that he is unfit to continue the medical profession on account of his ailment, cannot be swallowed even with a pinch of salt. We notice that in the witness box, the respondent adhered to the stand taken by him in the eviction petition. Ext. A11 discharge summary would show that he had a sudden cardiac death outside the Medical Trust Hospital where he was working, which was resuscitated at the same hospital. But for the timely intervention, he would not have survived. Subsequent management was at Amritha Institute of Medical Science and Research Centre, Kochi. No further evidence is required to prove that the physical incapacity alleged is true.

10. The argument of the learned counsel for the revision petitioner is that if the respondent has actually discontinued his medical profession, some documents would be there in the Medical Trust Hospital to prove that he had stopped his practice as an Anesthesiologist. The argument was that the failure on the part of the respondent to produce such document gives an inference that he is still continuing his profession as a medical practitioner. It was further argued that the finding of the learned Appellate Authority that the revision petitioner could have summoned the documents from the Medical Trust Hospital to prove that the respondent is still continuing his profession is not at all justifiable. We are not impressed by the said argument. Once the respondent has produced the documents to prove his ailments which cannot be discarded as unbelievable, the burden to prove that the respondent is still continuing in the Medical Trust Hospital in spite of that ailment, is on the revision petitioner.

11. Both the authorities have concurrently found that the need projected by the respondent is bona fide. We are not inclined to hold otherwise and to upset the above finding.

12. May be true, that the respondent is immensely rich. But, that is not a sufficient reason to hold that the need projected is not genuine. We do not see any genuine reason to say that his social status as an Anesthesiologist will stand in his way of starting the proposed business in the tenanted premises for augmenting his income, especially when he is not in a position to toil much. Though the room in the first floor of the building is remaining vacant, the respondent has stated specific reasons for not occupying the same. Firstly, it was pointed out that the area covered by the said room is insufficient for the requirement of the respondent as his idea is to occupy the entire area covered by the three rooms, including the tenanted premises, after effecting necessary modifications. The further version of the respondent is that he is unable to climb the stairs due to his ailment.

13. Relying on Ext. C1, it is argued by the learned counsel for the revision

petitioner that two rooms in the upstairs were let out recently and the said subsequent event has a bearing on the genuineness of the need projected by the landlord. But, as rightly pointed out by the courts below, the definite case of the respondent is that it is impossible for him to conduct the proposed business in the upstairs due to his ailment. It was further contended by the learned counsel for the petitioner that two rooms on the ground floor were let out for a mobile store during the pendency of the proceedings. But Exts. A12 and A13 would reveal that those rooms belong to the wife of the respondent. It is also relevant to note that the monthly rent which those rooms fetch is Rs. 48,000/- per month.

14. It was further contended on the strength of Ext. B1 to B3 that two rooms which got vacated earlier are in the possession of the respondent. But, the revision petitioner had admitted that the wife of the respondent has started a tailoring centre in one of the said rooms and the same is functioning even now. The other room was a car shed, which was demolished, as it was dilapidated.

15. It is settled law that the burden is heavily on the tenant to establish that she is entitled to the protection of both limbs of the second proviso to sub section (3) of Section 11. The learned Appellate Authority for genuine reasons has found that the revision petitioner is depending for her livelihood on the income derived from the business set up in the tenanted premises. Regarding the availability of alternate site, there is only a blunt statement by her that no vacant rooms are available in the locality to shift the business of the revision petitioner. On a totality of the circumstances now placed on record, we are of the definite view that the learned Appellate Authority has appreciated the evidence in its correct perspective and has arrived at the correct conclusion, which does not call for any interference under the revisional jurisdiction of this Court u/s 20 of the Act.

In the result, the revision petition fails and is accordingly dismissed. However, taking into account the fact that the revision petitioner is conducting a business in the tenanted premises which is the sole source of her livelihood, we feel it is only just and proper to grant the revision petitioner a breathing time to find an alternate space for shifting her business. We are of the view that the revision petitioner can be granted time upto 30.9.2013.

We, therefore, direct the execution court to keep the delivery in abeyance till 30.9.2013, subject to the following conditions:

(a) The entire arrears of rent shall be paid by the revision petitioner to the respondent/landlord within one month from today and the receipt thereof shall be produced before the Rent Control Court or the Execution court as the case may be, without fail;

(b) The revision petitioner shall file an affidavit, within three weeks from today before the Execution Court or the Rent Control Court as the case may be, undertaking to surrender vacant possession of the petition schedule shop room peacefully to the landlord on or before 30.9.2013 and he will continue to pay occupational charges at the current rent rate till the date of actual surrender of

the shop room to the landlord.

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