
(2010) 10 KL CK 0204
In the High Court Of Kerala
Case No : R.C. Rev. No. 214 of 2010

"Sudarsans" Partnership Firm

APPELLANT

Vs

Kunjunni Nair alias K.K. Unni

RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0204

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

Bench : Division Bench

Advocate : V. Chitambaresh, for the Appellant; K.K. Chandran Pillai, for Caveator, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The tenant, a partnership firm, challenges in this revision u/s 20 an order of eviction passed concurrently against them on the grounds u/s 11(3) and 11(4)(iii) of Act 2 of 1965.

2. We have heard the submissions of Sri. V. Chitambaresh, learned senior Counsel for the revision petitioner tenant and also Sri. K.K. Chandran Pillai, learned senior Counsel for the respondent landlord who had lodged a caveat before this Court in anticipation of the revision.

3. Even though Sri. Chitambaresh, assailed the impugned judgment of the Appellate Authority, on the merits of the matter we feel that in this revision it is not necessary to consider the correctness of the findings entered by the Appellate Authority except the finding that the need projected by the landlord u/s 11(3) is bona fide. As for that finding, we are not persuaded to hold that there is any illegality, irregularity or impropriety about the finding concurrently entered by the statutory authorities that the need projected by the landlord under Sub-section (3) of Section 11 is bona fide. However, we found considerable merit in the submission of Sri. Chitambarsh that the learned Appellate Authority did not discharge its function as statutory Appellate Authority by examining the legality

and correctness of the finding entered by the Rent Control Court in favour of the landlord in the context of the second proviso to Sub-section (3) of Section 11 and also the order of eviction passed against the revision petitioner u/s 11(4)(iii).

4. Sri. K.K. Chandran Pillai, learned senior Counsel for the respondent/landlord also conceded before us that the Appellate Authority apparently has not considered the question of the tenant's eligibility for protection of the second proviso to Sub-section (3) of Section 11 or the correctness of the order of eviction passed by the Rent Control Court u/s 11(4)(iii). But, according to him, it will be possible for this Court, on a reappraisal of the evidence available on record, to agree with the Rent Control Court on the above aspects also. A remand to the Appellate Authority, the learned senior Counsel submitted, will result in further delay in this matter where the landlord instituted the RCP way back in 1999. Mr. Chandran Pillai also submitted that for the petition schedule building having an approximate carpet area of 400 sq. feet situated on M.G. Road in Thrissur, the rent at the rate of Rs. 1400/- per month fixed in 1988 is very low.

5. We have scanned the judgment of the Appellate Authority. We find that though the learned Appellate Authority has considered the question of bona fides of the need u/s 11(3) in sufficient detail and rightly concurred with the Rent Control Court, that Authority has not considered the question of the tenant's eligibility for the protection of the second proviso or the tenant's liability to suffer order of eviction u/s 11(4)(iii). As statutory Appellate Authority u/s 18, the learned Appellate Authority was bound to make a reappraisal of the pleadings and the evidence for the purpose of taking a decision as to whether the findings entered by the Rent Control Court in the context of the second proviso and also in the context of the ground u/s 11(4)(iii) were legal. The Appellate Authority, we notice, has not discharged its statutory appellate function in the above context. We are unable to accept the submissions of Sri. Chandran Pillai that we ourselves decide those issues finally. We find force in the submission of Mr. Chitambaresh that If such a course is adopted, prejudice will be caused to the revision petitioner. We are therefore inclined to remit the matter back to the Rent Control Appellate Authority with proper directions. At the same time, we find force in the submission of Mr. Chandran Pillai that the rent rate of Rs. 1400/- per month being paid by the revision petitioner is very low. We are inclined to refix the rent with effect from 1st November, 2010 giving liberty to both sides to apply for regular fixation of fair rent u/s 5 before the Rent Control Court.

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

i). The Revision Petition is allowed to the extent of setting aside the order of eviction passed u/s 11(3) and 11(4)(iii).

ii). The finding entered by the Appellate Authority that the need projected by the landlord u/s 11(3) is bona fide is confirmed.

iii). The RCA is remanded to the Rent Control Appellate Authority, Thrissur for

taking fresh decision. The Appellate Authority will consider and enter specific findings as to whether the tenant is entitled for protection of the second proviso to Sub-section (3) of Section 11 and also as to whether the order of eviction passed by the Rent Control Court against the tenant u/s 11(4)(iii) is liable to be confirmed.

iv). As the RCP is of the year 1999, we direct the Rent Control Appellate Authority to give top priority to the appeal and ensure that decision is taken in the appeal early and at any rate within one month of the parties entering appearing before the Appellate Authority pursuant to this order.

v). The Rent payable by the revision petitioner for the building in question is refixed tentatively with effect from 1st November 2010 at Rs. 5000/- per month. This refixation is subject to the regular fixation of fair rent by the Rent Control Appellate Authority on the basis of application submitted by either parties.

vi). The parties will enter appearance before the Rent Control Appellate Authority on 29/10/2010.