

(2012) 02 KL CK 0091
In the High Court Of Kerala
Case No : RC Rev. No. 75 of 2012

Thekkumbath Mohanan, Suresh Babu and Kakkatt Sheela	APPELLANT
Vs	
Malol Abdurahiman	RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0091

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : V.N. Ramesan Nambisan, for the Appellant;

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—The tenants are the revision petitioners and they challenge the revised judgment of the Rent Control Appellate Authority confirming the order of eviction passed by the Rent Control Court u/s 11(3). The need projected by the respondent/landlord was that the building which is subject matter of the present RCR and the adjacent building are required bona fide so that his dependant son who was examined as PW2 in the case can conduct jewellery business in these two rooms. The bona fides of the need was disputed and the revision petitioners also contended that they are eligible for the protection of the second proviso to sub Section 3 of Section 11.

2. The Rent Control Court in the first instance took the view that the bona fides is a state of mind which is to be manifested by the really needed person i.e. the son. The Rent Control Court took the view that the need is not bona fide. Even though the finding in the context of the second proviso was in favor of the landlord, the RCP was dismissed. Against that landlord preferred an appeal to the Rent Control Appellate Authority. The learned Appellate Authority made a re-appraisal of the evidence. According to the Authority, it was not mandatory that the son for whom the building was sought for is examined. In that view of the matter the Appellate Authority reversed the finding of the Rent Control Court and

ordered eviction. The matter was brought up this court by the revision petitioners. In revision, this Court interfered with the judgment of the Appellate Authority and remanded the matter to the Rent Control Appellate Authority permitting the landlord to examine PW2 as a witness. Accordingly PW2 was examined and the learned Rent Control Appellate Authority on appreciating the evidence of PW2 also would find that the need is bona fide and also that the tenant is not entitled for the protection of the second proviso. Accordingly, Appellate Authority has under the impugned judgment confirmed the order of eviction passed by the Rent Control Court.

3. In this revision u/s 20 various grounds have been raised assailing the judgment of the Appellate Authority. Sri. V.N. Ramesan Nambisan, the learned counsel for the revision petitioners addressed very strenuous submissions before us based on all the grounds raised in the memorandum of appeal. Sri. Ramesan Nambisan in particular highlighted before us that the evidence given by PW2 conflicts with that given by his father PW1 in material particulars. It was submitted that a reading of the evidence of PW2 will show that PW2 has no intention to come back to India from the foreign country where he is presently working whereas PW1 father gave evidence to the effect that PW2 is financially in dire straits and badly intends to start the business of his own in his home town. Sri. Nambisan also submitted that going by the evidence of PW2 it is a small scale jewellery business which is proposed to be conducted by PW2. Unlike the large scale business spoken to by PW1 the small scale business spoken to by PW2 can be conducted in the adjacent room which is subject matter of other Rent Control Petition where eviction order has been passed in favor of the respondent. There is no need to evict the revision petitioners also for accomplishing the need even if the same is genuine. Sri. Nambisan while assailing the finding in the context of the second proviso to sub Section 3 of Section 11 submitted that those findings are contrary to the evidence available on record.

4. We have given our anxious consideration to the submissions of Sri. Nambisan. We have carefully gone through the impugned judgment of the Appellate Authority and the order of the Rent Control Court. We have also gone through the order of this Court in RCR.128/11 by which the RCP was remanded to the Rent Control Appellate Authority. Before the Appellate Authority PW2 was examined and the evidence of PW2 was also appreciated by the Appellate Authority which has passed the impugned judgment ordering eviction. We have also considered the salient portions of the evidence adduced by Pws.1 and 2 to which our attention was drawn by Sri. Ramesan Nambisan. In fact one of the submissions which was addressed before us by Sri. Ramesan was that PW2 has given evidence to the effect that the very purchase of the petition schedule building was with the intention of letting out the same to the tenant so that rental income can be derived. We are not at all impressed by the above submission of Sri. Ramesan Nambisan. PW2 only meant that the initial purpose in purchasing the petition schedule building was to derive rental income by

letting out the same to tenants. The above evidence given by PW2 is true and is demonstrated by the very fact that the building was let out to the revision petitioners immediately on purchase of the building by the respondent. The question to be considered is whether the need projected in the RCP is a bona fide one. PW1 and PW2 have consistently stated that there is a genuine need for PW2 to come back to Vadakara and start jewellery business in the petition schedule building. The argument of Sri. Ramesan Nambisan that even after obtaining eviction PW2 will not come back to Vadakara and start business cannot be a successful argument against the finding entered concurrently by the two authorities. In this context we alert the revision petitioners all their remedies under sub Section 12 of Section 11 in the event of PW2 not coming down to Vadakara and starting the proposed business even after the revision petitioners are evicted. On going through the impugned judgment of the Appellate Authority we find that the finding therein that the need is bona fide is entered on the basis of a proper appreciation of the evidence on record namely the evidence adduced by Pws.1 and 2. The Appellate Authority which had the advantage of recording the testimony of PW2 believed PW2 and accepted his evidence and has now found that the need is a genuine one. We in revision will not be justified in upsetting the above finding by venturing upon a re-appreciation of the evidence. The apprehension of Sri. Ramesan Nambisan that PW2 will not come and occupy the building and that the building is let out to others is being taken care of in this judgment apart from the statutory remedies which the petitioners have under sub Section 12 of Section 11.

5. Coming to the question whether the revision petitioners are entitled for the protection of the second proviso to sub Section 3 of Section 11, it is very clear to our mind that when regard is had to the principles laid down by the Full Bench of this Court in Francis Vs. Sreedevi Varassiar, and by the Supreme Court in Kunhamma v. Akkali Purushothaman 2007 (3) KLT 99 the finding of the Appellate Authority in favor of the landlord in the context of the second proviso is absolutely correct. In short we do not find any warrant for interference in this revision. The revision fails and the same will stand dismissed accordingly.

6. Sri. Ramesan Nambisan on being informed of our decision confirming the eviction order requested for grant of one year's time to surrender the building. We do not think that we will be justified in granting so much of time without notice to the landlord. However, even as we confirmed the order of eviction and dismissed the RCR, we issue notice to the respondent to determine the extent of time to be given to the revision petitioners to surrender the building and also regarding special precautions to be taken for ensuring that the building is occupied by PW2 after eviction.

I.A. No. 499/2012

7. Interim stay for a period of two months.