

(2012) 02 KL CK 0136

In the High Court Of Kerala

Case No : RC Rev. No. 63 of 2012, RCA 83 of 2010 and RCP 133 of 2006

Vylasserri Raju

APPELLANT

Vs

K.P. Subaida

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Right to Information Act, 2005 — Section 11(3), 20

Citation : (2012) 02 KL CK 0136

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

Bench : Division Bench

Advocate : J. Om Prakash, for the Appellant; K.M. Firoz (Caveator), for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J

1. Under challenge in this revision filed by the tenant is the judgment of the Appellate Authority confirming the order of eviction passed by the Rent Control Court on the ground under Sub Section 3 of Section 11. The need which was projected in the RCP by the landlady was that the building in question where the revision petitioner is conducting business in electric goods is required bona fide for accommodating her dependant son who is examined as PW1 so that he can conduct stationery business therein. Though the bona fides of the need was disputed and it was contended that the tenant is entitled for the protection of the second proviso to sub Section 3 of Section 11 and it was also contended (though not specifically) that the RCP was liable to fail by virtue of the first proviso to sub Section 3 of Section 11, the learned Rent Control Court on evaluating the evidence held that the need is bona fide and also that the RCP was not liable to fail by virtue of either the first or the second proviso to sub Section 3 of Section 11.

2. The Appellate Authority considered an appeal preferred by the revision

petitioner and re-appraised the evidence. The Appellate Authority also concurred with all the findings of the Rent Control Court and accordingly dismissed the appeal.

3. In this revision, various grounds have been raised assailing the judgment of the Appellate Authority. We have heard the submissions of Sri.J.Omprakash, the learned counsel for the revision petitioner and also those of Sri.K.M.Firoz, the learned counsel for the respondent who had lodged a caveat in anticipation of this revision.

4. Even though Sri.Omprakash addressed submissions on the basis of all the grounds in the RCR, he gave more thrust in his submissions to the argument that the RCP is liable to fail by virtue of the first proviso to sub Section 3 of Section 11. He placed reliance on Ext.C1 Commission Report submitted by the Commissioner and Ext.C2 sketch submitted along with Ext.C1. He submitted that it was clearly reported by the Commissioner in Ext.C1 that rooms A and B shown in Ext.C2 sketch were vacant and were available with the landlord. According to the learned counsel, the explanation of the landlord that those two rooms were already let out to one Prakashan for the purpose of godown has not been substantiated by the landlord. He drew our attention to Annexures-A1 and A2 which will show that in response to an enquiry made under the provisions of Right to Information Act, the local authority has informed the tenant that the rooms A and B are not possessed by Prakashan as claimed by the landlord. Sri.Omprakash submitted that it is obligatory that when the landlord is in possession of other buildings the RCP should be rejected under the first proviso to sub Section 3 of Section 11.

5. Sri.Firoz submitted that rooms A and B are already let out to Prakashan for godown purposes. The local authority was not in a position to convey this information to the revision petitioner because the assessment of these two rooms is yet to be completed by the local authority. Sri.Firoz submitted that at any rate rooms A and B are not suitable for accomplishing the need projected in the RCP as those rooms did not have main road frontage. Those are rooms on the backside and can be utilised only for godown purposes. Need of PW1 is to conduct a stationery business which requires a room with road frontage.

6. We have given our anxious consideration to the rival submissions addressed at the Bar. We are not inclined to accept the submissions of Sri.Omprakash. First of all, the revision petitioner has not specifically contended by referring to rooms A and B that because of the landlord possessing A and B rooms the RCP should fail by virtue of the first proviso. On a reading of the order of the Rent Control Court also it is seen that this issue was not seriously argued before the Rent Control Court. Had it been argued we are sure that the same could have been discussed by the Rent Control Court. Even in the memorandum of appeal preferred to the Rent Control Appellate Authority it was not raised as a ground that because of possessing A and B rooms the RCP was liable to be thrown out. It is clear on a reading of the Appellate judgment also this point was not seriously argued. Even

if it is true that the landlord is having vacant possession of these two rooms then also in view of the obvious position that those rooms are on the backside of the main building and do not face the main road, according to us, there is special reason as to why the landlord can insist on getting possession of the petition schedule building which abuts the main road. In short we do not find any illegality, irregularity, or impropriety about the finding regarding bona fides. As for the other findings concurrently entered by the two authorities in favour of the landlord, we are of the view that there is no illegality, irregularity or impropriety about those findings as envisaged by Section 20 of Act 2 of 1965. Revision necessarily will have to fail and the same will stand dismissed.

7. On being informed of our decision in the RCR Sri.Omprakash requested that at least one year's time be granted to the revision petitioner for surrendering the premises. This request was opposed very stiffly by Sri.Firoz. However, we feel that the time sought for can be granted subject to the following conditions:

1) The revision petitioner shall pay occupational charges to the respondent with effect from 01/03/12 till the date of surrender i.e. 15/02/13 at the rate of Rs. 500/- per mensem.

2) The revision petitioner will file an affidavit within three weeks from today before the Rent Control Court or the execution court as the case may be undertaking to give peaceful surrender of the building on 15/02/13 and undertaking further to pay occupational charges at the rate of Rs. 500/- with effect from 01/03/12 till date of surrender.

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