

Jasmine Rasheed Vs. B.U.Afsal

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Court : Kerala

Decided On : Nov-07-2013

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Jasmine Rasheed

Respondent : B.U.Afsal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE B.KEMAL PASHA THURSDAY, THE 7TH DAY OF NOVEMBER 2013 16TH KARTHIKA, 1935 RCRev..No. 87 of 2013 ()
----- AGAINST THE

JUDGMENT

IN RCA722010 AND 772010 of RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM DATED 29-10-2012 AGAINST THE

ORDER

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JUDGMENT

IN RCP592009 of III ADDL.M.C.& RENT CONTROL COURT, ERNAKULAM DATED 31-07-2010 REVISION PETITIONER/RESPONDENT IN RCA722010 & APPELLANT IN RCA772010/PETITIONER IN RCP:

----- JASMINE RASHEED AGED 51 YEARS
W/O.ABDUL RASHEED RESIDING AT 2475 JOLTSANA VAZHAKKALA
THRIKKAKARA PO KOCHI 68202 BY ADVS.M/S.VARGHESE & JACOB
SRI.P.JACOB VARGHESE (SR.) SRI.VIVEK VARGHESE P.J.

SRI.VARUGHESE M EASO SMT.LEEMA ROSE ABRAHAM
RESPONDENT: APPELLANT IN RCA 722010 & RESPONDENT IN RA 772010/
RESPONDENT IN RCP ----- B.U.AFSAL, AGED 32 YEARS
S/O.USMAN VALEPPILLY HOUSE GREEN GARDEN VP MARAKKAR ROAD
EDAPPALLY 682024 R1 BY ADV. SRI.SUNIL NAIR PALAKKAT R1 BY ADV.
SRI.K.N.ABHILASH R1 BY ADV. SMT.R.LEELA THIS RENT CONTROL
REVISION HAVING BEEN FINALLY HEARD ON 07/11/2013, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & B.
KEMAL PASHA, JJ.

----- R.C.R.No. 87 of 2013 -----
----- DATED THIS THE 7TH DAY OF NOVEMBER, 2013

ORDER

B. Kemal Pasha, J.

The landlady is challenging the divergent findings on the ground under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). Originally the Rent Control Petition was preferred on the grounds under Sections 11(2)(b) and 11(3) of the Act. The learned Senior Counsel for the revision petitioner has fairly conceded that presently he is challenging the findings rendered by the court below on the ground under Section 11(3) of the Act, especially when the landlady has filed another Rent Control Petition, viz. R.C.P.No.61/2013 claiming an order of eviction on the ground under Section 11(2)(b) of the Act, which is presently pending before the Rent Control Court, Ernakulam.

2. On a perusal of the Rent Control Petition, it has become clear that mainly the landlady was harping upon the question of arrears of rent. As a stray sentence in paragraph 6 of the Rent Control Petition, it was pleaded that "the petitioner is in

bonafide need of the premises for starting a RCR No.87/2013 -2- business for her elder son Harab who had completed his studies. Apart from the said sentence, no other pleadings have been incorporated in the Rent Control Petition regarding the bonafide need, the nature of the business to be started in the scheduled premises, the ability of the petitioner or her son to start the proposed business, the mode of raising funds for the same, the lack of other premises in the custody of the petitioner or her son to start the proposed business, etc. etc.

3. Learned counsel for the respondent/tenant has pointed out that no pleadings are there to enable the court below to pass an order directing the tenant to put the landlady in possession of the building on the ground under Section 11(3) of the Act. Learned Senior Counsel for the petitioner has argued that even though there is lack of pleadings in the Rent Control Petition regarding the intrinsic particulars of a claim under Section 11(3) of the Act, the parties to the litigation have understood the matters in controversy and therefore, the lack of pleadings is quite inconsequential.

4. Shri Jacob Varghese, learned Senior Counsel for the petitioner has taken us through the evidence adduced before the court below by the petitioner as P.W.1. In paragraph 10 of the affidavit filed by P.W.1 in lieu RCR No.87/2013 -3- of chief examination, it has been affirmed that her 23 year old son has completed his studies and that he wants to start a textiles business in the scheduled building. Apart from making an averment regarding dependency of her son for an accommodation to start such a business and the nature of business proposed to be started in the scheduled building, no further averments are seen made even in the affidavit in lieu of chief examination for substantiating the entire particulars regarding a claim under Section 11 (3) of the Act. It has not even stated whether he has completed his B.Tech. Course or not. It has not been affirmed as to how he could raise funds for starting the textiles business, especially when large volume of funds are required to start such a business. It has not been averred that P.W.1 or her son is not having any other premises of their own, to start the proposed business.

5. On going through the pleadings as well as evidence, we are satisfied that the tenant had no opportunity to defend properly an action for eviction on the ground under Section 11(3) of the Act. Especially when there are no pleadings or evidence regarding the question as to how funds could be raised for starting the proposed business, it adversely affects the RCR No.87/2013 -4- bonafides on the part of the landlady to claim an order under Section 11(3) of the Act. We do not think that the tenant could properly understand that the landlady was mainly harping upon a claim under Section 11(3) of the Act. On a proper appreciation of the evidence, we do not find any error committed by the Appellate Authority in finding that the landlady has failed to prove the bonafide need in respect of the claim under Section 11(3) of the Act, in the absence of sufficient pleadings as well as evidence in the matter. We do not find anything to interfere with the findings rendered by the learned Appellate Authority.

6. Lastly, learned Senior Counsel appearing for the petitioner has sought for an opportunity to the petitioner to amend the pleadings in the Rent Control Petition, so as to include sufficient facts relating to the claim under Section 11(3) of the Act and also other grounds, if available. It is also requested for an opportunity to adduce further evidence in the matter relating to such amendments. We do not find anything to deny such an opportunity to the petitioner, as she would be put to severe heartburn in the case of a dismissal of this revision petition, in the light of Section 15 of the Act. RCR No.87/2013 -5- 7. Matters being so, we are of the view that the revision petition can be allowed to the extent of setting aside the findings rendered by the courts below and to remit the matter back to the Rent Control Court for enabling the petitioner to carry out necessary amendments, if so advised, in the Rent Control Petition as aforesaid and to give both parties to adduce further evidence in the matter. In the case of any such amendments, the tenant is entitled to file additional pleadings by way of objections.

8. In the result, this Rent Control Revision is allowed and the impugned judgment as well as the order in the RCP on the ground under Section 11(3) of the Act, are set aside. The matter is remitted back to the Rent Control Court for fresh disposal in accordance with law, as aforesaid. In the nature of this RCR, there is no order as to costs. The parties shall appear before the Rent Control Court on 4.12.2013.

(T.R.RAMACHANDRAN NAIR, JUDGE) (B. KEMAL PASHA, JUDGE) kav/

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