

Balakrishnan Nair K.P Vs. Moideen Parol

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SooperKanoon Citation : sooperkanoon.com/1099037

Court : Kerala

Decided On : Nov-26-2013

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

Appellant : Balakrishnan Nair K.P

Respondent : Moideen Parol

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE B.KEMAL PASHA TUESDAY,THE26H DAY OF NOVEMBER20135TH AGRAHAYANA, 1935 RCRRev..No. 388 of 2013 ()
----- AGAINST THE

JUDGMENT

IN RCA582012 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE DATED2007-2013 AGAINST THE

ORDER

IN RCP12009 of RENT CONTROL COURT, KOZHIKODE DATED3101-2012 REVISION PETITIONER/APPELLANT/RESPONDENT:

----- BALAKRISHNAN NAIR K.P., AGED75YEARS S/O. KUNHUNNI NAIR, BUSINESS KATTIL PERAVANKANDI HOUSE, FERROKE AMSOM, NALLUR DESOM P.O.FERROKE,

KOZHIKODE TALUK. BY ADVS.SRI.T.KRISHNAN UNNI (SR.) SRI.SAJU.S.A
SMT.P.A.SHEEJA SMT.MEENA.A. SRI.K.C.KIRAN
RESPONDENT/RESPONDENT/PETITIONER:

----- MOIDEEN PAROL,
AGED54YEARS S/O. KUNHALI, BUSINESS, PALLIALIL HOUSE FEROKE
AMSOM, NALLUR DESOM, KOZHIKODE TALUK. BY ADV.
SRI.K.M.FIROZ(CAVEATOR) THIS RENT CONTROL REVISION HAVING COME
UP FOR ADMISSION ON2611-2013, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING: T.R.RAMACHANDRAN NAIR & B.KEMAL PASHA, JJ.

..... R.C.R No.388 of 2013
..... Dated this the 26th day of
November, 2013

ORDER

~ ~ ~ ~ ~ Ramachandran Nair, J.

The only question raised in the Revision Petition is whether the authorities were right in allowing the eviction petition filed by the landlord for own occupation under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. We heard the learned Senior Counsel for the petitioner/tenant Sri.T.Krishnan Unni and the learned counsel appearing for the respondent/landlord (Caveator) Sri.K.M.Firoz.

3. We find from the pleadings that the eviction was sought on two grounds, namely under Sections 11(3) (bona fide need) as well as 11(4)(ii) of the Act, (namely the tenant RCR.388/2013 :

2. : has used the building in such a manner as to destroy or reduce its value or utility materially and permanently. As far as the ground under Section 11(4)(ii) of the Act is concerned, both the authorities have denied it as it was found that the landlord could not prove the same. With regard to the bona fide need, the findings are concurrent.

4. The landlord sought eviction for his dependent son to conduct a cool bar and stationery items. The tenant is also doing the same business in the petition schedule building. The son of the landlord is studying for B.A. Degree course and he has no interest in continuing his studies and he wants to do business for eking out his livelihood.

5. It is the submission by the learned Senior Counsel for the petitioner that the landlord is having a beef stall in one room in the western side of the same building and his brother-in-law is also keeping another room for business. As far as the arrangement with the brother-in-law is concerned, it is clear from the evidence that the same RCR.388/2013 :

3. : was made in 2008 whereas the R.C.P. was filed in 2009. It is also submitted that for the business being conducted by the landlord as well as the brother-in-law, no licence has been obtained. Therefore, the argument is that it should be deemed that the rooms are remaining vacant.

6. As rightly pointed out by the learned counsel for the tenant, what is important for the purpose to attract first proviso to Section 11(3) of the Act is the question whether the rooms are remaining vacant (not occupied by the landlord). It is also submitted by the learned counsel for the respondent that Ext.A3 kychit shows that it was only a renewal of the earlier lease deed, which was originally executed by the brother-in-law in respect of the said room in his possession. It is therefore not correct to say that the landlord has leased out the said premises just before filing of the R.C.P.

7. In the light of the above, we cannot accept the argument raised by the learned Senior Counsel for the RCR.388/2013 :

4. : petitioner that the first proviso to Section 11(3) of the Act will come to the help of the tenant.

8. Then, the question is whether the finding on the aspect of bona fide need under Section 11(3) of the Act is vitiated by any circumstances. The evidence of the landlord will show that his son was studying for B.A. Degree course and the

landlord wants to set up a business to him, as he has no interest in studying. The proposal is for starting a stationery cum cool bar business in the petition schedule building. Both the authorities have accepted the case of the landlord after analysing the evidence. It cannot be said that in the light of the pleadings and the evidence adduced, the genuineness of the bona fide can be doubted. We also do not find any impropriety in the approach of both the authorities and, therefore, we confirm the findings. Both authorities have found against the tenant with regard to the benefit of the second proviso to Section 11(3) of the Act. We do not find that the authorities have acted perversely in RCR.388/2013 :

5. : arriving at the said finding and have not committed any error in applying the evidence. Therefore, we confirm the same also.

9. Learned Senior Counsel for the petitioner sought for a reasonable time to vacate the premises.

10. In the result, (a) This revision petition is dismissed. (b) The tenant is granted time up to 31.05.2014, to vacate the premises and deliver possession to the landlord on the following conditions:- (i) He remits the entire arrears as on today before the executing court within one month from today and files an affidavit before the executing court within one month from today, unconditionally undertaking to surrender vacant possession of the premises to the landlord on or before 31.05.2014. (ii) He pays charges towards use and RCR.388/2013 :

6. : occupation of the building at the current rent rate from today till he gives vacant possession of the premises to the landlord. (c) Execution proceedings, if any, pending before the executing court shall be kept in abeyance up to 31.05.2014, if the aforesaid conditions are satisfied. (d) If there is default in performing any of the conditions imposed in clause (b) above, the benefit given to the tenant as per this order will stand recalled automatically and the executing court shall effect delivery forthwith. (e) No costs. Sd/- (T.R.RAMACHANDRAN NAIR, JUDGE) Sd/- (B.KEMAL PASHA, JUDGE) aks/26/11 // True Copy // PA to Judge