

Dileep Kumar and Another Vs. State of Kerala and Others

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Court : Kerala

Decided On : Feb-19-2014

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : Dileep Kumar and Another

Respondent : State of Kerala and Others

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE19H DAY OF FEBRUARY201430TH MAGHA, 1935 RCR..No. 151 of 2013 (A) AGAINST THE

JUDGMENT

IN RCA332012 OF THE RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE, DATED2602-2013 AGAINST THE

ORDER

IN RCP.NO.122/2010 OF THE RENT CONTROL COURT (PRINCIPAL MUNSIFF'S COURT-I), KOZHIKODE DATED0401-2012 REVISION PETITIONER/APPELLANT/RESPONDENT:

----- SMT.GEETHA PRASAD, AGED54YEARS W/O.LATE PRASAD, C/O.KUNHIRAMAN, OOTHOLI HOUSE, THIRUVANGOORU, KOZHIKODE DISTRICT BY ADVS.SRI.K.RAKESH

ROSHAN SMT.THUSHARA.V RESPONDENTS/RESPONDENT:PETITIONER:

----- MANATHANATH
SANTHAKUMAR, AGED 48 YEARS S/O.MANATHANATH CHATHUKUTTY,
'SREENILAYAM', WEST HILL, CHUNKAM, KOZHIKODE, REP. BY POWER OF
ATTORNEY HOLDER MANATHANATH CHATHUKUTTY, 'SREENILAYM', WEST
HILL CHUNKAM, PUTHIYANGADI VILLAGE, KOZHIKODE TALUK, PIN - 673
002. BY ADV. SRI.V.V.SURENDRAN ADV. SRI.P.A.HARISH THIS RENT
CONTROL REVISION HAVING BEEN FINALLY HEARD ON 19-02-2014, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING: K.T.SANKARAN &
P.UBAID, JJ.

----- R.C.R. NO. 151 OF 2013A
----- Dated this the 19th day of February, 2014

ORDER

Ubaid, J.

The concurrent findings of the Rent Control Court and the Appellate Authority in an application for eviction under Section 11(2) (b) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act') and a claim for enhancement of rent under Section 5 of the Act, are under challenge in this Revision filed by the tenant under Section 20 of the Act. The petition schedule rooms were entrusted to the husband of the revision petitioner on 1.9.1994 on a monthly rent of 575/-. On the allegation that the tenant has kept the rent in arrear, and has not made payment in spite of statutory notice, the landlord sought eviction under Section 11(2)(b) of the Act before the Rent Control Court (Munsiff's Court- I), Kozhikode in R.C.P.No.122 of 2010. The landlord also sought enhancement of rent from the present rate to 3,500/- per month on the ground that the rent was fixed years back and there has been considerable change in circumstances including the commercial prospects of the building and the locality. R.C.R. NO. 151 OF 2013A ::

2. ::

2. The tenant entered appearance and filed counter statement contending that there is no reason or necessity for enhancing the rate of rent, and also contending

that she has not kept the rent in arrear. However, her contention as regards rent arrear is that it happened to be in arrear only because the landlord did not receive the rent when she tendered it.

3. During trial, both sides adduced oral and documentary evidence. The landlord was examined as PW1 and Exts.A1 to A7 were marked on his side. On the side of the tenant, the tenant and one witness were examined and Exts.B1 and B2 series documents were marked. On an appreciation of the evidence, the trial court found that the tenant has kept the rent in arrear as alleged in the petition, and that the present rent is liable to be enhanced. Accordingly, the Rent Control Court granted order of eviction under Section 11(2)(b) of the Act and also enhanced the rent to 2,250/- per month, with effect from the date of filing of the petition (19.11.2010). Aggrieved by the order dated 4.1.2012 in R.C.P.No.122 of 2010, the tenant approached the Rent Control R.C.R. NO. 151 OF2013A ::

3. :: Appellate Authority (District Court), Kozhikode in R.C.A.No.33 of 2012. In appeal, the Appellate Authority concurred with the findings of the trial court and dismissed the appeal.

4. The question for consideration before this Court is whether the orders of the courts below require any interference in revision on the ground of any erroneous finding, or on the ground of any illegality, irregularity or impropriety.

5. As regards the allegation under Section 11(2)(b) of the Act, the tenant has practically admitted that the rent is in arrear. Admittedly, she has not made any payment in spite of statutory notice. Her contention is that the rent happened to be in arrear only because the landlord did not receive it when she tendered the rent. Such a case stands not in any manner proved. She has also a contention that some amount is with the landlord by way of deposit, and that the rent arrear will have to be adjusted from that amount. Such a contention cannot now be considered by this Court. Such a plea for adjustment of rent was not raised in the trial court, and there is also no agreement between the parties for adjustment of rent from R.C.R. NO. 151 OF2013A ::

4. :: the advance amount. We find that the order of eviction under Section 11(2)(b) of the Act is legal and perfectly justifiable. We do not find any scope for interference in the said order on the ground of any illegality or irregularity.

6. The rent now being paid by the revision petitioner for the tenanted premises is only 575/- per month, which was fixed years back, in September 1994. Admittedly, there has not been any increase at any point of time for the last seventeen years. Admittedly, the area of the two rooms is 548 sq.ft. For making enhancement in rent, the trial court has considered all the relevant aspects including the guidelines made by this Court in *Edjer Ferus v. Abraham Itty Cheria* :

2004. (1) KLT176 On a consideration of all the relevant aspects including the area of the building, the lapse of time since rent was fixed initially, the present cost of living, the commercial importance and prospects of the building, and also the business being conducted there, the trial court fixed the rent at `2,250/- per month as reasonable rent. The trial court also considered the rent fixed for the adjacent building as per Ext.A6 order, which is 2,250/- per month. The tenant does not have any R.C.R. NO. 151 OF2013A ::

5. :: idea regarding rent for the adjacent rooms, or regarding the rent prevailing in the locality. On a consideration of all the relevant aspects including the commercial importance of the site and also the area covered by the two rooms, we find that 2,250/- per month fixed by the trial court is quite reasonable and it does not warrant any interference by this Court in revision, on the ground of any illegality, irregularity or impropriety.

7. In the light of the findings above, this Rent Control Revision is liable to be dismissed. However, we are inclined to grant some time to the revision petitioner to make payment of the entire rent arrear payable at the enhanced rate from the date of filing of the petition, before the landlord proceeds to file suit for realisation of rent arrear. Accordingly, the revision petitioner is given six months' time to make payment of the rent arrear at the enhanced rate from the date of filing of the petition. We also permit the revision petitioner to file an application under Section 11(2)(c) of the Act to have the order under Section 11(2)(b) set aside, within the statutory period counted from this date. R.C.R. NO. 151 OF2013A ::

6. :: In the result, this Rent Control Revision is dismissed by granting some time to the revision petitioner to make payment of the rent arrear and also to make application under Section 11(2)(c) of the Act as mentioned above. The parties will bear their respective costs of this proceeding. (K.T.SANKARAN) Judge (P.UBAID) Judge ahz/

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