

Chellan K Vs. Sheela

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Court : Kerala

Decided On : Jul-18-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Chellan K

Respondent : Sheela

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN FRIDAY, THE18H DAY OF JULY201427TH ASHADHA, 1936 RCRRev..No. 157 of 2014 (C) AGAINST THE

JUDGMENT

IN RCA.NO.1/2013 ON THE FILE OF THE RENT CONTROL APPELLATE AUTHORITY, PALAKKAD DATED0603-2014 AGAINST THE

ORDER

IN RCP.NO.5/2012 ON THE FILE OF THE RENT CONTROL COURT (ADDITIONALMUNSIFF), PALAKKAD DATED3110-2012 REVISION PETITIONER/APPELLANT/RESPONDENT: K.CHELLAN, AGED76YEARS S/O.KAMBAN, BUILDING NO.35/333, MAIN ROAD OLAVAKKODE.P.O., PALAKKAD. BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT/RESPONDENT/PETITIONER: SHEELA,, AGED51YEARS

W/O.SUDHAN, AISWARYA COLONY,KAVILPAD OLAVAKKODE, PALAKKAD-678 002. BY ADV. SRI.P.R.AJITHKUMAR ,CAVEATOR THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON1807-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: I.A.NO.1544/2014 IN R.C.R.NO.157/2014 DISMISSED SD/- K.T.SANKARAN, JUDGE1807/2014 SD/- ANIL K. NARENDRAN, JUDGE //TRUE COPY// AHZ/ K.T.SANKARAN & ANIL K. NARENDRAN, JJ.

----- R.C.R. NO. 157 OF2014C
----- Dated this the 18th day of July, 2014

ORDER

K.T.Sankaran, J.

The tenant challenges the concurrent findings of the Rent Control Court and the Rent Control Appellate Authority under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act').

2. The respondent/landlady filed R.C.P.No.5 of 2012 on the file of the Rent Control Court, Palakkad against the petitioner/tenant under Sections 11(2)(b) and 11(3) of the Act. The landlady purchased the building in 2003. She filed the Rent Control Petition only in 2012. She stated that rent from November 2009 was kept in arrears by the tenant. The tenant is paying a meagre rent of `200/- per month. He is running STD booth and a photostat shop in the petition schedule building. The landlady contended that the building is bona fide needed for the occupation of her son, who was R.C.R. NO. 157 OF2014C ::

2. :: examined as PW2, to run a computer store. The son of the landlady was doing the same business in another rented premises nearby and he closed that business since he could not afford to pay the rent and do the business. The landlady stated that her son is dependant on her for the purpose of the building.

3. The tenant contended that he does not know whether the petitioner in the Rent Control Petition is the landlady of the petition schedule building. It is to be noted that from 2003 to 2009, the tenant paid rent to the landlady. Still he raised a

contention that he does not know who is the landlady. It is submitted by the learned counsel for the petitioner/ tenant that the tenant is continuing in the petition schedule building for the last about fifty years. In spite of the fact that the rent is a very meagre amount, the tenant has kept the rent in arrears. The authorities below rightly held that the landlady is entitled to get an order of eviction under Section 11(2)(b) of the Act, on the ground of arrears of rent.

4. The tenant disputed the bona fide need put forward by the landlady. He contended that the son of the landlady is doing R.C.R. NO. 157 OF2014C ::

3. :: business under the name and style "I.T. Store" in the building just opposite to the petition schedule building. It was also contended by the tenant that the bona fide need put forward by the landlady is not genuine. The tenant also raised a contention that the landlady is having other vacant rooms in her possession and therefore, the Rent Control Petition is hit by the first proviso to Section 11(3) of the Act. The tenant also claimed the benefit of the second proviso to Section 11(3) of the Act.

5. The Rent Control Court, on considering the oral evidence adduced by the landlady as PW1, her son as PW2 and the tenant as RW1, held that the bona fide need put forward by the landlady is proved. It is established by the evidence of PW2 and Exts.A5 to A7 that PW2 had closed the business in the neighbouring building. Ext.A5 to A7 would show that the landlady's son was doing similar business in another building and that he closed down that business. On appreciation of the evidence on record, both the authorities below found that the bona fide need put forward by the landlady is genuine and that her son (PW2) is a dependant on her for the purpose of the building. R.C.R. NO. 157 OF2014C ::

4. ::

6. As regards the contention of the tenant under the first proviso to Section 11(3) of the Act, the Rent Control Court held that there is no evidence to show that the landlady is in possession of other vacant rooms. Ext.X1 Commissioner's report would also reveal the same. More over, the tenant admitted in evidence that no vacant rooms are available in the possession of the landlady. The Rent Control

Court found that the tenant is not entitled to the benefit of the first proviso to Section 11(3) of the Act and that finding was confirmed by the Appellate Authority.

7. The tenant raised a contention that he is depending for his livelihood mainly on the income derived from the business conducted in the petition schedule building and that there is no other suitable building available in the locality to accommodate his business. The Rent Control Court found that the tenant had succeeded in proving that he is depending for his livelihood mainly on the income derived from the business conducted in the petition schedule building. The Appellate Authority did not agree with that finding. It was held by the Appellate Authority that the tenant having R.C.R. NO. 157 OF2014C ::

5. :: not produced any accounts or other materials to show what is his income, he is not entitled to successfully contend that he is depending for his livelihood mainly on the income derived from the business conducted in the petition schedule building. The Appellate Authority relied on the decisions of this Court in Kunhiraman Nair v. Madhavi (2002 (2) KLT10, Scaria Kuncheria v. Riyas (1999(2) KLT SN Case No.2 at page 2) and Satheesan v. Abdul Rahiman (2003(3) KLT1119.

8. As regards the second limb of the second proviso to Section 11(3) of the Act, both the authorities below found that there are other suitable buildings available in the locality to accommodate the business of the tenant. It is clear from the Commissioner's report that another vacant room is available in the neighbouring shopping complex, which is situated only about 150 metres away from the petition schedule building. The tenant contended that the leanto portion of the petition schedule building cannot be taken into account for the purpose of computing the area in his possession and that the room available in the neighbouring shopping complex is having a larger area. The tenant also contended that the rent that is R.C.R. NO. 157 OF2014C ::

6. :: to be paid to the landlord in respect of the new building will be 3,000/- per month. The Rent Control Court found that the leanto attached to the petition schedule building was also being used by the tenant for the purpose of his business and that the difference in area between the petition schedule building

and the room in the neighbouring shopping complex, which is lying vacant, would be only about 30 to 50 square feet. As regards the rent prevalent in the area, the Rent Control Court took into account that the shop room situated on the opposite side of the petition schedule building was let out for a monthly rent of 8,000/- and that the rent for the room in the neighbouring shopping complex is 3,000/- per month. The tenant pays only 200/- per month as rent, which is far far below the market rate and the tenant cannot aspire for an alternative building for a monthly rent of 200/-. The authorities below rightly held that the tenant failed to prove the ingredients of the second proviso to Section 11(3) of the Act. It is well settled that the burden of proof is on the tenant to establish both the limbs of the second proviso to Section 11(3) of the Act.

9. The findings rendered by the authorities below are based R.C.R. NO. 157 OF2014C ::

7. :: on the oral and documentary evidence in the case and the findings are findings of fact. The revisional court would not be justified in interfering with the findings of fact, unless it is vitiated by any illegality, irregularity or impropriety as contemplated under Section 20 of the Act. There is no such illegality, irregularity or impropriety in the order and judgment of the authorities below.

10. For the aforesaid reasons, the Rent Control Revision is dismissed. Lastly, the learned counsel for the petitioner sought a reasonable time for the tenant to vacate the petition schedule building. Learned counsel appearing for the landlady submitted that only a short time may be granted to the tenant to vacate the premises. Taking into account the facts and circumstances of the case, the petitioner/tenant is granted time till 31.1.2015 to vacate the petition schedule building on condition that he shall file an affidavit before the Rent Control Court within one month, unconditionally undertaking to vacate the petition schedule building on or before 31.1.2015 and also on condition that the tenant shall R.C.R. NO. 157 OF2014C ::

8. :: deposit before the Rent Control Court the entire arrears of rent, if any, within one month from today. The tenant shall continue to pay the monthly rent on or before 10th of the succeeding months, till he vacates the building. If the tenant

complies with the conditions mentioned above, execution proceeding shall not be initiated or if already initiated, it shall be kept pending till 31.1.2015. If the tenant fails to comply with any of the conditions mentioned above, the respondent/landlady would be entitled to proceed with the execution forthwith.
(K.T.SANKARAN) Judge (ANIL K. NARENDRAN) Judge ahz/

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