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Court : Kerala

Decided On : Jan-27-2016

Judge : P.N. Ravindran &Amp; K. Ramakrishnan

Appeal No. : RCRev. No. 34 of 2016

Appellant : Vineethan

Respondent : Fathima and Others

Judgement :

K. Ramakrishnan, J.

1. The tenant in R.C.P.No.18 of 2012 on the file of the Rent Control Court, Koyilandy is the revision petitioner herein. The original landlady filed R.C.P.No.18 of 2012 seeking eviction of the tenant from the petition schedule building on the ground of arrears of rent, bonafide need for her grandson and cessation of occupation of the building by the tenant under section 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the Act for short. During the pendency of the petition, the landlady died and supplemental petitioners 2 to 4 were impleaded as her legal heirs. It is alleged in the petition that the original landlady leased out the building to the tenant on a monthly rent of Rs.300/- as per a registered kychit dated 27.6.2003. He did not pay rent. So she filed R.C.P.No.7 of 2004 and subsequently the same was settled between the parties and arrears of rent upto 27.2.2004 was paid. Thereafter the

rent was kept in arrears. He has ceased to occupy the building for more than one year without any reasonable cause. The second petitioner's son Sri.Abdul Gafoor has no job and income for his livelihood. He requires the petition schedule building to start a stationery business. He has got sufficient experience in conducting the business. There are no other vacant building available in their possession. He is depending on the landlady for this purpose. The tenant is not eking out his livelihood from the income derived from the business and there are other buildings available in the locality. The landlady had sent a notice to the tenant asking him to surrender the building stating the above reasons. Though it was received by him, he did not send any reply. Since he had not vacated the premises, the original petitioner in the rent control court filed a petition for eviction on the above grounds.

2. The revision petitioner herein who is the respondent in the rent control petition entered appearance and filed a counter denying the allegations. He denied the allegation that rent from 27.2.2004 was in arrears. He had paid rent upto August 2011 and obtained proper receipts. Thereafter the rent was not received. So it happened to fall in arrears. The allegation that the lessee has stopped the business in the building for more than one year is not correct. He is conducting a welding shop and as such, there is no cessation of occupation as alleged. He denied the allegation that Sri.Abdul Gafoor, son of the second petitioner is depending on the original petitioner and he wanted to start a business in the petition schedule building. According to him, he is working in gulf country and he has no experience or financial capacity to conduct a stationery business. Even if there is any necessity for them, there are other buildings available in the possession of the petitioners. He is depending on the income derived from the business conducted in the petition schedule building and there are no other suitable buildings available in the locality to shift his business. He has spent more than Rs.75,000/- for erecting the machineries and getting three phase electric connection. He will put to serious hardship if eviction is ordered. Further, the attempt of the petitioners is only to evict him and to let out the building to others for higher rent. So he prayed for dismissal of the petition.

3. The person on whose bonafide need the petition schedule building was sought to be evicted was examined as PW1 and Exts.A1 to A3 were marked on their side.

The tenant was examined as RW1 and Exts.B1 to B7 were marked on his side. After considering the evidence on record, the court below found that there is no rent in arrears and the cessation of occupation has not been proved and denied eviction on those grounds but found that the bonafide need alleged is genuine and the tenant is not entitled to get proviso protection and ordered eviction under section 11(3) of the Act.

4. Aggrieved by the same, the tenant filed R.C.A.No.12 of 2015 before the Rent Control Appellate Authority, Kozhikode which was made over to the IInd Additional District Court and the rent control appellate authority by the impugned judgment dated 17.10.2015 dismissed the appeal confirming the order of eviction passed under section 11(3) of the Act. The appellate authority also dismissed I.A.No.936 of 2015, to receive additional documents as that is not required for the disposal of the appeal. Aggrieved by the same, the present revision has been filed by the revision petitioner/tenant before the rent control court.

5. Heard Sri.E.Narayanan, learned counsel appearing for the revision petitioner. Learned counsel for the revision petitioner submitted that the appellate court was not justified in rejecting the application to receive additional evidence which will go to show that the landlady had filed R.C.P.No.16 of 2012 in respect of one of the rooms and eviction was ordered. Further the need alleged by the original landlady after her death did not survive as no amendment was made to the petition to the effect that even now PW1 is depending on the surviving legal heirs of the original landlady for this purpose so as to maintain the application under section 11(3) of the Act. The learned counsel also argued that the evidence of PW1 himself will go to show that the revision petitioner is depending on the income derived from the business conducted in the petition schedule building and there are no other buildings available in the locality and as such, there is no burden on the tenant to prove the second proviso which is admitted by the landlords themselves through PW1. According to the learned counsel, the courts below were not justified in allowing the application under section 11(3) of the Act.

6. We have perused the order of the rent control court and also the judgment of the rent control appellate authority. We have also called for the copies of the

orders in R.C.P.Nos.16 of 2012 and 17 of 2012 of the same court and they were received and we perused the same. The need alleged by the original landlady in the rent control petition was that her grandson, who is the son of the second petitioner in the rent control petition, is depending on her for getting the building to start a stationery business for his livelihood and he is without any employment and she bonafide requires the petition schedule building for that purpose. Even at that time the tenant had contended in the counter statement that PW1 is not depending on the landlady for that purpose and he is working in gulf and there is no necessity for him to do any business. It is during the pendency of the proceedings that the landlady died and her legal representatives including the mother of the person on whose behalf the need is alleged, were impleaded. So even at the time when the original petition was filed, the contentions raised by the tenant were available to him and that was raised by him in the counter statement. Only if any change of circumstance arises on account of the death of the landlady, then only there is question of amending the petition arises as claimed by the counsel for the revision petitioner. Even at the time when the application for eviction filed, his parents were alive.

7. The dictum laid down in the decision reported in Sumathi T.K. and Others v. Kundantavida Rabis and Others [2012 (1) KHC 589] relied on by the counsel for the revision petitioner is not applicable to the facts of this case. It was a case where the original landlord filed an application for eviction on the ground of his personal bonafide need. The question arose in that case was whether after the death of the original landlord, when the legal heirs were substituted, the bonafide need alleged by the landlord will survive or not and in such circumstances, this court held that even after the death of the original landlord if the need survives to the legal heirs, they will have to make necessary amendment in the petition incorporating those facts as well. That is not the case in this case. So that dictum is not applicable to the facts of this case.

8. In order to prove the case of the landlords, Sri.Abdul Gafoor, the person on whose bonafide need the petition was filed was examined as PW1. He had categorically stated that he is depending on the original landlady and now the supplemental petitioners for this purpose. He had also stated that he was working

in gulf earlier, now he is without any employment and he wanted to start a stationery business in the petition schedule building for that purpose, he requires the petition schedule building and depending on the landlords for this purpose. Though he was cross-examined at length, nothing was brought out to discredit his evidence on these aspects. Further no evidence has been adduced on the side of the revision petitioner who is the respondent in the trial court to prove that the parents of PW1 are having any building in their possession which can be occupied by PW1 for his purpose. Further it was admitted by PW1 that his father was conducting a grocery shop in Market Road in Koyilandy by name V.K. Stores and it is now being managed by his mother. He had also stated that it is a rented building and neither the petitioners nor PW1 is the owner of that building as well. Except that evidence, there is nothing to show that either the petitioners or PW1 is in possession of any building for the purpose of starting the intended business by PW1.

9. It is true that PW1 had admitted that the rent control petitions have been filed in respect of adjacent room as well as the upstair room as R.C.P.Nos.16 and 17 of 2012 and copy of the order in R.C.P.No.17 of 2012 was produced before the appellate authority which was not admitted in the evidence by the appellate authority. We have called for the copies of the orders in these two cases. It is seen from those orders that those petitions were filed in respect of two buildings one in the upstairs and one in the downstairs on the ground of arrears of rent and cessation of occupation and an exparte order of eviction was passed in respect of the upstair room. Further it was admitted by RW1 himself that the upstair building is not suitable for the intended business and it can be only used as an office. Further as regards the other building is concerned it was deposed by PW1 that that petition was dismissed. So they are not in possession of any buildings.

10. We have perused the order in R.C.P.No.16 of 2012 which will go to show that R.C.P.No.16 of 2012 was dismissed which is the building said to be available in the down floor for PW1 to occupy. That will go to show that no buildings in the possession of the landlady were available at the time when the application was filed or even at the time when PW1 was examined in court and the upstair portion room even admitted by RW1 is not suitable for conducting a stationery business.

So the courts below were perfectly justified in coming to the conclusion that there is no suitable building available in the possession of the landlady and held that there is no ground to deny eviction invoking the first proviso to section 11(3) of the Act. There is nothing brought out to disbelieve the evidence of PW1 regarding the bonafide need alleged. There is no evidence adduced on the tenant also to prove that he is conducting any business of his own to eke out his livelihood. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that the bonafide need alleged by the landlady is genuine. Further it is settled law that it is not the financial dependency that has to be considered and the dependency of building that has to be considered. Further even a need of the grandson can be considered as need of the member of the landlady's member. Further after the death of the original landlady, the mother of PW1 who is the second petitioner in the rent control petition has become a joint owner of the petition schedule building and then he will be treated as a member of the landlords family for whose bonafide need the landlords can seek an order of eviction under section 11(3) of the Act. (See Sameera and Others v. M.C. Mammootty and Another [2013 (4) KHC 826]. It is further held in the decision Mathew v. Aruna [2014 (2) KLT 876] that dependency can occur in wide range of relationship as between spouses or between parents and children or between brothers and sisters or between cousins or other near relations or even brothers-in-law and sisters-in-law. The same view has been reiterated in the earlier decisions Narayana Pillai v. Ponnappan Achari (1980 KLT 871), Prathapan v. Rama Warrier [2004 (2) KLT 559], Janaki v. Govindan Nair [2003 (3) KLT 562], Ameena v. Muhamood [2005 (4) KLT (SN) 76] and Kumaran v. Kunjunni Pillai [1991 (1) KLT 148].

11. It is settled law that even if the landlady establishes the bonafide need, if the tenant is able to establish that he is solely depending on the income derived from the business conducted in the petition schedule building and there are no other suitable buildings available in the locality for shifting his business, then no order of eviction can be passed under section 11(3) of the Act. But it is settled position of law that both these limbs have to be pleaded and proved by the tenant for getting the benefit as has been held in the decisions reported in Kochappan Pillai v. Chellappan (1976 KLT 1), Francis v. Sreedevi Varassiar [2003 (2) KLT 230 (F.B.)],

Thanuja Sunderdas v. Sisirkumar Raj [2008 (4) KLT 241 (F.B.)] and Kumaran v. Mathu [2009 (1) KLT 607]. Except the assertion made by RW1 that he is solely depending on the income, he had not adduced any evidence to prove the income derived by him from the business conducted in the petition schedule building. He had also not mentioned what was the income derived by him from the petition schedule building so as to ascertain as to whether that income is sufficient for him to eke out his livelihood and whether any other income is required for the purpose of meeting his requirements or to meet the expenses of his family as well. Merely because PW1 has stated that he did not know whether he is depending on the income derived from the business conducted in the petition schedule building alone is not sufficient to discharge the burden of proving the benefit required to be proved under the second proviso to section 11(3) of the Act by the tenant as he has to independently prove this fact and such a statement of PW1 is not sufficient to hold that there is admission on this aspect by him. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the tenant has not proved that he is solely depending on the income derived from the business conducted in the petition schedule building.

12. As regards the availability of the buildings are concerned, it is true that PW1 had produced Ext.A3 to show that there are three rooms belonging to one Narayanan and Sivadasan were vacant. But the court below did not rely on that document on the ground that the document does not bear the date on which it has been issued so as to ascertain as to whether the buildings were available at the time when the rent control petition was filed. It was admitted by PW1 that subsequently those buildings were given to tenants and the tenants are in possession and now it is not vacant. That does not mean that there are no other buildings available in the locality. It is also admitted by RW1 that one Suresh Babu was in possession of a building which was let out to others two weeks prior to his examination to a person who is conducting a business in making chips. So that shows that buildings were available at that time. Further in the cross-examination of RW1, he had admitted that there was a shopping complex by name Meppad Tower, which situates 100 meters east from the petition schedule building and it was let out to a supermarket but he had stated that he did not know when it was let out. He had stated that only recently shutters were put for those buildings. So,

that also will go to show that vacant buildings were available in the locality even after filing of the petition and the tenant had not made any enquiry regarding the same or made any attempt to shift his business to those buildings as well. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that vacant buildings are available in the locality for the tenant to shift his business and as such, the tenant is not entitled to get the protection under the second proviso to section 11(3) of the Act and rightly ordered eviction under section 11(3) of the Act. Concurrent findings on facts on these aspects do not call for any interference at the hands of this court invoking the power under section 20 of the Act.

13. While we were about to dispose of the revision petition, the counsel for the petitioner prayed for one year time to vacate the premises. The rent control petition was filed in the year 2012 by an old lady to provide a building to her grandson who was depending on her. She died and thereafter her legal heirs were impleaded. In spite of that more than three years over and PW1 is not able to start his business so far. Considering these aspects, we do not find any reason to give one year time as prayed for by the counsel for the revision petitioner. Considering the circumstances, we feel that three months time can be granted to the revision petitioner to vacate the premises. So the revision petitioner is granted three months time from today to surrender vacant possession of the building on condition that he shall file an undertaking in the form of an affidavit before the rent control court or before the execution court if any execution petition is filed, that he will vacate the premises within the time provided by this court without any objection and on further condition that he will deposit the arrears of rent, if any, and also continue to pay the rent at the rate agreed between the parties till he vacates the premises. He shall further undertake that he will not induct strangers in the petition schedule building or alienate or sublet the building or commit any acts of waste therein. The undertaking as directed above shall be filed within a period of three weeks from today. If the undertaking is not filed within that time, then the revision petitioner is not entitled to the benefit of extension of time to surrender the building as directed by this court.

With the above direction and observation, this revision petition is dismissed.

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