

Johnson vs Roy

Johnson vs Roy

SooperKanoon Citation : sooperkanoon.com/1286512

Court : Kerala

Decided On : Jan-17-2024

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr. Justice G.Girish

Appeal No. : RCRev./13/2024

Appellant : Johnson

Respondent : ROY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR. JUSTICE G. GIRISH WEDNESDAY, THE 17TH DAY OF JANUARY 2024 / 27TH POUSHA, 1945 R.C.REV. NO.13 OF 2024

ORDER DATED 01.06.2022 IN RCP NO.12 OF 2020 OF I ADDITIONAL

MUNSIFF COURT, THRISSUR CONCURRING WITH THE COMMON JUDGMENT IN RCA NO.68 OF 2022 DATED 12.12.2023 OF ADDITIONAL DISTRICT COURT AND SESSIONS COURT -IV, THRISSUR/III ADDITIONAL MACT, THRISSUR REVISION PETITIONER/APPELLANT/RESPONDENT:

JOHNSON, AGED 56 YEARS S/O ERUKULAM KOCHAPPAN, NOW RESIDING AT PRANAVAM NAGAR, OLLUKKARA VILLAGE, DESOM, P.O. OLLUKKARA, PIN - 680655, THRISSUR TALUK, DISTRICT (PROPRIETOR A.P.K. ELECTRICALS, T.C. 28/354/1, GROUND FLOOR, VADAKKETHALA TOWER, PATTURAIKKAL P.O. THIRUVAMBADI, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680022 BY ADVS. V.A.VINOD N.S.AJAY

RESPONDENT/RESPONDENT/PETITIONER: ROY, AGED 67 YEARS S/O VADAKKETHALA DEVASSY, ASWATHY APARTMENTS, BEHIND BSNL OFFICE, P.T. MANUAL ROAD, P.O. THIRUVAMBADI, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680002 THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 17.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Anil K. Narendran, J.

The petitioner is the respondent-tenant in R.C.P.No.12 of 2020 on the file of the Rent Control Court (Additional Munsiff-I) Thrissur, which was one filed by the respondent herein-landlord under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking eviction of the tenant from the petition schedule shop room, on the ground that the son of the

landlord, who is doing business in medical and hospital consumables on the second floor of the very same building, intends to start the business of sales and service of medical and hospital consumables, for which he requires the petition schedule shop room in the ground floor of that building, which has main road frontage. The tenant entered appearance and filed counter in the Rent Control Petition, opposing the order of eviction sought for. Before the Rent Control Court, the landlord and his son were examined as PWs.1 and 2 and Exts.A1 to A20 were marked. On the side of the tenant, he was examined as RW1 and Exts.B1 to B5 income tax returns were marked. After considering the pleadings and evidence on

record, the Rent Control Court arrived

at a conclusion that the need projected in the Rent Control Petition for seeking an order of eviction under Section 11(3) of the Act is bonafide, that the first proviso to Section 11(3) of the Act has no application in the facts and circumstances of the case and that the tenant is not entitled to get the protection under the second proviso to Section 11(3). Accordingly, the Rent Control Petition was allowed and the tenant was directed to put the landlord in vacant possession of the petition schedule shop room, under Section 11(3) of the Act, within a period of two months from the date of that order.

2. Challenging the order of eviction granted by the Rent

Control Court, the tenant filed R.C.A.No.68 of 2022 before the Rent Control Appellate Authority (Additional District Judge - IV) Thrissur, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 12.12.2023, whereby the order of eviction granted by the Rent Control Court stands confirmed. Challenging the order of eviction concurrently passed by the Rent Control Court and the Appellate Authority, the petitioner-tenant is before this Court in this Rent Control Revision, invoking the provisions under Section 20 of the Act.

3. Heard the learned counsel for the petitioner-tenant.

4. The learned counsel for the petitioner-tenant would

contend that the order of eviction granted by the Rent Control Court and the Appellate Authority is arbitrary and illegal, as the reasoning of the authorities below is perverse and patently illegal, which requires interference in this Rent Control Revision filed under Section 20 of the Act.

5. Section 11 of the Kerala Buildings (Lease and Rent Control) Act deals with eviction of tenants. As per Section 11(3) of the Act, a landlord may apply to the Rent Control Court, for an

order directing the tenant to put the landlord in possession of the

building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. As per the first proviso to Section 11(3), the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so. As per the second proviso to Section 11(3), the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or

business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

6. In Adil Jamshed Frenchman v. Sardur Dastur

Schools Trust [(2005) 2 SCC 476] the Apex Court reiterated that, as laid down in Shiv Samp Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222] a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejection of the tenant. The question to be asked by a judge of facts by placing

himself in the place of the landlord is whether in the given facts

proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. As reiterated in Deena Nath v. Pooran Lal [(2001) 5 SCC 705] bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere

fanciful or whimsical desire.

7. In Nalakath Saidali Haji v. Kalluparamba

Musthafa and others [2015 (4) KHC 815], a Division Bench of this Court relied on the law laid down in the decisions of the Apex Court referred to supra. The Division Bench also noticed the law laid down by the Apex Court in *Kizhakkayil Suhara v. Manhantavida Aboobacker (dead) by Lrs.* [(2001) 8 SCC 19] that, not merely the need of the landlord but also the need of the dependants for whom eviction is sought, should be established to be bona fide. On the facts of the case on hand, the Division Bench noticed that, neither the Rent Control Court nor the Appellate Authority has considered the need put forward by the landlord in accordance with the principles laid down in the decisions referred to supra and in the manner in which, the same ought to have been considered. Both the authorities were influenced by the fact that the landlord was holding an employment visa. The Division Bench noticed that, there is absolutely no evidence available on record regarding the nature of the employment visa that the landlord was holding or the terms subject to which the said visa has been issued to him. The conclusions of both the authorities below are based on the admission made by the landlord, while he was cross-

examined as PW1. Nothing precludes the landlord from going abroad for employment. The case of the landlord in the Rent Control Petition is that, he has left his employment abroad and has come back to his native place. The fact that he is still holding an employment visa, does not militate against the bona fide need pleaded by the landlord.

8. In *Ammu v. Nafeesa* [2015 (5) KHC 718] a Division

Bench of this Court held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra.

9. In *Regy V. Edthil v. Hubert Leslie D'Cruz* [2016 (2)

KLJ 164], a Division Bench of this Court relied on the decision of the Apex Court in *Deena Nath v. Pooran Lal* [(2001) 5 SCC 705], wherein the Apex Court held that, in order to order eviction on the ground of bona fide need of the landlord, the statutory requirement is that there must be an actual pressing need, not a mere

whim or fanciful desire; it must be in praesenti and also the landlord must not be in possession of any other reasonably suitable accommodation of his own in the town or city concerned. In the said decision, the Division Bench relied on the decision of

the Apex Court in Shiv Sarup Gupta [(1999) 6 SCC 222], wherein it was held that, the term 'bona fide' or 'genuinely' refers to a state of mind. Requirement is not a mere desire. The phrase 'required bona fide' is suggestive of Legislative intent is an outcome of a sincere and honest desire, in contra distinction with a mere desire, by the Rent Control Legislation. In Abdul Salam v. Sebastian [2013 (4) KLT 592], a Division Bench of this Court

held that, when the landlord has clearly admitted in his evidence

that vacant rooms are in his possession, he has to attribute special reasons for not occupying it, as the need mentioned under Section 11(3) of the Act cannot be a mere desire. On the facts of that case, since there was no sufficient opportunity given in the absence of plea, the Rent Control Petition was remitted to the Rent Control Court to enable the landlord to adduce evidence on that aspect and for fresh consideration by the Rent Control Court. Therefore, if there is admission on the part of the landlord of coming into possession of vacant rooms, unless special reason is given for not occupying the same, the need cannot be said to be bona fide and he is not entitled to get an order of eviction under Section 11(3) of the Act.

10. In Gireeshbabu T.P. v. Jameela and others [2021

(5) KHC SN 30], a Division Bench of this Court in which one

among us [Anil K. Narendran, J] was a party, held that, in order

to satisfy the requirement of Section 11(3) of the Act, a bona fide need must be an outcome of a sincere and honest desire of the landlord in contradistinction with a mere pretext on the part of the landlord for evicting the tenant, claiming to occupy the premises for himself or for any member of his family dependent on him. Once, on the basis of the materials on record, the landlord has succeeded in showing

that the need to occupy the premises is natural, real, sincere and honest, and not a ruse to evict the tenant from the said premises, the landlord will certainly be entitled for an order of eviction under Section 11(3) of the Act but, of course, subject to the first and second provisos to Section 11(3).

11. In the instant case, the need projected in the Rent

Control Petition for seeking an order of eviction under Section 11(3) of the Act, is that of the son of the landlord, who was examined as PW2 to start business in sales and service of medical and hospital consumables, utilising the petition schedule shop room in the ground floor of the building, which is having main road frontage. He is conducting business in medical and hospital

consumables in the second floor of the very same building. The need projected in the rent control petition was substantiated by the oral testimony of the landlord, who was examined as PW1, and that of his son, who was examined as PW2. After considering the pleadings and evidence on record, the Rent Control Court as well as the Appellate Authority arrived at a conclusion that the need projected in the rent control petition for seeking an order of eviction under Section 11(3) of the Act is bonafide. Viewed in the light of the law laid down in the decisions referred to supra, it cannot be contended that the reasoning of the Rent Control Court and the Appellate Authority on the above aspect is either perverse or patently illegal, warranting interference by this Court in this Rent Control Revision.

12. As per the first proviso to Section 11(3), the Rent

Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so.

13. In *M.L. Prabhakar v. Rajiv Singal* [(2001) 2 SCC 355] the Apex Court was dealing with a case in which eviction on

the ground of bona fide requirement was sought for under Section 14(1)(e) of the Delhi Rent Control Act, 1958. In the said decision, the Apex Court relied on the law

laid down in *Ram Narain Arora v. Asha Rani* [(1999) 1 SCC 141], wherein it was held that the question whether the landlord has any other reasonably suitable residential accommodation is a question which is intermixed with the question regarding bona fide requirement. Whether the

landlord has any other reasonably suitable residential accommodation is a defence for the tenant. Whether the other accommodation is more suitable than the suit premises would not solely depend upon pleadings and non-disclosure by the landlord. The landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. On the facts of the case on hand, the Apex Court found that, even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused, and the parties have squarely dealt with this question.

14. In *Vasanth Mallan v. N.S. Aboobacker Siddique*

[2020 (1) KHC 21] the question that arose before a Division Bench of this Court was whether a landlord is bound to plead under first proviso to Section 11(3) of the Act, the availability of vacant building in his possession and seek to explain special reason for non-occupation of such premises, in a proceeding initiated for eviction of the tenant under Section 11(3) of the Act. The Division Bench held that the initial burden to prove that landlord is in possession of the vacant building, if any, is only upon the tenant unless the landlord himself admits any such vacant building to be in his possession. Only when the primary burden of proof in this behalf is discharged by the tenant, the burden shifts to the landlord to show otherwise or that the vacant premises are not suited to his needs. He can successfully discharge his part of the burden by adducing evidence either through his own testimony or others or in any other legal manner. Law does not require the landlord to plead that he is in possession of any vacant building and has special reasons for its non-occupation. It is up to the tenant alone to take up the contention and prove that landlord is in vacant possession of premises.

15. In *Vasantha Mallan*, relying on the law laid down by the Apex Court in *M.L. Prabhakar* [(2001) 2 SCC 355] the

Division Bench held that, it is not incumbent on the landlord to disclose in his pleading availability of vacant building in his possession. The non-disclosure of vacant premises cannot be picked up as a reason or circumstance to doubt the bona fides of the claim of the landlord put forward under Section 11(3) of the Act. The Division Bench made it clear that it is not obligatory for the landlord to disclose in his pleadings the details of the vacant buildings available in his possession. Nor does first proviso to Section 11(3) of the Act insist the landlord to plead that the buildings available in his possession are not sufficient to meet his requirements. These are matters of evidence rather than pleadings. Failure of the landlord to disclose availability of buildings in his possession and plead special reasons for not occupying them, cannot be taken as a valid and legal ground for rejecting the claim of the landlord as not bona fide. What could at the most be said is that it might be a fair and reasonable conduct if the landlord disclosed in his pleadings the details of buildings in his possession and simultaneously explained the reason for non- occupation of the premises for his alleged needs.

16. In *Dineshan Pillai P.B. v. Joseph @ Jose* [2019 (3) KHC 206] a Division Bench of this Court was dealing with a case

in which one of the contentions of the tenant was that the landlord has several other vacant buildings of his own in his possession to start the proposed business. The Division Bench noticed that, the pleadings are very vague with respect to the first proviso to Section 11(3) of the Act. It is stated that the landlord has several other buildings. No particular vacant room has been identified or pointed out in the pleadings. The Division Bench opined that it is obligatory on the part of the tenant to plead and prove the identity of the vacant building in the possession of the landlord. In the absence of specific pleadings, disclosing the identity of the vacant building in the possession of the landlord, it can be said that the tenant has not discharged the initial burden of proof under the first Proviso to Section 11(3) of the Act.

17. In the instant case, the landlord, who was examined

as PW1, admitted that he has vacant rooms in his possession. PWs1 and 2 have stated special reasons for seeking an order of eviction in respect of the petition schedule shop room, which is the only room having frontage to the main road. The other rooms are facing towards a by-lane on the western side, without frontage to the main road. It has come out in evidence that the petition schedule shop room in the northern end is the only room

facing the main road in the northern side. Therefore, the Rent Control Court as well as the Appellate Authority rightly found that the first proviso to Section 11(3) of the Act has no application in the facts and circumstances of the case on hand. Viewed in the light of the law laid down in the decisions referred to supra, it cannot be contended that the reasoning of the Rent Control Court and the Appellate Authority on the above aspect is either perverse or patently illegal, warranting interference by this Court in this Rent Control Revision.

18. As per the second proviso to Section 11(3) of the Act,

the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

19. In *Ammeer Hamsa v. Ramabhadran and another*

[2019 (2) KHC 465] a Division Bench of this Court held that, it is trite law that both limbs under the second proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act are conjunctive and the burden of proof is on the tenant. Thus, the

legal position has been settled by a long line of decisions and the courts below have rightly placed reliance upon those decisions. Vide: *Narayanan Nair v. Pachumma* [1980 KLT 430], *Prasannan v. Haris* [2005 (2) KLT 365], *Vineethan v. Fathima and others* [2016 (1) KHC 631]. In view of the legal position well settled by the aforesaid decisions, the landlord is not required to plead or prove other

sources of income of the tenant. That apart, income is a fact which remains exclusively in the knowledge of each person only and another person cannot adduce evidence to prove income. Merely on the reason that the landlord has stated that the tenant has other sources of income and he is not mainly depending upon the income from the business carried on in the tenanted premises, for his livelihood and he failed to prove so, the tenant cannot escape from the burden of proof cast on him under the first limb of the second proviso to Section 11(3) of the Act. Where the statutory provision itself explicitly imposes the burden of proof on a party to the lis, there cannot be any variation whatever be the pleadings of the other party in that respect. The second proviso to Section 11(3) is an exception to the principal provision, granting protection to the tenant. When the second proviso itself imposes the burden of proof on the

tenant, the question whether the landlord has pleaded or proved the facts constituting the said proviso is insignificant and irrelevant. Even if the landlord pleaded so, the burden of proof will not be shifted to him. Since the second proviso to Section 11(3) is an exception to the principal provision, which would dis-entitle the landlord to get the order of eviction under Section 11(3), the burden of proof, under the said proviso is always on the tenant and unless the burden of proof under the second proviso is discharged satisfactorily, the tenant is not entitled to get protection under the said proviso to Section 11(3) of the Act.

20. In order to claim the protection under the second

proviso to Section 11(3) of the Act, the tenant who was examined as RW1, relied on Exts.B1 to B5 income tax returns for the year 2016-17 to 2020-21. The tenant has also contended that no other suitable shop rooms are available in the locality to shift the business conducted in the petition schedule shop room, under the name and style APK Electricals. Ext.C1 report of the Advocate Commissioner proved the availability of other suitable shop rooms in the locality. The said fact has also come out in the oral testimony of PWs1 and 2. The tenant failed to adduce any cogent and convincing evidence to substantiate the fact regarding non-

availability of other suitable shop rooms in the locality. Though the tenant produced Exts.B1 to B5 income tax returns, he failed to establish that he is mainly depending on the income derived from the business carried on in the petition schedule shop room for his livelihood. In the absence of any cogent and convincing evidence to prove both the limbs of the second proviso to Section 11(3) of the Act, the Rent Control Court as well as the Appellate Authority concurrently found that the tenant is not entitled to the protection under the second proviso to Section 11(3) of the Act. Viewed in the light of the law laid down in the decisions referred to supra, it cannot be contended that the reasoning of the Rent Control Court and the Appellate Authority on the above aspect is either perverse or patently illegal, warranting interference by this Court in this Rent Control Revision.

21. Section 20 of the Kerala Buildings (Lease and Rent

Control) Act deals with revision. As per sub-section (1) of Section 20, in cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any

order passed or proceedings taken under this Act by such

authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit. As per sub-section

(2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub- section (1) shall be in its discretion.

22. In Rukmini Amma Saradamma v. Kallyani

Sulochana [(1993) 1 SCC 499], the scope of revisional powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot

enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word propriety it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional

court can come to a different conclusion but not on a re- appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it.

23. In *T. Sivasubramaniam v. Kasinath Pujari* [(1999)

7 SCC 275] the Apex Court held that, the words to satisfy itself employed in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.

24. In *Ubaiba v. Damodaran* [(1999) 5 SCC 645] the

Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged

that whether such relationship existed would be a jurisdictional fact. Relying on the decision in *Rukmini Amma Saradamma* it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act may be, it cannot

have jurisdiction to re-appreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority. The Apex Court held that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under the Code. Therefore, notwithstanding the use of the expression propriety in Section 20 of the Act, the revisional court will not be entitled to re-appreciate the evidence and substitute its own

conclusion in place of the conclusion of the appellate authority.

On examining the impugned judgment of the High Court, in the light of the aforesaid ratio, the Apex Court held that the High Court exceeded its jurisdiction by re-appreciating the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist.

25. In *Hindustan Petroleum Corporation Limited v. Dilbahar Singh* [(2014) 9 SCC 78] a Five-Judge Bench of the

Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After referring to the law laid down in *Rukmini Amma Saradamma* the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in *Rukmini Amma Saradamma* that the word propriety does not confer power upon the High Court to re-appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it.

26. In *Thankamony Amma v. Omana Amma* [AIR 2019

SC 3803 : 2019 (4) KHC 412] considering the matter in the backdrop of law laid down in *Rukmini Amma Saradamma*, *Ubaiba* and *Dilbahar Singh* the Apex Court held that the findings rendered by the courts below were well supported by

evidence on record and could not even be said to be perverse in any way. The High Court could not have re-appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been interfered with by the High Court

while exercising revisional jurisdiction.

27. In *Abdul Salam v. Sebastian* [2013 (4) KLT 592],

a Division Bench of this Court held that, even though in the decisions of the Apex Court and this Court, it has been held that, in revisional jurisdiction there cannot be a re-appreciation of evidence in order to come to a different conclusion on the same set of facts, it has been held in those decisions itself that, if the view taken is perverse and the statutory scheme has not been kept in mind and if it requires correction, then Court can re- appreciate the evidence. When the argument is that, the approach made by the authorities are perverse, it cannot be said that this Court cannot look into the pleadings and scan through the evidence to find out whether the conclusions have been arrived at properly on the pleadings and evidence.

28. In *Regy V. Edthil v. Hubert Leslie D'Cruz* [2016 (2)

KLJ 164], a Division Bench of this Court held that, the High Court (in revision) is obliged to test the order of the Rent Control Court on the touch stone of whether it is according to law. For that limited purpose, it may enter into reappraisal of evidence for the purpose of ascertaining whether the conclusion arrived at by the Rent Control Court is wholly unreasonable or is one that no

reasonable person acting with objectivity could have reached on the material available.

29. Viewed in the light of the law laid down in the decisions

referred to supra, conclusion is irresistible that the reasoning of the Rent Control Court and the Appellate Authority while ordering eviction of the tenant under Section 11(3) of the Act is neither perverse nor patently illegal. It cannot also be

said that, while ordering eviction of the tenant under Section 11(3) of the Act, the authorities below have committed a manifest error, warranting interference of this Court, in exercise of the revisional jurisdiction under Section 20 of the Act. Therefore, we find no reason to interfere with the order of eviction passed by the Rent Control Court and the Appellate Authority under Section 11(3) of the Act.

30. The learned counsel for the petitioner-tenant would

submit that the tenant is conducting sale of electrical goods in the petition schedule shop room. The tenant may be granted at least six months time to vacate the petition schedule shop room. The tenant is prepared to clear the entire dues, if any, towards arrears of rent, within a time limit that may be fixed by this Court, and he shall continue to pay monthly rent for the remaining period, without any default, till he gives vacant possession of the petition

schedule shop room to the landlord.

31. In such circumstances, this Rent Control Revision

Petition is dismissed declining interference on the impugned

JUDGMENT / ORDER

of the Rent Control Appellate Authority and the Rent Control Court; however by granting four months' time to the petitioner-tenant, to surrender vacant possession of the petition schedule shop room to the respondent-landlord, subject to the following conditions:

(i) The respondent-tenant in the Rent Control Petition

shall file an affidavit before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, expressing an unconditional undertaking that he will surrender vacant possession of the petition schedule shop room to the petitioner-landlord within four months from the date of this order and that, he shall not induct third parties into possession of the petition

schedule shop room and further he shall conduct any business in the petition schedule shop room only on the strength of a valid licence/permission/consent issued by the local authority/statutory authorities;

(ii) The respondent-tenant in the Rent Control Petition

shall deposit the entire arrears of rent as on date, if any, before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, and shall continue to pay rent for every succeeding months, without any default;

(iii) Needless to say, in the event of the respondent-tenant

in the Rent Control Petition failing to comply with any one of the conditions stated above, the time limit granted by this order to surrender vacant possession of the petition schedule shop room will stand cancelled automatically and the petitioner-landlord will be at liberty to proceed with the execution of the order of eviction. Sd/- ANIL K. NARENDRAN, JUDGE

Sd/- G. GIRISH, JUDGE MIN

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com