

Afsal vs Nasar

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Court : Kerala Orders

Decided On : Oct-30-2023

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mr. Justice Johnson John

Appeal No. : RCRev./231/2023

Appellant : AFSAL

Respondent : NASAR

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE JOHNSON JOHN MONDAY, THE 30TH DAY OF OCTOBER 2023 / 8TH KARTHIKA, 1945 RCREV. NO. 231 OF 2023 AGAINST THE ORDER DATED 25.07.2022 IN RCP NO.162 OF 2012 OF PRINCIPAL MUNSIF COURT - I, KOZHIKODE CONCURRING WITH THE COMMON ORDER IN RCA NO.90 OF 2022 DATED 27.07.2023 OF RENT CONTROL AUTHORITY/ADDITIONAL DISTRICT COURT - V, KOZHIKODE. REVISION PETITIONER/APPELLANT/3RD RESPONDENT IN RCP: AFSAL, AGED 49 YEARS S/O. KATHIRI, RESIDING AT IRINGATTU HOUSE,

KURUVATTUR AMSOM, CHERUVATTA DESOM, PARAMBIL POST, KOZHIKODE, PIN - 673012 BY ADVS. V.V.SURENDRAN P.A.HARISH DIVIN V.VIJAYAN RESPONDENTS/RESPONDENTS/PETITIONER IN RCP: 1 NASAR, AGED 52 YEARS, S/O. HAMEED SHAH, RESIDING AT 32/1642, KAILADIPARAMBU, CHELAVUR POST, CHELAVUR AMSOM DESOM, KOZHIKODE, PIN - 673571. 2 SAFEERA, AGED 49 YEARS, D/O. P.P. ABOOBACKER, RESIDING AT 32/1642, KAILADIPARAMBU, CHELAVUR POST, CHELAVUR AMSOM DESOM, KOZHIKODE, PIN - 673571. THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 30.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: R.C.Rev.No.231 of 2023 2 P.B.SURESH KUMAR & JOHNSON JOHN, JJ.
----- R.C.Rev. No.231 of 2023
----- Dated this the 30th day of October, 2023.

ORDER

P.B.Suresh Kumar, J.

The tenant in a proceedings for eviction under Section

11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the Act), is the petitioner in the revision petition. The respondents are the landlords in the said proceedings. The Rent Control Court ordered eviction of the tenant and the Appellate Authority affirmed the decision of the Rent Control Court. The tenant is aggrieved by the concurrent orders of eviction.

2. The respondents own a row of six shop rooms, of

which one was in their possession and the rest were in the possession of five different tenants. The need set out by the respondents in the eviction petition was that they intend to establish a supermarket making use of all the six rooms after removing the separating walls. The need being the aforesaid, a single eviction petition was instituted against all the five tenants. The petitioner herein was one

among the tenants in the proceedings. The petitioner contested the eviction petition contending, among others, that the eviction petition is bad for misjoinder of parties; that the need of the

R.C.Rev.No.231 of 2023 3 respondents is not bona fide and that at any rate, he is entitled to the benefit of the second proviso to Section 11(3) of the Act. During the pendency of the eviction petition, the respondents entered into a settlement with all the tenants except the petitioner, and in terms of the said settlement, all the tenants other than the petitioner surrendered vacant possession of the premises held by them. In the light of the said development, the eviction petition was pursued by the respondents only against the petitioner.

3. The Rent Control Court, having regard to the

subsequent development aforesaid, rejected the plea of the petitioner that the eviction petition is bad for misjoinder of parties. It also found, on an appraisal of the materials on record, that the need set out by the respondents is bona fide and that the petitioner is not entitled to the benefit of the second proviso to Section 11(3) of the Act. It is on that basis, the Rent Control Court ordered eviction of the tenant, and it is affirming the said findings of the Rent Control Court that the Appellate Authority dismissed the appeal.

4. Heard the learned counsel for the petitioner.

5. It is seen that the authorities below rejected the

plea of the petitioner that the eviction petition is bad for misjoinder of parties, holding that inasmuch as all the tenants other than the petitioner have surrendered vacant possession of the premises to the respondents, no prejudice is caused to the petitioner on account R.C.Rev.No.231 of 2023 4

of the institution of a single eviction petition against several tenants. According to the learned counsel for the petitioner, the said view is unsustainable in law, inasmuch as the question whether the proceedings is bad for misjoinder is one to be seen as on the date of the application of the eviction petition and inasmuch as the eviction petition was bad for misjoinder of parties as on the date of the eviction

petition, the contention taken by the petitioner should have been upheld. It was also argued by the learned counsel that the findings rendered by the authorities below on the issue whether the need set out by the respondents is bona fide and the issue whether the petitioner is entitled to the benefit of the second proviso, are unsustainable in law.

6. We do not find any merit in the arguments advanced by the learned counsel for the petitioner.

7. No doubt, a landlord cannot unite several causes of

action in a single rent control petition, if the contentions of the tenants are different and distinct, for the same is likely to cause prejudice to the tenants. But in the case on hand, inasmuch as the remaining tenants have surrendered vacant possession of the premises held by them and the eviction petition was pursued by the respondents only against the petitioner, the petitioner cannot be heard to contend that any prejudice has been caused to him on account of the fact that the eviction petition was instituted as one,

R.C.Rev.No.231 of 2023 5 against several tenants. In other words, the argument raised by the learned counsel for the petitioner is purely technical. It is now trite that in matters of this nature, the court has to take a pragmatic approach, and when substantial justice and technicalities are pitted against each other, the court has to prefer the former. In this view of the matter, we do not find any merit in the contention advanced by the learned counsel for the petitioner that the eviction petition is bad for misjoinder of cause of action. Similarly, the issue whether the need set out by the respondents is bona fide and the issue whether the tenant is entitled to the benefit of the second proviso to Section 11(3) of the Act, are purely issues to be decided on the facts of the case and we do not find any illegality, irregularity or impropriety in the finding rendered by the authorities below on the said issues, warranting interference in exercise of the jurisdiction conferred on this Court under Section 20 of the Act.

The rent control revision, in the circumstances, is

dismissed. Nevertheless, having regard to the peculiar facts of this case and the orders passed by this Court in similar and identical revisions, the petitioner is granted six months' time from today to surrender vacant possession of the premises on condition that he shall file an unconditional undertaking before the Rent Control Court within two weeks from the date of receipt of a copy of this order to vacate the tenanted premises within six months and also that he

R.C.Rev.No.231 of 2023 6 shall pay the arrears of rent, if any, within the aforesaid time limit and continue to pay the monthly rent on or before the tenth day of every succeeding month till he vacates the premises. Sd/-P.B.SURESH KUMAR, JUDGE. Sd/-JOHNSON JOHN, JUDGE amk

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