Unnikrishnan vs Vasanthakumar

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Court : Kerala

Decided On : Oct-28-2023

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

Appeal No. : RCRev./236/2023

Appellant : Unnikrishnan

Respondent : Vasanthakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE G. GIRISH SATURDAY, THE 28TH DAY OF OCTOBER 2023 / 6TH KARTHIKA, 1945 R.C.REV.NO.236 OF 2023 AGAINST THE JUDGMENT DATED 11.10.2023 IN RCA 24 of 2023 OF THE 1ST ADDL.RENT CONTROL APPELLATE AUTHORITY, THRISSUR, ARISING FROM THE ORDER DATED 22.02.2023 IN RCP NO.09 OF 2022 OF MUNSIFF COURT, WADAKKANCHERY REVISION PETITIONER/APPELLANT/RESPONDENT: UNNIKRISHNAN AGED 61 YEARS S/O. MANALUMKUNNATH RAMAKRISHNA, EZHUTHASSAN, MANALUMKUNNATH HOUSE, PUNNAMPARAMBU P.O, THRISSUR, PIN - 680589 BY ADVS. SINDHU SANTHALINGAM A.D.SHAJAN

JESSY S. SALIM RESPONDENT/RESPONDENT/PETITIONER: VASANTHAKUMAR AGED 71 YEARS S/O.CHENDRA AYYAPPAN, CHENDRA HOUSE, ARANATUKARA P.O, THRISSUR, PIN - 680618 SMT LAKSHMY S - RESPONDENT THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 28.10.2023, 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.9 of

2022, on the file of the Rent Control Court (Munsiff), Wadakkanchery, which was the one filed by the respondent herein-landlord under Sections 11(2)(b) and 11(3) of the Kerala Building (Lease and Rent Control) Act, 1965, seeking eviction of the petition schedule building, which is a two-storied building with a plinth area of 3000 sq.ft., with building No.XVIII/436 of Thekkumkara Grama Panchayat, situated on 22 cents of land in Survey No.293/2 of Thekkumkara Village. The Rent Control Petition was filed seeking an order of eviction on the grounds of arrears of rent and bonafide need of the landlord to occupy that building for his own occupation.

2. Before the Rent Control Court, the tenant entered

appearance and filed a counter opposing the order of eviction sought for. On the side of the landlord, Exts.A1 to A8 were marked and he was examined as PW1. On the side of the tenant, he was examined as RW1. The tenant has not chosen to adduce any documentary evidence. After considering the pleadings and evidence on record, the Rent Control Court passed an order of eviction under Sections 11(2)(b) and 11(3) of the Act and the

tenant was directed to put the landlord in vacant possession of the petition schedule building, in terms of the direction contained in that order.

3. Challenging the order of eviction passed by the Rent

Control Court in R.C.P.No.9 of 2022, the tenant filed R.C.A.No.24 of 2023 before the Rent Control Appellate Authority, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 11.10.2023, confirming the

order of eviction under Sections 11(2) (b) and 11 (3) of the Act.

4. Feeling aggrieved by the order of eviction granted

concurrently by the Rent Control Court and the Rent Control Appellate Authority, the petitioner-tenant is before this Court in this Rent Control Revision, invoking the provisions under Section 20 of the Act.

5. Heard the learned counsel for the petitioner-tenant and also the learned counsel for the respondent-landlord.

6. The issue that requires consideration in this Rent

Control Revision is as to whether any interference is warranted on the concurrent findings by the Rent Control Court and the Appellate Authority, in ordering eviction under Sections 11(2)(b) and 11(3) of the Act.

7. The learned counsel for the petitioner-tenant would

contend that the order of eviction granted concurrently by the Rent Control Court and the Rent Control Appellate Authority is per se arbitrary, illegal and unsustainable, which warrants interference in the exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

8. Per contra, the learned counsel for the respondent-

landlord would contend that since the scope of interference in a revision under Section 20 of the Act is very limited, the reasoning of the Rent Control Court and the Rent Control Appellate Authority in the impugned order and judgment, which cannot be said to be either perverse or patently illegal, warrants no interference in this Rent Control Revision.

9. Section 11 of the Act deals with eviction of tenants. As

per Section 11(1), notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act. Section 11(2)(b) of the Act deals with arrears of rent. As per Section 11(2)(b), if the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the

time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, it shall make an

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

building, and if it is not satisfied it shall make an order rejecting the application thereof by him. As per the proviso to Section 11(2)(b), an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof. As per section 11(2)(c) the order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order.

10. In the instant case, on a proper appreciation of the pleading and evidence on record, the Rent Control Court as well as the Appellate Authority found that the tenant, who was

examined as RW1 has not disputed the landlord-tenant relationship and existence of Ext.A1 rent agreement. The defence of the tenant was that even though he had

approached the landlord with the rent, the landlord had not accepted the same. As per Section 9(2) of the Act, if the landlord refuses to accept the rent, the tenant could very well pay the same by money order or may by notice in writing, require the landlord to specify a bank into which the rent may be deposited by the tenant to the credit of the landlord. The tenant has not taken recourse to the modes provided in Section 9(2) of the Act. In the above circumstances, the Rent Control Court as well as the Appellate Authority rightly found that the landlord is entitled to an order of eviction under Section 11(2)(b) of the Act. The reasoning of the Authorities below for granting an order of eviction under Section 11(2)(b) of the Act is neither perverse nor patently illegal, warranting interference in this Rent Control Revision.

11. 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.

12. 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 ejectment 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.

13. 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.

14. 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.

15. 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.

16. In Vasantha 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. In the instant case, the bona fide need projected in

the Rent Control Petition for seeking an order of eviction under Section 11(3) of the Act stands proved by the oral testimony of the landlord, who was examined as PW1. It has also come out in evidence that the daughter of the landlord is a sick person, who needs constant treatment. Though the tenant as RW1 deposed the landlord has other suitable buildings in the locality, he failed to prove the said contention by adducing cogent and convincing evidence. The landlord as PW1 deposed that he owns only six

cents of land, which is paddy land. At present, he is residing in a rented building along with his daughter, who is having various ailments. It has come out in evidence that the petition schedule building was given on rent to the tenant, for a period of two months, for the purpose of conducting the marriage of his daughter. The tenant as RW1 admitted that his daughter is presently residing in UK and his son is a Dentist. The reasoning of the Authorities below for granting an order of eviction under Section 11(3) of the Act is neither perverse nor patently illegal, warranting interference in this Rent Control Revision.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 anyway. 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.

28. Viewed in the light of the law laid down in the

decisions referred to supra, the conclusion is irresistible that the reasoning of the Rent Control Court and the Rent Control Appellate Authority while ordering the eviction of the tenant under Sections 11(2)(b) and 11(3) of the Act is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

29. In such circumstances, we find no reason to interfere with the order of eviction concurrently passed by the Rent Control Court as well as the Appellate Authority.

30. The learned counsel for the petitioner would submit

that, in case this Court is not inclined to interfere with the impugned order/judgment, the petitioner-tenant may be granted breathing time to vacate the petition scheduled building.

31. The learned counsel for the respondent-landlord would

point out that as already found by the Rent Control Court and the Appellate Authority, the daughter of the landlord is suffering from various ailments. From the year 2021 onwards, the landlord is residing in a tenanted premise, along with his ailing daughter.

32. Considering the facts and circumstances of the case, we deem it appropriate to grant one months time to the petitioner-tenant to vacate the petition scheduled premises, 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 one week 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 building to the petitioner-landlord within one months from the date of this order and

that, he shall not induct third parties into possession of the petition schedule building;

(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 one week from the date of receipt of a certified copy of this order, and shall continue to pay rent for the remaining period in occupation, 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 building will stand cancelled automatically and the petitioner-landlord in the Rent Control Petition will be at liberty to proceed with the execution of the order of eviction.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- G. GIRISH, JUDGE vgd