

Valsan vs Raphy

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Court : Kerala

Decided On : Feb-09-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RCRev./111/2021

Appellant : Valsan

Respondent : RAPHY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 9TH DAY OF FEBRUARY 2022 / 20TH MAGHA, 1943 R.C.REV. NO. 111 OF 2021 AGAINST THE JUDGMENT DATED 30.01.2021 IN R.C.A.NO.167 OF 2019 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE-IV), THRISSUR AND AGAINST THE ORDER DATED 29.06.2019 IN R.C.P.NO.16 OF 2017 OF THE RENT CONTROL COURT, IRINJALAKUDA

REVISION PETITIONER: VALSAN, AGED 43 YEARS, S/O.THEKKODAN JOSE, KARUVANNUR DESOM, PORATHISSRY

VILLAGE, MUKUNDAPURAM TALUK, PIN-680125. BY ADVS. SREEDEVI KYLASANATH ACHUTH KYLAS JOSELAL GEORGE R.MAHESH MENON DEAGO JOHN K AMAL DEV C.V. RESPONDENT: RAPHY AGED 56 YEARS, S/O.AZCHANGADAN PAUL, PERAMBRA VILLAGE AND DESOM, CHALAKUDY TALUK, PIN-680689. BY ADV G.SREEKUMAR (CHELUR) THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 09.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

This revision petition is filed under Section 20 of the

Kerala Buildings (Lease and Rent Control) Act, 1965. The petitioner is the tenant and the respondent is the landlord. The respondent filed R.C.P.No.16 of 2017 before the Rent Control Court (Munsiff), Irinjalakuda, seeking eviction of the petitioner from petition schedule shop room under Section 11(3) of the Act. The petition was allowed as per order dated 29.06.2019. The petitioner preferred an appeal, R.C.A.No.167 of 2019, under Section 18(1)(b) of the Act before the Rent Control Appellate Authority (Additional District Judge-IV), Thrissur. The appeal was dismissed as per judgment dated 30.01.2021. The petitioner challenges the said judgment and

order in this revision petition.

2. The respondent-landlord is now working abroad. He

intends to come back. On his coming back, he wants to start a bakery business, for which he needs the petition schedule shop room. That room together with its adjoining room, which is already in his possession, are proposed to be used for the purpose, after converting both into one room. Setting out such a need, eviction is sought.

3. The petitioner filed a counter statement. The

respondent has no need or necessity to conduct a bakery business. He has in his possession several other rooms. He owns several shopping complexes. The need projected by the respondent is not bonafide. If he wanted to start such a business, he would have started the same in other vacant rooms already in his possession. Sole source of income for the livelihood of the petitioner is the income from the business in the petition schedule shop room. No other room or building to shift his business is available in the locality. On those grounds the petitioner sought to dismiss the petition.

4. At the trial, the Rent Control Court recorded oral

evidence of PW1, RW1 and CW1. Exts.A1 to A3 and C1, C1(a), C2, C2(a) and C2(b) were received in evidence. After considering the said evidence, the Rent Control Court allowed the petition ordering eviction. The order of the Rent Control Court was challenged by the petitioner in R.C.A.No.167 of 2019 under Section 18(1)(a) of the Act, without any success.

5. On 08.09.2021, when this matter came up for

admission, urgent notice was ordered to the respondent. The execution of the order of eviction was stayed for a period of two months. The order of stay was extended from time to time and is still in force.

6. Heard the learned counsel appearing for the petitioner and also the learned counsel appearing for the respondent.

7. The learned counsel appearing for the petitioner

would contend that the respondent is a very affluent person and he does not have any need of starting a bakery business. He has enough rental income and other sources of income. Besides, he is working abroad and there is no likelihood of coming back home in the near future. He got one room vacated by evicting one Sri.Ravi, the tenant, in 2011, on the ground of bonafide need. But he did not occupy the same. He leased out it to others. Many vacant rooms are available in

his

possession; any one of which can be made use of to start the projected business. The learned counsel submits that those

facts would manifest that he did not have any intention to

come back abandoning his employment abroad and the need urged by him cannot be said to be bonafide.

8. The learned counsel appearing for the respondent,

on the other hand, would submit that all the said contentions were considered by the courts below and found against the petitioner. The learned counsel would submit that the findings of both the authorities are supported by sufficient reasons and legally correct. It is pointed out that in order to have a suitable place for bakery business proposed by the

respondent, the petition schedule room is absolutely necessary and no other rooms belonging to the respondent can be made use of for that purpose. As regards the employment of the respondent abroad, the learned counsel invited our attention to the oral testimony of PW1, the respondent. He deposed that he earlier was conducting business, but now he is employed in a private firm. It is

explained that private employment in a foreign country has no guarantee and therefore the respondent wanted to come home and build up a business.

9. PW1 admitted that he got vacant possession of one room in the occupancy of one Ravi. It was in 2011. It is seen

that on sending the eviction notice, the room was surrendered. There is nothing in evidence to show that the tenant in the said room was evicted for the same purpose. Whatever that be, having it occurred in 2011, it cannot have an eclipse on the need now put forward by the respondent. The findings of the courts below in this respect cannot be said to be perverse or illegal.

10. On a perusal of Exts.C2 and C2(a), it can be seen

that the petition schedule shop room has sufficient road frontage. It is the case of the respondent that he proposes to start the business by converting the petition schedule shop room and its adjoining southern room, which is already in his possession, into one to start the bakery business. There is no case for the petitioner that any other room in the ground floor

of the building is available vacant. It has come out that two rooms on the first floor are lying vacant. It was found by the court below that the said rooms on the upstairs are not suitable for such a bakery business. Taking all such matters into account, the Appellate Court as well as the Rent Control Court concluded that the need urged by the respondent is bonafide.

11. Having considered the matter in detail, we do not find any reason to say that the said finding suffers from any illegality, irregularity or impropriety, warranting interference by this Court.

12. The respondent is in possession of the other three

rooms in the same shopping complex. From the discussions made above, it is evident that the reasons for not occupying the said rooms by the respondent or utilising the same for the projected need is self-explanatory and genuine. Therefore, the petitioner cannot claim the benefit to first proviso to Section 11(3) of the Act.

13. 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. A Full Bench of this Court in

Francis v. Sreedevi Varassiar [2003 (2) KLT 230] held

that it is for the tenant to prove both the limbs of the second proviso to Section 11(3) of the Act and that the tenant cannot insist that alternative accommodation

should be similar to that of the tenanted premises in terms of the rate of rent and convenience.

14. The respondent did not adduce any documentary

evidence to prove his income from the business in the petition schedule shop room. The oral testimony that he ekes out his livelihood solely from the income derived from the petition schedule shop room is insufficient to prove the fact. He is conducting a bakery and stationery business. We are unable

to believe that there is absolutely no document regarding his business income. Coming to the availability of other rooms for shifting the business of the respondent also, the evidence is scanty. Both in Exts.C1 and C2 details of the rooms, kept under lock and key, have been stated. During examination in court, the petitioner could not explain as to the availability or not of such rooms. It follows that the petitioner did not discharge his burden so as to prove that no other room or building is available in the locality, suitable for his business. We, therefore, hold that the findings of the court below in this regard also do not require any interference.

15. 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 at its discretion.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. In view of the above legal principles, it is not

possible for us to re-appreciate the evidence, especially when the Appellate Authority, being the first appellate court, has considered and marshalled the entire evidence in great detail and confirmed the finding of the Rent Control Court.

22. In view of what are stated above, we are of the definite view that this is not a case where any interference under the provisions of Section 20 of the Act is required. The

judgment of the Appellate Authority or the order of the Rent

Control Court does not suffer from any illegality, irregularity or impropriety. Hence this Revision Petition fails. We, accordingly, dismiss it.

23. The learned counsel for the petitioner has made a

request to afford seven months' time for vacating the premises pointing out the difficulty in finding out another room and making necessary arrangements for shifting his business. The learned counsel for the respondent submits that a period

of six months would be the reasonable period.

24. Having considered all the aspects, we deem it appropriate to grant six months time to surrender vacant possession of the petition schedule shop room, subject to the following conditions:

(i) The respondent-tenant in the Rent Control Petition shall file an affidavit before the Rent Control Court 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 six 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 that he will 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 four 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/- P.G. AJITHKUMAR, JUDGE dkr

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