

Raziya, vs Ajith Kumar,

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Court : Kerala

Decided On : Jan-06-2022

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

Appeal No. : RCRev./242/2019

Appellant : Raziya,

Respondent : Ajith Kumar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 6TH DAY OF JANUARY 2022 / 16TH POUSHA, 1943 R.C.REV. NO. 242 OF 2019 AGAINST THE JUDGMENT DATED 28.02.2019 IN R.C.A.NO.3 OF 20126 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE-II) NORTH PARAVUR AND THE ORDER DATED

31.10.2015 IN R.C.P.NO.16 OF 2013 OF THE RENT CONTROL COURT (MUNSIFF), ALUVA REVISION PETITIONER: RAZIYA, AGED 55 YEARS, W/O.ABDUL JABBAR, PARILAKATHOOTT HOUSE, VI/20

KODER LANE, ALUVA. BY ADVS. SRI.ZAKEER HUSSAIN
SMT.K.A.SANJEETHA RESPONDENT: AJITH KUMAR, AGED 46
YEARS, S/O.V.V.ARAVINDAKSHAN, VAZHELIPARAMBIL HOUSE,
THAINOTHIL ROAD, ALUVA- 683101. THIS RENT CONTROL
REVISION HAVING COME UP FOR FINAL HEARING ON 06.01.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

Tenant is the revision petitioner. The respondent filed

R.C.P.No.16 of 2013 before the Rent Control Court (Munsiff), Aluva, seeking eviction of the petitioner from the petition schedule shop room under Section 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The rent control petition was allowed directing the petitioner to surrender vacant possession of the petition schedule shop room to the respondent within a period of one month from the date of that order. The petitioner preferred appeal as R.C.A.No.3 of 2016 before the Rent Control Appellate Authority (Additional District Judge-II), North Paravur under Section 18(1)(b) of the Act. The Appellate Authority allowed the appeal and set aside the

order of eviction. Feeling aggrieved thereof, the petitioner

preferred this Rent Control Revision under Section 20 of the Act.

2. The petition for eviction was filed on the ground

that husband of the landlady, who is conducting real estate business in the room adjoining to the petition schedule shop room, both belonging to her, wants to expand that business and hence she requires vacant possession of the petition schedule shop room.

3. The respondent-tenant resisted the application by

filing a counter statement. He contended that the husband of the petitioner has not been conducting any such business and the petitioner has been in vacant possession of many other rooms. The respondent is depending for his livelihood solely on the income derived from the petition schedule room. In case he is evicted therefrom, he will be put to much hardship and the advantage that may be available to the petitioner

does not outweigh the hardship of the respondent. Accordingly, the respondent sought to dismiss the petition.

4. The Rent Control Court recorded oral evidence of

PW1 and RW1 & RW2. Exts.A1 to A4 and B1 to B8 were marked. The Rent Control Court upon considering the said evidence found that the husband of the petitioner has been conducting a real-estate business in the adjoining room, and therefore, the need of additional accommodation projected by the landlady is genuine. It was further held that the advantage on account of getting vacant possession of the petition schedule shop room is much more comparing to the hardship that would be caused to the respondent on account of the eviction.

5. The Appellate Authority differed from the findings of the Rent Control Court essentially on two points; namely,

(i) the need of additional accommodation of the landlady's

husband cannot be a ground for eviction under Section 11(8) of the Act, and (ii) the petitioner failed to prove that her husband has been conducting a business in the adjacent room as she claimed.

6. On 17.06.2019, the revision petition was admitted directing notice to the respondent. Despite receipt of notice, none has appeared on behalf of the respondent.

7. Heard the learned counsel appearing for the petitioner.

8. The learned counsel appearing for the petitioner would contend that the findings of the Appellate Authority with respect to both the points referred to above are

wrong. The

learned counsel submits that the need for additional accommodation of the husband of the landlady is equally a ground sufficient under Section 11(8) of the Act. What requires is only that the court should satisfy itself about the bonafides of

the need for additional accommodation before making an order

of eviction. In order to prove the second point, whether the husband of the landlady has been conducting a business in the adjoining room, the learned counsel placed reliance on Exts.A1 and A2 and also the oral testimony of PW1.

9. Section 11(8) of the Act says that a landlord, who

is in occupation of only a part of a building, may apply for eviction of a tenant occupying the whole or any portion of the remaining part of the building, if the landlord requires additional accommodation for his personal use. It is true that the additional requirement of the landlord is made mention of. This provision has been interpreted by this Court in K.C.Arjunan v. Eranu [1991(2) KLT 279] where it was

held that the requirement of additional accommodation in the

context of Section 11(8) need not always be that of the landlord. The need of a member of the family of the landlord may be enough. In view of the said legal principle, the finding of the Appellate Authority that the requirement projected being that of the husband of the landlady, she is not entitled to claim eviction under Section 11(8) of the Act is wrong. Hence, we reverse the said finding.

10. The Appellate Authority considered in detail

evidence available on record and found that the husband of the petitioner has not been conducting any business in the adjacent room as she claimed. While PW1, the petitioner, deposed before the court that her husband is doing real- estate business in the adjacent room, RW1, the respondent deposed that no such business is being conducted by the husband of the petitioner. The documents produced by the petitioner do not relate to the conduct of business by her

husband. In the light of the said evidence, the Appellate Authority came to the conclusion that the petitioner failed to prove that her husband has been doing real-estate business in the adjacent room.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. In the light of the above said legal principles, we are of

the view that the finding of the Appellate Authority that the husband of the petitioner is not doing any business in the room adjoining the petition schedule

shop room, cannot be said to be perverse, improper or irregular. The petitioner is therefore not entitled to get an order of eviction, and the impugned judgment dated 28.02.2019 in R.C.A.No.3 of 2016 of the Rent Control Appellate Authority (Additional District Judge-II), North Paravur, is not liable to be interfered with. Hence, this revision fails and accordingly the same is dismissed.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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