

S.a.Sahitha vs Nazeera

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Court : Kerala

Decided On : Jun-01-2022

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

Appeal No. : RCRev./434/2017

Appellant : S.a.Sahitha

Respondent : Nazeera

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 1ST DAY OF JUNE 2022 / 11TH JYAISHTA, 1944 AGAINST THE JUDGMENT DATED 13.10.2017 IN R.C.A.NO.6 OF 2016 OF THE RENT CONTROL APPELLATE AUTHORITY (DISTRICT JUDGE), KASARAGOD AND THE ORDER DATED 23.03.2016 IN R.C.P.NO.15 OF 2012 OF THE RENT CONTROL COURT (MUNSIFF), HOSDURG
REVISION PETITIONER: S.A.SAHITHA AGED 45 YEARS, D/O K.S.ABDULLAKUNHI, PROPRIETOR, A.K. BROTHERS, OPP. LIC OFFICE, KANHANGAD, HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADVS. SRI.V.G.ARUN SRI.T.R.HARIKUMAR RESPONDENTS:

1 NAZEERA AGED 53 YEARS, W/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316. 2 FAIZAL K.M. AGED 36 YEARS, S/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316. 3 ABDUL NAZAR K.M. AGED 29 YEARS, S/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316. 4 MUHAMMED SHAFEEQUE K.M AGED 26 YEARS, S/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316.

5 RABIYA K.M. AGED 26 YEARS, D/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316. 6 FAREEDA K.M. AGED 34 YEARS, D/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316. 7 MOHAMEDALI K.M. AGED 31 YEARS, S/O LATE K.M. SALI HAJI, BEKAL KUNNEL, PALLIKKARE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN:671316. BY ADV SRI.KODOTH SREEDHARAN

THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 19.05.2022, THE COURT ON 01.06.2022 DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

Sri.K.M.Sali Haji was the owner of the petition schedule

shop room. He filed R.C.P.No.15 of 2012 before the Rent Control Court (Munsiff), Hosdurg, seeking eviction of the petitioner who is the tenant thereon under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965.

The Rent Control Court dismissed the R.C.P. During pendency of the R.C.P., Sri.Sali Haji died and therefore his legal representatives, respondents 1 to 7 herein came on record. In the appeal preferred by the respondents, R.C.A.No.6 of 2016, under Section 18(1)(b) of the

Act, the Rent Control Appellate Authority (District Judge), Kasaragod, set aside the order in the R.C.P. Eviction was ordered under Section 11(3) of the Act. This Revision has been filed under Section 20 of the Act challenging the said judgment, which is dated 13.10.2017.

2. On 03.01.2018, this Revision was admitted and notice

was ordered to the respondents. Further proceedings for evicting the revision petitioner from the petition schedule shop room was stayed for a period of two months. The order was extended from time to time and is still in force.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

4. Eviction under Section 11(3) of the Act was sought by

Sri.Sali Haji, the landlord, on the ground that he along with his son, Mohammed Shafeeque, wanted to start a business in electrical goods and appliances in the petition schedule shop room. After the death of Sri.Sali Haji, the R.C.P. was amended adding paragraph No.5(a), where it was reiterated that Sri.Mohammed Shafeeque, the 4th respondent herein, remained jobless and he wanted to start the above-said business. The petitioner filed a counter statement and also an additional counter statement where she refuted the claim of the respondents. It was contended that the need urged by the respondents was not bona fide and that several vacant rooms were in their possession in which the 4 th respondent can well start a business if at all he wanted to start a business. A plea based on the second proviso to Section 11(3) of the Act was also advanced, but it was submitted before the Appellate Authority that the petitioner was not pursuing the said contention.

5. During trial, PW1, PW2 and RW1 were examined before the Rent Control Court. Exts.A1 to A11, B1 and C1 were admitted in evidence. The Rent Control Court after analysing the evidence on

record held that room Nos.III/1366 and III/1367, which are situated next adjoining to the petition schedule shop room were got vacated by the respondents during pendency of the R.C.P. or immediately prior to that and that the respondents did not satisfactorily explain the reasons for not occupying the said rooms for the projected need, and therefore, the need urged by them was not bona fide. The reasons stated by the respondents for non- occupying the said rooms were not accepted by the Rent Control Court as sufficient to avoid invocation of the first proviso to Section 11(3) of the Act also. Resultantly, the claim for eviction was declined.

6. Before the Appellate Authority the contention of the

respondents was that both the said rooms were utilised by the respondents for other purposes and that contention was accepted. The Appellate Authority took a definite view that falling of the said rooms vacant was not proved to be before filing of R.C.P.No.15 of 2012 and obtaining of the said rooms by the respondents being a subsequent event, the same should not have been taken into account by the Rent Control Court as a reason to decline the eviction. The Rent Control Court observed that the respondents despite getting vacant possession of such rooms failed to state

anything in the R.C.P. and therefore their bona fides became doubtful and the said observation was also found by the Appellate Authority misplaced for the reason that there was no evidence to show that the said rooms got vacated before filing of the R.C.P.

7. The learned Counsel appearing for the petitioner would

submit that room No.III/1366 was the subject matter of R.C.P.No.20 of 2009, a copy of the said petition is Ext.B1, and the purpose for seeking eviction in that R.C.P. being the need of Sri.Mohammed Shafeeqe, non-occupation of the said

room by him tells upon the bona fides of the need. Further, it is contended that room No.III/1367, which also is adjacent to the petition schedule shop room, got vacated and the explanation for not occupying that also is not satisfactory.

8. Answer of the learned counsel appearing for the

respondents in the above regard is that in room No.III/1366 Sri.Sali Haji had started a business and after his death the 2 nd petitioner has been continuing that business. From the evidence on record, it is not seen that the said room was surrendered by the tenant before institution of this R.C.P., and therefore, the Rent Control Court should not have found fault with the respondents for not mentioning about that room in the Rent control Petition. The other

room was vacated for a different purpose and the same is in occupation of the 2nd petitioner, PW1, and therefore, the same also cannot be a reason to doubt the bona fides of the need.

9. While examining, PW1 admitted in court that after filing

R.C.P.No.20 of 2009, the tenant in room No.1366 surrendered vacant possession. Getting possession of room No.1367 has also been admitted by PW1. He gave evidence for and on behalf of all the respondents. When he admits that two rooms next adjoining to the petition schedule shop room were obtained vacant prior to or after the filing of this Rent Control Petition, there certainly arises a

question whether that would affect the bona fides of the respondents in claiming eviction of the petitioner on the ground of bona fide need. While the Rent Control Court held that the explanation given by the respondents in that regard was not satisfactory. The view taken by the Appellate Authority to dispel the said finding is that after filing of the R.C.P. only such events occurred, and therefore, the same should not have been taken into account by the Rent Control Court.

10. From the evidence available on record it is not able to say when exactly had the respondents obtained vacant possession of room Nos.1366 and 1367. But it is beyond dispute that they

obtained possession of the said rooms during pendency of the R.C.P. The fact that the tenant in room No.1366 vacated was added in the petition itself by way of amendment. The Appellate Authority has taken a definite view that such subsequent events could not be considered. This Court in *Gireeshbabu T.P. v. Jameela and others* [2021 (5) KHC SN 30] after referring to the decisions of the Apex Court in *Ramesh Kumar v. Kesho Ram* [AIR 1992 SC 700], *Kedar Nath Agrawal v. Dhanraji Devi* [(2004) 8 SCC 76] and *Maganlal Kishanlal Godha v. Nanasaheb Uddhaorao Gadewar* [(2008) 13 SCC 758] and also a few other decisions on the point held that subsequent events that have a bearing on the relief claimed by a party can be taken into consideration. It was also observed that the subsequent events which have fundamental impact on the rights claimed by the rival parties have to be taken into account while adjudicating the claim for eviction on the ground of bona fide need. In such cases, the normal rule that the state of affairs as on the date of institution of the litigation alone are relevant is not invariable. In view of the said legal principle, the view taken by the Appellate Authority that the Rent Control Court should not have considered the impact of getting vacant possession of two rooms after the filing of the R.C.P., is not correct.

11. Ext.B1, eviction petition was filed by Shri.Sali Haji in

2009. The need urged in that petition for claiming eviction is extracted below:

(c) The petitioners having five sons and two daughters. Out of which K.M.Muhammadali and K.M.Shafeeq are unemployed and they have no idea of going outside for employment. Instead they have expressed desire to start a Readymade Garments shop at the petition 'A' schedule building which is situated near the bus stand at Kottachery. On thorough study it is revealed that there is sufficient scope for Readymade Garments shop at Kottachery which can be run profitably. The petitioners have the ability to start the proposed business with the assistance of Bank. The petitioners have no other suitable room in their possession in the locality for conduct of the said business. Whereas there are other rooms available in the same town to shift the business of the respondents. Hence the petitioners are entitled to get the petition

schedule room vacated on the ground of bona fide need. Moreover, the respondents have got other business at Kannur and Kasaragod and they are not depending upon the income derived from the business being conducted in the 'A' schedule room. Hence the respondents are liable to be evicted under Section 11(3) of Act 2 of 1965.

12. After getting vacant possession of that room, paragraph No.5(a) was added in the R.C.P. in this case to the effect that Sri.Sali Haji started a business in that room under the name and

style Second Skin. PW1 deposed in court that that business was stopped and later he started another business. The petitioner got a contention that the said room was let out to one Suresh and that was why photos of Hindu Gods and lit lamps in front were seen by the Commissioner in that shop. PW1 admitted that at the time of visit of the Commissioner photos and lighted lamps were there, but he asserted that Suresh was not in occupation, but he was only an employee under him. Whether the shop Second Skin was conducted initially by Sri.Sali Haji and after his death by PW1, has no much bearing; whereas, the fact relevant is only whether or not the respondents occupied the said room for the proposed purpose, i.e., to start a ready-made garments by Sri.K.M. Muhamedali and Muhammed Shafeeque. The admitted case of the respondents is that the said room was never put on use for such a purpose.

13. Room No.1367 admittedly was obtained vacant by the

respondents and the explanation for the respondents with regard to that room is that it was required for PW1's mother, the 1 st respondent herein, to conduct a Parda shop. Of course, regarding room No.1367, the landlords never projected a need, as in this case, that it was required for Sri.K.M.Shafeeque to start a business. So, getting that room vacant may not be a sufficient reason to

doubt their bona fides.

14. 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. 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.

15. 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.

16. 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. In *Gireeshbabu T. P. v. Jameela and*

others [2021 (5) KHC SN 30] this Court reiterated 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, of course, subject to the first and second provisos to Section 11(3) of the Act.

17. In this case, eviction was sought initially for using the

petition schedule shop room to start a business in electric goods and appliances by Sali Haji along with his son Mohammed Shafeeque. By way of amendment, the need was changed to the effect that the room was required for Sri.Mohammed Shafeeque, who is the 4th respondent herein and examined in the case as PW2.

18. What emerges from the above is that room No.III/1366,

eviction of which was demanded by filing R.C.P.No.20 of 2009 was vacated during pendency of R.C.P.No.15 of 2012. Although, the need stated in R.C.P.No.20 of 2009 was Sri.K.M.Muhamedali and Sri.K.M.Mohammed Shafeeque wanted to start a ready-made shop in room No.1366, they never started such a business; instead Sri.Sali Haji started a business named Second Skin. Of course, even if Sri.Mohammed Shafeeque along with Muhamedali wanted to start a ready-made

garment business, that was not a bar for Sri.Mohammed Shafeeque (PW2) to start one more business in electrical goods and appliances in the petition schedule shop room. But when the tenant in room No.1366 was evicted, no matter, it was a voluntary or involuntary surrender, after filing of R.C.P.No.20 of 2009, and putting that room for a different purpose, claiming eviction of the petitioner from the petition schedule shop room for the purpose of PW2 himself cannot be said to be bona fide. Therefore, the finding of the Appellate Authority that obtaining of vacant possession of two rooms by the respondents during pendency of this proceedings does not have any bearing and also the further finding that the need urged by respondents 1 to 7 is a bona fide one, do not sustain either on facts or in law. The said

findings are against the evidence on record. The need urged is sincere or honest. Therefore, we hold that eviction of the petitioner ordered by the Appellate Authority on the ground of bonafide need is liable to be set aside.

19. 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.

20. 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 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.

21. 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.

22. The reasons stated above for finding the need urged by

the respondents not bona fide are applicable while considering the case of the petitioner in the context of the first proviso to Section 11(3) of the Act as well. The allegation that the respondents let out room No.1366 during pendency of this proceedings to one Suresh is not supported by sufficient evidence. The fact which is proved is that vacant possession of two rooms were obtained by respondents 1

to 7. Explanation offered by them for not using either of the said rooms for the need projected in this case is not explained satisfactorily. Therefore, the bar created by the first proviso also disentitles the respondents from getting an order of eviction in respect of the petition schedule room.

23. Accordingly, we allow this Rent Control Revision. The

judgment of the Appellate Authority (District Judge), Kasaragod,

dated 13.10.2017 in R.C.A.No.6 of 2016 is set aside. Consequently, R.C.P.No.15 of 2012 of the Rent Control Court (Munsiff), Hosdurg, stands dismissed. No costs.

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

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