Ameer Ali Vs. S. Koder

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SooperKanoon Citation : sooperkanoon.com/718795

Court : Kerala

Decided On : Feb-20-2004

Reported in : 2004(2)KLT104

Judge : K.S. Radhakrishnan and; Pius C. Kuriakos, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(4)

Appeal No. : R.C.R. Nos. 177 and 178 of 2003

Appellant : Ameer Ali

Respondent : S. Koder

Advocate for Def. : T.K.M. Unnithan,; K.P. Unnikrishnan and; K.S. Sathish Ba

Advocate for Pet/Ap. : T.R. Raman Pillai, Sr. Adv. and; T.R. Ramachandran Nair, Adv.

Judgement :
ORDER

Pius C. Kuriakose, J.

1. The landlords are the revision petitioners. Their application for eviction of the tenant on the ground of requirement of reconstruction, Section 11(4)(iv) of Kerala Act 2 of 1965 (for short, the Rent Control Act), was allowed by the Rent Control

Court and confirmed in appeal, in revision and ultimately in a proceeding under Article 227 of the Constitution of India at the instance of the tenant. The landlords did not carry out reconstruction within the time specified in the eviction order. The tenant took another building in the neighbourhood on lease paying a much higher rent. Ultimately the landlords completed the reconstruction of the while building, but did not induct the tenant into the building. The tenant filed two separate I.As, I.A. No. 2616 of 1999 for induction of the tenant into possession of the reconstructed building and I.A.No. 420 of 1996 seeking award of damages under the second proviso to Section 11(4)(iv).

2. The Rent Control Court allowed the application for reinduction. But the other application for award of damages was not allowed by that court which took the view that the landlords were not willfully negligent in the matter of carrying out reconstruction and that the delay had been occasioned on account of reasons beyond the landlords' control.

3. The tenant preferred appeal as R.C.A.No. 80 of 2002 against the order refusing damages while the landlords preferred appeal as R.C.A. No. 84 of 2002 against the order directing reinduction. The Rent Control Appellate Authority considered both the appeals together and disposed them of by a common judgment. Allowing the tenant's appeal, the Appellate Authority found that the delay caused in the matter of carrying out the reconstruction of the building till February, 1996 was attributable to reasons beyond the control of the landlords and that the delay thereafter was liable to be accounted for by the landlords. Accordingly damages at the rate of Rs. 3425 per mensem, a sum equal to the excess rent which the tenant paid for the building he had taken on lease, was awarded in favour of the tenant. The landlords' appeal was also partly allowed and the order of the Rent Control Court was modified so as to allow reinduction specifically in respect of an area ear-marked in the approved plan-a two shutter portion in the ground floor having a total carpet area of 320 sq. feet - thereby reducing the area directed by the Rent Control Court to be delivered over to the tenant. Both the present revision are filed by the landlords and it appears that the tenant has no grievance regarding the area ordered to be reallotted.

4. Shri T.R. Raman Pillai, Senior Advocate addressed us on behalf of the revision petitioners-landlords while Shri T.K.M. Unnithan, Advocate addressed us on behalf of the tenant. The lower court records are available for our perusal

5. Shri T.R. Raman Pillai submitted that both the I.As., I.A Nos. 2616 of 1999 and 420 of 1996, are not maintainable in law in as much as they are preferred by a partnership firm by name M/s. S. Koder which was not a party to the rent control proceedings even. Inviting our, attention to the trial records of the case including the rent control petition and the common order of eviction passed by the Rent Control Court under Section 11(4)(iv) in the present rent control petition and connected R.C.P.Nos. 83, 85 and 90 of 1985, counsel submitted that the respondent in the present rent control petition, i.e. R.C.P.No. 87 of 1985, was an individual by name S. Koder and not any partnership by name M/s. S. Koder, the petitioner in the two I.As. Counsel drew our attention to Ext.B1 judgment of this Court in O.P.No. 14662 of 1992, an original petition under Article 227 which was filed impugning the orders of eviction concurrently passed by the Rent Control Court, the Rent Control Appellate Authority (then Sub Judge) and the Rent Control Revisional Court (then District Judge). Our attention was drawn specifically to para.4 of the judgment wherein a plea by the petitioner in that case, obviously the petitioner in the two I.As., that the rent control petition is not maintainable since all the partners of M/s. S. Koder, a partnership firm were not made parties to the proceedings, was turned down by this Court observing that the tenant was described as S. Koder in the rent control petition and that in the statement of objections filed by Shri S. Koder no contention was raised that it is a partnership firm which was in possession of the building. The identity of the tenant, learned Senior Counsel submitted, was of paramount importance since it is only the tenant who was evicted pursuant to the order under Section 11(4)(iv) who could maintain the interlocutory applications for reinduction and damages.

6. Inviting our attention to the three provisos to Section 11 (4)(iv), learned Senior Counsel submitted that the second proviso has application only in cases where the landlords has not reconstructed the building after evicting the tenant and does not apply to the present case where though belatedly the reconstruction had been completed. Assailing the award of damages as a multiple of the difference

between the rent which the tenant is paying to his present landlords Shri Suresh Bhat and what he was paying for the building from which he was evicted, Shri Raman Pillai submitted that the monthly damages cannot be anything more than the difference between the fair rent Of the reconstructed building into which the tenant is being reinducted and the rent which the tenant is currently paying to his present landlord. Determination of damages, counsel submitted, shall be different to a post-induction stage.

7. Reminding us of the limitations of our powers under Section 20, Shri T.K.M. Unnithan submitted that there was no justification for a reappraisal of the evidence on the question of identity of the tenant since the findings in that regard are concurrent and based on evidence. Regarding the observations contained in Ext. B1, counsel submitted that those observations can never operate as res judicata. According to counsel, it was only due to an omission that the prefix 'M/s.' was not used to the name 'S. Koder'. The right of reinduction, counsel submitted, goes with the reconstructed building and it is not a personal right. Regarding the provisos, learned counsel submitted that they are separate provisos operating in different fields. Counsel fortified his submissions with authorities such as George v. Thressia, 1992 (1) KLT 65, Arunachalam Pillai v. District Court, 1990 (2) KLT 881 and Ratnakara Shenoy v. Rent Controller, 1989 (2) KLT 690. The power of the court under the second proviso, according to counsel, was a considerable amplitude and it was the duty of the court to ensure that the landlord who obtained eviction under Section 11(4)(iv) does not take the tenant and the court itself for a ride.

8. We shall first deal with the dispute regarding the identity of the tenant against whom the order of eviction was passed by the Rent Control Court. Senior Advocate Shri T.R. Raman Pillai capitalizing on the name and description of the respondent in the original R.C.P. would argue that the respondent was an individual by name S. Koder and not M/s. S. Koder which is the petitioner in the two I As. The trump card of Shri Raman Pillai of this argument is Ext.B1 judgment of this Court in the O.P. filed by the respondent in the R.C.P. and an order passed by this Court refusing to review Ext. B1. The cause title description of the respondent in the original R.C.P. which is carried over to the eviction order actually

passed by the Rent Control Court describes the respondent as just S. Koder and not M/s. S. Koder, a partnership firm represented by its partners. The third proviso to Section 11(4)(iv) which lays down the statutory right of reinduction confers such right on the evicted tenant and therefore the argument presently raised by Shri Raman Pillai cannot be brushed aside as irrelevant. The argument is attractive at least at first blush.

The right of reinduction or re-allotment conferred by the statute upon evicted tenants is not a purely personal right conferred on tenants. Instead it is a right which is annexed to or goes with the reconstructed building. The trial side records pertaining to the rent control petition will certainly reveal that all along the respondent in the R.C.P. maintained that it was not any individual but a partnership firm of which Shri S. Koder, the signatory to the statement of objections before the Rent Control Court who was examined as PW.7 was the Managing Partner at that time. Even Ext. B2 judgment which is highlighted before us by the landlords will reveal that the respondent in the R.C.P. understood the eviction proceedings as one instituted against a partnership firm by name S. Koder. Had the draftsman of the R.C.P. taken care to prefix name of the respondent with the abbreviation 'M/s' perhaps the present controversy regarding identity of the tenant would not have even arisen. Notably in the R.C.P. 'S. Koder' was not described by details such as age, father's name etc. as one would expect in the case of individuals. The argument which was raised before this Court in Ext.B1 case was not that the rent control petition was not filed against the real tenant, a partnership firm. On the contrary, the argument was only that the real tenant, a partnership firm has not been properly arrayed as a party in the sense that all the partners have not been made respondents eo nominee in the rent control petition. Obviously Ext.B1 O.P. was filed at a time when it was understood that Order XXX of the Code of Civil Procedure dealing with suits by and against partnership firms does not apply to proceedings under the Rent Control Act vide Chhotelal Pyarelal v. Shikarchand, AIR 1984 SC 1570. Notwithstanding the Supreme Court's view regarding the applicability of Order XXX of the Code to proceedings under the Rent Control Act, this Court had laid down in Lieye v. Kaliappa Chettiar Sons, 1995 (2) KLT 783, that firm can also be a tenant and, therefore, a rent control petition will be maintainable against a firm in the name of

the firm. The firm after all means a compendium of partners and when firm is a tenant, possessory right over the tenanted premises is being exercised by its partners. The observation in Ext.B1 judgment coming as it does in a proceeding under Article 227 cannot be equated to that of a finding binding on the parties. In the present case the person who has come forward claiming that she is the Managing Partner is none other than the daughter of Shri S. Koder who was examined as RW.7, the partner at the time when actual eviction was effected. Importantly, even if it is assumed that RW.7 was the tenant in his personal capacity, then also the present Managing Partner being daughter and legal heir has become the repository of tenancy rights. The anxiety which a landlord can lawfully have in a circumstance like the present one, the possibility of somebody else coming forward at a later point of time claiming reinduction rights, is unwarranted when the matter is seen though the above perspective. We therefore agree with the findings of the authorities below that the applications are maintainable at the instance of the petitioner represented by the present Managing Partner who is daughter of late S. Koder.

9. We shall now deal with Shri T.R. Raman Pillai's argument that the second proviso to Section 11(4)(iv) does not have application in the present case where reconstruction has been completed by the landlord belatedly though it be. Accepting this argument in our view will be to ignore the legislative intent and mandates completely. A scrutiny of the various eviction grounds provided by the Rent Control Act reveals that the ground under Section 11(4)(iv) is the only ground where the Legislature strikes an extra note of caution regarding the genuineness of the claim requesting the Rent Control Court to be convinced that the proposal is not a pretext for eviction apart from the bona fides of the need and claim underlined by Sub-section (4) and qualified by Sub-section (10). We feel this extra check or caution introduced by the Legislature has been due to the realisation that Section 11(4)(iv) is an area where there is more likelihood for claims which are not genuine being projected. The eviction order contemplated under Section 11(4)(iv) which is subject to the third proviso is actually a short term affair and the Supreme Court has indicated in Metalware Co. v. Bansilal, AIR 1979 SC 1559, that there is justification for taking a relatively liberal approach towards passing eviction orders in cases coming under statutes where a right of re-entry is given to the evicted

tenants. Toeing the same line, this Court in Madhavan v. Leelamma, 1991 (2) KLT 32, ruled that the decision of the Supreme Court in P.ORR and Sons (P) Ltd. v. Associated Publishers, (1991) 1 SCC 301, giving an emphasis to the condition of the building in cases for reconstruction will not be applicable to cases under the Kerala Statute. The provisos to Section 11(4)(iv) actually underscore the anxiety of the Legislature to ensure that the eviction order under Section 11(4)(iv) is a temporary affair and the tenant ultimately comes back to the reconstructed building. The first proviso deals with the landlord's liability for fine which he will incur only if it is established by evidence that he has willfully neglected to reconstruct the building completely within the time originally fixed or as extended subsequently. The third proviso deals with actual reallotment of the reconstructed building and the same comes into operation only after the reconstruction is completed and the building is ready for occupation. The second proviso with which we are more concerned in this case is an independent proviso which operates differently and in a different area. The second proviso deals with situations subsequent to eviction but prior to reallotment. The said proviso empowers the Rent Control Court to issue appropriate directions to the landlord regarding reconstruction of the building and to give effect to such directions in any effective manner including in appropriate cases by directing restoration of possession of the old building if the same has not been pulled down or even the situs of the old building [George (supra)]. Award of damages to the tenant is also one of the manners mentioned in the second proviso which can be adopted by the court for giving effect to the orders and directions passed by the court under the second proviso. It is often noticed in many cases that it is after long-drawn out legal battles that landlord succeeds in obtaining actual eviction of his tenant under Section 11(4)(iv). The delay during the pre-eviction litigation perhaps provokes the landlord to reply his tenant in the same coin and he does not do anything seriously about reconstruction except perhaps pulling down the old building. In many cases reconstruction process is delayed deliberately with the objective of creating a situation wherein the tenant may become frustrated and give up his idea of coming back to the reconstructed building. But spirited tenants like the one before us will never give up the battle and will see to it that the landlord is compelled to complete the reconstruction and make the building ready for reallotment. To accept the

argument that the second proviso and especially the power given under that proviso to award damages to a tenant who was compelled to take another building on lease pending completion of reconstruction work by the landlord will not have application in cases where reconstruction is made, however late it may be, will be doing violence to the obvious legislative objective which is to ensure that the order of eviction under Section 11(4)(iv) which is integrally intertwined with the landlord's statutory obligation under the third proviso to make reallotment is obeyed in letter and spirit. A tenant who is evicted under Section 11(4)(iv) will not ordinarily be very much concerned or enthusiastic about the first proviso since the same does not fetch him any relief. He will be concerned more about the other two provisos and it is to be noticed in this connection that most of the post-eviction litigations under Section 11(4)(iv) arise out of proceedings under the second proviso. We have little difficulty to hold that the second proviso continues to have application in the present case though the landlords have already completed the reconstruction of the building.

10. Now we shall deal with Mr. Raman Pillai's argument as to the amount that should be awarded as damages to a tenant like the one before us who has been compelled to take another building on lease waiting for the landlord to complete the reconstruction of the old building. Going by the proviso the damages can be equal to the excess rent he has to pay for another building that he is occupying in consequence of such eviction. Excess over what? According to Shri Raman Pillai, the excess contemplated is excess over the fair rent of the reconstructed building and not excess over the contract rent of the old building. Therefore, the Senior Counsel argues that quantification of damages should be deferred till such time as the fair rent of the reconstructed building is fixed. It is now trite, the learned counsel submits, that all the tenants, whether evicted or otherwise, shall pay fair rent. The above argument of the learned Senior Counsel though attractive cannot be accepted. The Section clearly speaks of the excess rent which the tenant has become compelled to pay in consequence of such eviction which clearly means the difference between the rent which he would have paid but for the eviction order and the rent which he is paying for the alternate premises acquired by him waiting for completion of the reconstruction.

11. However, we do agree that there may be cases where the tenant even in collusion with his new landlord pays a highly exorbitant rent to that landlord so that the landlord who evicted him will be made accountable. To that extent and enquiry regarding the fairness or reasonableness of the rent of the building temporarily occupied by the tenant will be warranted and it will always be open to the Rent Control Court to limit the damages as the difference between the rent reasonably payable for the alternate building taken on lease and the rent which was being paid for the evicted building.

12. Shri Raman Pillai raised yet another argument that the award of damages by the Appellate Authority at any rate has been exorbitant. We will now consider this argument. The contract rent which the tenant is paying for the building he has taken on lease from his new landlord Suresh Bhat is Rs. 3600 per mensem which is Rs. 3425 in excess of the contract rent of Rs. 175/- which he was paying for the building wherefrom he was evicted. We do not find anything in evidence to indicate that the sum of Rs. 3600 is in excess of the fair or reasonable rent currently paid for the new landlord's building. The landlords are prudent enough not to take such a stand since the same will have adverse effect on their own prospective claims as to what could be the fair rent of the building they have reconstructed. We notice that the Appellate Authority has condoned the delay caused in the matter of carrying out the reconstruction upto February, 1996 stating that the delay upto that period was inevitable. The damages have been awarded at Rs. 3425/- per mensem for the period commencing from March 1996 till the date of induction into the area specified in the order of the Appellate Authority. One aspect of the matter seems to have gone unnoticed by the Appellate Authority. The total area into which the tenant is going to be reinducted is only 320 Sq.ft. which is only one-half of the area which the tenant was enjoying in the old building. It appears that there has been some consensus between the parties before the Appellate Authority that the tenant need be reallotted only the ear-marked area having 320 Sq. ft. The area of the building temporarily taken on lease by the tenant from Shri Suresh Bhat is more than 600 sq. feet, an area almost equal to the area the tenant was enjoying in the old building. The Appellate Authority, it appears, though that the court is bound to award the difference between the original contract rent and the rent currently paid by the tenant as damages. Though a plain reading of the second

proviso to Section 11(4)(iv) tends to justify such a view, we are of the view that the Rent Control Court has sufficient discretion in an appropriate case to award a lesser amount as damages. Having regard to the circumstances obtaining in the present case, we are of the opinion that the quantum of damages fixed by the Appellate Authority can be reduced but only subject to the condition that there is immediate obedience with the direction regarding reinduction.

13. The result of the above discussions is that the judgment of the Rent Control Appellate Authority will stand confirmed and the R.C.P. will stand disposed of passing the following directions:-

1. The revision petitioners-landlords will induct the respondent M/s. S. Koder into the ear-marked portion of the reconstructed building within 45 days from today.

2. They shall pay damages to the respondent at the rate of Rs. 3425 per mensem from 1.3.1996 till the date of actual reinduction into the reconstructed building so however that in case the reinduction takes place within 45 days from today, their liability for damages will stand reduced to the rate of Rs. 1712.50 per mensem.

3. The Rent Control Court will fix the fair rent for the building into which the tenant is reinducted on the basis of the various guidelines set out by us in Aboobacker v. Vasu, 2003 (3) KLT 1029 and the reviewed order in Issac Ninan's case (R.P.No. 23 of 2004 in O.P. No. 10733 of 1987) - 2004 (1) KLT 767 Edger Ferus v. Abraham Ittycheria

The parties will suffer their respective costs.