**Gopi Vs. Joseph**

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**SooperKanoon Citation** : sooperkanoon.com/719323

**Court** : Kerala

**Decided On :** Mar-08-2004

**Reported in** : AIR2004Ker231; 2004(2)KLT241

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

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

**Appeal No.** : C.R.P. No. 311 of 1998

**Appellant** : Gopi

**Respondent** : Joseph

**Advocate for Def.** : V. Giri, Adv.

**Advocate for Pet/Ap.** : Viju Abraham and; P.C. Chacko, Advs.

**Judgement** :
ORDER

**K.S. Radhakrishnan, J.**

1. The question that has come up for consideration in this case is whether failure to sign a registered notice intimating contravention of the conditions of lease 11 (4)(i) of Act 2 of 1965 would render an application for eviction non-maintainable.

2. Section 11 (4)(i) of the Act enables the landlord to apply to Rent Control Court for an order directing the tenant to put the landlord in possession of the building if the tenant after commencement of Act 2 of 1965 without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so. The proviso to the said section obliges the landlord to send a registered notice to the tenant intimating the contravention of the condition of the lease if he seeks an order of eviction under Section 11(4)(i) and within thirty days of the receipt of notice of the contravention the tenant could terminate the transfer or sublease and defend a petition filed by the landlord under Section 11(4)(i). In the instant case the registered notice was sent by the landlord through his advocate, but the advocate failed to put his signature in the notice, consequently the tenant did not respond though received the notice.

3. Counsel for the tenant also submitted a registered notice signed by the landlord or his representative is a mandatory requirement and since the said requirement has not been satisfied there is no proper notice under the proviso to Section 11(4)(i) and therefore the petition filed under Section 11(4)(i) is not maintainable. Counsel appearing for the landlord Sri. P.C. Chacko submitted the statute contemplates only a registered notice and failure to sign would not render the notice defective. The landlord need only intimate the contravention through a registered notice and on receipt of that notice if the tenant fails to terminate the transfer or sublease the landlord will have a cause of action under Section 11(4)(i). Counsel submitted landlord had entrusted the matter to his lawyer who sent a notice in his letterhead, but advocate failed to sign the notice and therefore the landlord cannot be penalised.

4. The notice sent was a registered notice, the contravention of the conditions of lease has been specifically mentioned, and the only defect was that the lawyer failed to sign the notice. The word 'notice' in its legal sense may be defined as information concerning a fact actually communicated to a party through an authorised person, which information is regarded as equivalent to knowledge of its legal consequence. As per statute if the tenant sublets the premises without the consent of the landlord it is objectionable, so also if the tenant transfers his rights

under the lease to any other person is also objectionable. The purpose and object of the proviso is only an intimation to the tenant of the contravention of the conditions of the lease. Tenant has been alerted of the contravention. In order to avoid an order of eviction it is necessary to terminate the transfer or sublease within thirty days of the receipt of the notice or refusal thereof. A learned Judge of this Court had occasion to consider the issue in Abdurehim Sait v. Sahul Hameed, 1981 KLT 289 and in Rakesh Kumar and Anr. v. Hindustan Everest Tool Ltd., (1988) 2 SCC 165. In view of the above mentioned reasons we are inclined to hold that though an advocate has failed to sign in the lawyer notice sent under the proviso to Section 11(4)(i) since no prejudice has been caused to the tenant, the notice is a proper notice. Hence the petition under Section 11(4)(i) is maintainable.

5. The building was rented out to the original tenant vide Ext.A1 lease deed dated 14.1.1968 on a monthly rent of Rs. 30/- which was enhanced to Rs. 60/-. Tenant was conducting radio repair work under the name and style 'O.K. Radio Repairing Institute.' But in violation of the terms of rent deed and without the consent of the landlord the tenant has sublet the premises to one Inasu. Tenant resisted the petition contending that Inasu is an instructor employed by him and Inasu is not conducting any business in the schedule premises. Evidence consists of the testimony of PWs.1 and 2 and documents marked as Exts.A1 to A5 on the side of the petitioner. Respondent examined RWs.1 to 3 and marked Exts.B1 to B12 documents on his side. C1 is the commission report. Landlord has established in this case the presence of Inasu. Burden is on the tenant to show that there has not been any objectionable sublease. Reference may be made to the decision in Vialaparambil Gopi v. Chundamveettil Pazhaya Ottayil Mohammed Basheer, 2003 (3) KLT (SN) 114 = 2003 (3) KHCACJ 670. So far as this case is concerned in our view the tenant failed to establish the jural relationship between him and Inasu. Landlord was examined as PW1. He has specifically stated that the tenant has ceased to occupy the tenanted premises and he is conducting an institute having an area of more than 2000 sq. feet. The specific case of the landlord is that Inasu is conducting the radio repair business and he is in exclusive possession. Landlord PW-1 had produced Ext.A5 document which is an extract of the property tax register maintained by the local authority for the period 1988-93. The said document would show that the occupant of the premises is Inasu. Commission

was taken out. C1 is the commission report. When the Commissioner inspected the premises the original tenant was not present, but Inasu was present. The tenant failed to produce any document to show that Inasu was not conducting the business prior to the issuance of notice to the tenant. On the other hand, B6, B7 series and B8 and B12 documents produced by the tenant are all subsequent to the institution of the petition. RW1 has stated that Inasu was employed by him from 1981 onwards and no objection was raised by the landlord, in the event of which he should have produced the muster roll and other relevant records of previous years. No document has been produced. Going by the evidence adduced by RW2 Inasu the dimension of the tenanted premises is only 8 x 7 feet. It is difficult to believe that the tenant is used to conduct practical training for his students in that area. Admittedly he has started training institute in an area of 2000 sq. feet. All these facts would indicate that Inasu was in actual occupation of the premises. Under such circumstance we are in agreement with the Appellate Authority that the landlord is entitled to get eviction under Section 11(4)(i) of the Act.

6. Consequently revision lacks merits and the same is dismissed. However, in the facts and circumstances of the case we are inclined to grant time to the tenant upto 30.6.2004 for vacating the premises on condition that he would file an undertaking before the Rent Control Court within one month that he would vacate the premises within the aforesaid time and that he would pay arrears of rent if any, and also future rent.