

Jamal Vs. Safia Beevi

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Court : Kerala

Decided On : Jan-31-2005

Reported in : 2005(2)KLT359

Judge : K.S. Radhakrishnan,; A.K. Basheer and; M.N. Krishnan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11, 11(2), 11(3), 11(4), 11(7), 11(8), 11(10) and 14(1)

Appeal No. : C.R.P. Nos. 1748 and 2222 of 2001

Appellant : Jamal

Respondent : Safia Beevi

Advocate for Def. : R.S. Kalkura and; G.S. Reghunath, Advs.

Advocate for Pet/Ap. : S.V. Balakrishna Iyer and; P.B. Krishnan, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Can a landlord unite different causes of actions against different tenants in a single Rent Control Petition in the event of which such a petition will be bad for

misjoinder of causes of actions or misjoinder of parties due to multifariousness, is the question that has come up for consideration in these cases.

2. A Division Bench of this Court in C.R.P. Nos. 714 of 1992 and 573 of 1993, to which one of us (K.S. Radhakrishnan, J.) was a party has taken the view that rent control legislation does not contemplate a single application against separate tenants holding separate lease arrangements. However it was opined that Rent Control Court can order consolidation of such applications for the purpose of collecting evidence if the Court deems it expedient to do so either because common questions are involved in all of them or on account of any other reason. Another Division Bench of this Court consisting of P.K. Balasubramanyan, J. (as he then was) has considered this question in Sulthan v. Mohanan (2000 (3) KLT 338) and have taken the view that there cannot be any objection to a single petition being maintained for eviction if the claim is for reconstruction of the entire structure. When the present Revision Petitions came up for consideration before a Division Bench, the Bench noticed the conflicting views expressed by the two Division Benches and the matter was placed before us for an authoritative pronouncement.

3. Landlord in this case, sought eviction of various tenants in occupation of distinct portions of the same building under Sections 11(2)(b), 11(4)(i) and 11(4)(v) of Act 2 of 1965. First counter petitioner is in occupation of T.C. No. 38/679 on a monthly rent of Rs. 36/- which was sublet to the second counter petitioner. T.C. No. 38/680 was rented out to the fourth counter petitioner on a monthly rent of Rs. 10/- which was subsequently enhanced to Rs. 25/-. Fourth petitioner is conducting barbershop with the help of the fifth counter petitioner, his son. Father of counter petitioners 6, 8, 9 and 11 and husband of the 7th counter petitioner were occupying T.C. Nos. 38/681 and 38/682 on a monthly rent of Rs. 50/-. After the death of their father, 6th counter petitioner is conducting business and counter petitioners 6 to 9 are assisting him.

4. Landlady filed a single petition for eviction of the tenants who are in occupation of the distinct portions of the same structure. Contention was raised before the Rent Control Court that a single petition against all the tenants is not maintainable

and there would be misjoinder of causes of actions. Rent Control Court held that since the scheduled building in its entirety is a single structure consisting of different shop rooms having different tenants in occupation of the different portions causes of actions can be united in one petition and there is no misjoinder of causes of actions. Rent Control Court therefore ordered eviction under Sections 11 (2)(b) and 11 (4)(i v) of the Act as against counter petitioners 1, 4, 6 to 9 and 11. Petition was allowed under Section 11(4)(i) as against counter petitioners 1, 3 and 6 to 9 and 11 to 13. Aggrieved by the order passed by the Rent Control Court counter petitioners preferred appeals before the Appellate Authority. No specific ground as against the maintainability of the petition was raised before the Appellate Authority and therefore it did not examine that question. Appellate Authority dismissed both the appeals. Aggrieved by the said judgment, matter has been taken before this Court in C.R.P. No. 1748 of 2001 and C.R.P.No. 2222 of 2001. The question of maintainability of a single petition was also taken up alleging misjoinder of causes of actions.

5. In *S.M. Gopalakrishna Chetty v. Ganeshan* (AIR 1975 SC 1750) the Apex Court examined the question as to whether landlord who is the holder of the life interest in the property is entitled to evict the tenants under Section 14(1)(b) of the Act on the ground that the building is bona fide required by the landlord for demolition and for reconstruction. The second question raised was whether a single petition is maintainable to evict the tenants from two different tenancies one for residential purpose and the other for non-residential purpose. On the latter point the High Court held that a single petition is maintainable. With regard to the contention that a single petition in respect of the two different tenancies, although in the same premises, one for residential purpose and the other for non-residential purpose is not maintainable, the Apex Court held that such a petition would be maintainable if the tenancy is one.

6. Learned single judge of this court, G. Balagangadharan Nair, J., in C.R.P. Nos. 1129, 1226 and 1252 of 1977 had occasion to consider a similar issue. That was a case where two landlords brought a common petition for evicting six tenants who were in occupation of one single building which consisted of 9 rooms of which 4 rooms owned by one landlord and the other 4 rooms by another landlord. Petition

was on the basis that the building was over 50 years old and was in a dilapidated condition and therefore it required reconstruction. Rent Control Court allowed eviction. Appeals preferred by the tenants were rejected. So also revisions preferred by them. Contention was raised before this Court in the C.R.P. that the eviction petition was bad for misjoinder of parties who were holding distinct portions of the same structure under separate engagements. Repelling the contention learned Judge took the view that the proceeding is not vitiated by misjoinder of causes of actions or misjoinder of parties and that there is no evidence to show that there was any failure of justice. Chandrasekhara Menon, J. had also occasion to consider similar issue in *Devassia v. St. Mary's Forane Church* (1983 KLT 172). The question raised therein was whether the Rent Control Court has jurisdiction to entertain a single petition for eviction of tenants who have taken distinct parts of same structure on independent tenancies. In that case, Writ Petition was filed by St. Mary's Forane Church under Sections 11(3) and 11(4)(iv) of Act 2 of 1965. The church has got a storied building with number of rooms. Writ petitioners were tenants of the separate rooms in that building. When the Rent Control Petition was filed, the maintainability of the petition and jurisdiction of the Court to entertain the petition on the ground that a single petition for eviction of tenants whose tenancies are separate, distinct and independent was raised. Rent Control Court repelled the contention and held that petition is maintainable against which Writ Petition was preferred before this Court. Dismissing the said Writ Petition, learned judge held that a single petition is maintainable. A Division Bench of this Court in C.R.P. Nos. 2608, 2609 and 2611 of 1998, also examined the question whether R.C.P. No. 9 of 1992 filed by the landlord for evicting 19 tenants is maintainable. Placing reliance on the decision of a Division Bench of this Court in C.R.P. No. 2714 of 1992, the Court held that such a petition is not maintainable and opportunity was given to the landlord to file separate petitions. Another Division Bench of this Court in *Sulthan v. Mohanan* (2000 (3) KLT 338) held that the petition for eviction under Section 11(4)(iv) is maintainable when the claim for reconstruction relates to the entire structure consisting of various buildings as defined under the Act. The Division Bench affirmed the decision in *Devassia*'s case, *supra* to that extent. Another Division Bench in *Annie George v. Jamal* (2003 (2) KLT 530) examined the question as to whether single petition for eviction of

two tenants for two different causes of action, namely to shift his residence and to start an ice cream parlour under different tenancies would be maintainable. The Bench held that the causes of action against the two tenants are different and therefore there is misjoinder of causes of action and the petition is held not maintainable.

7. The Kerala Buildings (Lease and Rent Control) Act, 1965 is an Act to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala. Section 11(10) of the Act stipulates that the Rent Control Court shall, if it is satisfied that the claim of the landlord under Sub-sections (3), (4), (7) or Sub-section (8) is bona fide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Rent Control Court, and if the Court is not so satisfied, it shall make an order rejecting the application. Landlord can seek eviction of the tenant only on specified grounds mentioned in Section 11 of the Act. Grounds for eviction mentioned in Section 11 are 11(2), 11(3), 11(4)(iv), 11 (8), 11(4)(iii) and so on. Grounds stated under Section 11 are distinct and separate and give independent causes of action to the landlord. Causes of actions are synchronised with the right to file application for eviction.

8. Landlord may let out distinct portions of a single structure to various tenants of which one may sublease the premises to a third party which gives rise a cause of action to the landlord under Section 11(4)(i) of the Act. Another portion of the same structure let out to another tenant may also be required for the landlord for own occupation which may give rise to a cause of action under Section 11(3) of the Act. Failure to pay rent by the tenants may also give rise to a cause of action under Section 11(2)(b) of the Act. Bona fide need for reconstruction under Section 11(4)(iv) gives, rise to another cause of action against a solitary tenant or against different tenants occupying distinct portions of the same structure. Distinct and separate grounds of eviction are therefore available to the landlord for eviction of the tenants under Sections 11(3) and 11(4)(iv), 11(4)(i) etc. of the Act. So also distinct and separate grounds are available to tenants to defend a petition for eviction. Landlord has to show in an application under Section 11 (4)(iv) that the building is in such a condition that it needs reconstruction and the requirement is

bona fide and that he has got plan and licence and also the ability to rebuild, he can then successfully prefer a petition. Rent Control Court can then order eviction against all the tenants who are in occupation of the distinct portions of the same structure. Joint interest in the Rent Control Petition is a condition precedent to the joinder of several causes of action against several tenants. Causes of actions in such a situation is joint and united and there is no misjoinder of causes of actions and misjoinder of parties. The defences available to all the tenants in such a situation are also the same and generally common question of law and facts would arise for consideration. All the tenants have got the right to exercise their option and are entitled to allotment after reconstruction. All the tenants are also entitled to get the benefits of other provisos under Section 11(4)(iv) as well.

9. The principle behind such an action is that even in cases the landlord seeks individual reliefs where the enquiry would be a large extend be identical in each individual Rent Control Petition the landlord may unite all the causes of action in one petition so as to avoid multiplicity of petitions and to avoid unnecessary expenditure. The trial of the petitions should not be embarrassed by simultaneous investigation of totally diversified causes of actions. We therefore affirm the judgment in Sultan v. Mohanan's case (supra). Landlord can also unite in the same petition several causes of action against single tenant. For example; landlord can unite grounds under Section 11(4)(i), 11 (4)(iii), 11 (4)(iv), 11 (8), etc. against single tenant. In such a situation also, petition is not bad for misjoinder of cause of action, because there would not be any conflict of interest between the tenants inter se. We are therefore of the view that a single petition for eviction under Section 11(4)(iv) would lie against all the tenants who are in occupation of distinct portions of the same structure, in the event of which there is no misjoinder of causes of action or misjoinder of parties and the petition is not hit by multifariousness.

10. The difficulty arises when the landlord unites several causes of actions against various tenants who are in occupation of distinct portions of same building under separate tenancy arrangements. Question is whether in such case there is misjoinder causes of action. Landlord can file petition for eviction of various tenants who are in occupation of distinct portion of the same building under

Section 11(4)(i), 11(3), 11(4)(iii), 11(8), etc. In such a case causes of action are distinct and separate and defences available to the tenants are also distinct and detached. For example, when landlord files petition under Section 11(3) against various tenants occupying separate portions of same structure, different consideration may follow and defences available to the tenant would also be different. One of the tenants can defeat the claim of the landlord if he could establish that there is no bona fide need but also on the ground that the tenant is entitled to the benefit of the second proviso to Section 11(3). Another tenant can also defeat the claim under the first proviso to Section 11(3) if he could establish that landlord has got another building reasonably sufficient for his requirement. Another tenant occupying a portion of the same structure would not be able to claim the benefit of the second proviso to Section 11(3) if the tenant is not depending for his livelihood mainly on the income derived from the trade or business conducted in the tenanted premises. Defences available to the tenant could be distinct and different and there would be conflict of interest inter se. So also in a petition under Section 11 (8) as against different tenants who are occupying distinct portions of the same building, tenant can claim the benefit of the first proviso stating that the hardship caused to him would outweigh the advantage to the landlord. Even if cause of action against various tenants is the same, defence available to the tenants against the landlord may be distinct and different. In such a case there is likely to be conflict of interest between the tenants inter se and single petition for eviction against more than one tenants is bad for misjoinder of causes of action and misjoinder of parties.

11. The trial of the petition would lead to simultaneous enquiry of totally unconnected controversies and would cause embarrassment to the parties and to the Court. We may in this connection refer to the words of Peacock, C.J. in *Raja Ram Tewari v. Luchman* ((1867) 8 W.R. 15).

'Such a joinder complicates the case before the Judge, and renders it exceedingly difficult for him in dealing with the case of each defendant to exclude from his consideration those portions of the evidence which may not be admissible against him, though admissible against one or more of the others. Moreover, it is vexatious and harassing to the different defendants. Such a procedure renders it almost

compulsory on all the defendants to be present, either in person, or by their pleaders, whilst the case is going on against the others in respect of matters in which they are not interested, and, moreover, it is harassing and inconvenient as regards the attendance of the witness of the several defendants, as it renders it necessary for the witnesses for each to be present, and to be detained whilst the case of the others is being heard and determined.'

We are of the view, if causes of actions against different tenants are distinct and separate and defence available to the tenants is also vary in such a case if single petition is filed uniting all the causes of action there will be misjoinder of causes of action and misjoinder of parties. Petition of such a nature would be bad for multifariousness.

12. The misjoinder of cause of action is however regarded as irregularity and not a ground on which petition be dismissed unless objection is taken at the appropriate time. Objection is to be taken at the earliest opportunity in the event of which landlord could file separate petitions. In a case where such an objection is not taken at the earliest opportunity the Court would not interfere unless there is total failure of justice. Rent Control Court always can consolidate the Rent Control Petitions if there are similar or identity on all the matters in issue in the Rent Control Petitions. Rent Control Court has got the power *ex debito justitiae* to consolidate the proceedings and proceed accordingly.

We therefore answer the questions as follows:

(i) Landlord can unite several causes of action against single tenant if he is occupying the same building in the event of which there will not be misjoinder of causes of actions and misjoinder of parties since tenant is single tenant occupying the same structure.

(ii) Landlord can prefer an application under Section 11(4)(iv) against various tenants who are occupying distinct portions of the same structure since the tenants are jointly interested in the causes of action and the defence available to all the tenants would be by and large common and hence there will not be any misjoinder of causes of actions or misjoinder of parties.

(iii) Landlord cannot unite different causes action in a single petition filed against various tenants whether they are in occupation of same building or different building. Such a petition would be bad for misjoinder of causes of actions and misjoinder of parties.

(iv) Objection as to the misjoinder of causes of actions and misjoinder of parties should be taken at the earliest opportunity; failing which Court would not interfere unless it is shown that serious prejudice has been caused to the parties.

(v) Rent Control Court can consolidate the applications for eviction if there are similarity or identity of the matters in issue in the petitions which is to be left to the discretion of the Rent Control Court, depending upon the facts and circumstances of each case.

We are of the view, as far as the present case is concerned, Rent Control Court and the Appellate Authority concurrently found that landlord is entitled to an order of eviction under Sections 11(2)(b), 11(4)(i) and 11(4)(iv) of the Act. Further, tenants could not establish that any prejudice has been caused to them by entertaining the petition. No such plea was raised by the tenants at the appellate stage and no evidence was adduced to establish that any prejudice has been caused to them. We therefore uphold the finding of the Appellate Authority and dismiss the Revision Petitions.