

Santha Kumar Vs. Karthiyani

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Court : Kerala

Decided On : Apr-02-2004

Reported in : 2004(2)KLT619

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. 2437 of 1997

Appellant : Santha Kumar

Respondent : Karthiyani

Advocate for Def. : V.V. Surendran and; P.A. Harish, Adv.

Advocate for Pet/Ap. : Sanjan Mannali, Adv.

Disposition : Revision allowed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. The question that has come up for consideration in this case is whether the interse dispute between the legal heirs of the original tenant is a reasonable cause for non-user of the tenanted premises continuously for six months as on the date

of the filing of the petition under Section 11(4)(v) of Act 2 of 1965.

2. Rent Control Petition was filed under Section 11(2), 11(3), 11(4)(v) and 11(8) of Act 2 of 1965. Rent Control Court allowed petition under Section 11(4)(v) and rejected the claim under Section 11 (2), 11 (3) and 11 (8) of the Act. Respondents 6 to 8 before the Rent Control Court filed RCA 116/93 and the 2nd respondent before the Rent Control Court filed RCA 164/93. Appeals were allowed and the eviction ordered under Section 11(4)(v) was set aside, against which landlord has come up in revision. The only question to be considered is whether the Appellate Court is justified in setting aside the order of eviction passed under Section 11(4)(v) of the Act. The fact that the tenanted premises was not being occupied by respondents-tenants for a period of more than six months prior to 21.8.1990, the date of filing of Rent Control Petition is not disputed. Landlord submitted that the respondents-tenants had ceased to occupy the room for more than 1 1/2 years immediately before the filing of the Rent Control Petition.

3. Contesting respondents however, took up the stand that on account of litigation between respondents regarding the right to use the shop room the business run there, had to be stopped. The original tenant Kanarankutty was the husband of the first respondent before the Rent Control Court, father of respondents 2 and 3, father-in-law of respondents 4 and 6 and grandfather of respondents 5, 7 and 8. Original tenant died and the respondents before Rent Control Court are his legal representatives. Sixth respondent's brother was examined as RW1. RW1 stated that the 2nd respondent and others were not ready to allow respondents 6 to 8 to participate in the management of the hotel. The 2nd respondent along with respondents 1 and 3 to 5 attempted to oust 6th respondent and her children from the petition schedule premises. Second respondent was making arrangements to sublease the premises without, the consent of the 6th respondent and her children. Then 6th respondent filed injunction suit against the 2nd respondent and others vide O.S. 1116/88. On 18.12.88 as per order in I.A. 6497/88. both the parties were directed to maintain status quo till 9.1.1989. Later as per order dated 16.2.1989 the Muasiff Court permitted the 6th respondent and her children to participate in the management of the hotel conducted in the petition schedule building. In other words, the dispute between the parties was one of the reasons

projected for not using the building for more than six months prior to the filing of the Rent Control Petition. The question is whether the dispute between the legal heirs of the tenant can be considered as sufficient cause for non-occupation.

4. We are of the view the reasons stated by the respondents are not sufficient to hold that it is a reasonable cause. Munsiff Court had not restrained the tenants from conducting the business in the petition schedule premises. Schedule premises was not used because of the dispute between the parties. Landlord is not concerned with the dispute between the respondents. If the building is kept closed and not under use its value and utility will be reduced materially and permanently. So far as this case is concerned we are of the view the tenant has not shown sufficient cause for not. using the premises. In the absence of any court order or any accident attributable directly and exclusively to natural cause without any human intervention or act of God it cannot be said that the building was not occupied with reasonable cause. Landlord also submitted that none of the respondents are paying rent in respect of the shop room and the last deposit was made only on 31.7.1990. This is also done of the reason to show that the building was not under use and no income is derived by the respondents by conducting any business in the tenanted premises.

5. We are therefore inclined to allow this revision and set aside the order of the Appellate Authority and restore that of the Rent Control Court.