

Jose Vs. Co-operative Stores Ltd.

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Court : Kerala

Decided On : Jan-27-2003

Reported in : 2003(1)KLT978

Judge : S. Sankarasubban and; K.K. Denesan, JJ.

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

Appeal No. : C.R.P. No. 2269 of 1995

Appellant : Jose

Respondent : Co-operative Stores Ltd.

Advocate for Def. : V. Giri, Adv.

Advocate for Pet/Ap. : K.T. Sankaran,; M.S. Narayanan and; N. Subramaniam,

Judgement :

ORDER

S. Sankarasubban, J.

1. Landlord is the revision petitioner. Rent Control Petition was filed under Sections 11 (2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafterreferred to as 'the Act'). According to the petitioner, the petition schedule room wasobtained by the petitioner under document No. 207/85

from his father. The respondent had taken the premises on lease from the father of the petitioner on a monthly rent of Rs. 250/-. After the assignment in favour of the petitioner, the matter was duly intimated to the tenant. The tenant then attorned to him. The petitioner needs the premises for his bona fide occupation. He intends to start business in cold storage. The petitioner has no other building in his possession and he was to start the business for earning his livelihood. The petitioner has made preliminary arrangements for starting the cold storage business. It is alleged that the tenant is guilty in keeping the rent in arrears. Further the respondent has acquired another building, where it can conduct business.

2. The petition was resisted by the tenant. The Rent Control Court came to the conclusion that the rent has been kept in arrears and hence the contention under Section 11 (2)(b) of the Act was negatived. The finding under Section 11(3) and Section 11(4)(iii) of the Act was against the landlord. Aggrieved thereby, the landlord filed an appeal. The Appellate Court, after considering the matter, dismissed the appeal. It is against that the present revision is filed.

3. We are told that so far, as the contention under Section 11(2)(b) of the Act is concerned, it does not survive now. In so far as the question of bona fide need is concerned, both the courts have found against the landlord. We perused the orders of the lower court and we are satisfied that no interference is called for. But so far as the ground under Section 11(4)(iii) of the Act is concerned, we are of the view that the order passed by the court below is not correct.

4. The respondent-tenant has admitted that it has constructed a building within 1 1/2 kms. from the present premises and it is also admitted that no suitable building is available in the locality. Learned counsel for the revision petitioner pointed out that an order under Section 11(4)(iii) of the Act can be ordered. The Appellate Court dismissed this claim. In paragraph 15 of the judgment, the Appellate Court said thus: 'The claim for eviction under Section 11(4)(iii) in this case has to be viewed in this case from a slightly different angle. The tenant in the instant case is a co-operative society. They have undertaken the sale of essential commodities with the intention of providing maximum outlets for the benefit of the public. So their idea is to start as many shops as possible so that the public can

have ready approach to them. It was with this intention that the present premises was occupied by the Co-operative Society'.

5. Learned counsel for the landlord submits that the matter has to be decided under the Rent Control Act. We are not concerned with the question of business of the Co-operative Society. They may have many ideas regarding the starting of business. But so far as the present case is concerned, the respondent is only a tenant. If the tenant has acquired a building or in possession of another building suitable for its business, it is liable to be evicted. If that be so, we find that an order under Section 11(4)(iii) of the Act cannot be made. Thus, we reverse the finding of the lower Appellate Court and hold that the respondent is liable to be evicted under Section 11(4)(iii) of the Act. Accordingly, eviction is ordered under Section 11(4)(iii) of the Act. Learned counsel for the respondent then submitted that since a Co-operative Store is running, some time may be given to his client.

6. In the above view of the matter, we grant three months time to the respondent to vacate the premises on condition that the respondent files an undertaking before the court below that it will give vacant possession of the building to the petitioner on the expiry of the third month and that they will pay all arrears of rent. Such an undertaking shall be filed within four weeks from today. If such an undertaking is not filed as stipulated above, then the petitioner can take steps to get possession of the building through court.

Civil Revision Petition is disposed of as above.

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