

Krishnan Nair Vs. Mohammed

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Court : Kerala

Decided On : Mar-09-2004

Reported in : 2004(2)KLT546

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

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(2), 11(3) and 11(4)

Appeal No. : C.R.P. No. 1630 of 1996

Appellant : Krishnan Nair

Respondent : Mohammed

Advocate for Def. : K.T. Sankaran, Adv.

Advocate for Pet/Ap. : K. Ramachandran and; P. Ramachandran, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Is failure to mention the need for own occupation in the lawyer notice issued pertaining to Section 11(4)(ii) fatal to the claim under Section 11(3) is the question

that has come up for consideration in this case.

2: Landlord sent lawyer's notice dated 3.12.1991 contending that the tenant has used the premises in such a manner as to destroy its value and utility materially and permanently. Two weeks later he sent another notice dated 17.12.1991 seeking eviction on the ground of bonafide need for own occupation. Contention was raised by the tenant that non mentioning of bonafide need in the notice sent on 3.12.1991 would show that there is no bona fides in the plea raised under Section 11(3) and therefore the same has to be rejected. Rent Control Court repelled the contention of the tenant, but was accepted by the Appellate Authority holding that non-mention of the bonafide need in the first notice would show that there is no bona fide. Legislature has contemplated issuance of prior notice in seeking eviction under Section 11(4)(i) and Section 11(2)(b) of the Act. Sending of notice is not a pre-condition for filing application under Section 11(3) or under Section 11(4)(ii). Proviso to Section 11(4)(i) states that application under that Section shall be made only after sending a registered notice to the tenant. Landlord however could file application under Section 11(3) and also under Section 11(4)(ii) for eviction without sending any prior notice. Landlord in the instant case when convinced that tenant is using the building in such a manner as to destroy its value and utility either materially or permanently had sent a notice though not a pre-condition. We are therefore in agreement with the Rent Control Court that failure to mention the bonafide need in notice issued under Section 11(4)(ii) would not vitiate a claim under Section 11(3).

3. Landlord wanted the tenanted premises for the purpose of conducting a wholesale dealership in sugar. Landlord admittedly is conducting grocery shop near the railway station as M.V. Stores which is situated 10 to 15 ft. away from the tenanted premises. Landlord wanted to conduct wholesale dealership in sugar and for that purpose a godown is necessary to stock sugar. Availability of a godown is a condition precedent for applying for the wholesale dealership.

4. Petition was resisted by the tenant contending that the landlord can use the hack side of the grocery shop as godown. If it is the case of the tenant that the landlord could use the rear portion of the shop room, the burden is entirely on the

tenant to establish the same by adducing independent evidence. Tenant has not taken out a commission to establish that contention. We are therefore in agreement with the Rent Control Court that the need urged by the landlord is bonafide. Rent Control Court found that tenant is not entitled to the benefit of the second proviso to Section 11(3). Appellate Authority also concurred with the view of the Rent Control Court that tenant is not entitled to the benefit of the second proviso to Section 11(3). Full Bench of this Court in Francis v. Devaki Varassiyar (2003 (2) KLT 230) held that burden is on the tenant to establish both the ingredients of Section 11(3). Evidence adduced in this case, as rightly held by the Rent Control Court, is insufficient to discharge the burden cast on the tenant. Consequently we are inclined to allow the Rent Control Petition under Section 11(3).

5. Rent Control Court also allowed the claim of the landlord under Section 11(4)(iii) of the Act which was confirmed by the Appellate Authority. There is concurrent finding by the Rent Control Court and the Appellate Authority that the tenant is already in possession of another building which is sufficient for his requirement, in the same town and locality. R.W. 1 when examined admitted that the scooter show room has been shifted from the petition schedule room to another room at Kanniampuram. In paragraph 5 of the petition it was stated that the tenant is in possession of another property in Ottappalam Municipality and for that reason also tenant is liable to be evicted. Apart from the evidence of R.W. 1 no other independent evidence was adduced to disprove the contention of the landlord. If there was insufficiency of space in the scooter show room in the building subsequently acquired by the tenant, he ought not have shifted the business to that building. Facts would indicate that the shop room of Bajaj scooters was being conducted in the schedule room earlier. It is that shop room which was shifted. Facts also would indicate that father and son was always doing the same business. Tenant also admitted that the shop room of Narmada scooters was being conducted in that room and there was a service station in the said room previously. While the landlord has established the said contention, tenant has not adduced any independent evidence to reject the same. In such circumstances, we find no illegality; irregularity or impropriety in the order passed by the Appellate Authority so far as the finding under Section 11(4)(iii) is concerned.

6. In the result, the Revision Petition lacks merits and it is accordingly dismissed. However, considering the facts and circumstances of the case, we are inclined to give time to the tenant up to 30.8.2004 for vacating the premises on condition that the tenant should furnish an undertaking before the Rent Control Court within one month from today that he would vacate the premises within the aforesaid period and would pay arrears of rent, if any, and future rent.

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