

Fathima Beevi Vs. Stella John

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Court : Kerala

Decided On : Mar-16-2006

Reported in : 2006(2)KLT285

Judge : M. Ramachandran and; P.R. Raman, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11, 11A, 11(3), 11(4) and 20; Kerala Buildings (Lease and Rent Control) Rules - Rules 7(1) and 12

Appeal No. : R.C.R. No. 111 of 2006

Appellant : Fathima Beevi

Respondent : Stella John

Advocate for Pet/Ap. : S. Abdul Razzak, Adv.

Judgement :

ORDER

M. Ramachandran, J.

1. Appellate Authority under the Rent Control Act (District Judge, Trivandrum), by order dated 17-12-2005 in R.C.A No. 43 of 2003 has confirmed the orders passed by the Rent Controller, Trivandrum in R.C.P. No. 34 of 2002. Eviction is ordered under Section 11(3) and 11(4) (iv) of the Kerala Buildings (Lease and Rent

Control) Act (for short Rent Control Act). The tenant has come up in revision.

2. The rental arrangement admittedly was in existence for decades. Serious efforts are seen to have been taken for eviction, after a notice issued on 16-05-2002, demanding vacant possession. Scheduled building is a residential house in the heart of Trivandrum city. The landlady had pointed out that she had no other building in Trivandrum. Although she was residing in her own house at Nagercoil, in Tamilnadu, being her native place she wanted to come over to Trivandrum. She had lost interest for Nagercoil, since her husband had passed away and her only child also was no more. The dilapidated building also required to be demolished and reconstructed.

3. The bonafide need, as projected, however had been disputed by the tenant, pointing out that the factual situation presented itself was sufficient to show that it was only a ruse. The idea might have come to the landlady as their personal relations had become sour. It was unthinkable that the landlady wanted to leave her relatives for good and for opting a solitary life. The bereavement spoken of had happened long back. The very claim about reconstruction had been criticized by the tenant stating that the landlady had neither the funds nor any concrete ideas convincing enough.

4. Proof affidavit had been filed by the landlady before the lower authority supplying details, which might have been considered as relevant for substantiating her bona fides. The Commissioner, deputed by the Court, had also been examined. The building permit had been produced as an exhibit. The tenant had examined herself and quite a few documents had been relied on. The Rent Control Authority had accepted the evidence of the landlady as credible, and had overruled the objections raised by the tenant. The claim on the strength of arrears of rent, however, was negatived.

5. As referred to earlier, the tenant had not been able to convince the Appellate Authority that the order as above suffered from errors. Sri S.A. Razzak, appearing for the petitioner, submits that the order requires interference of this Court, in exercise of its powers under Section 20 of the Rent Control Act. The reason, according to him, is that the lower authorities were oblivious about the requirement

of pleadings and any evidence overreaching the pleadings should have been eschewed. The hallmark of a claim was bona fides, and this was lacking all through out, the counsel submits.

6. Mr. Razzak refers to the circumstance pointed out by the landlady, at the time of her evidence, which prompted her to think of shifting her residence to Trivandrum. Every one or them are newly invented and the authorities were purposely misled. The course adopted was highly objectionable. The tenant also was a widowed lady depending on others, and unless compelling reasons were there, she should have been permitted to continue, as a shifting would have wilted her life altogether.

7. We had examined the issue in some detail. The plea put in by the landlady was that she wished to shift to Trivandrum at the later stages of her life, since she had now no interest at all at Nagercoil. The inconvenience of a third party was therefore irrelevant. The issue to be examined is as to whether this was a bonafide need or a mere wish, as alleged to prejudice the tenant and whether she had been guilty of indiscretion by bringing on materials, which had resulted in a repair and recasting, prejudicing the interests of the opposite side.

8. The landlady had referred to the facilities which were normally available at Trivandrum, namely the proximity of public institutions and the availability of medical facilities. Additionally, she spoke about the advantages offered by good Libraries in the city. According to her, she is pursuing literary activities and this would have, therefore, helped her to spend her time usefully. The Rent Control Court had obviously relied on these circumstances, for finding the bona fides of the claim. The question posed is that can this be considered as irrational, since such details were not as such incorporated while the petition under Section 11 had been presented.

9. It is settled position that in summary proceedings, like a petition under the Rent Control Act, there is no insistence for meticulous pleadings. The parties are to state the essential factual situations, which may be foundation for the court to grant or deny eviction. The need pointed out was that she wanted to come and occupy her own building in a metropolitan city. We are of the opinion that details

which prompted her for coming to such decision are expected to be supplied at the time of placing evidence alone. On the other hand, the arguments of the tenant here would lend to a position that a landlord is to be prevented from presenting supplementary materials, and almost always has to confine himself to the particulars incorporated in the petition. This can never be the case.

10. Now we may examine the Scheme of the Act and the procedure required to be followed. The Rent Control Act, by Section 11, provides that a tenant shall not be evicted excepting in accordance with the provisions of the Act. Rule 7(1) of the Kerala Buildings (Lease & Rent Control) Rules could be referred to in this context:

7.(1) Every application under the Act shall, in addition to the particulars necessary to support it, contain also the particulars prescribed in Rule 12 so far as they may be applicable and every application for eviction under Section 11 or 11A shall also state the grounds on which the application is made.

11. Particulars as may be necessary are to be given and the landlord is required to state the grounds on which the application is made, when the application is under Section 11 or 11A of the Act. Therefore, requirement of detailed pleadings are not envisaged but only the grounds which are relevant alone need be stated. Interpretative decisions show that the legal position is undisputable, viz., that in an application for eviction, to the extent relevant, subsequent events to a very great extent become decisive. The cardinal principle is that when an application is filed, the grounds on which eviction is sought are to be clearly pleaded, and objection can be only in a case when materials are attempted to be introduced seeking relief on additional grounds than that was pleaded. That is not the case here.

12. In a case when claims are urged under Section 11(4)(iv), or for that matter when claims are urged on any grounds only at later stages, evidence could be brought in. The landlord at that point of time will have to convincingly establish his claim. The plaintiff need prove his claims, which are disputed by the opposite side, and there lies importance of pleadings. As for the bonafide need under Section 11(3), likewise details could be furnished and it is not as if no opportunity is there for the opponent to controvert the submissions. Fairness should be the hallmark, as the statute, on more occasions than one, speaks about the requirement of bona

fides.

13. The oral evidence tendered by the landlord was intended only to substantiate and supplement her claims'. This was never inadmissible or one which was to be treated as irrelevant. The landlord was highly qualified, was a retired Professor of an educational Institution, and having laid down her office would have thought of coming over to her own building in the city. The motivating details given were supplemental, and it could not have beguiled the tenant as one plucked from an empty hat.

14. It has also come out in evidence that the scheduled building is more than 100 year old and with tiled roof. The evidence presented before the Rent Control Authority and especially that of the Commissioner, who had been deputed by the Court, supported her claim that it could have been converted to a more habitable premises. There cannot be any doubt that the landlady had capability for undertaking such a work, as could be gatherable from the evidence. She had the building permit. The effort of the tenant perhaps was to continue occupation, since she might have developed an affinity to the surroundings, but when superior claims are presented by the landlady, after evaluation of the circumstances, the Court is called upon to decide the issue fairly. Her claims could have been only subservient to the need of the landlady, of course subject to the restrictions available in the Rent Control Act. The authorities were justified in coming to the conclusion that an order terminating the tenancy was warranted and justifiable. We do not see any merit in the revision petition. It is dismissed.

15. However, taking notice of the submissions made by Mr. Razzak, and the circumstances that the tenant also is on the wrong side of 60 years, we further direct that she is to be permitted to continue in occupation of the building for a period of about three months, on conditions to be imposed.

16. Consequently, if the tenant files an affidavit unconditionally undertaking to give vacant possession of the building to the tenant by 30th of June, 2006 and such affidavit is filed within one month from today, the execution proceedings are to be kept in abeyance till that date. Of course, the tenant will have to pay the entire arrears of rent payable up to 28-02-2006, within one month from today, and is to

pay the rent without default during the period of her continued occupation.

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