Chandran Vs. Sunil Kumar

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SooperKanoon Citation : sooperkanoon.com/726522

Court : Kerala

Decided On : Aug-03-2004

Reported in : 2004(3)KLT420

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

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

Appeal No. : C.R.P. No. 3169 of 2000

Appellant : Chandran

Respondent : Sunil Kumar

Advocate for Def. : V. Giri,; D. Krishna Prasad and; M. Harisharma, Advs

Advocate for Pet/Ap. : N.P. Samuel, Adv.

Judgement :
ORDER

K.S. Radhakrishnan, J.

1. Can a Rent Control Petition filed under Section 11(3) of Act 2 of 1965 be rejected placing reliance on certain subsequent events brought out in the cross-examination without amendment of the pleadings by the tenant is the question that has come up for consideration in this case.

2. Rent Control Petition was filed on 17.6.1996 under Section 11(3) of Act 2 of 1965 contending that the tenanted premises is bona fide required by the landlord's son. Landlord's son has completed a technical course from the Thyagaraja Poly Technic and he intends to start a refrigeration service and repairing unit in the petition schedule premises. Landlord is financially sound to purchase the machinery and tools to start the refrigeration service and repairing unit for his son. Son is unemployed, but has the requisite qualification and experience to start the refrigeration service and repairing unit.

3. Tenant contended that the attempt of the landlord is only a ruse to evict him. Further it was pointed out by the tenant that he is conducting a medical shop and that the need of the son is not genuine. Further landlord has got other buildings for conducting the business of his son. Tenant also pleaded that he is solely depending upon the income derived from the business conducted in the tenanted premises and no other buildings are available in the locality. Landlord in order to establish his case got himself examined as PW2. His son was examined as PW1. A commission was taken cut. He was examined as PW3. Exts.A1 to A5 documents were produced on the side of the landlord. Tenant got himself examined as RW-1 and produced Exts.B1 to B8 documents. C1 is the Commission Report.

4. The Rent Control Court found that the landlord's son has completed his Pre-degree and a technical course from the Thyagaraja Polytechnic at Alagappa Nagar, Thrissur in the field of Air Conditioning and Refrigeration. It was also noticed that by Ext.A2 he has gained two years experience from S.S. Electricals and Musicals and that he is unemployed. Rent Control Court though found that the above facts as correct placed reliance upon certain facts brought out in cross-examination of PW1 and held that the omission to state those facts in the Rent Control Petition is fatal to a plea of bona fides. Rent Control Court also took the view that the facts brought out in the cross-examination of PW1 are relevant facts, which the landlord ought to have disclosed in the Rent Control Petition. Rent Control Court concluded as follows:

'It is true that PW 1 has completed his predegree and a technical course from the Thyagaraja Polytechnic at Alagappa Nagar in Trissur District in the field of Air Conditioning and Refrigeration. Ext. A1, is the certificate obtained by him from the Thyagaraja Polytechnic, Alagappa Nagar. It is also evident from Ext.A2 that he obtained 2 years experience from S.S. Electricals and Musicals and was an unemployed fellow. But it is brought out in evidence that he is now at Muscat. According to him he is a trainee in Ford Car Company, Ruwi in Muscat. It is also disclosed from his evidence that the respondent's brother-in-law is also employed in the same company. But the RW1's case discloses that the respondent's son was employed in the workshop for a long time and now left for Muscat and is employed as a mechanic in the Ford Car Company. According to his assertions the respondent's son is an employee in a car company for the last 3 years and the submission made by PW1 that he is a trainee is not a correct one. If the respondent's son is a trainee it can be proved by documentary evidence. His passport, visa and other records may reveal about the employment of the petitioner's son. Such documents can be produced by the petitioner so as to convince the Court that he is only a trainee in the Ford Car Company. Normally the visas issued will only be not more than a terms of 3 years, so that no company in gulf country will take persons for training. So there is considerable force in the argument advanced on behalf of the respondent. Even if the petitioner's son is a trainee, it is exclusively within his knowledge. Since there is no documents placed or summoned by the petitioner so as to know the real fact, the evidence tendered by PW1 and 2 that the petitioner's son is a trainee for the last three years in Ford Car Company cannot be an acceptable one. If that be so, the only possible presumption to be draw in this case is that the petitioner's son is an employed fellow in Ford Car Company'.

Rent Control Court then concluded that subsequent events brought out would defeat the plea of bona fides urged by the landlord and that the need of the landlord's son no more exists. Holding so Rent Control Court dismissed the petition. Landlord took up the matter in appeal. Appellate Authority confirmed the finding and held as follows:

'It is settled that the Rent Control Authorities can take into account subsequent events. Even going by the evidence of PW1, he went abroad after the respondent filed counter in the court below. Hence the respondent cannot be found fault with for not raising a contention regarding that, in his counter. The appellant or PW1 did not produce any document to show that PW1 is working as trainee in S.S. Ford Company. PW1 would say that there is no document to show that he is working as trainee but, claimed that he had received orders from that company appointing him as trainee. PW1 could have very well produced the appointment order from the company appointing him as trainee. PW1 could have very well produced the appointment order from the company. He did not produce at least a copy of his visa showing that it was not on job visa that he went abroad. It is difficult to accept the case of PW1 that there are no documents to show, in what capacity he is working in S.S. Ford Company. In these circumstances, there is force in the evidence of RW1, particularly when his brother-in-law is also admittedly working in the same company that PW1 is employed in S.S. Ford company. It is not that if PW1 is working abroad, he cannot return to his native place or think of starting his own business at his native place. But, the appellant or PW1 has no such case. On the other hand, what is claimed by them is that PW1 is only a trainee abroad and, if he gets possession of the schedule room, he will not go abroad, again. That case of the appellant and PW 1 is found to be unacceptable. The question whether the appellant bona fide needs the schedule room has to be decided objectively, based on the facts and circumstances that emerges in the case'.

Rent Control Court and Appellate Authority have rejected the claim of the landlord under Section 11(3) based on certain facts alleged to have been brought out in the cross-examination of PW-1, son of the landlord for whom the eviction was sought for. Rent Control Court and Appellate Authority took the view that those facts should have been pleaded by the landlord in his petition. We find it difficult to support this reasoning. Rent Control Petition was filed on 17.6.1996. Tenant filed his counter affidavit on 25.6.1997. PW.1 was examined on 20.2.1998. He has stated that he had left for Muscat somewhere in the year 1997. If he had left for Muscat in the year 1997 there is no question of stating those facts in the Rent Control Petition filed on 17.6.1996. Therefore, the finding of the Rent Control Court and Appellate Authority that the landlord has not pleaded those facts in the Rent

Control Petition is a perverse finding. Further, the tenant has filed his counter affidavit on 25.6.1997. Question is on whom burden lies to bring forth those facts to the Rent Control Court, either on the landlord or on the tenant. If the tenant wanted to defeat the claim under Section 11(3) on the ground that the bona fide need has ceased to exist it is for the tenant to plead and establish the same. Burden is not on the landlord. Rent Control Court and Appellate Authority in our view have completely misunderstood the basic principles of burden of proof, pleadings and as to how the subsequent events have to be brought out there the Court.

Burden of Proof, Pleadings and Subsequent Events:

The object of pleadings is to bring the parties to an issue. Pleadings have to contain material facts on which the party relies for the claim or the defence, but not the evidence by which material facts are to be proved. The burden of proving the facts pleaded is on the party who asserts. It is trite the burden of proof has two meanings with reference to judicial proceedings, one is that the burden of proof of pleadings and the other the burden of adducing evidence. The burden of proof of pleadings never shifts, it remains constant, but the burden of adducing evidence shifts, Section 101 of the Evidence Act deals with the former and Section 102 deals with the latter. In a petition under Section 11(3), the burden of proof, in the first sense lies on the landlord and once he discharges his initial burden the onus shifts to the tenant to dislodge the assertion of the landlord. While burden of proof in the first sense is always constant, the burden of proof in the later sense shifts constantly and it is a continuous process in the evaluation of evidence. Rent Control Court and Appellate Authority have placed reliance on few answers brought out in the cross-examination of the landlord's son to hold that there is no bona fides in the plea. If the tenant wanted to rely upon those facts the tenant ought to have brought out those facts by amending the pleadings. Evidence ought to have been adduced to prove those facts. Tenant tried to explain it contending that those facts are subsequent events. If these subsequent events have got any bearing so as to nonsuit the landlord, those facts should have been brought before the Court by amendment of pleading and not through oral evidence either by way of chief examination or by cross-examination. Facts brought out by way of cross-

examination are not substitute pleadings. Pleadings have to contain material facts on which the party relies for claim or defence as the case may be, but not the evidence on which they are to be proved. It is trite that no evidence if any produced by the parties be considered if no relevant plea is raised. No party be permitted to travel beyond his pleadings. When a particular claim has not been allowed to be raised. The tenant cannot be permitted to travel beyond his pleadings. When a particular claim has not been made in the defence, no amount of evidence could be allowed to be raised, the tenant cannot be permitted to adduce evidence in proof of a fact which has never been pleaded in the objection, and even if such evidence is adduced it should not be looked into. Parties cannot be permitted to raise new points not covered by pleadings. Though strict rules of pleadings are not applicable to Rent Control proceedings, basic material facts should be pleaded.

5. Subsequent events have to be brought out not through oral evidence, either in chief or in cross-examination. Subsequent events have to be pleaded applying the principle under Order VI Rule 17 C.P.C. We may in this connection refer to a decision of the Apex Court in Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 252 wherein Apex Court held as follows:

'Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or, the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties'.

A Division Bench of this Court had occasion to consider similar issue of which one of us is a party (K.S. Radhakrishnan, J.) in Korah Abraham v. Varughis, 2004 (2)

KLT 192. Relying on the dictum laid down by the Apex Court in Om Prakash Gupta's case (supra) the Division Bench held that subsequent events could, be brought to the knowledge of the Rent Control Court, Appellate Authority and even before this Court so that the Court could mould the relief to do complete justice between the parties and also could shorten the litigation. But the Court should at the threshold when the subsequent events are brought to its knowledge examine whether those events have any fundamental impact on the main issue and if not addressed would cause serious prejudice to the parties either to the landlord or to the tenant. Subsequent events could be brought in by the tenant as well as the landlord since Rent Laws are neither pro-landlord or pro-tenant. But Court should be guarded that its process are not abused or taken undue advantage of or misused or used as a medium to delay the rights of parties.

6. Counsel for the tenant submitted that an opportunity may be given to the tenant to amend the pleadings and the matter may be remanded back to the Rent Control Court. The Court should be guarded against such requests on the basis of some subsequent events. Remand would further prolong the litigation to the advantage of one party and to detriment of another. If a party wanted to bring in subsequent events, those facts would be pleaded at the earliest point of time. Before us also no petition was filed to amend the pleadings. Matter is rested here for several years and at this stage placing reliance on some facts alleged to have been brought out in the cross-examination of PW1, the tenant wanted to amend the pleadings which cannot be permitted. In our view those facts if the tenant wanted to rely upon should have been brought to the notice of the Court at the earliest point of time by amending the pleadings. Facts brought out in cross-examination are not substitute for pleadings and cannot be relied upon to reject a petition under Section 11(3) of the Act.

7. In our view, even if the facts were brought out through amendment of pleadings there is no reason to reject the claim of the landlord. PW1 wanted to come back to his native place and do some business residing with his family. Mere fact that he has gone to Gulf countries during the pendency of the litigation does not mean that he would not come back. We are not prepared to say that the desire expressed by the son to come back to the native place is not bona fide. We have also examined

the oral and documentary evidence adduced in this case. We have no reason to doubt the bona fides of the plea of the landlord. We are convinced that the need urged by the son is genuine and bona fide.

8. In such circumstances, we are of the view that the Rent Control Court and the Appellate Authority have committed a gross error in placing reliance on facts brought out in the cross-examination to reject the petition without, amendment of pleadings. Orders passed by the Appellate Authority and the Rent Control Court are accordingly set aside. Considering the facts and circumstances of the case, tenant is given time upto 31.12.2004 for vacating the premises on condition that he should file an undertaking in the form of an affidavit before the Rent Control Court within one month from today stating that he would vacate the premises within the aforesaid time and would pay arrears of rent, if any, and future rent.