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Ahammed Vs. Krishnalal

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Court : Kerala

Decided On : May-27-2005

Reported in : 2005(3)KLT1004

Judge : R. Bhaskaran and; K.R. Udayabhanu, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act - Sections 11, 11(2), 11(4), 11(9) and 11(10); Transfer of Property Act - Sections 53A and 107; Registration Act - Sections 17 and 49

Appeal No. : RCR No. 445 of 2004

Appellant : Ahammed

Respondent : Krishnalal

Advocate for Def. : K.C. Charles, Adv.

Advocate for Pet/Ap. : K.C. John and; T.M. Mohamed Youseff, Sr. Advs. and; T.G.

Disposition : Petition dismissed

Judgement :
ORDER

R. Bhaskaran, J.

1. The challenge in this Rent Control Revision is directed against the concurrent findings of the Rent Control Court as well as the Appellate Authority holding that the revision petitioner-tenant of the building shown in the Rent Control Petition is liable to be evicted under Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act.

2. The petitioner in the Rent Control Petition purchased the property by registered sale deed dated 27-3-2002 from the original owners and filed the Rent Control Petition in the same year contending that the tenant has in his possession a building reasonably sufficient for his requirement in the same city and that he is liable to be evicted under Section 11(4)(iii) of the Act. The tenant contended that as per the rental agreement dated 2-9-1996 between the tenant and the original landlords, he was entitled to be in possession of the tenanted premises for a period of ten years and the Rent Control Petition, filed before the expiry of ten years is not maintainable. He also contended that the allegation in the Rent Control Petition that the tenant has another building reasonably sufficient for his requirement is incorrect.

3. The Rent Control Court considered the following points. (1) Whether the petition is barred under Section 11(9) of the Act, and (2) Whether the petitioner is entitled for an order of eviction under Section 11(4)(iii) of the Act. These are the points which are seriously and strongly pressed before us also. The question whether the alternate accommodation available with the tenant is sufficient for his purpose or not was not considered in detail by the Appellate Authority. According to the learned counsel for the respondent, the Senior Advocate who argued the case of the tenant before the Appellate Authority had expressly stated in court that he was not seriously pressing that point and it was for that reason that the Judgment of the Appellate Authority does not contain any discussion on that aspect. One of the questions to be considered in this revision is how far the tenant can urge that contention in the revision before this Court. The question whether the tenant is entitled for the protection of Section 11(9) was considered by the Appellate Authority and it was found against the tenant. There was also a further contention that the Rent Control Petition was barred by limitation.

4. The points for consideration in this revision are (1) whether the tenant is justified in contending that the Rent Control Petition is liable to be dismissed under Section 11 (9) of the Act, (2) whether the landlord has established the grounds available under Section 11(4) (iii) of the Act to get an order of eviction in the Rent Control Petition and (3) whether the Rent Control Petition is barred by limitation.

Point No. 1

5. Ext. B-1 is the registration copy of the sale deed in favour of the present landlord by the original landlords. A reading of that document clearly establishes that the original landlords had agreed for renewal of the lease for a further period of ten years on a monthly rent of Rs. 8,000 for the first five years from 1-8-1996 and thereafter at Rs. 10,400 for the remaining five years. Therefore, the fact that the earlier landlords had agreed for a continuation of the tenancy arrangement for a period of ten years on payment of the stipulated rent cannot be disputed. There is also no dispute that the Rent Control Petition is filed before the expiry of ten years from the date of the renewal of the lease. But the contention of the present landlord is that the lease agreement between the original landlords and the tenant was not a registered lease and that document was not produced before court. Therefore, in the absence of a registered lease deed an agreement to lease for ten years is not legally enforceable. The further contention of the landlord is that though Section 11(9) of the Act states that 'where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply to the Rent Control Court before the expiry of such period', it cannot be construed to mean that all other clauses in Section 11 of the Act enabling the landlord to get eviction on specified grounds are to be ignored. According to the learned counsel, the Statute has to be read harmoniously consistent with the other provisions in the same enactment. Apart from the ground of bona fide need and additional accommodation the Kerala Buildings (Lease and Rent Control) Act enables the landlord to file an application for eviction if the tenant keeps rent in arrears [Section 11 (2)(b)], if the tenant sub-leases the building [Section 11(4)(i)], if the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently [Section 11(4)(ii)], if the tenant has in his possession a building or subsequently acquires possession

of or puts up a building reasonably sufficient for his requirements in the same town or village [Section 11(4)(iii)], if the building is in such a condition that it needs reconstruction [Section 11(4)(iv)] and if the tenant ceases to occupy the building continuously for six months without reasonable cause [Section 11(4)(v)]. Take, for instance, a case where a person obtains a building on lease for 15 years and after two months of the tenancy arrangement he keeps the building closed. He also does not pay any rent. If Section 11 (9) is to be enforced in its full rigor, the landlord is expected to wait for the entire 15 years to file an application for eviction as he can not file an application for eviction either on the ground of arrears of rent or on the ground that the tenant has ceased to occupy the building for more than six months. Similar is the case where the tenant sub-leases the building immediately after getting the building on lease and if the lease period has not expired, the landlord does not get any right to approach the Rent Control Court. It is in the above context that a Division Bench of this Court in Paul v. Saleena, 2004 (1) KLT 924, held that Section 11(9) has to be confined to application for eviction on the ground of bona fide need or additional accommodation and it cannot be applied to cases where the tenant fails to pay rent or sub-leases the building or reduces the value or utility of the building materially and permanently or ceases to occupy the building. In Krishna Kumar v. State of Rajasthan, : [1991]3SCR500 , the Supreme Court emphasised the need for a harmonious construction of two sections of the same Act where there appears to be inconsistency in the two sections. It is held by the Supreme Court as follows:

'11. It is settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what the Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same. In Venkataramana Devaru v. State of Mysore, : [1958]1SCR895 , this Court observed:

'The rule of construction is well-settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known

as the rule of harmonious construction.'The essence of harmonious construction is to give effect to both the provisions. Bearing these principles in mind it is legitimate to hold that Section 100(4) prescribed period of limitation of one year in respect of the scheme proposed under the provisions of the new Act, while in the case of a scheme under Section 68 C of the old Act, pending on the date of enforcement of the new Act, namely, July 1, 1989, the period of one year as prescribed under Section 100(4) should be computed from the date of commencement of the new Act. This interpretation would give full effect to both the sections - Section 100(4) and Section 217(2)(e) of the new Act.'

In State of Rajasthan v. Gopi Kishan Sen, : AIR 1992 SC1754 , the Supreme Court held as follows:

'The rule of harmonious construction of apparently conflicting statutory provisions is well-established for upholding and giving effect to all the provisions as far as it may be possible, and for avoiding the interpretation which may render any of them ineffective or otiose.'

Nothing has been brought to our notice to hold that the view expressed in Paul v. Saleena, 2004 (1) KLT 924, requires reconsideration and we respectfully agree with the reasoning in that judgment.

6. Even assuming that the tenant is entitled to the benefit of Section 11 (9) of the Act, he has to further cross yet another hurdle inasmuch as the lease created for ten years is not evidenced by a registered document. It is not disputed that a lease of immovable property for a period exceeding one year can be made only by a registered instrument and that the lease deed executed between the tenant and the erstwhile landlords is not a registered lease deed. The contention of the learned counsel for the revision petitioner is that though the document is not registered the present landlord is bound by the stipulation in the sale deed in his favour. In the sale deed, it is stated that the tenant is given the building for a further period of ten years from the date of execution of the lease deed in 1996 on certain terms. Since the present landlord has purchased the property with such conditions, it is contended that he cannot get eviction of the building before the expiry of the period of lease. The learned Senior Counsel relied on the decision of

the Allahabad High Court in Raj Narain v. Sukha Nand Ram Narain, : AIR1980 All78 . In that case, a Division Bench of the Allahabad High Court held that the provision in a lease deed to the effect that the tenant shall not be liable to be evicted except on grounds of arrears of rent for one year is a provision which is running with the land and is binding on the purchaser at court auction. In that case, the lease deed was a registered lease and the question whether the lease itself is invalid for want of a registered document as required under Section 107 of the Transfer of Property Act did not arise for consideration. Therefore, the decision of the Allahabad High Court will not come to the help of the revision petitioner in this case.

7. The learned counsel for the revision petitioner relied on the decision in K.K. Krishnan v. Vijayaraghavan, 1977 KLN Case Notes, Case No.62, Page No. 73. The question which was considered by Justice V. Khalid, (as His Lordship then was), was whether the landlord has to establish his bona fides even in a case coming under Section 11(4)(i), (ii), (iii), (iv) and (v) of the Act. It was held that though it could be strongly felt that the Legislature could have only meant Section 11(4)(iv) when it included Section 11(4) in Section 11(10), as the section now stands, it can be held that when a landlord establishes the ground of sub-letting as also the grounds under Section 11(4)(ii), (iii) and (v) to the satisfaction of the Court that by itself is proof that the claim is bona fide. This decision is of no help to the revision petitioner as the learned Judge has interpreted Section 11(10) to mean that the claim under Section 11(4)(i), (ii), (iii) and (iv) can be said to be bona fide if the landlord establishes the ground for eviction to the satisfaction of the Rent Control Court. The learned counsel for the revision petitioner also relied on the decision in M. Mallikarjunaiah v. Shivanna, AIR 1973 Mysore 40. In that case, the learned Judge has held that though an unregistered document may not be admissible in evidence to prove a lease for a period exceeding one year, it does not mean that the tenant cannot rely upon other documentary proof of his tenancy. A reading of the entire judgment in that case will show that the main question considered by the learned Judge was whether on the redemption of a mortgage, the mortgagee who was earlier a tenant could be dispossessed of his property and whether the lease came to an end on execution of the mortgage. If as a matter of fact the mortgagee was already a tenant then it was held that the tenancy right

would revive even after the mortgage was redeemed. It was only for that limited purpose that the learned Judge held that other evidence could be looked into to ascertain whether the mortgagee was also a tenant earlier. Therefore, that decision also will not come to the rescue of the revision petitioner in any manner.

8. Merely because the petitioner in the Rent Control Petition is a transferee from the earlier landlord, the lease in favour of the tenant for ten years without registered document will not become an enforceable transaction. To hold so will be to defeat the provisions contained in Section 107 of the Transfer of Property Act and Section 17 and Section 49 of the Registration Act. When Section 49 of the Registration Act says that no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power unless it has been registered, it has to be given effect to by a court of law. The proviso to Section 49 enables the court to receive in evidence an unregistered document required to be registered only if it is an agreement for sale and the suit is for specific performance of the agreement or it is produced as evidence of part performance of the contract for the purpose of Section 53A of the Transfer of Property Act or in evidence of collateral transaction. In this case, the unregistered document is not even produced at all.

9. In Anthony v. K.C. Ittoop and Sons, : (2000)6SCC394 , the question arose whether a tenant of a building could be evicted by filing a suit in the regular court when the building is situated in an area covered by the Kerala Buildings (Lease and Rent Control) Act and when the lease was for a period of more than one year and the lease deed was not registered. The High Court held that the tenant has not proved that independent of the void lease the relationship of the landlord and tenant has come into existence between the parties and therefore the suit was maintainable. The Supreme Court in further appeal held that the instrument of lease is required to be registered and the court is disabled from using the instrument as evidence and it goes out of consideration. On the admission of the landlord that the defendant was inducted into possession of the building by the owner and thereafter he was paying monthly rent the legal character of the

defendant has to be attributed to a jural relationship which cannot be placed anything different from that of lessor and lessee. Therefore, the defendant could be evicted only under the provisions of the Rent Control Act. In that case, the court was concerned with the status of the defendant as to whether he was a lessee or of any other legal character. That by itself will not help the revision petitioner in this case as by giving effect to the term in the sale deed that the tenant can continue in possession for ten years, he will be enforcing a term in a lease transaction which is otherwise unenforceable in law for want of a registered document. If the original landlords were not bound by the term of the lease deed as it was not a registered document, the transferee also cannot be bound to do so. The Division Bench in Paul's case, 2004 (1) KLT 924, has considered this aspect also and found that the tenant is not entitled to enforce the term in the lease deed for a lease of the property for more than one year when the document was not registered and that he cannot claim the benefit of Section 11(9) of the Act on that basis. The learned senior counsel appearing for the revision petitioner pointed out the decision in Pieco Eletronics and Electricals Ltd.v. Tribeni Devi, : AIR1990 Cal135 , and argued that the unregistered lease deed could be looked into for ascertaining the commencement of possession, rate of rent or similar other provisions which are collateral to the principal transaction and therefore the period of termination of the lease also could be ascertained from an unregistered lease deed. By accepting such a contention we will be giving effect to an otherwise invalid transaction which is unenforceable in law. The Supreme Court in Delhi Motor Co. v. V.A. Basrurkar, : [1968]2SCR720 , has held that the rights arising under an unregistered lease deed which is for more than one year cannot be enforced in a court of law. In the light of the above discussion, we hold that the tenant is not entitled for the benefit of Section 11 (9) of the Kerala Buildings (Lease and Rent Control) Act.

Point No. 2

10. The next question to be considered is whether the tenant is liable to be evicted under Section 11(4)(iii) of the Act. It is true that there is no serious discussion on this aspect by the Appellate Authority and since the Appellate Authority is a final court of fact, in the ordinary course, we would have remanded the matter to the Appellate Authority to have a finding on this aspect after discussing the evidence

in detail. But the learned counsel for the respondents who was also appearing in the lower court has specifically stated that the correctness of the finding on Section 11(4)(iii) by the Rent Control Court was not challenged when the appeal was argued before the Appellate Authority and it was expressly given up by the learned senior counsel appearing in that case. Of course, there is no observation in the judgment of the Appellate Authority that it was so given up. But if the matter was argued and it was not dealt with by the Appellate Authority, the revision petitioner could have filed an application for review of the judgment. In an appeal where several grounds are raised and only some of the grounds are pressed at the time of argument, the court is expected to deal with only those grounds which are pressed by the counsel. The learned counsel for the respondents also brought to our notice that even in the revision filed before this Court, there is no contention raised to the effect that the correctness of the finding of the Rent Control Court on Section 11(4)(iii) was canvassed before the Appellate Authority and no finding was entered by that Authority. In the memorandum of revision, the only ground urged in this aspect is ground K which reads as follows:

K. Court below should have held that Section 11(4)(iii) is attracted only if the tenant acquires a property sufficient for his own occupation in the town. Admittedly, after the execution of the lease deed no property is acquired by the petitioner. The one mentioned in the Rent Control Petition was already in existence even before execution of the rent deed in the year 1996. Therefore the respondents are not entitled to claim eviction on this ground.

Even in that ground, the emphasis is for not acquiring any property after the execution of the lease deed by the tenant and therefore the contention raised is that Section 11(4)(iii) is not attracted. After the case was argued and when the absence of any ground in the revision petition was pointed out by the learned counsel for the respondents the revision petitioner has filed an application for amendment of ground in the Rent Control Revision taking up additional grounds. In the additional grounds, no doubt, the necessary grounds are raised and in the petition for amendment of grounds, the respondent has filed an objection. In the objection, it is specifically stated that before the lower Appellate Court, the learned senior counsel for the revision petitioner pressed only two grounds, viz. (1) the

petition is barred under Section 11(9) of the Act and that (2) the eviction petition is barred by law of limitation and the other ground regarding acquisition of alternate suitable building by the appellant was given up. It is also stated that the deponent was personally present in the Appellate Court when the appeal was argued. This revision was heard earlier on 18-2-2005 before another Bench in which one of us (Bhaskaran, J.) was a member and when it was posted again on 21-3-2005 since the arguments were not fully over and there was a reconstitution of the Benches, it was ordered that the case may not be treated as part heard. It was thereafter that this petition for amendment was filed on 21-3-2005. Therefore, we are of opinion that amendment is only an after thought and if as a matter of fact there was any serious argument made before the Appellate Court with regard to the correctness of the finding on Section 11(4)(iii), it would have been specifically challenged in the original revision memorandum itself and not after it is pointed out by the learned counsel for the respondents. Therefore, we do not think that we will be justified in remanding the matter to the Appellate Authority for consideration on this question by that Authority. The Supreme Court in Sukhpal Singh v. Kalyan Singh, : [1963]2SCR733 , the Supreme Court held as follows:

'The memorandum of appeal does contain the grounds of objection to the decree appealed from without any argument or narrative as laid down in Sub-rule (2) of Rule 1, Order 41. Such grounds cannot take place the points for determination contemplated by Rule 31. Not unoften certain grounds of objection raised in the memorandum of appeal are not argued or pressed at the hearing and in that case such grounds cannot be taken to be the points for determination and are rightly not discussed in the judgment at all. It is for the appellant to raise the points against the judgment appealed from. He has to submit reasons against its correctness. He cannot just raise objections in his memorandum of appeal and leave it to the Appellate Court to give its decision on those points after going through the record and determining the correctness thereof. It is not for the Appellate Court itself to find out what the points for determination can be and then proceed to give a decision on those points.'

In Girijanandini v. Bijendra Narain, : [1967]1SCR93 , the Supreme Court held as follows:

'We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the Appellate Court when it agrees with the view of the trial court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.'

11. Since the matter is argued before us, it is only proper that we deal with that aspect in this case. The contention of the landlord is that the tenant has got a five storied building situated 45 metres away from the petition schedule building and that building is more than sufficient for the requirement of the tenant. Ext.A-4 is the extract of the property tax register maintained by Cochin Corporation. That shows the availability of space in the building owned by the tenant and it shows that the first floor and second floor are lying vacant. The learned senior counsel appearing for the revision petitioner contended that the building owned by the tenant is a lodge and the petition schedule building is used as a hotel and it is not possible to conduct a hotel business in the other premises owned by the tenant. The learned counsel for the respondents on the other hand contended that though the building is used as lodge also there is space available in the ground floor and first floor of the building which can be used for hotel purpose. He also pointed out that the Commissioner appointed in the case has submitted a plan and report and the Commissioner has reported that the tenant has exhibited a board in front of his building as follows: 'The Bake House Inn, Hotel and Family Restaurant'. It is found by the Rent Control Court that the tenant is running a hotel and family restaurant in the building owned by him. When the tenant was examined, the only reason for not accepting the contention of the landlord on this aspect was that the petition schedule building was facing M.G. Road and the tenant might not get the same business in the building owned by him, a little away from the petition schedule building. It is pointed out that his case was that there was no sufficient space in the building owned by him and that he will not get the same volume of business in that building. Though the Commissioner has not seen any restaurant functioning in the first floor, his report shows that it has got an area of 2384 sq.feet in his possession and therefore there is nothing which prevents the revision petitioner from shifting the hotel business presently being conducted in the petition schedule building to

the ground and 1st floor of the building owned by him. The Rent Control Court found that merely because the other building is having a lesser area than the petition schedule building that by itself is not a reason to reject the petition for eviction under Section 11(4)(iii) of the Act. The Section says only that the building should be reasonably sufficient for the respondent's requirements. This Court in a number of decisions have held that if it is shown that the tenant has got another alternate building, the burden shifts on him to prove that the building is not reasonably sufficient for his purpose. In Vakkachan v. Kurian, 2002 (2) KLT 716, is one such decision. In this case, the Commissioner's report shows that there is space for a restaurant in the first floor of the building owned by the tenant and there is space available in the ground floor also. It cannot be said that the space available with the tenant is insufficient for his purpose. Therefore, we find that the contention of the tenant in this respect is not sustainable.

Point No. 3

12. As held by a Division Bench of this Court in Sadanandan v. Pradeepan, 2001 (2) KLT 913, the Rent Control Act does not prescribe any period of limitation for making an application for eviction under the Act. The Rent Control Court is not a civil court in the strict sense of the term. Though the position may be different in the case of filing an application for execution or filing appeal from an order of Rent Control Court, it cannot be said that there is any limitation prescribed for filing an application for eviction on any one of the grounds provided under Section 11 of the Act. The Appellate Authority has relied on the decision of a Division Bench of this Court and nothing was brought to our notice to take a different view in this matter. We therefore find no merit in that contention also.

In the light of the above discussion, we find no ground to interfere in this Rent Control Revision and we dismiss the same. In order to enable the revision petitioner to find out other accommodation we grant three months' time to vacate the petition schedule building on condition that the revision petitioner deposits the arrears of rent if any within one month from today and continues to pay the rent and also files an undertaking to vacate the premises on or before the expiry of three months from today. The undertaking must also be filed within one month

from today.

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