

Venkitaramanan Vs. Rajamma

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Court : Kerala

Decided On : Nov-09-2004

Reported in : 2004(3)KLT930

Judge : K.S. Radhakrishnan and; K. Thankappan, JJ.

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

Appeal No. : C.R.P. No. 1197 of 2002

Appellant : Venkitaramanan

Respondent : Rajamma

Advocate for Def. : N. Haridas and; P.N. Sasidharan, Advs.

Advocate for Pet/Ap. : T.B. Thankappan and; K. Deepa, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Landlord is the revision petitioner. Eviction was sought for Under Section 11(3) of Act 2 of 1965. Need urged by the landlord is as follows:

'The petitioner is the partner of a hotel business carried in the name and style 'HOTEL KRISHNA BHAVAN' lacks in accommodation. The petitioner bonafide believe that he can run the business more profitably than now if some additional facilities are attached thereto. The room that lies immediately to the south of the petition schedule building remains vacant and he intends to make an addition of air-conditioned restaurant attached to the present hotel. He can conveniently and profitably do the same if he gets the vacant possession of the petition schedule building. In fact the respondent is not practically doing any work in the petition schedule building.'

Landlord has also stated that tenant is not doing any business in the tenanted premises. Further it is stated that tenant has got other sources of income and buildings are available in the locality where the tenant could shift the business. Lawyer notice was issued by the landlord requesting to surrender the premises. Since the premises was not surrendered landlord approached the Rent Control Court for eviction Under Section 11 (3) of the Act.

2. Tenant resisted the petition stating that she is in possession of the tenanted premises for a number of years. It is stated that she is conducting typewriter repair service in the premises by name 'Prompt Services'. Further it is stated that the income derived from the business conducted in the tenanted premises is the main source of her livelihood and no other building is available in the locality to shift her business. It is also stated that the landlord has earlier filed R.C.P. No. 173 of 1982 for conducting the business by his second son and the same was dismissed. The present attempt is only a ruse to evict her.

3. Landlord got himself examined as PW. I. and Exts. A1 to A5 documents were marked. On the side of the tenant RWs. 1 and 2 were examined and Exts. B 1 to B5 were marked. RW.2 is the Commissioner. Ext. C 1 is the Commission Report and Ext.C2 is the plan. After considering the oral and documentary evidence, the Rent Control Court came to the conclusion that the need urged is not bona fide and dismissed the petition which was confirmed by the Appellate Authority. Aggrieved by the same, this Revision Petition has been preferred.

4. In our view, both the Courts below have committed grave error in taking the view that it would not be possible to conduct an air conditioned restaurant in the tenanted premises which is a small room. Further it is also pointed out that the tenanted premises is situated in such a way that it would not be possible for the landlord to convert it into an air conditioned restaurant. Further it was noticed that same is hardly sufficient for placing more than two chairs. Reference was also made to the Commission Report wherein it is stated that only two tables and chairs could be kept in the tenanted premises. Further it is stated that it would be inconvenient to start an air conditioned restaurant since kitchen is situated in the middle of the hotel room. It is also stated that the landlord had earlier filed Rent Control Petition for the purpose of starting a stationery business for his son, which was dismissed and the present attempt is only a ruse to evict the tenant.

5. We are of the view, courts below have completely misdirected in its approach. On going through the need urged in the Rent Control Petition it is clear what the landlord wanted is not to set up an air conditioned restaurant in the tenanted premises exclusively but he required that premises also so that he could use the same for the purpose of starting an air conditioned restaurant. It is for the landlord to decide in what manner the space is to be utilised and what are the modifications, additions, alterations etc. have to be made in the ground floor of the hotel premises. The Rent Control Court has opined that the landlord's case would indicate to evict the tenant not for living but for earning profit. The Rent Control Court also reiterated that from the evidence it can also be seen that the petitioner's need is for getting more earning and not for living. We are in complete disagreement with this' reasoning. What is wrong in making profit in a hotel business?

6. The Commission Report was misinterpreted and misunderstood. The evidence has to be analysed on the basis of the pleadings. The Commission Report states that in the tenanted premises an air conditioned restaurant as such cannot be set up. We are of the view, it is for the landlord to decide in what manner the space has to be utilised. Facts would reveal that hotel is a two storeyed building consisting of 18 rooms. Hotel is in the ground floor and first and second floors are utilised for lodging. Hotel is situated in a very important locality in the Cochin City

and if the landlord gets vacant possession of the premises, the same could be utilised for setting up an air conditioned restaurant which will also augment his business prospects.

7. The earlier Rent Control Petition filed by the father was not for the petitioner in the Rent Control Petition but for another son Raja gopalan who is no more. In the earlier Rent Control Petition there is no plea that the tenanted premises is required for starting an air conditioned restaurant. Both the Rent Control Court and the Appellate Authority have committed an error in thinking that earlier Rent Control Petition was for the same purpose and for the same son. The need was different and also the person for whom the need was projected is also different. This being the position, dismissal of the earlier Rent Control Petition would not amount to res judicata since parties are different and the need urged is also different and for another son by name Rajagopal who is no more.

8. Contention was raised by the tenant that the need urged by the landlord would only come Under Section 11(8) and not Under Section 11(3). First of all, no such contention was raised earlier either before the Rent Control Court or before the Appellate Authority. Oral and documentary evidence was adduced by both the parties considering the need Under Section 11 (3) and not Under Section 11(8). Tenant is not justified in contending before this Court in revision that the ground ought to have been under Section 11(8) and not under Section 11(3). We reject that contention.

9. We have also examined the question as to whether tenant is entitled to the benefit of the proviso to Section 11 (3). A Full Bench of this Court in Francis v. Sreedevi Warassiyar (2003 (2) KLT 230) has held that the burden is entirely on the tenant to establish both the limbs of the second proviso. Apart from the interested testimony of the tenant, no other independent evidence has been adduced by the tenant to discharge that burden. Tenant has not produced any evidence to show that her main source of income is the income derived from the business conducted in the tenanted premises. Landlord has asserted about the availability of buildings in the locality. There is nothing to show that tenant has made any effort to ascertain the availability of the buildings in the locality.

10. In such circumstances, we set aside the judgment of the Appellate Authority and allow this appeal. Consequently, order of eviction is passed under Section 11(3) of the Act. However, considering the facts and circumstances of the case, tenant is given time upto 28.2.2005 for vacating the tenanted premises on condition that she should file an undertaking in the form of an affidavit before the Rent Control Court within one month from today that she would vacate the premises within the aforesaid period and would pay future rent.

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