

Narayanan Vs. Vinod

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Court : Kerala

Decided On : May-27-2004

Reported in : 2004(3)KLT955

Judge : N.K. Sodhi, C.J. and; K.K. Denesan, J.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 12 and 12(3)

Appeal No. : R.C. Rev. No. 239 of 2003

Appellant : Narayanan

Respondent : Vinod

Advocate for Pet/Ap. : T.A. Ramadasan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

N.K. Sodhi, C.J.

1. This Revision Petition has been filed by the tenant under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act') against the order dated January 28,2003 passed by the Rent Control Appellate Authority directing him to put the landlord in possession of the demised premises under

Section 12(3) of the Act.

2. Facts giving rise to this petition which lie in a narrow compass may first be noticed.

3. The landlord-respondent filed a petition Under Sections 11 (2)(b) and 11 (3) of the Act seeking ejectment of the petitioner on the ground of non-payment of rent and also on the ground that he (landlord) bona fide needs the building for his own use and occupation. It is alleged that the landlord is an Ayurvedic Medical Practitioner and bona fide requires the tenanted premises for stocking, preparing the storing medicines as he intends to start his consultancy in the adjoining room. The petition was contested by the petitioner. He denied the bonafide need of the landlord and also claimed that the rent had been paid annually and that it was in arrears only because of the refusal of the landlord to receive the same. It was also pleaded that no alternative premises were available in the locality and that the tenant was mainly dependent for his livelihood on the income derived from the business carried on in the tenanted premises.

4. On a consideration of the oral and documentary evidence led by the parties the Rent Controller found that the need of the landlord was bona fide and that the tenant was not entitled to the benefit of the provisos to S. 11(3) of the Act. The ejectment petition was allowed Under Section 11 (3) of the Act and the tenant was ordered to be evicted. Since the tenant had deposited the arrears of rent the ground for eviction Under Section 11 (2)(b) of the Act was no longer available to the landlord. Feeling aggrieved by the order of ejectment the tenant filed an appeal before the Rent Control Appellate Authority, Thalassery.

5. While the appeal was pending the landlord-respondent filed an application under Section 12 of the Act for an order directing the petitioner to put the landlord in possession of the building as he had failed to deposit the arrears of rent admitted by the tenant to be due in respect of the demised premises. This application was allowed by the Appellate Authority and all further proceedings in the appeal were stopped and the petitioner was directed to vacate the demised premises and deliver vacant possession to the landlord- respondent. It is against this order that the present Revision Petition has been filed.

6. The solitary ground on which the impugned order has been assailed before us is that the petitioner was not granted time as stipulated in Section 12(2) of the Act to deposit the arrears of rent and that he had not been issued any notice under Section 12 (3) to show sufficient cause for not depositing the rent and, therefore, the order directing ejectment of the petitioner is contrary to the provisions of Section 12 of the Act. At this stage it is necessary to refer to Section 12 of the Act which reads as under:

'12. Payment or deposit of rent during the pendency of proceedings for eviction.

(1) No tenant against whom an application for eviction has been made by a landlord under Section 11, shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under Section 18 against any order made by the Rent Control Court on the application unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the Appellate Authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the Appellate Authority, as the case may be.

(2) The deposit under Sub-section(1) shall be made within such time as the Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in Sub-section(4):

Provided that the time fixed by the Court for the arrears of rent shall not be less than four weeks from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due.

(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the Appellate Authority, as the case may be, shall unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(4) When any deposit is made under Sub-section(1), the Rent Control Court or the Appellate Authority, as case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner, and the amount deposited may, subject to such conditions as may be prescribed be withdrawn by the landlord on application made by him to the Rent Control Court or the Appellate Authority in that behalf.'

The provisions of Section 12 of the Act are mandatory and no tenant against whom an application for ejectment has been made by a landlord is entitled to contest the same or to prefer an appeal under Section 18 of the Act against any order passed by the Rent Controller unless he had paid or pays to the landlord or deposits with the Rent Controller or with the Appellate Authority all arrears of rent admitted by him to be due in respect of the demised premises up to the date of payment and continues to pay or deposit the rent which may subsequently become due in respect of the building until the termination of the proceedings before the Rent Controller or the Appellate Authority. The deposit of the arrears of admitted rent has to be made within such time as the Court may fix. The time which the Court will fix for the deposit of the arrears of rent shall not be less than four weeks from the date' on which order is made and the time which is fixed for the deposit of rent which subsequently accrues shall not be less than two weeks from the date when it becomes due. Sub-section(3) of Section 12 of the Act then mandates that if any tenant fails to pay or deposit the rent as aforesaid the Rent Controller or the Appellate Authority shall 'unless the tenant shows sufficient cause to the contrary' stop all further proceedings and make an order directing the tenant to put the landlord in possession of the demised premises. In other words, if the admitted rent due is not deposited during the pendency of the proceedings before the Rent Controller or the Appellate Authority, all further proceedings have to stop and the authority concerned is required to make an order directing the tenant to put the landlord in vacant possession of the premises unless the tenant shows sufficient cause for not depositing that rent.

7. The short question that arises for consideration is whether the Rent Controller or the Appellate Authority, as the case may be, where admitted rent has not been paid, is required to issue a separate notice to the tenant to enable him to show

'sufficient cause' for default in payment of admitted rent or is it for the tenant himself to file an application and bring to the notice of the Court the reasons which prevented him from depositing the rent.

8. A bare reading of Section 12 of the Act leaves no room for doubt that the object of this provision is to require the tenant to deposit during the pendency of proceedings all admitted arrears of rent in respect of the demised premises and that he must continue to pay or deposit the rent which may subsequently become due in respect of the building until the proceedings before the Rent Controller or the Appellate Authority are terminated. The Rent Controller or the Appellate Authority, as the case may be, is required to make an order fixing the time within which the admitted arrears of rent shall be deposited by the tenant and this period shall not be less than four weeks from the date on which the order is made and for the rent which subsequently accrues the period shall not be less than two weeks from the date on which the rent becomes due. If the admitted arrears of rent are not deposited within the time fixed by the Court the tenant makes a default resulting in the penal consequences of his immediate eviction by stopping all further proceedings. This, however, will not happen if the tenant is able to show sufficient cause for making the default in not depositing the admitted rent. From the language of Section 12(3) of the Act and the legislative intent, it is not for the Rent Controller or the Appellate Authority to issue any separate notice to the tenant to enable him to show sufficient cause for not depositing the admitted arrears of rent. When the time fixed by the Court for the deposit of arrears of rent runs out and the tenant has not deposited the same, the Rent Controller or the Appellate Authority, as the case may be, is not expected to pass an order ordering ejectment of the tenant forthwith. The Rent Controller or the Appellate Authority while fixing the time within which the arrears of rent shall be deposited by the tenant should normally adjourn the hearing of the case to a date beyond the date fixed for depositing the rent thereby allowing reasonable time to the tenant to show sufficient cause for not depositing the rent if he has committed default in payment. It will then be for the tenant to move an application before the concerned authority to show sufficient cause for the non-payment of rent. In other words, the interval between the date up to which the rent is to be deposited and the date on which the order under, S.12(3) is passed should be reasonable to enable the tenant to show

sufficient cause for committing the default if he so chooses. If he moves such an application and points out the reasons which prevented him from depositing the arrears of admitted rent, the Court concerned will examine the issue on merits to find out whether sufficient cause has been shown or not. If sufficient cause is shown, the Rent Controller or the Appellate Authority will not order immediate ejectment of the tenant. If no application is filed by the tenant or if the reasons shown by the tenant are insufficient, the penal consequences as contemplated in Section 12(3) of the Act shall follow. As already observed, Section 12(3) of the Act is a mandate to the Rent Controller or the Appellate Authority to order immediate ejectment of the tenant if he does not deposit the admitted arrears of rent the only exception being if he is able to show sufficient cause for not doing so. In this view of the matter, the question posed earlier has to be answered in the negative. The Rent Controller or the Appellate Authority, as the case may be, where admitted rent has not been deposited by the tenant, is not required to issue any separate notice to the tenant to enable him to show sufficient cause for committing the default.

9. In the case before us, the application filed by the landlord Under Section 12 of the Act before the Appellate Authority came up for hearing on 9th August, 2002 and after hearing both sides the tenant was granted time to deposit the admitted arrears of rent on or before 10th September, 2002 and the case stood adjourned to 6th November, 2002. The tenant did not deposit the rent by 10th September 2002, and, thus, committed a default. The default started with effect from 11th September, 2002 and the tenant had sufficient time up to 6th November, 2002 to move an application to show sufficient cause for not depositing the arrears of admitted rent. He did not file any application to show any cause much less sufficient cause for the default committed by him and thereby became liable to immediate eviction as required by Section 12(3) of the Act. The Appellate Authority could have ordered the ejectment of the petitioner on 6th November, 2002 but it did not do so and the case was adjourned to 28th January, 2003. The tenant could have moved an application even before this date to show sufficient cause for not depositing the arrears of rent. Since he failed to avail this opportunity as well, the Appellate Authority was justified in ordering his ejectment under Section 12(3) of the Act. No fault can, thus, be found with the order passed by the Appellate

Authority.

In the result, the Revision Petition fails and the same stands dismissed.

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