

**Mini Vs. Leela**

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**Court :** Kerala

**Decided On :** Dec-02-2003

**Reported in :** 2004(1)KLT195

**Judge :** K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 114

**Appeal No. :** C.R.P. No. 1175 of 1998

**Appellant :** Mini

**Respondent :** Leela

**Advocate for Def. :** P. Vijaya Bhanu and; T. A. Unnikrishnan, Advs.

**Advocate for Pet/Ap. :** V. Giri, Adv.

**Disposition :** Revision petition allowed

**Judgement :**

ORDER

**K.S. Radhakrishnan, J.**

1. Landlady is the revision petitioner. Eviction was sought for under Sections 11(2)(b), 11(4)(i) and 11(4)(ii) of Act 2 of 1965. Rent Control Court allowed eviction under Sections 11(2)(b) and 11(4)(i) and dismissed the claim under Section

11(4)(ii). First respondent -tenant took up the matter in appeal before the Appellate Authority as R.C.A. No 19 of 1995. While the appeal was pending, first respondent died. Consequently his legal representatives, wife and children got themselves impleaded. The Appellate Authority allowed the appeal and set aside the finding under Section 11(4)(i). Aggrieved by the same this revision petition has been preferred by the landlady.

2. Petition schedule building was rented out on 1.1.1993 by Ext. A2 rent chit on a monthly rent of Rs. 400/-. Petitioner stated that first respondent had defaulted payment and that he had subleased the premises to respondents 2 and 3 and caused damages by reducing its value and utility of the premises. Petitioner had sent registered lawyer notice Ext. A3 dated 25.8.1993 to the first respondent intimating about the sublease and directing him to vacate the sublessee within thirty days from the date of receipt of the notice. Petitioner has stated in the rent control petition that first respondent has sublet a portion of the tenanted premises to the second respondent for conducting a telephone booth without her consent and knowledge. Further first respondent has also transferred the hotel business in the premises to the third respondent by way of sublease and the third respondent is running a hotel by name 'Thriphy Hotel' in the said premises.

3. First respondent - original tenant resisted the petition. Second respondent filed counter affidavit resisting the petition. Later his counsel reported no instruction and he was set ex parte. Third respondent was also set ex pane. In the counter statement filed by the first respondent he denied the alleged sublease. He maintained the stand that the entire premises is in his occupation. Telephone booth is run in the premises for his own benefit. It was pointed out that no licence for running the telephone booth was taken out in the name of the second respondent. The same was in fact conducted by the first respondent only with his assistance. Further it is also stated that second respondent is being paid fixed amount as remuneration. Third respondent is not doing any business in the premises. In order to establish her case, father of the petitioner was examined as P.W.I. P.W.2 is the commissioner appointed in O.S. No. 141 of 1993. On the side of the petitioner Exts.A1 to A5 documents were produced. First respondent got himself examined as R.W.I. On the side of the respondents Exts. B1 to B1(z) were

produced. Ext.X1 is the file of the Telecom District Office, Thrissur.

4. The Rent Control Court entered a clear finding on the basis of the oral and documentary evidence that the petitioner-landlady has established that the first respondent has sublet the premises to one Francis, the second respondent, and he is running telephone booth in a portion of the tenanted premises. Rent Control Court also entered a specific finding that the first respondent has subleased the premises to hotel business to the third respondent and he is conducting hotel by name 'Thripathi hotel' and later it was found that the hotel is being conducted by one Raghavan under the name and style 'Hotel Ambadi.' The Rent Control Court found no reason to allow eviction under Section 11(4)(ii) and therefore eviction under Section 11(4)(ii) was disallowed. Appellate Authority reversed the finding of the Rent Control Court, which in our view, by a wayward reasoning without properly understanding the meaning and scope of Section 11(4)(i) of the Act. Appellate Authority has first examined as to whether landlady had complied with the first proviso to Section 11(4)(i), i.e. issuance of notice. We may extract the said proviso for easy reference.

'Provided that an application under the clause shall not be made for the first time in respect of one and the same tenancy unless the landlord has sent a registered notice to the tenant intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sublease, as the case may be, within thirty days of the receipt of the notice or the refusal thereof. '

Appellate Authority took the view that the landlady has complied with the pre-condition of issuance of notice under the proviso to Section 11(4)(i) as far as the second respondent is concerned and not the third respondent. Appellate Authority held as follows:

'It is crystal clear that in Ext. A3 the contravention alleged is sublease/transfer of possession in favour of the second respondent. There is no complaint or grievance that there is a contravention by transferring/subleasing the building in favour of the third respondent. Thus, in respect of the alleged sub-lease/transfer of possession in favour of the third respondent, the proviso to Section 11(4) has not been complied with'.

Appellate Authority took the view that unless the alleged contravention is specified in the notice the tenant would be deprived of an opportunity to correct the indiscretion and reverse the error or wrong committed by him.

5. The reasoning of the learned Appellate Authority is not sound. Section 11(4)(i) stipulates that if the tenant after the commencement of the Act, without the consent of the landlord, transfers his right under the lease or sublets the entire building or any portion thereof if the lease does not confer on him any right to do so, landlord may apply to the Rent Control Court for an order of eviction directing the tenant to put the landlord in possession of the building. Before filing application under Section 11 (4)(i) there is a pre-condition that the landlord has to send a registered notice to the tenant intimating the contravention of the said condition of the lease. Landlord is not expected to make an investigation to find out the whereabouts of the sublessee or his name and address, a fact which is normally in the exclusive knowledge of the tenant. If the landlord finds that tenant has sublet the building or transferred his right in contravention of the condition of lease to a stranger, he is entitled to issue registered notice intimating the tenant of the contravention. 'Contravention' is an act done by the tenant in violation of a legal obligation not to sublet or transfer his rights. Tenant cannot act in opposition to the provisions of the rent deed. Once the tenant is alerted of the contravention of the condition of lease, he could terminate the sublease and revive his rights and restore landlord-tenant relationship within thirty days of receipt of the notice. The mere fact that landlady has not pointed out the name of the sublessee or failed to specify the name of the sublessee in the notice would not render the notice defective or invalid.

6. We may point out as far as this case is concerned, the notice Ext.A3 has fully satisfied the requirements of the proviso to Section 11(4)(i). We may refer to the relevant portion of the said notice, which reads as follows:

In the earlier portion of the notice extracted landlady has specifically mentioned the name of the second respondent as the person conducting the telephone booth within the tenanted premises but the name of the third respondent was not mentioned. In the last portion of the notice, which is extracted below, it is

specifically stated that which would indicate that there were more than one sublease. We are of the view, by issuing Ext. A3 notice the landlady has complied with the proviso to Section 11(4)(i). The finding of the Appellate Authority, that there was no proper notice, as far as third respondent is concerned, is not correct and the finding will stand vacated.

7. We may examine whether lease deed permits subletting or transfer his right. Ext.A2 is the rent chit which restricts sublease. The operative portion of which reads as follows:

The subletting or assignment has to be treated objectionable unless the lease deed itself contains a term permitting the subletting or assignment. See: Janab M.P. Azad v. Fatima Sarohimi Suresh (1983 (1) RCJ 259 (Ker). Ext. A2 does not authorise or permit transfer of right or subletting, on the other hand it restricts subletting.

8. We may now examine whether the tenant has either transferred his right under the lease or sublet the entire or any portion of the building to respondents 2 and 3, the alleged sublessees. We have already indicated that second respondent is conducting a telephone booth in the tenanted premises, a fact which is not disputed. The reasoning is that the same would augment the income of the tenant and that the second respondent is conducting the business under the first respondent. Appellate Authority has categorically held as follows:

'It is evident that the telephone booth is being operated in a portion of the petition schedule building. On the admitted evidence the presence of second respondent in the booth is not disputed. We have of course, the evidence of P.W.2 and Ext. A5 also to show that second respondent used to be present in the premises. Though the tenant/first respondent attempted to advance a contention that second respondent is only an employee entitled to specific amount every month, that has not been proved satisfactorily. Similarly though an attempt was made to show that son of the tenant/first respondent was also operating the telephone, there is no satisfactory evidence in support of such plea also.

Thus, the evidence shows that telephone booth is installed within the petition schedule building, that the telephone installed in the said booth is the one allotted to the second respondent, that the second respondent is present in the premises, the explanation of first respondent that her son is operating the telephone is not proved and that there is no evidence to prove that second respondent is an employee of the first respondent'.

After entering the above findings of fact, curiously the Appellate Authority took a strange reasoning as follows:

'The installation of a telephone booth in the premises would definitely help to augment and support the business running the hotel. In order to improve his business the tenant may want a public telephone to be available in his premises. If in the interest of advancing his business, he chooses to permit a licensed telephone operator to operate his public telephone in his premises, it cannot be said that that by itself amounts to objectionable transfer of possession/sublease'.

Appellate Authority after assuming that the entire income received from operating the telephone is being taken away by the second respondent and the first respondent is not entitled to receive any income from the profits earned by second respondent, held as follows:

'By merely permitting a telephone operator to keep his telephone in the premises of a hotel, the proprietor of the hotel does not transfer possession objectionably to the telephone operator. In this case, the admitted fact is that there is a telephone booth. That telephone booth is inside the petition schedule building.'

The appellate authority therefore concluded that there is no objectionable transfer or exclusive possession to the second respondent, a finding which cannot be supported either on facts or on law. It has also come out in evidence that the tenant has sublet not a portion of the building but whole portion. Even if only a portion of the building was sublet the landlord has got the right to evict the tenant from the whole building. See: *Kadeersha v. Venkitaswamy* (1978 KLT 260) and *Ramakrishnan v. Sankaranarayanan* (1998 (1) KLT (SN) 49).

9. The Legislature has given right to the landlord to seek eviction if the tenant transfers the right under the lease or subleases the entire building or a portion thereof in contravention of the conditions of lease. Right of the tenant under the lease is to enjoy the tenanted premises on payment of rent to the landlord. Once tenant is put in possession by the landlord of the premises he is entitled to get protection under the provisions of the Kerala Buildings (Lease and Rent Control) Act. He has no legal right to contravene the terms of the lease and transfer his right under the lease or sublease the entire building or any portion thereof to third party. The Act gives emphasise 'transfer of right under lease and sublease the premises'. By putting the second and third respondent in the tenanted premises, tenant has transferred the right in contravention of the terms of the agreement the legal implication of which has been elaborately considered by us in the decision in *Vialaparambil Gopi v. Chundamveetil Pazhaya Ottayil Mohamed Basheer*, 2003 (3) KLT SN 114 = (2003) 3 KHCACJ 670.

10. In view of the above mentioned circumstances, we are inclined to set aside the judgment of the Appellate Authority and restore the order of the trial court. Revision petition is allowed as above.

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