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Ryru Vydiar Vs. Saseendran

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Court : Kerala

Decided On : Dec-13-2002

Reported in : 2003(1)KLT367

Judge : K.S. Radhakrishnan and; A.K. Basheer, JJ.

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

Appeal No. : C.R.P. No. 589 of 1997

Appellant : Ryru Vydiar

Respondent : Saseendran

Advocate for Def. : R. Parthasarathy, Adv.

Advocate for Pet/Ap. : T.P. Kelu Nambiar, Sr. Adv.,; P.G. Rajagopalan and; Gopi

Judgement :
ORDER

K.S. Radhakrishnan, J.

1. Tenant is the revision petitioner. Eviction was sought for under Sections 11 (2)(b) and 11(3) of Act 2 of 1965. Rent Control Court dismissed the petition. On appeal by the landlord, Appellate Authority allowed eviction under Section 11(3) of the Act.

2. Petition schedule room was let out to the tenant by the grandfather of the landlord on a monthly rent of Rs. 17.50. Petition schedule shop room and the propertyin which rooms are situated were bequeathed to the present landlord and to his brothers as per registered Will executed by his grandfather in the year 1971. Second respondent before the Rent Control Court is landlord's brother who is away in Gulf. Landlord could not secure any employment. However, he had practised videography and used to cover various important functions as a professional videographer. Second respondent before the Rent Control Court is the brother who had helped him with money to buy video camera and accessories. Petitioner wanted to set up a video studio in the petition schedule room.

3. Petition was resisted by the tenant. It was contended by the tenant that he is an ayurvedic physician doing consultation and dispensation of medicine in the petition schedule room and his family is depending upon the income that is derived from the business conducted in the petition schedule room. It was also contended that there is no bonafides in the plea of the landlord. Benefit of the provisos was also claimed. Both the courts below have concurrently found that the need projected by the landlord is genuine. Rent Control Court however held that tenant is entitled to get the benefit of the second proviso. Consequently rejected the claim under Section 11(3). While holding so, Rent Control Court has stated as follows:

'RW. 1 has a definite case that no other buildings are available in the locality for his occupation. He added that in order to get a newly constructed room in the locality he has to pay premium of about 11/2 or 2 lakhs and monthly rent of about Rs. 1,500/-. PW. 1 has not denied the case of RW. 1 in this regard, PW. 1 stated that he is not aware whether huge amount to be paid as premium and rent for getting other rooms. From the available evidence, it can only be inferred that RW. 1 is depending mainly on the income getting from his practice as physician for his livelihood and no other rooms without payment of huge amounts are available for the occupation of RW. 1 in the locality.'

The Rent Control Court also found that landlord could not disprove the case of the tenant that there are three rooms in the building which are being used for consultation, storage or medicine and preparation of medicine. Rent Control Court

however held it is well settled that the need of a tenant in some conditions is kept above the need of the landlord. It was also held that since the tenant mainly depends upon the income from his practice as physician he has satisfied the condition of the second proviso as well.

4. The Appellate Authority however took the view that the practice in ayurveda would not come within the purview of the second proviso to Section 11(3) of the Act. It was held that tenant could not prove that his main source of income is from the business conducted in the tenanted premises. With regard to the second limb of the first proviso, that is, availability of alternate building, Appellate Authority held as follows:

'In order to attract the second proviso to Section 11(3) of the Act, it is also necessary for the first respondent to prove that no alternate accommodation is available for him in the locality to carryon the avocation. In the counter it is stated that it is impossible to get a suitable building at Vatakaraunless a huge amount is paid by way of premium. RW. 1 in chief examination has stated that he will have to pay an amount of rupees one lakh or rupees two lakhs by way of premium and rent of at least Rs. 1,500/- per month to get a building in the immediate vicinity of the building. A building of course cannot be said to be available unless the first respondent is able to get it on a reasonable rent. If it becomes necessary for the first respondent to pay an amount of Rs. One lakh or rupees two lakhs by way of premium and a rent of Rs. 1,500/-, it cannot be said that a building is available to him. There is no dispute with regard to this proposition.'

Appellate Authority though held as above, took the view that there is no evidence to establish those contentions and consequently held that the tenant had not proved about the non availability of the building. It was held by the Appellate Authority that the tenant had failed to prove the existence of two ingredients referred to in the second proviso and consequently ordered eviction. Though we agree with the conclusions reached by the Appellate Authority on the second proviso to Section 11(3), we may indicate that the reasoning of the Appellate Authority for reaching the said conclusion cannot be fully supported. Appellate Authority has taken the view that practice of ayurveda physician is not a business.

This reasoning is not correct. In this connection the decision of the Apex Court in Dr. Jess Raphael v. Regina Joseph (1994 (1) KLT 852) is relevant. In that case tenant was conducting a nursing home. The Apex Court held in that case that the word 'business' so long as a systematic activity is carried on it wouldbe enough to call it 'business'. It was held that a doctor who is running a nursing home is carrying on 'business' within the meaning of the-express ion 'trade or business'. It was also noticed that the Apex Court in S. Mohanlal v. R. Kondiali (1979 (3) SCR 12) held that profession carried on by an advocate is a business. A bench of this court in Raghavan v. Balamohan (1997 (1) KLT 202) held that doctor practising homeopathic medicine is carrying on a business. This court applied the ratio of the decision in Dr. Jess Raphael's case, supra. The Bench also held in view of the decision in Dr. Jess Raphael's case of the Apex Court, the decision of this court in Hassan v. Mohammed (1994 (1) KLT 502) and Krishnankutty Menon v. Malathi (1985 KLT 6) and Sethurama Menon v. Meenakshi Amma (1966 KLT 665) are no longer good law. Applying the decision of the Apex Court in Dr. Jess Raphael's case as well as the decision in Raghavan's case, we are of the view practising ayurveda is a business within the meaning of the second proviso to Section 11(3) of the Act. Even then we arc of the view the tenant has not established that the income derived by him from the said business is the sole source of livelihood. Consequently first limb of the second proviso was not satisfied.

5. We are alsoof the view that the reasoning of the Appellate Authority that it may become necessary for the tenant to pay Rs. 1 lakh or Rs. 2 lakhs by way of premium to get a building cannot be said to be correct. We are of the view these are all matters for the tenant and the prospective landlord to negotiate. This legal position is well settledin the decision of this court in Kunhiraman Nair v. Madhavi (2002 (2) KLT 10). As far as the landlord in an eviction petition is concerned, he need only point out availability of the building. It is for the tenant to disprove the same. Act of paying pakidi and the demand of exorbitant rent by itself is not a ground to deny the bonafide need established by the landlord. In any way as far as this case is concerned, tenant had failed to establish the fact of non-availability of alternate building. In such circumstances, we are inclined to uphold the order of the Appellate Authority. Consequently the revision lacks merits and it is accordingly dismissed. Considering the facts and circumstances of the case,

tenant is given three months' time from today to vacate the premises.

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