

Manoharan Vs. Narayana Menon

Manoharan Vs. Narayana Menon

SooperKanoon Citation : sooperkanoon.com/730795

Court : Kerala

Decided On : Nov-29-2002

Reported in : 2003(1)KLT538

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

Acts : Kerala Buildings (Lease & Rent Control) Act, 1965 - Sections 11(2), 23 and 23(1)

Appeal No. : C.R.P. No. 1107 of 1993

Appellant : Manoharan

Respondent : Narayana Menon

Advocate for Def. : V.V. Nandagopal Nambiar and; M.P. Sreekrishnan, Adv.

Advocate for Pet/Ap. : N. Viswanatha Iyer, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. The question that has come up for consideration in this case is whether the Rent Control Court after having granted time more than what was statutorily fixed

under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 could still grant further period in exercise of its discretion under Section 11(2)(c).

2. A Bench of this court *Rabi Umma v. Mukundan* (1992 (1) KLT 700) held that the wording of the sub-clause especially the words 'such further period' would permit extension of the period fixed in the original order by a subsequent order passed not only before the expiry of the original period but also after its expiry. In *Jeboy v. Subramonian* (1990 (2) KLT 167) another Bench of this court held that if extension of time is granted once, the court becomes functus officio and thereafter it is not open to the Rent Control Court to grant further extension of time.

3. Short facts which are necessary for disposal of this case are as follows: Landlord is the owner of building bearing door No. 39/651 with all additions, and temporary sheds attached to the same. Eviction was sought for by the landlord under Section 11(2)(b) for arrears of rent. Tenant filed objections. However, when the matter came up for hearing both sides submitted that actual arrears of rent payable by the tenant would come to Rs. 8,407/- as on 31.10.1989 and order of eviction was passed by the Rent Control Court. Rent Control Court also recorded the statement and passed an order under Section 11 (2)(b) and the order passed under Section 11(2)(b) was subject to the order passed under Section 11(2)(c) of the Act.

4. Tenant then paid the amount due as per the order on 28.5.1990 and it was accepted by the landlord. Landlord however moved the learned Rent Controller for executing the order. On 16.10.1990 Amin went to the property for effecting delivery which was objected to by the tenant. Tenant, later filed I.A. No. 6109 of 1990 to condone the delay in filing Section 11(2)(c) petition. I.A. No. 6411/90 was also filed under Section 11(2)(c) of the Act for vacating the order of eviction passed on 12.12.1989. LA. No. 6412/1990 was filed under Sections 23 and 11(2)(c) read with Sections 141, 148 and 151 of the Code of Civil Procedure for enlargement of the time fixed under the order dated 12.12.1989. Rent Control Court found that there was no delay. Later I.A. No. 6410/90 and 6411/90 were heard and by a common order dated 17.7.1991 allowed those applications since the tenant had paid the amount. Landlord took up the matter in appeal. Appellate

Authority however reversed the finding of the Rent Control Court and held that the landlord is entitled to execute the order passed under Section 11(2)(b) of the Act, reasoning of which is challenged in these proceedings.

5. Before examining the rival contentions we may examine the scope of Section 11(2)(b), which is extracted for easy reference.

11. (2)(b). If the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied it shall make an order rejecting the application thereof by him:

Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof.

Section 11(2)(b) deals with a situation prior to the passing of the order of eviction. Following are the procedures to be followed by the landlord for eviction under Section 11 (2)(b) of the Act. Landlord has to send a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of receipt of the notice or refusal thereof. Rent Control Court has to give a reasonable opportunity of showing cause against the application. If the Rent Control Court is satisfied it can direct the tenant to put the landlord in possession of the building and if not make an order rejecting the application.

6. Section 11(2)(c) deals with a situation subsequent to the order of eviction passed under Section 11(2)(b) of the Act. We may extract the said provision for

easy reference.

(c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in the discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order.

Following are the procedures to be followed while passing an order under Section 11 (2)(c). The order shall not be executed before the expiry of one month from the date of the order. Rent Control Court has also to pass an order not to execute the order of eviction for 'such further period' as the Rent Control Court may in its discretion allow, and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order. Analysing the above mentioned provision it is clear that statute has prescribed the time limit of fifteen days under Section 11(2)(b). No discretion is conferred on the Rent Control Court to grant further time while exercising the powers under Section 11(2)(b). However, statute has given discretionary power to the Rent Control Court to grant further period beyond one month from the date of the eviction order. Statute has never conferred any power on the Rent Control Court to indefinitely hold up the execution proceedings after having passed an order under Section 11(2)(b). Section 11(2)(c) has prescribed a bar in executing the order of eviction for a period of one month from the date of such order. Statute has also conferred power on the Rent Control Court to grant such further period. We are of the view 'such further period' cannot be interpreted as such further periods. Rent Control Court can exercise the discretion only once. Contention was raised by the counsel for the tenant placing reliance on the decision of this court in Rabi Umma's case. By virtue of Section 23 of the Act Rent Control Court has to pass an order to enlarge the time as it pleases. We find it difficult to accept the contention of the tenant. We may examine Section 23 also. Relevant portion of Section 23 is as follows:

23. Summons, etc. (1) Subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authority shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters:-

(a).....

x x x x x (i) enlargement of time originally fixed or granted.

Section 23(1)(i) has to be read subject to such conditions and limitations as may be prescribed that is within the limit prescribed statutorily under Section 11(2)(c), that is, one month and such further period as the Rent Control Court may in its discretion allow. We are therefore of the view that Rent Control Court can extend the period only once. We are in this case not called upon to exercise the powers of the trial court. Appellate Authority had also refused to extend the time, in our view, rightly. In the light of the above we may examine whether this is a case where Rent Control Court has properly exercised the discretion in extending the time.

7. In the instant case, the order of eviction was passed on 12.12.1989. Tenant agreed that arrears of rent would be paid within a period of three months. Rent Control Court recorded the statement and passed an order to that effect. Rent Control Court also directed the tenant to vacate the premises in case amount is not paid subject to Section 11 (2)(c). We are of the view Rent Control Court, was not legally obliged to grant any time while exercising powers under Section 11 (2)(b). Time limit is fixed by the statute. It is by virtue of the request of the tenant three months time was granted though the tenant was not statutenly entitled. The Rent Control Court has no discretion under Section 11(2)(b) to grant any time beyond what is provided under Section 11(2)(b). This vital factor was not taken into consideration while granting three months time by the Rent Control Court while passing orders under Section 11(2)(b). Three months' time was however granted on the request made by the tenant. In this case Rent Control Court allowed the application without properly exercising the discretion under Section 11(2)(c) which was reversed by the Appellate Authority. In our view no cogent grounds and reasons are stated by the tenant for not depositing the amount within the time

agreed to by him. The Rent Control Court was not justified in condoning the delay and extending further time in the facts and circumstances of the case. In such circumstances we uphold the order of the Appellate Authority and dismiss the revision petition. However, the tenant is given three months' time from today to vacate the premises.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com