

Abdul Karim. Vs. Sebastian.

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Court : Kerala

Decided On : Nov-26-2010

Judge : Pius C.Kuriakose; P.S.Gopinathan, Jj.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1959 - Sections 20, 11(3), 11(4)(i)

Appeal No. : RCRev..No. 131 of 2010

Appellant : Abdul Karim.

Respondent : Sebastian.

Advocate for Def. : SRI.MANOJ RAMASWAMY, Adv.

Advocate for Pet/Ap. : SRI.M.P.MADHAVANKUTTY, Adv.

Judgement :

1. Under challenge in this revision under Section 20 of the Kerala Building (Lease & Rent Control) Act, 1965 by the 1st respondent in the Rent Control Petition is the judgment of the Rent Control Appellate Authority, ordering eviction against the revision petitioner under Section 11 (4)(i) of Act 2/65, reversing the order of the Rent Control Court dismissing the eviction petition in which eviction was sought on the ground of arrears of rent and bona fide need for own occupation and several other eviction grounds.

2. The parties shall be referred as the 'landlord', 'tenant' and the 'alleged sub-tenant'. The landlord sought eviction on the grounds of arrears of rent under Section 11(2)(b), bona fide need for own occupation under Section 11(3), sub-letting under Section 11(4)(i) and also on the ground of misuser of the building under Section 11(4)(ii). It is conceded by both sides that the only eviction ground which survives is the ground of sub-letting and we do not have to be concerned with the other grounds in this revision. The allegation of the landlord in the context of Section 11(4) (i) was that the first respondent is the tenant and that he has sub-let or transferred the premises unauthorisedly to the second respondent in the Rent Control Petition who is arrayed as the second respondent in this revision petition. No contest was raised by the second respondent in the Rent Control petition either before the Rent Control Court or the Appellate Authority. In fact, the specific allegation of the landlord was that the first respondent tenant has received a sum of Rs.1,50,000/- from the alleged sub-lessee and that he is further receiving daily rent of Rs. 400/- from him. The defence of the revision petitioner was that there is no sub-lease or transfer. The defence was that the alleged sub-lessee was only a supplier of cattle to the meat business which was being conducted by the revision petitioner. A sum of Rs. 1,50,000/- was due from the revision petitioner to the first respondent on account of that business and the occasional visits of the alleged sub-lessee to the petition schedule building was only for the purpose of collecting the amount due to the alleged sub-lessee.

3. The R.C.P. went for trial and in the enquiry, the evidence consisted of Exts. A1 to A5, B1 to B3 and oral evidence of PW1 and CPWs 1 and 2. PW.1 is the wife and power of attorney holder of the landlord who was employed in Bombay. CPW.1 was the revision petitioner herein and CPW.2 was his employee. The evidence adduced by PW.1 was to the effect that her information regarding the sub-lease is based on the conversation between CPW.1 and the alleged sub-lessee, which, she could overhear as her residential building was adjacent to the petition schedule building, which was only a leanto of the residential building. The learned Rent Control Court took the view that the evidence adduced by the landlord was not strong enough to support the finding that there is objectionable sub-lease or transfer. Taking that view of the matter, the Rent Control Court would dismiss the Rent Control Petition. The Rent Control Appellate Authority would

consider the appeal preferred by the landlady. That authority made a thorough reappraisal of the evidence in the case. It was observed by the Appellate Authority that the evidence of PW.1 which is to the effect that the second respondent is always seen in the premises and from the conversation of the respondents which she overheard, she understood that the second respondent is a sub-lessee, is not sufficient to establish the case of sublease. However, the learned Appellate Authority would further observe that sub-leases are always entered in secrecy and conclude that in the circumstances which surround this particular case and having regard to the probabilities of the matter, the version of the landlord that the jural relationship between the revision petitioner and the sub-lessee is that of a tenant and alleged sub-tenant. In this context, the learned Appellate Authority would find that the version of the revision petitioner / tenant that the alleged sub-lessee was visiting the petition schedule building occasionally for the purpose of collecting back the sum of Rs. 1,50,000/- which was due to the alleged sub-lessee is not at all probable in the nature of the business conducted by the revision petitioner. In that view of the matter, the learned Appellate Authority would reverse the finding of the Rent Control Court and order eviction under Section 11(4) (i).

4. In this revision under Section 20 of the Act, various grounds have been raised assailing the judgment of the Appellate Authority. Sri. M.P. Madhavankutty, learned counsel appearing for the petitioner would address his arguments before us on the basis of those grounds. Mr. Madhavankutty argued that in order that eviction on the ground of sub-letting under Section 11(4) (i) is established before the Rent Control Court, it is necessary that there should be cogent evidence either regarding objectionable sub-lease or regarding objectionable transfer. In the instant case, there is no evidence to support a finding of either objectionable sub-lease or objectionable transfer. Admittedly and evidently, the revision petitioner is physically present in the petition schedule premises.

5. The allegation of the landlord and the evidence of PW.1 is only to the effect that the alleged sub-lessee is frequently found in the petition schedule premises along with the revision petitioner tenant. Even according to the learned Appellate Authority, the version of PW.1 that she inferred sublease on overhearing the conversation between the revision petitioner and the alleged sub-lessee is not very

much dependable. It is essentially on preponderance of probabilities that the learned Appellate Authority holds that there is sublease. According to us, the inference drawn by the learned Appellate Authority merely on probabilities was not warranted in the present case. The version of the tenant that he owed a substantial amount to the alleged sub-lessee and that the alleged sub-lessee was frequently the petition schedule building demanding repayment, is in our opinion an equally probable version. True, subleases are always made in secrecy. But in the present case, admittedly and evidently the tenant has not vacated the building. Tenant is very much present and doing business in the petition schedule building. When the tenant is physically present and doing business in the petition schedule building it was the landlord's burden to establish the alleged sublease by adducing cogent evidence. That burden has not been discharged in the present case. We are therefore inclined to interfere with the judgment of the Appellate Authority.

6. But we notice another aspect of the matter. The petition schedule building is situated at Kurissumoodu Junction which is an important commercial junction in Changanassery Municipality. Evidently the rent being paid by the tenant to the landlord is in our opinion very low. We are inclined to re-fix the rent prospectively subject to regular fixation of fair rent by the Rent Control Court.

7. The result is that the Rent Control Revision is allowed. The judgment of the Appellate Authority is set aside and the order passed by the Rent control Court is restored. The R.C.P. is dismissed. The rent payable by the revision petitioner to the respondent is tentatively re-fixed with effect from 1.12.2010 at Rs. 9,000/- per month. It is clarified that this fixation of rent is tentative and if either party is aggrieved, it is open to such parties to approach the Rent Control Court for getting fixed the fair rent. It is further ordered that the revision petitioner shall pay the entire arrears of rent accrued so far to the respondent within one month from today.

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