

K.A.Abbas. Vs. U.A.Abdulla.

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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 - Section 11(2)(b), 11(3), 11(4)(i)

Appeal No. : RCRev..No. 372 of 2010

Appellant : K.A.Abbas.

Respondent : U.A.Abdulla.

Advocate for Pet/Ap. : SRI.P.K.MUHAMMED, Adv.

Judgement :

1. The respondents/tenants in RCP No.2/2008 on the file of the Rent Controller, Kasaragod are the revision petitioners. The respondent herein, to whom the petition schedule building belongs, in his petition contended that his son Abdul Rahman, who was examined as PW2, has no avocation and the petition schedule building is bona fide needed for the occupation of PW2 to start a provision store and that PW2 is a dependent. It was further contended that the petition schedule building was let out as per Ext.A1 lease deed for a monthly rent of Rs.1,000/- and that the rent of the building was kept in arrears from 16/10/2006 and despite Ext.A3 notice, the arrears of rent was not discharged and that the 1st revision petitioner sub let the petition schedule building to the 2nd revision petitioner

without the consent of the respondent. With these pleadings, the respondent sought for an order of eviction under Section 11(2)(b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease & Rent Control) Act 1965 (hereinafter referred to as 'the Act' for short.).

2. The revision petitioners contended that the petition schedule building was not obtained on lease as per Ext.A1. It was obtained on lease in the year 1993 for a monthly rent of Rs.500/- and that it was subsequently enhanced to Rs.1,000/- in the year 2003 and that there was no arrears of rent and that rent was paid upto October 2007. The bona fide need alleged was also disputed and further contended that the revision petitioners mainly depend upon the income from the vegetable business run in the petition schedule building for their livelihood and that there is no sub lease in favour of the second respondent and the 2nd respondent is only a worker under the revision petitioners.

3. During the course of enquiry, the respondent, his son and another worker were examined as the PWs 1 to 3. The revision petitioner and another were examined as RwW1 and 2. On the side of the respondent, Exts.A1 to A6 were marked. On the side of the revision petitioners, Exts.B1 to B14 were marked. The report of the commissioner was marked as Ext.C1. The Rent Controller on appraisal of the evidence on record arrived at a finding that there is arrears of rent as pleaded in the petition and the need urged by the respondent is bona fide and that there is no building available in the possession of the respondent to meet the requirements of PW2 and that the revision petitioners failed to establish that they were mainly depending upon the income derived from the business run in the petition schedule building for their livelihood and that no suitable building was available in the locality to meet their requirement. Consequently, the petition was allowed in part directing the revision petitioners to put the respondent in possession of the petition schedule building under section 11(2)(b) and 11(3) of the Act. The sub lease alleged in favour of the 2nd respondent was found in favour of the revision petitioners. The prayer for eviction under section 11 (4)(i) was declined.

4. Being aggrieved, the revision petitioners preferred appeal as RCA No.4/2009 before the Rent Control Appellate Authority, Kasaragaod. By the impugned

judgment dated 14/10/2010, the appeal was dismissed.

5. In this revision under Section 20 of Act 2 of 1965, various grounds are raised assailing the legality, correctness and propriety of the of the judgment in appeal.

6. We heard Sri.P.K.Muhammed, learned counsel appearing for the revision petitioners and perused the judgment impugned as well as the order of the Rent Controller. The plea of the revision petitioners that there is discharge of arrears rent could not be established. The revision petitioners had not at all produced any document to establish that there is payment of rent as alleged by them. The rate of rent is not at all disputed. As regards arrears there is oath against oath. Since the plea is one of discharge, it is the burden of the revision petitioners to prove the same. Other than the oral exercise, there is no reliable evidence. We find no reason to disbelieve the respondent who had deposed that there are arrears of rent. In the above circumstances, we find that the authorities below were justified in arriving at a finding that there is arrears of rent. That finding requires no interference.

7. As regards the bona fides of the need, there is evidence of PW1 supported by PW2 to the effect that the PW2, is depending upon the respondent and that he has no avocation of his own. The intention to start a provision shop for PW2 is well established by the evidence of PWs1 and 2 which the authorities below concurrently believed. Going by the judgment and order of the authorities below, we find that the authorities below had correctly appreciated the evidence and entered finding in favour of the respondent. In fact, the finding regarding the bona fides of the need by the authorities below was not much impeached by the learned counsel. But the claim is that the revision petitioners are entitled to the benefit of the 2nd proviso. There is no case for the revision petitioners that the respondent is in possession of any other vacant building to meet the requirement of PW2. So, admittedly the first proviso to sub section (3) of Section 11 would not interdict the claim for eviction under Section 11 (3). As regards the benefit of the second proviso, the revision petitioners had not at all adduced any evidence to show that the income from the petition schedule building is their main source of livelihood. Though they contended that they are getting Rs.400-500/- per day from the

business run in the petition schedule building, no document was produced in support of that plea. The revision petitioners could have produced the accounts books or profession tax receipt. But nothing was produced. Therefore, regarding the income from the business run in the petition schedule there is no evidence. The respondent had alleged that the building having door Nos.XII/317, E17, XII/317 E13 and XII/317 E15 were lying vacant. It is in support of that plea, Exts.A5 and A6 were relied upon. The first revision petitioner as RW1 had admitted that these shop rooms are lying vacant. But, the contention is that it was situated at a distance of 750 metres and that the rent payable in respect of those buildings is not affordable to them. The distance of 750 meters to the alternate building is not at all a reason to deny the eviction sought under Section 11 (3). As regards the rent payable in respect of those buildings absolutely there is no evidence. Though the revision petitioners had contended that the rent that might be payable in respect of those buildings is not affordable, no evidence was let in to that effect other than the vague statement. There is nothing on record to show that the landlords of those buildings had been making any demand for an exorbitant rent. In the event the revision petitioners are bound to pay fair rent in respect of those buildings, it shall not be a reason to reject the eviction sought under section 11(3). On going through the judgment under challenge as well as the order of the Rent Controller, we find that the suitable buildings are available in the locality to meet the requirements of the revision petitioners. The reason stated by the revision petitioners is not at all justifiable to decline eviction sought under Section 11(3). The fact finding authorities below had meticulously analysed the evidence on record and rightly rejected the benefit of the 2nd proviso claimed by the revision petitioners. We find little reason to interfere with the findings of the authorities below in exercise of revisional jurisdiction. The revision petition is devoid of merits.

8. The learned counsel, having failed to impress upon us to interfere with the impugned judgment, sought one year time to the revision petitioners to vacate the premises. We find that the time sought for is exorbitant and that it would be just and proper to grant time till 30/6/2011.

9. In the result, the revision petition is dismissed as devoid of merits. The revision petitioners are granted time till 30/6/2011 to vacate the premises on the following

conditions; i). The revision petitioners shall file an affidavit before the Rent Controller within three weeks from today undertaking to vacate the premises on or before 30/6/2011 without raising any objection. ii). The arrears of rent if any shall be discharged within one month from today and continues to pay occupational charges at the contract rent without any default. In the event of the revision petitioners file affidavit as above and conditions therein are honoured, the Rent Controller/Execution Court shall keep the order of eviction in abeyance till 30/6/2011. In the event of failure to comply with any of the above conditions, the respondent is at liberty to get the order of eviction executed on proof of failure to comply with the conditions.

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