

Akbar Ali Vs. U.Narayanankutty

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Court : Kerala

Decided On : Jan-05-2011

Reported in : ILR2011(1)Ker877

Judge : Pius C. Kuriakose; N.K.Balakrishnan, Jj.

Acts : The Rent Control Act - Sections 20, 11(3), 11(4)(iii), 11(4)(iv), 20

Appeal No. : R.C.R.Nos.3,7,8,9,10,11 & 12 of 2011

Appellant : Akbar Ali

Respondent : U.Narayanankutty

Advocate for Pet/Ap. : SRI.V.CHITAMBARESH, Adv.

Judgement :

1. The short point that arises for consideration in these seven Rent Control Revisions is whether the order for joint trial and the consequent order of eviction passed by the learned Rent Controller u/s.11(3) of Act 2/65 which was confirmed in appeal by the learned Appellate Authority suffer from the vice of illegality, irregularity or impropriety warranting invocation of the revisional jurisdiction of this Court under S. 20 of the Act.

2. Eight Rent Control Petitions were filed by the same landlord against different tenants inter alia raising the common ground for eviction under S.11(3) of the Act.

All the petition R.C.R.3/2011 and connected cases schedule rooms form part of the ground floor of a larger building. The common ground urged by the landlord is that he requires all the petition schedule buildings/rooms for the purpose of conducting a departmental store. It was averred that in order to conduct a departmental store, necessary modifications and alternations will be effected by him after the buildings are got vacated. Against some of the tenants apart from Section 11(3), other grounds like Section 11(4)(iii) and 11(4)(v) were also projected.

3. All the eight Rent Control Petitions were jointly tried and a common order of eviction was passed by the Rent Control Court on the ground of bonafide need and on other grounds also.

4. The respondent in R.C.P.No.1/2008 did not file any appeal. It is reported that he subsequently vacated the building held by him.

5. The appeals filed by other seven tenants were dismissed by the learned Appellate Authority confirming the order of eviction R.C.R.3/2011 and connected cases under Section 11(3) of the Act. Challenging the concurrent verdicts the tenants have come up in revision. They contend that the joint trial allowed by the Rent Controller is unsustainable since there is differentiability in the defensive pleas taken by the tenants and that merely because all the rooms are under the common roof belonging to the same landlord, it cannot be held that the petitions can be jointly tried.

6. Sri. V.Chitambaresh, learned senior counsel has relied upon the decision in Ebrahim Ismail Kunju v. Phasila Beevi [1991(2) KLT 861] and submitted that since the common ground urged by the landlord is under Section 11(3), the tenants can have different defensive pleas pertaining to the second proviso to Section 11(3) and the evidence that can be let in by the tenants to prove entitlement of the benefit under the second proviso must certainly vary depending upon the various defences taken by them.

In Ebrahim Ismail Kunju v. Phasila Beevi [1991(1) KLT 861] this Court was considering a case where there were two R.C.R.3/2011 and connected cases

landlords. Smt.Phasila Beevi was the landlady in one case and her husband was the landlord in the other two cases. They filed a petition for joint trial. In that case it was found that a joint trial would work out serious prejudice to the parties and therefore it was held that order for joint trial cannot be sustained. But here, the landlord is the same. The decision in Ebrahim Ismail Kunju v. Ogasuka Beevi (cited supra) was followed in Sasidharan v. Saroja (2004(2) KLT 885).

That decision was also relied upon by the learned senior counsel for the revision petitioner, where it was held:

"Landlord in all the cases is the same. Tenants are different. Need urged is also the same. That by itself, in our view, is not sufficient to order a joint trial. A Division Bench of this Court in Ibrahim Ismail Kunju v. Phasila Beevi, 1991(1)KLT 861,while dealing with the scope of Section R.C.R.3/2011 and connected cases 23 of Act 2 of 1965 in a case where eviction was sought for under Section 11 (3) held that the mere fact that three shop rooms are under a common roof would not justify the running of a joint trial".

7. It may be remembered that the decision in Sasidharan's case was rendered as the application for joint trial was opposed and not in a case like this, where the application was not opposed at all and the parties lay by it and submitted to the jurisdiction and suffered the orders of eviction after a full fledged enquiry. Not only that, no contention was raised in the appeal that any prejudice was caused to them because of joint trial. Therefore, the decision in Sasidharan's case cited supra also has no application to the facts of this case.

8. The learned counsel for the landlord has pointed out that when joint trial petition was filed by the landlord, the same was not opposed by the tenants. The further fact is that only one of R.C.R.3/2011 and connected cases the tenants raised the plea of protection under the second proviso to Section 11(3) but he could not succeed because of the fact that he could not prove the second ingredient of the

second proviso to Section 11(3).

The learned counsel therefore submits that objection raised for the first time before this Court regarding joint trial must necessarily fail.

9. The decision in Abdul Aziz v. Shankaran [2002(2) KLT 613] can also be referred to. That was a case where the tenants in the two RCPs filed by the same landlord were brothers who subsequently jointly constructed a building in the same town and the landlord therein sought eviction of those tenants under Section 11(4)(iii) of the Act. When application for joint trial was filed, it was allowed by the trial court holding that joint trial of the two cases would minimise the evidence and would be convenient for both the parties. It was further held in the aforesaid case that the Rent Control Court has inherent power to direct joint trial of cases if the joint trial will sub-serve the interest of the parties and is R.C.R.3/2011 and connected cases necessary in the interest of justice. There is no statutory prohibition for ordering joint trial. The Rent Control Court would normally be in a position to modulate its procedures in such a manner as to best sub-serve the interest of the litigants. Every issue regarding joint trial has to be decided on its own merit. In the case on hand, facts to be proved to substantiate the claim for eviction in all the petitions are the same.

10. The main thrust of the argument advanced by the learned Senior counsel appearing for the revision petitioners is that since each of the tenants would be entitled to claim protection under the second proviso to Section 11(3) the evidence that can be adduced by each of them, at least with regard to the first limb of the second proviso would be certainly different. But even then it is not a case where any prejudice would be caused to the tenant because entitlement of the second proviso to Section 11(3) claimed by each of the tenant may have to be considered independently and separately. If any of the tenants could succeed in establishing that R.C.R.3/2011 and connected cases he was mainly depending on the income derived from the business carried on in the petition schedule building and if he proves that there were no suitable buildings available in the locality at the relevant time he may have to be granted protection under the second proviso which can never depend upon the rejection, if any of a similar claim made by other tenants

under the second proviso to Section 11(3).

A piquant situation may arise where there are two or more tenants occupying separate portions under the same roof and more than one tenant out of them could succeed in proving the first limb of the second proviso but only one suitable vacant room was available in the locality at the relevant time; then who has to be given the protection or deny the protection under the second proviso may be a pertinent question. But here, that situation does not arise. Even in a situation as mentioned above prejudice may be caused only to the landlord and not to the tenant, as the benefit may have to be given to the tenant. R.C.R.3/2011 and connected cases

11. The decision in Mohammed Salim v. Habeeb & Company [2002(2) KLT 93] was rendered in a case in which the common ground for eviction was reconstruction under Section 11 (4)(iv) of the Act. In that case it was held that the facts were in favour of allowing a joint trial application as evidence regarding the present condition of the building, approval of plan, licence etc. are the same and that allocation of the reconstructed building would also be more convenient for the tenants if the cases are jointly tried. It was further observed that to avoid conflict of findings and save the time of the court also joint trial is convenient. The learned Senior Counsel for the revision petitioners would strenuously argue that the ingredients to prove the ground under Section 11(4)(iv) are totally different and that the evidence to be let in such a case is common and that no prejudice will be caused to the tenant in such cases since there can be no difference in the defensive pleas, but when the ground for eviction is under Section R.C.R.3/2011 and connected cases 11(3) there would be difference in the defensive pleas especially when the respective tenants put forward claim for protection under the second proviso to Section 11(3) of the Act.

12. Another decision of this Court in Sasikumar v. Sheeba [2009(4) KLT 384] [in which one of us was a party - Pius C. Kuriakose, J.] has also been referred to in this connection. There also, the ground for eviction was under Section 11(4)(iv) of the Act. It was held in that case that objections as to misjoinder of causes of action and misjoinder of parties should be taken at the earliest opportunity failing which

the court could not interfere unless it is shown that serious prejudice has been caused to the parties. The Division Bench followed the Full Bench decision in Jamal v. Safia Beevi [2005(2) KLT 359 (F.B.)].

13. The Full Bench decision in Jamal v. Safia Beevi [2005 (2) KLT 359 (F.B.)] was rendered pursuant to a reference made by a Division Bench for a decision on the question as to whether a single Rent Control Petition can be maintained for evicting two R.C.R.3/2011 and connected cases tenants covered by two different tenancy arrangements on the same or several grounds of eviction. Out of the five answers given by the Full Bench to the reference, the fourth answer given is regarding the misjoinder of causes of action and misjoinder of parties.

It was held :

"(iv) Objection as to the misjoinder of causes of actions and misjoinder of parties should be taken at the earliest opportunity, failing which Court would not interfere unless it is shown that serious prejudice has been caused to the parties.

(v) Rent Control Court can consolidate the applications for eviction if there are similarity or identity of the matters in issue in the petitions which is to be left to the discretion of the Rent Control Court, depending upon the facts and circumstances of each case."

The 5th answer given by the Full Bench as quoted above would support the view that there can be consolidation of applications for eviction if there are similarity or identity of the matters. In the present case admittedly objection regarding misjoinder of causes R.C.R.3/2011 and connected cases of action and misjoinder of parties was not raised either before the Rent Control Court or before the Appellate Authority and has been raised for the first time before this Court in revision. Therefore objection now raised regarding the procedure followed by the learned Rent Controller having a joint enquiry after allowing the petition filed by the landlord for that purpose is unsustainable. The fact that no

objection was raised before the Rent Control Court or before the Rent Control Appellate Authority according to the learned Senior counsel appearing for the petitioners can not save the situation or come to the rescue of the landlords since it affects the very jurisdiction of the Rent Control Court to have a joint trial. We are not persuaded to accept that submission. The jurisdiction of the Rent Control Court was not affected because joint trial was not opposed at all.

14. The bonafide need projected by the landlord in all these petitions is common that all the petition schedule buildings/rooms under the same roof are required for conducting a departmental R.C.R.3/2011 and connected cases store for which the landlord says that after getting eviction the intervening walls would be removed. That is the case set up by the landlord in all the rent control petitions. As regards the claim under Section 11(3) the defence raised by all the tenants is common.

It was held by the Apex Court in *Om Prakash Srivastava v. Union of India and another* [2007(2) SCJ 263] :

"The cause of action has no relation to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff"

15. This decision was followed by the Division Bench of this Court in *Kunhamu v. Arun Kumar* [2010(3) KLT 640] which was authored by one among us [Pius C. Kuriakose, J.]. So far as the ground under Section 11(3) in this case is concerned, the cause of action is the conception of a need in the mind of the landlord to occupy the entire building for the purpose of conducting department stores in the whole of the larger building.

16. The learned counsel for the revision petitioners would submit that when the decision of a coordinate Bench of the same R.C.R.3/2011 and connected cases High Court was brought to the notice of another Bench, it is to be respected and is binding. If the other Bench wants to take a different view or to doubt the correctness of the earlier decision, the course open to the later Bench is to refer the question to a larger Bench.

In support of his submission, the learned senior counsel has relied upon the decision in U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj (2007) 2 Supreme Court Cases 138, where it was held in paragraph 26:

"Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity".

R.C.R.3/2011 and connected cases

17. The argument put forward by the learned senior counsel is that if this Court wants to take a different view than what was taken in Ebrahim Ismail Kunju v. Phasila Beevi (1991(1) KLT 861) and Sasidharan v. Saroja (2004(2) KLT 885), the proper course is to refer the question, whether a joint trial of two or more petitions filed by the same landlord against different tenants occupying portions of a larger building for bonafide own occupation under S.11(3) is maintainable, to a larger Bench so as to have an authoritative pronouncement on that point and set at rest the controversy.

But this argument has been taken exception by the learned counsel for the landlord pointing out the inapplicability of the decision to the facts of this case since in the present case no objection as to misjoinder of the causes of action was taken by the tenants either before the Rent Control Court or before the Appellate Authority and also in view of the later decision rendered by the Division Bench in Kunhamu v. Arun

R.C.R.3/2011 and connected cases Kumar (2010(3) KLT 640). The Supreme Court decision in Om Prakash Srivastava cited supra would also run counter to the plea of prejudice put forward by the tenants.

18. As stated above, there is concurrent finding by the two Courts with regard to the bonafide need projected by the landlord that he requires the building for starting a department store after effecting alterations and modifications. We have gone through the order of the learned Rent Controller and the judgment of the learned Appellate Authority. We are reminded of the contours of our revisional jurisdiction under Section 20 of the Act. There is no illegality, irregularity or impropriety in the finding entered by the courts below. Since the tenants could not succeed in proving the two ingredients required for the protection of the second proviso to Section 11(3), the orders of eviction passed in all the cases have to be sustained.

19. Sri.Chitambaresh, learned senior counsel for the revision petitioners made a fervent appeal to grant two years time to the R.C.R.3/2011 and connected cases tenants to vacate the premises. This request is strongly opposed by the learned counsel for the landlord. Since the tenants are conducting business in some of the rooms, we find that it is just and proper to grant them time till 31.12.2011 subject to certain conditions. We also notice that the rent that is paid by some of the tenants is too low. Since all the rooms are having almost identical space, we think it proper to fix the monthly occupation charges at Rs.1500/- in respect of each of the rooms. It shall be paid with effect from 01.02.2011.

20. The result therefore is: The revision petitions will stand dismissed. The revision petitioners are granted time till 31.12.2011 to vacate the petition schedule buildings on the following conditions: The tenants/revision petitioners shall file affidavits before the Execution Court within three weeks from today undertaking to give peaceful surrender of the petition schedule building to the respondent/landlord on or before 31.12.2011. The tenants shall R.C.R.3/2011 and connected cases also undertake through the same affidavits that occupation charges at the rate of Rs.1,500/- per month will be promptly paid with effect from 01.02.2011 as and when it falls due.

21. We make it clear that the revision petitioners would be entitled to get the benefit of extension of time only if the affidavits are filed within three weeks from today and the undertakings given by them are honoured.

