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(2023) 05 KL CK 0184

High Court Of Kerala

Case No: Rent Control Revision No. 35 Of 2023

P.P.Akbar APPELLANT

Vs

Joseph Antony RESPONDENT

Date of Decision: May 25, 2023

Acts Referred:

- Kerala Building (Lease and Rent Control) Act, 1965 - Section 11(3)

Citation: (2023) 05 KL CK 0184

Hon'ble Judges: A.K. Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench: Division Bench

Advocate: P.Prijith

Final Decision: Dismissed

Judgement

Mohammed Nias.C.P.J

1. This revision is filed against the order passed by the Rent Control Appellate Authority, Kottayam, in RCA 38 of 2018 dated 14.11.2022 confirming

the order of eviction and dismissing the appeal preferred by the tenant in RCP No.6 of 2017 of the Rent Control Court, Changanacherry dated

29.9.2018.

2. The respondent herein, the landlord, instituted a Rent Control Petition under Section 11(3) of the Kerala Building (Lease and Rent Control) Act,

1965, contending that the petition schedule item No.1 shop room, as well as item No. 2 building taken on rent by the respondent, is required for starting

a business of roofing materials. It is also stated in the petition that the revision petitioner-tenant is in possession of another building, and contending that

the landlord has no other suitable building for starting with the proposed building, the petition was filed.

3. The revision petitioner-tenant filed an objection stating that the landlord had several rooms of his own for starting the proposed business and that the

need projected is not bonafide. It is also stated by him that the building referred to by the landlord, which is stated to be that of the tenant, is owned by

his wife. It is also stated that the Rent Control Court has already passed an order evicting the occupants in the building owned by the tenant's wife.

The tenant is ready to vacate from the petition schedule shop rooms after obtaining vacant possession of the shop rooms she owned.

4. The Rent Control Court, after appreciating the evidence of PWs 1 to 3 on behalf of the landlord and Exts. A1 to A8 and C1 and also the evidence

of DW1 on the side of the respondents and marking Exts.B1 to B4 came to the conclusion that the need set up by the landlord is bonafide and further

finding that the tenant is not entitled to the benefit of the second proviso to Section 11(3) of the Act passed an order directing eviction of the revision

petitioner under Section 11(3) of the Act,2/65.

5. The tenant had preferred an appeal before the appellate authority challenging the order of eviction.

6. In the appeal, an admission made on behalf of the tenant was recorded as follows:-

Ã¢â‚¬Å“At the time of hearing the appeal, the appellant admitted that his filed petition for eviction of the tenant in her building on the ground of additional

accommodation. If vacant possession of the portion occupied by the tenant in the building of his wife is obtained, he is ready to vacate from the petition schedule

rooms. The evidence adduced by the petitioner clearly proves his bonafide need. Now the petition filed by the wife of counter petitioner for eviction was allowed in

her favour. In the circumstances, I am of the considered view that no interference is required in the order passed by the Rent Control Court.Ã¢â‚¬â€‹

We find that the appellate authorityÃ¢â‚¬â„¢s order of dismissal of the appeal was based on the admission of the tenant re-produced above.

7. In the revision before us, the learned counsel for the petitioner, Sri.P.Prijith, argues that the dismissal of his appeal by the appellate authority is

wrong in as much as there is no decision on merits. He also argues that the admission made on behalf of his client was that once possession of the

rooms belonging to his wife is obtained, pursuant to the order of eviction passed in her favour, he would vacate the petition schedule premises, and that

has not happened. So, the tenant should not be made to surrender the possession now.

8. We find that the appellate authority had passed the order solely based on the concession made on behalf of the tenant. We cannot accept the

contention of the learned counsel for the revision petitioner that the concession was not properly recorded. In such circumstances, the only remedy

available to the petitioner is to file a review against the judgment of the appellate authority as regards the recording of the concession. In such

circumstances, we do not propose to consider the grounds raised in the revision memorandum or the merits of the claim under Section 11(3) of the

Act.

9. Accordingly, We direct the revision petitioner, if he is so advised, to move a review petition against the judgment of the appellate authority impugned

in this revision petition within two weeks from today and seek appropriate orders from that court. To enable the revision petitioner to do the same, we

direct that the execution proceedings pursuant to the order in RCP 6 of 2017 of the Rent Control Court, Changanacherry, dated 29.9.2017, which was

affirmed by the appellate authority, shall be kept in abeyance for a period of three weeks from today. The registry is directed to return the certified

copy of the order produced by the revision petitioner before this Court , forthwith.

Subject to the above, the revision petition is dismissed.