

(2013) 03 KL CK 0113

High Court Of Kerala

Case No: RC Rev. No. 310 of 2012

Kalangotta Pradeepan

APPELLANT

Vs

Thiyadeth Aboobacker

RESPONDENT

Date of Decision: March 19, 2013

Acts Referred:

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

Hon'ble Judges: T.R. Ramachandran Nair, J; A.V. Ramakrishna Pillai, J

Bench: Division Bench

Advocate: K.C. Santhoshkumar and Smt. K.K. Chandrakha, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ramachandran Nair, J.

An order of eviction passed by both the authorities u/s 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 is under challenge in this revision. We heard the learned counsel for the petitioner Sri. K.C. Santhosh Kumar. Even though notice has been served on the respondent, there is no appearance. The learned counsel for the petitioner mainly pleaded that the approach made by the authorities below is not correct and evidently erroneous. We were taken through the orders passed by both the authorities.

2. We notice that the landlord pleaded for vacation of the building by the tenant on the ground that his son Abdul Sameer is jobless and he wants to set up stationery business in the petition schedule building. The tenant disputed the bona fide need pleaded. At the stage of trial, PW1 was examined, being the dependent son of the landlord. The tenant and the Advocate Commissioner were examined as RW1 and RW2.

3. The learned counsel for the revision petitioner contended that even at the time of filing the RCP, one room in the ground floor was in the possession of the landlord and therefore, going by the first proviso to Section 11(3), the landlord will not be entitled for getting eviction of the petition schedule building. According to the tenant, the son of the landlord is doing hotel business there. The Rent Control Court in paragraph-10 of the order discussed the above and found that the name of the hotel noted by the Commissioner is Aiswarya and in the normal case, the landlord being a Muslim will not use the said name. It was held that the contention put forward by the tenant is not sustainable.

4. We were taken through the judgment of the Appellate Authority On this aspect. The discussion is evident in paragraph-11 onwards. It is mentioned by the Appellate Authority that while giving evidence as RW1, the tenant had admitted that the hotel business is managed by one Pramod and he has not established that the son of the landlord is having any connection with the hotel business being run in the adjacent building. There is nothing on record to show that the son of the landlord is managing business as contended by the tenant. Apart from this, one more aspect pointed out before the Appellate Authority was that another room No. C.H. 64/C in the first floor of the building was got vacated as per the order in RCP No. 333/2002. The said aspect was brought into the notice of the Appellate Authority by filing I.A. No. 52/2011 and the report of Amin was marked as Ext. B3 series also. The Appellate Authority was of the view that after having made a preference for getting the petition schedule room, the landlord cannot be forced to occupy another premises. It was pointed out that the upstair portion cannot be conveniently used for conducting stationery business and it is not sufficient for the purpose of the landlord. Therefore, the said contention was also rejected.

5. I.A. No. 2084 of 2012 filed by him is an application filed for producing additional documents.

6. It is submitted by the learned counsel for the petitioner that the landlord had pleaded that one Pramod was conducting hotel business and in that context, the prayer in the I.A. was made for directing the landlord to produce the original license deed. It is also submitted that Mr. Pramod who was allegedly conducting business is no more and the room is being kept vacant even now and is in the possession of the landlord. It is submitted that the said Pramod died during the pendency of this revision petition.

7. This is a matter which the Appellate Authority will have to consider as it is a new development. We deem it fit that the matter is remanded to the Appellate Authority for considering the above plea along with the pleas which have been made by the tenant already before it. The parties are allowed to amend the pleadings and to adduce evidence, if they are desirous of. Accordingly, the judgment of the Appellate Authority is set aside and the matter is remanded to the Appellate Authority for a fresh hearing of the appeal in terms of the above directions. Since the respondent is

not appearing here, fresh notice will be issued to both parties showing the posting date.

8. We have also considered the finding rendered by the authorities below with regard to the applicability of the second proviso to Section 11(3) of the Act, mainly, the protection pleaded by the tenant. Paragraph-15 of the judgment of the Appellate Authority considered various aspects. It is reported by the Commissioner that the tenant is running another business in Mosaic, Cement and tiles in building No. 564 of Elayavoor Panchayat. It was also noted that the tenant is having business of glass in building bearing No. CH 1375 of the same Panchayat. Thus, it was concluded that there is evidence to show that the tenant is doing active business in other buildings also. Accordingly, it is concluded that the tenant is not mainly depending on the income derived from the business carried on in the petition schedule building. With regard to the availability of other buildings also, commissioner's report was relied upon. After finding that the burden on the tenant is to establish that he is entitled to protection contained in the 2nd proviso to Section 11(3) of the Act, the Appellate Authority concluded that no other acceptable evidence came out in this case to show that the tenant is entitled to protection contained in the second proviso to Sec. 11(3) of the Act. The above finding is rendered on the evidence adduced by the tenant also. We do not find any reason to interfere with the said finding.

It is open to the tenant and the landlord to argue on all points with regard to the bona fide need pleaded before the Appellate Authority.