
(2010) 05 KL CK 0077

High Court Of Kerala

Case No: R.C. Rev. No. 125 of 2010

K.K. Saify

APPELLANT

Vs

K.A. Juliet @ Julie

RESPONDENT

Date of Decision: May 24, 2010

Hon'ble Judges: Pius C. Kuriakose, J; C.K. Abdul Rahim, J

Bench: Division Bench

Advocate: Shaji P. Chaly, for the Appellant; Abraham Lal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Pius C. Kuriakose, J.

Under challenge in this revision filed u/s 20 by the tenant is the order of eviction concurrently passed on the grounds of arrears of rent and bona fide need for own occupation. Having scanned the order of the Rent Control Court and judgment of the Appellate Authority, we do not find any infirmity about the findings entered by those authorities in the context of arrears of rent. After all, any eviction order passed u/s 11(2)(b) is tentative and is liable to be got vacated by making requisite deposit u/s 11(2)(c). We straight away confirm the order of eviction passed u/s 11(2)(b) and direct that if the petitioner deposits the entire arrears of rent as found by the Rent Control Court and the Appellate Authority within two months from today and make an application u/s 11(2)(c) that order will stand vacated.

2. The prominent ground on which eviction is ordered is the ground of bona fide need for own occupation. The need projected was that the landlady wants to eke out income for her living by conducting an internet cafe. The landlady herself was examined as PW1. The learned Rent Control Court was inspired by her oral evidence. The Appellate Authority re-appraised the evidence and agreed with the finding of the Rent Control Court. Of course, the tenant had claimed the protection of the second proviso to Sub-section 3 of Section 11. Both the authorities have concurrently found that the tenant was unsuccessful in establishing that he satisfies either of the ingredients of the second

proviso to Sub-section 3 of Section 11. Having regard to the contours of this Court's jurisdiction u/s 20, we are unable to find any illegality, irregularity or impropriety about the finding so entered into by the authorities below. The revision necessarily has to fail.

3. As his last plea Sri. S.P. Chaly requested that at least one year's time be granted to the petitioner to surrender the premises. The learned Counsel submitted that recently, the petitioner met with an accident and it will be harsh to compel him to surrender the building immediately. Sri. K. Abraham Lal, the learned Counsel for the respondent would oppose the request for time stiffly. According to him, even now rent is in arrears heavily.

4. Having considered the rival submissions, we feel that in view of the facts and circumstances attending on this case, there is justification for granting time to the revision petitioner till the end of this year i.e. 31/12/10 to surrender the premises imposing suitable conditions. The result is therefore, as follows:

5. Confirming the order of eviction passed by the authorities below, RCR is dismissed. Petitioner is granted two months' time to make requisite deposit and for filing of application u/s 11(2)(c). The execution court is directed not to order and effect delivery of the petition schedule building till 01/01/11 subject to the following conditions. The petitioner will file an application before the execution court undertaking as follows:

a) That he shall give peaceful surrender of the petition schedule building to the respondent/landlady on or before 31/12/10.

b) That he shall discharge the entire arrears of rent found by the Rent Control Court and the Appellate Authority to be due from him (less amounts paid till date) within two months from today and also occupational charges at the current rent rate of Rs. 3,000/- will be paid for the succeeding months till he gives surrender.

6. It is needless to mention that if the above directions are not complied with, the revision petitioner will not be entitled for the benefit of time granted to him by this order. The affidavit as directed above shall be filed within seven days from today.