Sarojam Vs Pankajakshy Amma

Court: High Court Of Kerala

Date of Decision: Aug. 5, 2001

Acts Referred: Kerala Buildings (Lease and Rent Control) Act, 1965 â€" Section 20

Hon'ble Judges: S. Sankarasubban, J; S. Marimuthu, J

Bench: Division Bench

Advocate: R. Harikrishnan, for the Appellant; K.P. Dandapani, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Sankarasubban, J.
This Civil Revision Petition is filed by the petitioner in R.C.P. No. 8 of 1987 on the file of the Rent Control Court,

Alappuzha. The landlady filed the petition on the ground that the room occupied by the tenant is necessary for the purpose of conducting business

for her two sons. The petition schedule building originally belonged to her husband and the husband gifted it to the wife. The husband is no more.

One of the sons of the petitioner is doing business in jewellery. At the time of filing the petition it was stated that since it was difficult to get a licence

in jewellery business, these two sons wanted to do business in silver. Hence, the room was required for the purpose of doing business for

Murughan and Ganesh who are the sons of the petitioner. The tenant in this case is conducting a Pharmacy called S.D. Pharmacy. It has come in

evidence that they have got branches through out India and outside India and it is a leading company dealing in ayurvedic medicines. The

contention raised by the tenant is that the building was not required for the business of two sons and it is only a ruse to evict the tenant. The tenant

submitted that the landlady has got a flourishing business. Earlier the landlady has filed a rent control petition with the same prayer and it was

dismissed. No appeal was filed against that judgment and hence, the claim is not bona fide. Before the lower court, the landlady examined herself

as PW1, and two other witnesses namely PWs. 2 and 3, her sons. These persons were examined on 17.12.1987, 18.12.1987 and 19.12.1987.

On 19.12.1987 petitioner''s evidence was closed. Thereafter the tenant wanted him to be examined on Commission. So a Commission was

appointed, the Commission was appointed, the Commission examined him and filed his report on 17.2.1988. On 18.2.1988 the court adjourned

the case for further evidence on 20.2.1988. On 20.2.1988 the tenant again applied for time and it was adjourned for further evidence on

27.2.1988. On 27.2.1988 no further evidence was adduced. The counter petitioner applied for time but that was not allowed. The court recorded

no evidence and the case was posted for hearing. Another petition was filed on 10.3.1988 as I.A. No. 476 of 1988. That was dismissed on

17.3.1988 stating that sufficient opportunity was granted to the counter petitioner to adduce evidence. In that petition, the tenant has stated that the

witness to be examined was for the purpose of proving that landlady has demanded higher rent. Further, it appears that, at the request of the

petitioner and the counter petitioner the matter was adjourned and the rent control court finally heard the matter on 2.8.1988 and an order was

passed on 9.9.1988. The rent control court found that the landlady requires the building bona fide for the need of her two sons and after

appreciating the evidence it allowed the petition for eviction. Against that order, an appeal was filed before the Rent Control Appellate authority.

The Rent Control Appellate Authority heard both sides but finally by the impugned judgment remanded the matter to the rent control court merely

on the ground that application for reopening the case for evidence viz., I.A. No. 476/88 was wrongly dismissed. The Appellate Authority took the

view that opportunity should have been given to the tenant to examine additional witness and on that ground remanded the matter. It is against that

the present revision is filed.

2. We heard counsel for the petitioner and the respondents. We went through the records in the case. At the outset, we wish to state that the

revisional power is exercised under S.20 of the Kerala Buildings (Lease and Rent Control) Act, 1965. The section gives wide power to examine

the record. We examined the records because counsel for the respondents submitted that the appellate authority was not satisfied with the

evidence and hence has remanded the case for adducing further evidence. This Court can find out whether the remand was correct or not and on

the basis of the evidence in the case can give a decision on merit. First of all, we shall deal with the dismissal of I.A. No.476 of 1988. We wish to

state that the tenant did not file the witness list before the case was listed. The evidence of the landlady was over on 19.12.1987, the tenant applied

for examining him on Commission and he was examined on Commission. Even then no witness list was filed. It was only on 10.3.1988 that he filed

a petition to examine a witness who was a salesman in his shop. It is seen from the records that the court gave opportunity to the tenant for

examining the witnesses on 20.2.1988, then on 27.2.1988. On 27.2.1988 the witness was not present and so the court posted the case for hearing

on 10.3.1988. It was thereafter on 10.3.1988 an application was filed to review the order closing the evidence. The court dismissed the

application. We do not find anything wrong in the dismissal of the application, because sufficient time had been given to the tenant to produce the

witness. We may at this juncture state that the parties can not take lightly the proceedings in a court. It is after a long wait that the case is included

in the list. Opportunities are granted to the parties to adduce evidence, time is granted and the cases are adjourned at request. But there is a limit in

granting adjournments. The Court cannot just be mute to what is happening around its premises. The Court is not expected to adjourn the case

every time. The parties should be vigilant. Hence, we are of the view that there was nothing wrong in dismissing the application. The appellate

authority remanded the case on the ground that the rent control court took six months to decide the matter after the dismissal of I.A. No.476 of

1988. We find that every time when the case was posted for argument, one or the other counsel sought adjournment and mostly by the counter

petitioner. By some reason or other, when the case was posted on 4.4.1988 it was adjourned to 5.7.1988. Then, it was only on a petition to

advance the hearing the case was posted to 18.6.1988. We cannot hold that merely because the court took time to dispose of the rent control

petition, it should have allowed the petition to adduce further evidence. If we examine the circumstances, we cannot find fault with the rent control

court in dismissing the petition, I.A. No. 476/88. Moreover, we find that the tenant wanted to examine a salesman to prove that landlord has

demanded higher rent. We do not think that this is a matter which is to proved. In the decision reported in John v. District Court (1992(1) KLT

803), Thomas, J. (as he then was) has held as follows:

The mere fact that landlord demanded higher rent on a previous occasion which the tenant declined to oblige is not a reflection of any oblique

motive on the part of the landlord''s claim on the ground of his own need to occupy the building.....''''.

Thus, even if the tenant was examined, it was not going to improve the case of the tenant. Further the tenant has not spoken anything in the Chief

Examination about the claim of the landlord to increase the rent. In the above background, we find that non-examination of the witness stated in

I.A. No. 476/88 was not fatal to the tenant. Further, we find that the landlady requires the building for the purpose of business of her two sons.

Counsel for the petitioner submitted that now there is relaxation of licence rules and hence it is not necessary to start business in silver. We do not

think that the subsequent event should be taken note of. Hence we set aside the order of the appellate authority remanding the case to the rent

control court and restore the order of the rent control court.

4. Learned counsel for the tenant submitted that some time may be granted to vacate the petition schedule building. Taking into account the fact

that a business is being conducted, we give three months time to vacate the premises on condition that the tenant shall file an undertaking within

three weeks in the Court below that he will vacate the premises, and shall pay the rent which is in arrears and also for the period he occupies the

building.

5. The C.R.P. is disposed of as above.