

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

RCRev..No. 136 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN RCA 46/2009 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM

AGAINST THE ORDER/JUDGMENT IN RCP 137/2007 of ADDL. MUNSIF
AND/RENT CONTROL COURT,ERNAKULAM

REVISION PETITIONER IN RCR/APPELLANT IN RCA/PETITIONER IN RCP:

BENNY M VARGHESE
S/O. LATE N.K.VARGHESE, RESIDING AT
MKV BLDGS., M.G.ROAD,ERNAKULAM - 682 035.

BY ADVS.SRI.K.JAYAKUMAR (SR.)
SMT.GEETHA P.MENON
SRI.N.AJITH
SRI.P.B.SUBRAMANYAN
SRI.P.B.KRISHNAN

RESPONDENT (IN RCR/RESPONDENT IN RCA/RESPONDENT IN RCP:

A.H.ABDUL JAMAL
S/O. HAJI ABDUL HAMEED, NEW COCHIN FASHION JEWELLERY
MKV BLDGS., M.G.ROAD, ERNAKULAM - 682 035
REP. BY HIS POWER OF ATTORNEY HOLDER,
HAJI P.H.MOHAMMED EBRAHIM, NEW COCHIN FASHION JEWELLERS
MKV BLDGS., NEAR SHENOY'S JUNCTION
M.G.ROAD, ERNAKULAM - 682 035

R1 BY ADV. SRI.MATHEW JOHN (K)
R1 BY ADV. SRI.DOMSON J.VATTAKUZHAY

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

R.C.R. NO.136 OF 2012

Dated this the 13th July, 2015.

O R D E R

Surendra Mohan, J.

The landlord is the revision petitioner. The landlord had filed RCP137/2007 seeking an order of eviction against the respondent tenant on the ground under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (the 'Act' for short). According to the landlord, he wanted to start a boutique along with his children, in the premises. The building is located at a commercially important place by the side of M.G.Road at Ernakulam. Therefore, according to him, he needed the same for his own occupation. Though he had demanded vacant possession of the premises from the tenant by issuing a notice through his Lawyer the tenant did not vacate the premises. Therefore, the Rent Control Petition was

filed.

2. The Rent Control Petition was resisted by the tenant, seriously disputing the bonafides of the claim put forward by the landlord. According to the tenant, a reading of the Rent Control Petition showed that the emphasis therein was on various other aspects rather than the need on the basis of which eviction was sought. According to the tenant, his power of attorney holder who was dealing with the landlord was a person against whom the landlord was having differences of opinion and that was the real reason for seeking eviction of the tenant. He contended that, he had purchased the jewellery as a running concern and had invested substantial amounts therein. A lot of money had been expended for interior decoration, all of which would be lost if vacant possession was ordered. Since the need that was put

forward was not genuine, according to the tenant the Rent Control Petition was liable to be dismissed.

3. The parties went to trial on the above pleadings. On the side of the landlord, Exts.A1 to A4 documents were marked and the landlord was examined as P.W.1. On the side of the tenant Exts.B1 to B5 documents were marked and the power of attorney holder of the tenant was examined as R.W.1. Ext.C1 commission report was marked as a court exhibit.

4. On a consideration of the evidence on record, the Rent Controller found that the landlord had not succeeded in establishing the bonafides of his need. According to the learned Rent Controller, though Exts.A1 and A2 notices had preceded the issue of the Lawyer notice Ext.A3, there was no mention in those notices about the alleged need of the landlord. There were other communications between the

parties wherein the landlord had demanded payment of service tax in respect of the rent that was paid by the tenant. The proximity of the dates of the above communications were taken note of to conclude that, had the need been genuine there would have been some mention thereof in the said communications. The Rent Controller also took note of the statement of the landlord as P.W.1 that according to him, it would have been better, had he been dealing with a different power of attorney holder instead of the present one. For the above reasons, it was found that there were disputes subsisting between the landlord and the tenant regarding payment of electricity charges, water charges, service tax etc., apart from the disputes with the power of attorney holder. Therefore, it was found that there was a possibility of there being a hidden agenda in seeking the order of eviction.

Accordingly, the Rent Control Petition was dismissed. The landlord thereupon challenged the dismissal of his petition in RCA 46/2009. The Rent Control Appellate Authority permitted the landlord to take out another commission to conduct a local inspection. The report of the Advocate Commissioner has been marked as Ext.C2. The Advocate Commission was taken out in the context of the contention of the tenant that the landlord was in possession of other vacant rooms. The Advocate Commissioner has in Ext.C2 report stated that the rooms were not suitable for the business proposed. According to the Appellate Authority also a reading of the Rent Control Petition gives an overall impression that the landlord was laying emphasis more on other facts that related to events that had taken place during the subsistence of the lease and that the need had only been

stated in a casual manner. The Appellate Authority placed reliance on the statement of the landlord as P.W.1 to the effect that his daughters were all married and living with their husbands to conclude that the said circumstances justified doubts regarding the genuineness of the need that was put forward. The landlord was at that time aged 63 years. The Appellate Authority found that he had no previous experience in conducting business and that a statement that he "bonafide" required the building for his own occupation was conspicuously absent in the Rent Control Petition. The Appellate Authority noted that what has been stated was only that the need was genuine. The Appellate Authority has found that the landlord had not disclosed that he had other vacant rooms in his occupation. Therefore it has been held that the need that has been put forth was not bonafide.

Accordingly, the order of eviction granted by the Rent Control Court has been confirmed.

5. According to the Senior Counsel Shri. K.Jayakumar who appears for the petitioner, though it is true that the word “bonafide” does not find a place in the Rent Control Petition the landlord has stated that his need was “genuine”. What was to be examined by the authorities below also was whether the need was genuine or a mere ruse for eviction. Therefore, the omission to use the exact expression used in the statute could not be held to be fatal to the petition. The learned Senior Counsel further points out that though a lot of unnecessary facts have been stated in the Rent Control Petition, the landlord has specifically stated the requirement for which the eviction was sought. Nothing has been brought out in evidence to justify a conclusion that the need was lacking in

bonafides. Though the landlord had issued Exts.A1& A2 notices he had not mentioned about his need therein because it was unnecessary to do so since the term of the lease had not expired at that time. After the term of the lease expired, Ext.A3 notice was issued, putting the tenant on notice regarding his need. According to the learned Senior Counsel the authorities below have seriously erred in making much of the timings of Exts.A1 and A2 notices to find lack of bonafides on the part of the landlord. There is nothing tangible according to the learned Senior Counsel in the circumstances pointed out to justify a conclusion that the need of the landlord was not bonafide. He had been questioned when examined as P.W.1 regarding the details of the business that he wanted to start. He has withstood the cross examination and according to the learned Senior Counsel nothing has been

brought out to discredit his testimony. Therefore according to the learned Senior counsel this is a case in which the authorities below ought to have ordered eviction finding that the need of the landlord was bonafide.

6. The contentions of the learned Senior Counsel for the petitioner are seriously opposed by Adv.Mathew John who appears for the respondent tenant. According to the learned counsel absolute lack of bonafides is writ large in the entire sequence of events leading up to the filing of the Rent Control Petition. A perusal of Exts.A1 and A2 notices that preceded Ext.A3 notice could show that there is not even a whisper therein regarding the need that was subsequently put forward. What the landlord was concerned while issuing Exts.A1 and A2 was only regarding the renewal of the lease for which the tenant had not taken any action. It is only in Ext.A3 Lawyer's

notice that the need has surfaced for the first time. The quick succession in which Ext.A3 notice had followed Exts.A1 and A2 shows utter lack of bonafides on the part of the landlord. The learned counsel also draws our attention to Exts.B3 to B5 communications issued by the landlord demanding payment of service tax in respect of the rent. The above notices are relied upon to point out further that, it was out of the animosity for not having paid the amounts demanded therein that eviction has been sought. According to the learned counsel the relevant circumstances have been rightly taken note of and relied upon by the Rent Control Court as well as the Appellate Authority to find lack of bonafides in the need that is put forward. It is also the contention of the learned counsel that, the children of the landlord are all married and well settled in life, living with their husbands at different

places. Therefore, the prospects of starting a business involving them is remote and impracticable. Since lack of bonafides has been concurrently found by both the authorities below, it is contended that no interference with the same is either called for or justified in revision.

7. We have heard the counsel appearing for the respective parties at length. We have also been taken through the evidence on record, both documentary as well as oral, at length. We have considered the rival contentions, anxiously. A reading of the Rent Control Petition no doubt shows that a lot of unnecessary details have been stated therein, mostly relating to the clauses in the lease deed that was entered into between the parties. It is further stated therein that, clause 18 of the lease deed stipulates that the tenant should intimate the landlord regarding his intention to renew the lease for a

further term, within a period of one month prior to the expiry of the term thereof by registered post. It is also stated that no such notice was served on the landlord as contemplated. Reference has been made to Exts.A1 and A2 letters issued by the landlord also. However, the fact remains that in paragraph 5 of the Rent Control Petition the landlord has set out his need that forms the basis of his claim for eviction. It is true that, he has not used the word “bonafide” in the Rent Control Petition. However, he has stated that his need is genuine. We notice that paragraphs 5 and 6 of the Rent Control Petition have set out his need, which is to start a boutique, according to him, in collaboration with his children. We are not satisfied that, an omission to employ the expression “bonafide” to qualify the need that has been put forward by him should be held against the landlord to

conclude that his need was not bonafide. The bonafides of the need has to be tested on the basis of the other circumstances that are available on record. The object of pleadings is to put the opposite party on notice regarding the case that is pleaded. By stating that his need is genuine the landlord has certainly put the tenant on notice of the fact that, he was putting forward a genuine need. The question as to whether his need is genuine or not, would have to be tested on the basis of other evidence available in the case.

8. According to the Rent Control Petition, the term of the lease agreement between the parties expired only on 18.7.2007. Ext.A1 notice is dated 29.6.2007 while Ext.A2 notice is dated 12.7.2007. In short, both Exts.A1 and A2 notices were issued before the expiry of the term of the lease arrangement. The explanation of the landlord when he was

cross examined as P.W.1 is that, he had not mentioned his need in Exts.A1 and A2 for the reason that the lease arrangement had not expired at that time. His explanation does not appear to have been taken note of by either the Rent Control Court or the Appellate Authority. Whether his explanation is justified or whether the same is acceptable, is a relevant aspect that ought to have been considered by the authorities below.

9. It is true that, by Exts.B3, B4 and B5 communications the landlord had demanded payment of service tax. It is an admitted fact that the demand was not acceded to by the tenant. Both the authorities below have concluded on the basis of the above that there were disputes between the landlord and the tenant. However, apart from the demands for service tax made by the landlord we do not find evidence

of any dispute between the parties. It is true that, when examined as P.W.1 the landlord has deposed that it would have been better had the power of attorney been a different person. There is no evidence of any previous litigation between the parties. Therefore, it cannot be said that the parties were not on good terms. It has come out in evidence through Ext.C2 commission report that the landlord is in possession of other vacant rooms. The Appellate Authority has found fault with him for not having disclosed the same in his Rent Control Petition. It is true that the Commissioner has stated in Ext.C2 report that the two rooms in his possession are not suitable for the proposed business. However, whether the requirement of “special reasons “ contemplated by the first proviso to Section 11(3) stand satisfied by the said statement of the Advocate Commissioner also is an aspect on

which the authorities below would have to take a decision.

10. On an overall consideration of the order of the Rent Control Court as well as the judgment of the Appellate Authority we are of the view that, both the authorities have found lack of bonafides on the part of the landlord for the reason that he had not made mention of his need in Exts.A1 and A2. As already noticed above, his explanation for the above omission has not been considered. Therefore, it is necessary that the bonafides of the need put forth by the landlord is examined afresh by the Rent Control Court. It shall be open to both parties to adduce further evidence, if necessary after amending the pleadings suitably.

For the above reasons this revision is allowed as follows:

i) The Judgement of the Appellate Authority, Ernakulam in RCA 46/2009 as well as the order of the Rent Control Court in

RCP 137/2007 are set aside.

ii) The Rent Control Court is directed to give an opportunity to both parties to adduce fresh evidence if necessary after giving them an opportunity to amend the pleadings, to consider the matter afresh and to pass fresh orders on the Rent Control Petition.

iii) The Rent Control Court shall give priority to the Rent Control Petition and shall make an endeavour to dispose of the same, as expeditiously as possible. The counsel on both sides assure that, the landlord as well as the tenant shall appear before the Rent Control Court on 3.8.2015, without further notice.

iv) We clarify that we have not entered any findings on the merits of the respective contentions advanced by the parties. Therefore, the Rent Control Court shall decide the

issues untrammelled by any of the observations made hereinabove.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

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