IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RCRev..No. 89 of 2015 ()

AGAINST THE JUDGMENT IN RCA 17/2014 OF THE RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM

AGAINST THE ORDER IN RCP 38/2007 OF THE 3rd ADDITIONAL MUNSIFF AND RENT CONTROL COURT, ERNAKULAM.

REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:
----

1. ELITE MACHINE TOOLS COMPANY
REPRESENTED BY ITS MANAGING PARTNER K.N.SASI
BUILDING NO.39/4248, RAVIPURAM ROAD, ERNAKULAM.

2. K.N. SASI, S/O.K.N.NARAYANAN AGED 48 YEARS
KODUMTHALYIL HOUSE, PUTHIYAKAVU, THEKKUMBHAGAM VILLAGE
TRIPUNITHURA P.O., KANAYANNUR TALUK.

BY ADVS.SRI.ABRAHAM P.GEORGE
SRI.M.RAJENDRAN NAIR
SRI.K.VINODKUMAR (707/89)
SMT.M.SANTHY

RESPONDENT(S)/RESPONDENTS/PETITIONERS:
----

1. C.KAMALADEVI, AGED 53 YEARS
D/O. MANIKKIRI GOPALAKRISHNA MENON
RESIDING AT CHETTIPPARAMBIL HOUSE, KANNANKULANGARA
TRIPUNITHURA P.O.

2. C. MAYA, W/O.MANOJ, AGED 30 YEARS
CHETTIPPARAMBIL HOUSE, KANNANKULANGARA
TRIPUNITHURA P.O.

3. C. INDU, S/O.C.KAMALADEVI, AGED 27 YEARS
RESIDING AT CHETTIPPARAMBIL HOUSE, KANNANKULANGARA
TRIPUNITHURA P.O.

R1 BY ADV. SRI.K.N.CHANDRABABU
RB/O BY SRI.CHANDRABABU (CAVEATOR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Surendra Mohan & Mary Joseph, JJ.

=====================================

R.C.R.No.89 of 2015

=====================================

Dated this the 21st day of July, 2015.

ORDER

Surendra Mohan, J.

1. This is a tenants' revision challenging an order of eviction of the Rent Control Court, Ernakulam under Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the "Act", for short). The order of eviction has been confirmed by the Rent Control Appellate Authority.
2. The respondents/landlords had filed R.C.P.No.38 of 2007, seeking an order of eviction against the tenants under Sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the "Act", for short). The ground under Section 11(3) has been found against and was not pursued by the landlords. Therefore, the only ground that survives at present is the ground under Section 11(4)(iii).

3. The revision petitioners/tenants are conducting a business in the name and style “M/s.Elite Machine Tools Co.”. The 1st revision petitioner is a partnership firm and the 2nd petitioner is the Managing Partner thereof. According to the respondents/landlords, the tenants had purchased another premises in a building by name “Indo Persian NJK Square” with Door Nos.39/2606 B, 39/B7, which is reasonably sufficient for the purpose of conducting the business that they have been carrying on in the tenanted building. The tenants disputed the said contentions, pointing out that, the business in the tenanted premises was being conducted by the partnership firm while the business in the newly acquired premises was being conducted by the Managing Partner in his personal capacity. It is necessary to notice here that the Rent Control Petition, as originally filed, did not contain a ground under Section 11(4)(iii) of the Act. The ground under Section 11(3) was initially found against by the Rent Control Court. The respondents/landlords had challenged the order of the Rent Control Court before the Appellate Authority. In the appeal, a

petition was filed for amending the Rent Control Petition by adding the additional ground under Section 11(4)(iii). The amendment was allowed, the order of the Rent Control Court was set aside and the matter was remanded for fresh consideration. After remand, additional evidence was adduced and the matter was considered afresh by the Rent Control Court. It was thereafter that the Rent Control Court passed the order of eviction against the tenants.

4. According to Sri.Abraham P. George, who appears for the revision petitioners/tenants, acquisition of another premises by the Managing Partner of a partnership firm would not attract the ground under Section 11(4)(iii) of the Act. The businesses carried on in both the premises are different. In the tenanted premises, business is being carried on in heavy items of machinery like wood plainers, drills etc. Reliance is placed on the report submitted by the Advocate Commissioner, to point out that, each of the machinery weighs 350 to 450 kilograms. On the contrary, as per the commission report, the business that is being carried on in the newly acquired premises, was

in smaller articles like safety shoes and other hardware products. Therefore, according to the learned counsel, the businesses carried on in both the premises are different. The newly acquired premises, though described in Exts.A5 and A6 title documents as located on the ground floor of the building, is actually on the first floor at a height of 2.2 metres above the ground level. The only means of access to the said premises is through a stair case. It is not possible for the heavy machinery stocked in the tenanted premises to be transported to the newly acquired premises. For the above reason, it is contended that, the newly acquired premises are not sufficient for carrying on the business that is being carried on in the tenanted premises. However, the above crucial aspect has been missed by both the Rent Control Court as well as the Appellate Authority. Both the authorities below have, according to the counsel, proceeded on the assumption that, both the businesses were identical. Therefore, it is contended that the judgment of the Appellate Authority requires interference in revision.

5. Advocate Sri.K.N.Chandra Babu appears for the respondents/landlords. According to the counsel, the tenants are carrying on one and the same business in both the premises. Exts.X1 and X2 series documents are relied upon, to point out that, both the businesses have only one registration under the Kerala Value Added Tax Act (KVAT Act, for short) as well as under the Central Sales Tax Act (CST Act, for short). According to the learned counsel, the partnership firm has only two partners, the 2nd petitioner and his wife. The business that is being carried on is also one and the same and therefore it is contended that the authorities were right in ordering eviction. Counsel for the revision petitioners/tenants has a further contention that the rent deed was not produced in the present case and therefore there is no evidence as to whether it is the first revision petitioner or the 2nd revision petitioner, who is the actual tenant. The above infirmity has also not been noted by the authorities below.

6. Heard. It is admitted that the business, that is being carried on in the

tenanted premises as well as in the newly acquired premises, is under the same name “Elite Machine Tools Co.”. The contention of the learned counsel for the revision petitioners is that, while heavy items of machinery are being sold from the tenanted premises, in the newly acquired premises, the business is confined to smaller items. The heavy machinery cannot be transported up to the newly acquired premises and therefore, the said newly acquired premises are not sufficient for the purpose of carrying on the business that is being carried on from the tenanted premises.

7. A perusal of Ext.X1 series documents show that there is unity in the business that is being carried on from both the premises. Ext.X1 is the Annual Return Form No.10 under the Kerala Value Added Tax Rules, 2005 for the periods 2010-11. The name of the dealer is mentioned as Elite Machine Tools Co. The address shown is that of the newly acquired premises. Ext.X1(a) is the return for the year 2011-12. The said document also reveals that the dealer is M/s.Elite Machine Tools Co. A perusal of Ext.X1(b) also shows that the said

return has been submitted by the same dealer. In sharp contrast, Ext.X2 series documents shows that, for the years 1994-95, the dealer under the Kerala General Sales Tax Rules 1963 was M/s.Elite Machine Tools Co., where the address of the establishment is shown as the tenanted premises at Ravipuram Road, Valanjambalam. The same is the situation that emerges on a perusal of Ext.X2(a), which is the annual return for the year 1991-2000.

8. The newly acquired premises was purchased by Exts.A5 and A6 documents dated 13.2.2009. The change in the dealer particulars has taken place after the purchase of the new premises as per Exts.A5 and A6. It is clear that, after the purchase of the new premises, the address of the dealer has changed to the newly acquired premises. It is therefore obvious that, the revision petitioners are carrying on their business from the newly acquired premises as evident from the registration obtained by them as dealer under the KVAT Act. In other words, the unity of the business that is being carried on by them from both the tenanted premises as well as the newly acquired premises is

established by the above documents. It is true that the learned counsel for the petitioners has taken up a contention that heavy items of machinery are being stocked or displayed at the tenanted premises, whereas smaller items are being sold from the newly acquired premises. Apart from the fact that the Commissioner has noted the presence of some heavy items of machinery in the tenanted premises, there is nothing on record to show that a different business is being carried on from the tenanted premises. Therefore, the only conclusion possible is that, the machinery stocked or displayed in the tenanted premises are also dealt with as part of the business that is being carried on from the newly acquired premises.

9. It may be true that the tenants may find it difficult to transport the heavy items of machinery to the newly acquired premises. However, as far as Section 11(4)(iii) is concerned, it has been held by this Court that, it is not necessary that the newly acquired premises should be perfectly suitable for carrying on the entire business of the tenants. What the statutory provision contemplates is only that the

newly acquired premises should be "reasonably sufficient" for carrying on the business that is being carried on in the tenanted premises. We notice that many of the items like safety shoes are dealt with from both the premises. Counsel for the landlords has placed reliance on Ext.A14 covering letter issued by the tenants, while furnishing the Demand Draft towards the rent for the month of April, 2013, to point out that, they have described themselves in their letter head as dealers of machinery, pumpsets, power tools, hand tools, safety equipments, spares and allied accessories. The said description, according to the learned counsel, covers all the items in which they are dealing from both the premises occupied by them. The Appellate Authority has however found that, though the newly acquired premises is at a level above the ground level with modern equipments like cranes, transportation is not an impossible proposition. We are also conscious of the said facts. Therefore, transportation of the said machinery to the newly acquired premises is not an impossibility as sought to be made out by the counsel for the petitioners.

10.The question as to who is the actual tenant of the premises is not required to be considered at length, for the reason that, both the partnership as well as the Managing Partner are parties to these proceedings. The only dispute raised by the tenants is that, the actual tenant is the partnership concerned. Since both of them are parties hereto, a decision, either way, could be taken without violating any of their rights.

11.For the foregoing reasons, we are not satisfied that any interference is called for in revision with the judgment of the Appellate Authority, as sought for by the revision petitioners. Therefore, we decline interference.

12.As a last submission, the counsel for the revision petitioners sought for some time to surrender vacant possession of the premises. The request is objected to by the counsel for the respondents/landlords. However, having considered the contentions and submissions of both sides, we find it necessary to grant time upto 31.12.2015 to surrender vacant possession of the premises to the landlords.

In the result,

i) The Rent Control Revision is dismissed.

ii) The revision petitioners are granted time upto 31.12.2005 to surrender vacant possession of the premises to the landlords, on condition that the 2nd revision petitioner files an affidavit before the Execution Court in R.C.P. No.38/07, within a period of two weeks of the date of receipt of a copy of this order, undertaking to surrender vacant possession of the premises, on or before 31.12.2015. It shall be a further condition that, the tenants shall pay the entire arrears of rent, if any remaining unpaid and shall continue to pay the rent in respect of the premises, without any delay or default, until vacant possession is surrendered to the landlords. It is made clear that, in the event of the tenants committing default in complying with any of the above conditions, the benefit of the directions contained in this order shall be forfeited and the respondents shall be at liberty to pursue further proceedings, in accordance with law, for obtaining vacant possession of the premises.

K. Surendra Mohan, Judge.

Mary Joseph, Judge.

sl.