

Kerala High Court

Rosily vs Ittimathew on 9 December, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RCRev..No. 387 of 2010()

1. ROSILY, W/O.NEDUMPILLY CHAKKU,  
... Petitioner

Vs

1. ITTIMATHEW, S/O.CHEERANVEETTIL CHERU,  
... Respondent

2. C.U.DAVY, PROPRIETOR,

For Petitioner :SRI.V.CHITAMBARESH (SR.)

For Respondent :SRI.K.N.PADMAKUMAR

The Hon'ble MR. Justice PIUS C.KURIAKOSE

The Hon'ble MR. Justice P.S.GOPINATHAN

Dated :09/12/2010

O R D E R

PIUS C.KURIAKOSE & P.S.GOPINATHAN, JJ.

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RCR.No. 387 OF 2010  
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Dated this the 9th day of December, 2010

O R D E R

Pius C.Kuriakose, J.

The landlady challenges in this revision under Section 20 of Act 2 of 1965 the judgment of the rent control appellate authority, Thrissur, allowing the appeal as well as I.A. No.2382/2010 which had been filed by the first respondent for setting aside the ex parte order of eviction which was passed by the rent control court against him and the 2nd respondent. It is not the first time that this case

reaches this court. We ourselves had occasion to consider RCR No.325/2010 filed by the first respondent before this court. We by our order in RCR No.325/2010 imposed various conditions and directed the learned appellate authority to consider the issue on merits upon compliance of the conditions. All the conditions imposed by us were complied with by the first respondent and it is thereafter that the learned appellate authority has passed the impugned judgment allowing I.A. No.2382/2010.

2. Various grounds have been raised in this memorandum of revision assailing the judgment of the appellate authority. We have heard the submissions of Sri.V.Chitambaresh, learned senior counsel for the petitioner landlady and also those of Sri.K.P.Padmakumar who took notice on behalf of the first respondent as directed by us.

3. Mr.Chitambaresh submitted that the learned appellate authority has passed the impugned judgment mechanically as though this court by its order in RCR No.325/2010 had directed that authority to allow the RCA. This court only directed the learned appellate authority to decide the RCA on merits in accordance with law. The appellate authority was bound to consider whether the explanation offered by the first respondent for his absence on the fateful day when the ex parte order was passed against him was acceptable. There has been no such consideration and the appellate authority's judgment is per se illegal, irregular and improper. The learned senior counsel also pointed out that the learned appellate authority has granted relief to the first respondent without imposing any conditions in view of the conditions imposed by this court in RCR No. 325/2010. This court at best had only indicated that the conditions imposed by this court also should be taken into account in case the appellate authority becomes inclined to impose conditions. The learned counsel highlighted that under the impugned judgment, the learned appellate authority had granted relief even to the 2nd respondent against whom the ex parte order has already attained finality.

4. The submissions of the learned senior counsel were opposed by Sri.K.N.Padmakumar, learned counsel for the respondents. According to him, there is no justification for interfering with the impugned judgment within the contours of Section 20 of Act of 1965.

5. We have considered the rival submissions. We find some merits in the submissions of Mr.Chitambaresh, learned senior counsel that the learned appellate authority has not under the impugned judgment considered the sufficiency of the explanation offered by the first respondent for his absence on the fateful day when the ex parte order was passed against him. We find more merit in the submissions of the learned senior counsel that the appellate authority erred in granting relief to the second respondent who had already suffered the ex parte order of eviction. However, we are not inclined to interfere with the impugned judgment completely in view of those reasons. After all, the learned appellate authority has only directed consideration of the rent control petition in which eviction is sought on various grounds by the rent control court on merits. According to us, what is required is only a clarification to the effect that the ex parte order has been set aside only as against the first respondent and that the 2nd respondent is not entitled to pursue the contentions which he had filed in the rent control petition.

Subject to the above clarifications, the impugned judgment is confirmed. We are informed that the rent control court has already started the trial. We direct the rent control court to make every endeavour to ensure that trial is completed and the orders are passed in the rent control petition before the court closes for Christmas Holidays.

PIUS C.KURIAKOSE,JUDGE P.S.GOPINATHAN, JUDGE dpk