

Kerala High Court

P.Govindan vs K.C.Remani Amma on 7 August, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RCRev..No. 179 of 2008()

1. P.GOVINDAN, PULAPPADI HOUSE
... Petitioner

Vs

1. K.C.REMANI AMMA,DWARAKA,
... Respondent

For Petitioner :SRI.G.UNNIKRISHNON

For Respondent : No Appearance

The Hon'ble MR. Justice P.R.RAMAN
The Hon'ble MR. Justice T.R.RAMACHANDRAN NAIR

Dated :07/08/2008

O R D E R

P.R.Raman &
T.R. Ramachandran Nair, JJ.

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R.C.R. No.179 of 2008
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Dated this the 7th day of August, 2008.

O R D E R

Ramachandran Nair, J.

The tenant is the revision petitioner. Eviction was sought by the landlord under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Control Court allowed eviction under Section 11(3) of the Act and the same stands confirmed by the Appellate Authority as per the judgment impugned.

2. Learned counsel for the petitioner mainly raised the following contentions:- It was submitted that the Appellate Authority has not entered clear findings as to the genuineness of the bonafide need, that there are no bonafides, as the landlady was clamouring for enhanced rent which is evident from the facts pleaded and that the time lag between the date of issuance of notice and the filing of the Rent Control Petition will show that the bonafide need pleaded is not genuine.

3. To appreciate the said argument, some basic facts are necessary to be stated. The landlady pleaded that the monthly rent was originally Rs.450/- which was raised to Rs.1,500/- from 1.6.2001 onwards. The landlady and her husband are unemployed and they are intending to start a business in ready made garments by getting eviction of the petition schedule room and the room let out to another tenant by name Vilasini. In the objections, the tenant contended that the initial rent was Rs.210/- which was raised to Rs.320/- and later, to Rs.450/-. The allegation that the rent was enhanced to Rs.1,500/- is not correct. On the bonafide need, it was contended that the landlady and her husband are having large extent of properties and they are getting income from cultivation which is quite sufficient to meet their requirements and the necessity now pleaded to start a business is only a pretext for evicting the tenant. The tenant and his son are running a medical shop in the schedule room and they are depending mainly on the income derived from the business and the entire family is depending upon the said business income for their livelihood.

4. The Rent Control Court found that the bonafide need pleaded is genuine. It was found that the tenant failed to prove that the landlady has got substantial income from the properties and actually there was no evidence on that aspect adduced by the tenant. It was found that the landlady and her husband are having no employment and hence the idea to start a business was genuine. The said court rejected the contention that the claim for enhanced rent and the delay in filing the eviction petition goes against the bonafide need pleaded by the landlady. The explanation offered by the landlady that her husband was laid up for a long time which delayed the filing of the Rent Control Petition, was also noticed by the Rent Control Court. These findings have been confirmed by the Appellate Authority also.

5. It is well settled that periodical requests for enhancement of rent will not show that the bonafide need pleaded is not genuine. The said legal position is well settled by the various decisions of this court and that of the Apex Court (*Sukesini Amma v. Nagarajalu* (2004 (2) KLT 427). Therefore, the argument that the bonafide need pleaded is not genuine as there was a demand for increasing the rent, cannot hold good and we reject the same.

6. The other aspect pointed out by the learned counsel for the petitioner is the delay in filing the Rent Control Petition which, according to him, casts a doubt on the bonafide need. It is pointed out that the notice to the tenant was issued in the year 2003, whereas the eviction petition was filed only in the year 2006. Ext.A2 notice is dated 2.3.2003. In fact, both the authorities have noticed that the landlady had deposed that her husband was laid up due to paralysis and there was no effective cross examination on that point. Apart from that, we notice that there is no plea by the tenant that there had been change of circumstances in the meanwhile to doubt the genuineness of the bonafide need. In the absence of any such plea and evidence to support the same, we find that merely because there was delay in filing the eviction petition after the notice was issued, the need pleaded is not bonafide.

If, on an overall assessment of evidence it is found that it is not a mere desire of the landlady and that the need pleaded is genuine, then eviction can be ordered. Therefore, we reject the said contention also.

7. As we have noticed earlier, the tenant has failed to prove that the landlady has substantial income from the properties in their possession. The finding as to their income is only that they are getting Rs.3,100/- per month as rent from the tenants to whom various rooms have been let out. The above aspects will show that the need projected to start a business to augment the income of the family, is clearly genuine. To start the business, she intends to avail financial assistance from Bank. Even though learned counsel for the petitioner contended that there is no clear finding on that aspect by the Appellate Authority, we find that on a reading of the judgment, that the Appellate Authority has, after analysing the evidence in detail, entered a clear finding in para 8 that the demand made by the landlady for the room to start a business in ready made garments appears to be true and genuine. We are also satisfied that on the evidence available, the bonafide need pleaded is genuine. The findings cannot be said to be perverse.

8. Then, the other aspect is the benefit of the second proviso to Section 11(3) of the Act. As far as this aspect is concerned, the authorities have found that the tenant has failed to prove that he is depending mainly on the income from the business in the schedule property. It has also been found that the landlady has discharged her burden to prove that there are other buildings available in the locality. Learned counsel for the petitioner submitted that Ext.B26 will show that the tenant had filed a petition before the Accommodation Controller to get details regarding the rooms available in the locality and thus the tenant has discharged his burden. We are not impressed by the above argument, because P.W.1 has pointed out various buildings available in the locality along with the names of the owners of the buildings, but the tenant did not examine any of these persons as witnesses or produce documentary evidence by way of assessment registers maintained by the Panchayat, etc. to prove that the rooms as pointed out by the landlady are not available. Thus, there is total failure on the part of the tenant to discharge the burden of proof regarding that aspect also. Therefore, as far as the said question is concerned, the finding rendered by the Appellate Authority and the Rent Control Court does not require any interference.

For all these reasons, we find that there is no ground to interfere with the view taken by the Appellate Authority and we dismiss the revision petition.

In the facts and circumstances of the case, we grant four months time from today to the petitioner to vacate the premises on condition that he files an undertaking in the form of an affidavit before the Rent Control Court undertaking to vacate the premises unconditionally on or before the expiry of four months from today and also to pay the arrears of rent, if any, due and continue to pay the monthly rent till the premises are vacated. The affidavit shall be filed within three weeks from today. The petitioner shall also deposit the entire arrears of rent, if any, within the aforesaid period of three weeks and shall continue to pay an amount equivalent to the rent payable, towards compensation for use and occupation, till possession is surrendered. If any of the conditions aforesaid is violated, then the order of eviction will become enforceable at once.

(P.R.Raman, Judge.) (T.R. Ramachandran Nair, Judge.) kav/