

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

&

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 4TH DAY OF MARCH 2014/13TH PHALGUNA, 1935

R.C.Rev.No. 340 of 2012

AGAINST THE JUDGMENT IN RCA 35/2009 of II ADDL.RENT
CONTROL APPELLATE AUTHORITY, KOLLAM DATED 29-03-2012

AGAINST THE ORDER IN RCP 35/2007 of PRINCIPAL RENT
CONTROLLER, KOLLAM DATED 25-02-2009

REVISION PETITIONER/RESPONDENT/PETITIONER:

A.KAMALUDHEEN,
S/O.ALI AKBAR, KUTHIRAPANTHI VEEDU,
KANKATHU NAGAR,
KOLLAM-12.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENTS/APPELLANTS/COUNTER PETITIONERS:

1. M.SHAHARBAN BEEVI,
SIDDIQUE MANZIL, NEAR KAVALPPURA SCHOOL,
PALLIMUKKU,
KOLLAM-691001.
2. SIDDIQUE, S/O.M.SHAHARBAN BEEVI,
RESIDING AT --DO. DO----,
PIN-691001.

R1 AND 2 BY ADV. SMT.K.G.BINDU
R1 AND 2 BY ADV. SMT.T.S.MAYA (THIYADIL)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY
HEARD ON 04-03-2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

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K.T.SANKARAN & P.UBAID, JJ.

R.C.R No.340 of 2012

Dated this the 4th day of March, 2014

O R D E R

P.Ubaid, J.

The landlord in the trial court is the revision petitioner herein. The respondents in the eviction proceedings are mother and son. The landlord, who obtained order of eviction on the ground of rent arrear and sub lease, lost it in appeal. The landlord filed R.C.P No.35/2007 before the Rent Control Court, (Munsiff Court, Kollam), on the allegation that the tenant, who is the 1st respondent in the proceedings, has kept the rent in arrear and she has sublet the premises to the 2nd respondent. The petition schedule building was let out to the 1st respondent on 5.1.1976 on a monthly rent of ₹30/- and later the rent was enhanced to ₹150/- per month.

2. The respondents entered appearance in the trial Court and resisted the prayer for eviction on the

definite contention that the 1st respondent has not in fact sublet the premises to anybody, that she has not kept the rent in arrear, and that she has been actually conducting business in the premises, with her sons as partners. Subject to the contention that it is only a partnership business under her, the tenant denied the allegation of sublease.

3. During the trial process the landlord was examined as PW1 and Exts.A1 to A6 were marked on his side. The 1st respondent was examined as CPW1 and Exts.B1 to B4 series were marked on her side. On an appreciation of the evidence the trial court found that the tenant has kept the rent in arrear, and that she has sublet the premises to the 2nd respondent, who is none other than her son. Accordingly, the trial court allowed R.C.P No.35 of 2007 under Sections 11(2)(b) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act') by order dated 25.2.2009.

Aggrieved by the said order of eviction the respondents preferred appeal before the appellate authority (District Court, Kollam) as R.C.A No.35/2009. Finding that the order of eviction under Section 11(2)(b) of the Act was not in force, the appellate authority proceeded to decide on the question of sublease. On a re-appraisal of the evidence, the appellate authority found that the case of sublease alleged by the landlord is not true, and that the 1st respondent has effective control over the business being conducted in the tenanted premises. Accordingly, the appellate authority set aside the order of eviction under Section 11(4)(i) of the Act by judgment dated 29.3.2012 in R.C.A No.35/2009. Now the landlord has come up in revision before this Court under Section 20 of the Act.

4. On a perusal of the case records, we find that the trial court found in favour of the landlord on three grounds. One is that Ext.B1 partnership relied on by the respondents to deny the alleged sublease is an unregistered

partnership, the second ground is that Ext.A4 assessment register issued from the Kollam Corporation and Ext.B2 tax registration stand in the name of the 2nd respondent, and the third is that there is nothing to show that the 1st respondent has effective control over the business being conducted in the premises. Of course, in appeal the appellate authority reversed those findings, and found that the tenant has effective control or dominion over the business, and that there is no evidence to prove the alleged sublease.

5. Of course, it is true that Ext.B1 partnership deed is an unregistered one. But the tenant has used the said partnership deed only to substantiate her contention that she has not in fact sublet the premises to anybody, and that she herself has been conducting business in the premises, with her sons only as partners. No right under such a partnership is being enforced or sought to be enforced. In such a situation, it is quite immaterial that

Ext.B1 partnership deed is an unregistered one.

6. It is true that Ext.A4 assessment register stands in the name of the 2nd respondent, and Ext.B2 sales tax registration also stands in the name of the 2nd respondent as a partner of the firm. But the tenant examined as CPW1 has given definite and consistent evidence to the satisfaction of the court that she has effective control and dominion over the business, and that her sons are only partners admitted by her in the partnership formed by her under Ext.B1. The evidence given by the tenant proving her dominion over the business stands not in any manner discredited. On an appreciation, we find that the business is actually being conducted by her, under her control, and her sons would help her in the business as partners.

7. Now let us come to the legal question involved in this matter. The landlord has alleged sublease in this case only because the tenant has formed a

partnership, with her sons as partners. Just because the tenant has formed a partnership to conduct business in the tenanted premises, a case of sublease cannot be found by the Court. In **Vialaparambil Gopi V. Chundamveettil Pazhaya Ottayil Mohammed Basheer & Anr.** reported in **(2004(1) KLJ 357)** this Court has held that, what the provision under Section 11(4)(i) of the Act contemplates is unauthorised transfer of the tenant's right under the lease without the landlord's consent even when the transfer does not amount to subletting. In **Jacob v. Pradeep Naik (2009 (2) KLT 262)** this Court held that "it is not necessary to show that exclusive possession of tenanted building has been unauthorisedly transferred to the alleged sub-lessee and there is landlord tenant relationship between the tenant and the alleged sub-lessee". What is objectionable as a ground for eviction under Section 11(4)(i) is transfer of the tenants rights under the lease without the consent of the landlord. In **Parvinder Singh V. Renu Gautam and**

others [(2004) 4 SCC 794] a three Judge Bench of the Hon'ble Supreme Court has cautioned about the tactics of unscrupulous tenants and sub-tenants, of bringing into existence some deed of partnership which gives the relationship of tenant and sub-tenant an outward appearance of partnership, while, in effect, what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership, with the object of defeating rights of landlord or defeating the provisions of law. The Hon'ble Supreme Court has also held that merely because a tenant has entered into a partnership he cannot necessarily be held to have sub-let the premises or parted with possession thereof in favour of his partners.

8. Relying on **Parvinder Singh V. Renu Gautam and others** and other decisions on the point, the Hon'ble Supreme Court made some guidelines to decide the question of sub-lease under the Rent Control Legislations in **Celina Coelho Pereira (Ms) and others V. Ulhas**

Mahabaleshwar Kholkar and others (2010) 1 SCC 217.

Those guidelines are:

“(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (1) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (2) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

9. In this case, we do not find a situation where a partnership was created by the tenant with her sons to defeat the rights and interests of the landlords. We do not find a situation of transfer of possession by the tenant to the sub-tenant, and we do not find that Ext.B1 partnership deed was created by the tenant to conceal a transaction of sub lease. She has given definite evidence that inspite of Ext.B1 partnership deed she continues possession over the premises and she has full dominion and control over the business being conducted in the premises. In such a factual

situation a case of sublease cannot be found by this Court, in view of the guidelines made by the Hon'ble Supreme Court in the decision cited above. This is not a case of transfer of possession or parting with possession, and this is not a case where the alleged sub-tenant has any control over the business being conducted in the premises except as a partner with his mother, who is the actual tenant.

10. It is pertinent to note that the D & O Traders license for the business being conducted in the premises stands in the name of the tenant. It has come out in evidence that the trade license even now stands in the name of the original tenant, and Ext.B3 series documents will show payment of license fee periodically by the 1st respondent. In such a circumstance, we do not find a case of sub-lease as alleged by the landlord. We find that the order of eviction granted by the trial court was rightly set aside by the appellate authority, and we concur with the findings made by the appellate authority as regards sub-

lease. We do not find any irregularity, illegality or impropriety in the findings of the appellate authority or in the judgment of the appellate authority, warranting interference under Section 20 of the Act. This revision is accordingly liable to be dismissed.

11. In the particular facts and circumstances of this case, we find that some interference is necessary in the interest of justice, as regards the amount of rent. The total area of the tenanted premises in this case is above 500 sq. ft. What the tenant pays as rent is only ₹150/- per month. Nobody can get such a building at such a rate in any part of Kerala. We find the absolute necessity of making some reasonable enhancement in the rate of rent, of course, tentatively, with the object of doing substantial justice to the landlord. Of course, the landlord can initiate appropriate proceedings for getting the rent enhanced under the law, and till then, the rent tentatively fixed by us in this proceedings will be in force from 1st January 2014.

12. Considering the total facts and circumstances including the area of the premises, and on hearing both sides, we think that ₹2,000/- per month would be the reasonable rate of rent. This amount of rent fixed by us will not prejudice the right of the landlord to claim appropriate enhancement, or the right of the tenant to make appropriate defence when enhancement in rent is sought by the landlord.

In the result, this revision petition is dismissed subject to the above directions regarding the rate of rent which will take effect from 1.1.2014.

Sd/-
K.T.SANKARAN
JUDGE

Sd/-
P.UBAID
JUDGE

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