K. LUBNA & ORS. A

v.

BEEVI & ORS.

(Civil Appeal Nos. 2442-2443 of 2011)

JANUARY 13, 2020 B

[SANJAY KISHAN KAUL AND K. M. JOSEPH, JJ.]

Kerala Buildings (Lease and Rent Control) Act, 1965 – s.11(4)(i) – Eviction of tenants – Sub-tenancy – Appellants-owners alleged that respondents-tenants stopped the payment of rent of three shop room premises, defined as room nos. 3/471, 3/472 and 3/476, and it was also alleged that two shops were sublet by the respondent without the consent of the appellants – The appellants sent a legal notice dated 15.12.1987 demanding surrender of possession of suit shop rooms and arrear of rent, and ultimately filed an eviction petition before the Rent Control Court – The Trial Court found against the appellants on all grounds except non-payment of rent while granting a decree of eviction for all the three shops – The Appellate Authority found bonafide need of appellant in respect of room no. 3/472 and sub-letting in respect of room no. 3/476 was proved – Thus, eviction was granted by the Appellate Authority in respect of room nos. 3/472 and 3/476 – The High Court in the cross- revision petitions sustained eviction order only qua room no. 3/476 on the ground of sub-letting – Before the Supreme Court, the appellants contended that u/s. 11(4)(i) of the Act, even if the sub-tenancy is created in part of the premises, the entitlement of eviction is in respect of the whole of the premises – The respondents dissuaded from examination of this plea in view of it not having been raised at an earlier stage and thus, no factual basis being laid for the same – Held: On the legal principle, a pure question of law can be examined at any stage, including before the Supreme Court – If the factual foundation for a case has been laid and the legal consequence of the same have not been examined, the examination of such legal consequence would be a pure question of law – The finding of fact in the instant case was not required to be closely scrutinised as the essential facts, which were analysed by the Courts below, clearly show the existence of a single tenancy C D E F G H

A *– Issuance of a single notice and the filing of a single eviction petition, albeit raising different grounds for different portions of the premises, is an undisputed fact – Further, under the statute, sub-letting of any part of the tenanted premises gives right to eviction from the whole premises – Thus, the appellants entitled to a decree of eviction for the entire premises, mentioned as tenanted premises,* B *on the ground of the respondents having sub-let a part of the premises.*

Allowing the appeals, the Court

HELD: 1. The judicial pronouncements of this Court in M. Meeramytheen & Ors. v. K. Parameswaran Pillai & Ors. which C **deals with the very Kerala Buildings (Lease and Rent Control) Act, 1965. In the facts of that case, one single tenancy was created in relation to two shop rooms, while sub-tenancy was created in respect of one of the two shop rooms by the tenant. Much later,** D **a partition was effected by virtue of which the two shops were allotted to the share of different co-sharers who joined together in the suit proceedings seeking eviction of tenants as sub-lessees. It was held that it could not be said that on account of the partition, the original tenancy was divided and therefore, eviction could be ordered only in respect of one of the rooms that was actually sub-**E **let, more so when the cause of action had arisen prior to the partition. The appellate court and the High Court, having granted a decree of eviction only with respect to one shop, was stated to be a legal error committed and, thus, eviction was granted in respect of both the shops on the ground that one of the shops** F **was sub-leased, in view of the provision of the Act. [Para 13] [974-C-E]**

M. Meeramytheen & Ors. v. K. Parameswaran Pillai & Ors. **(2010) 15 SCC 359 – relied on.**

2. The aforesaid judgment, covers the legal principle on all G **fours. A bare reading of sub-para (i) of sub-section (4) of Section 11 of the said Act leaves no manner of doubt that the cause arises upon the tenant transferring his rights under a lease and sub-lets the entire building "or any portion thereof", if the lease does not confer on him any right to do so. The proviso requires that the landlord should have sent a registered notice to the tenant**

H

intimating the contravention of the said condition of the lease and upon the tenant failing to terminate the transfer or the sub-lease, as the case may be, within thirty (30) days of the receipt of the notice, an application for eviction could be made by the landlord. Thus, sub-letting of any part of the tenanted premises gives right to eviction from the whole premises. That is how the statute reads and that is also, a reasonable interpretation of the same, as, if one tenancy is created it would not be appropriate to pass eviction order only in respect of a part thereof, and not the whole. The provision reading clearly, and in view of the aforesaid judicial pronouncements, there is no doubt about this proposition. This is not a case of *bona fide* requirement. The findings of fact in this case are not required to be closely scrutinised as the essential facts, which have been analysed by the courts below, clearly show the existence of a single tenancy. Issuance of a single notice and the filing of a single eviction petition, albeit raising different grounds for different portions of the premises, is an undisputed fact. Thus, the appellant is not expected to allege sub-letting of the whole premises if the sub-letting is only in part of the premises. No doubt the appellants have not specifically claimed that by sub-letting a portion, the whole premises is liable to be vacated, but then that is the legal consequence as is emerging from the legal position. [Para 14][974-F-G; 975-A-D]

3. Thus, the appellants are entitled to a decree of eviction for the entire premises, mentioned as tenanted premises, on the ground of the respondents having sub-let a part of the premises, and a decree is accordingly passed. [Para 16][975-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2442-2443 of 2011.

From the Judgment and Order dated 30.10.2007 of the High Court of Kerala at Ernakulam in Civil Revision Petition Nos. 1959 of 1998 and 1175 of 2000.

K. Rajeev, Adv. for the Appellants.

Raghenth Basant, Ms. Mahamaya Chatterjee, Ms. Liz Mathew, Advs. for the Respondents.

A The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. One Pathummakutty, the owner, let out three shop room premises, defined as Room Nos. 3/471, 3/472, 3/476, located in 1-29 in Survey 14 and Re-survey 15/6, at the eastern side of Areekadu
B NirathuVazhi, Nallalam Amsom Desom, Kozhikode Taluk to one Beerankoya *vide* document dated 1.1.1967 for a monthly rent of Rs.75. The ownership rights in the property were transferred in favour of the appellants in 1986 by a registered document. This transfer/assignment was intimated to original respondent No.1 (now represented through his
C legal heirs) as per a registered letter in May, 1986. The allegation is that the original respondent sent rent through money orders only up to November, 1987, and stopped payment of rent thereafter. It is also alleged that the appellants required the premises *bona fide*; two of the shops had been sublet by the original respondent without the consent of the appellants and the value of the suit shops had been reduced materially
D and permanently by the respondents. The appellants, thus, sent a legal notice dated 15.12.1987 demanding surrender of possession of suit shop rooms and arrears of rent, and ultimately filed an eviction petition before the Rent Control Court, Kozhikode for eviction under Sections 11(2), 11(3) and 11(4)(i) & 11(4)(ii) of the Kerala Buildings (Lease and Rent
E Control), Act, 1965 (hereinafter referred to as the 'said Act').

2. The trial court *vide* judgment dated 31.10.1994 found against the appellants on all grounds except non-payment of rent while granting a decree of eviction for all the three shops. In terms of Section 11(2)(b) of the said Act read with Section 11(2)(c) of the said Act, in case such
F an eviction order is passed, one month's time or any further time as deemed proper by the Rent Control Court is granted to the tenant to deposit the arrears of rent with interest and the cost of proceeding, and in that eventuality the eviction order is to stand vacated. It does appear that the amount was thereafter deposited by the respondents. The appellants preferred an appeal before the appellate authority. The three
G rooms were 3/471, 3/472 and 3/476. In respect of Room No.3/471 though *bona fide* need of the appellants was not found, in Room No.3/472 the *bona fide* need of the appellant was stated to be proved but no sub-letting was stated to have been proved, and in respect of Room No.3/476 the sub-letting was proved. Thus, eviction was granted in respect of
H rooms 3/472 and 3/476 *vide* order dated 9.7.1998.

3. The aforesaid order resulted in cross-revision petitions by both sides before the High Court of Kerala. In terms of the impugned order dated 30.10.2007 *qua* Room No.3/471, no *bona fide* need has been found and the position is the same in respect of Room No.3/472. Further, while sub-letting was not proved *qua* Room No. 3/472, was stated to have been proved *qua* Room No.3/476. The result of the aforesaid is that the endeavour of eviction from Room Nos.3/471 and 3/472 failed, while eviction order *qua* Room No.3/476 on the ground of sub-letting was sustained.

4. The appellants, aggrieved by this order, preferred a Special Leave Petition, in which leave was granted on 4.3.2011. The respondents did not prefer any appeal, and even after leave was granted, did not file any cross-appeal/cross-objections. In the proceedings of 29.8.2019, this Court recorded the real contention of the appellants as advanced by the counsel, that there was one tenancy though there were different violations in different portions of the tenancy. The notice dated 15.12.1987 was stated to be a composite notice and one eviction petition was filed *qua* the whole premises. That being the position, it was sought to be contended before us, by inviting our attention to Section 11(4)(i) of the said Act, that even if the sub-tenancy is created in part of the premises, the entitlement of eviction is in respect of the whole of the premises. The relevant provision reads as under:

"11. Eviction of tenants.—

xxxx xxxx xxxx xxxx
xxxx

(4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building,—

(i) if the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or **sub-lets the entire building or any portion thereof** if the lease does not confer on him any right to do so:

Provided that an application under this clause shall not be made for the first time in respect of one and the same tenancy unless the **landlord has sent a registered notice to the tenant** intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sublease

A as the case may be, within thirty days of the receipt of the notice or the refusal thereof."

5. It would be useful at this stage itself to also reproduce the definition of a 'building' as defined under Section 2(i) of the said Act, which reads as under:

B "**2.Definitions.—**In this Act, unless the context otherwise requires,-

(1) "building" means any building or hut or part of a building or hut let or to be let separately for residential or nonresidential purpose and includes-

C (a) …..

(b) …..

(c) ….."

D 6. In order to appreciate the controversy, we deemed it appropriate to peruse the notice dated 15.12.1987, which was not on record. In the subsequent proceedings, it was found that there was some difficulty in obtaining the same and, thus, the record of the trial court was called for, to peruse the same. On a perusal of the record, what emerges is that there was actually one tenancy and one single notice seeking eviction of E the tenants on different grounds, though the allegation against the three portions are different in character. A perusal of the eviction petition also shows the same, i.e., there is a single eviction petition for the three shops/rooms, though the alleged violations are different in respect of different portions.

F 7. We may notice that the plea sought to be advanced before us, that sub-letting one room would entail eviction from the entire tenancy premises, apparently was never urged before the trial court, the appellate court or the High Court, and forms a part of the pleadings before the Supreme Court, to the extent of being included in the rejoinder to the SLP. Thereafter by way of an interlocutory application, additional grounds G were urged where this question was sought to be raised, and leave was granted by this Court post that stage. The net effect, in our view of all of these is that this plea has to be examined; rather this is the only plea to be examined by us in view of the finding of fact recorded by the three courts.

H

8. Learned counsel for the respondents endeavoured to dissuade us from examining this plea in view of it not having been raised at an earlier stage and thus, no factual basis being laid for the same. However, on perusal of the eviction petition, the notice and the reply, what is found is that the aspect of single tenancy was never disputed. Nor is it disputed that there were different grounds made out for different portions, i.e., that the single tenancy was of three rooms, but what the respondents, as tenants, were alleged to have done, to constitute violation of the terms of the lease was different for the three portions. Such allegations, however, did not find favour ultimately, except to the extent of one of the portions, i.e., Room No.3/476, where the finding reached was of subletting, by the appellate authority, reversing the finding of the trial court on that aspect, and the High Court thereafter affirming the same. Thus, there is a concurrent finding by the final court of fact, as well as in the revision petition.

9. On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law[1].

10. No doubt the legal foundation to raise a case by including it in the grounds of appeal is mandated. Such mandate was fulfilled by moving a separate application for permission to urge additional grounds, a course of action, which has already been examined by, and received the imprimatur of, this Court in ***Chittoori Subbanna v. Kudappa Subbanna***[2].

11. We may also usefully refer to what has been observed by Lord Watson in ***Connecticut Fire Insurance Co. v. Kavanagh***[3] in the following words:

> "….When a question of law is raised for the first time in a court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions

[1] Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari 1950 SCR 852
[2] AIR 1965 SC 1325
[3] 1892 A.C. 473

A of fact in considering which the court of ultimate review is placed in a much less advantageous position than the courts below."

12. In our view, the aforesaid succinctly sets forth the parameters of scrutiny, where the question of law is sought to be raised at the final court stage. There are no "nice questions of fact" required to be decided B in the present case which would dissuade us from examining this plea at this stage. We have set forth the undisputed facts aforesaid. Thus, the only question is whether this is a question of law which deserves to be examined, and has ramifications in the present case.

13. We may now turn to the judicial pronouncements of this Court C in ***M. Meeramytheen & Ors. v. K. Parameswaran Pillai & Ors.***[4], which deals with the very said Act with which we are concerned. In the facts of that case, one single tenancy was created in relation to two shop rooms, while sub-tenancy was created in respect of one of the two shop rooms by the tenant. Much later, a partition was effected by virtue of which the two shops were allotted to the share of different co-sharers D who joined together in the suit proceedings seeking eviction of tenants as sub-lessees. It was held that it could not be said that on account of the partition, the original tenancy was divided and therefore, eviction could be ordered only in respect of one of the rooms that was actually sub-let, more so when the cause of action had arisen prior to the partition. E The appellate court and the High Court, having granted a decree of eviction only with respect to one shop, was stated to be a legal error committed and, thus, eviction was granted in respect of both the shops on the ground that one of the shops was sub-leased, in view of the provision extracted hereinabove.

F 14. The aforesaid judgment, in our view, covers the legal principle on all fours. A bare reading of sub-para (i) of sub-section (4) of Section 11 of the said Act leaves no manner of doubt that the cause arises upon the tenant transferring his rights under a lease and sub-lets the entire building "or any portion thereof", if the lease does not confer on him any right to do so. The proviso requires that the landlord should have sent a G registered notice to the tenant intimating the contravention of the said condition of the lease and upon the tenant failing to terminate the transfer or the sub-lease, as the case may be, within thirty (30) days of the receipt of the notice, an application for eviction could be made by the landlord.

H [4] (2010) 15 SCC 359

Thus, sub-letting of any part of the tenanted premises gives right to eviction from the whole premises. That is how the statute reads and that is also, in our opinion, a reasonable interpretation of the same, as, if one tenancy is created it would not be appropriate to pass eviction order only in respect of a part thereof, and not the whole. The provision reading clearly, and in view of the aforesaid judicial pronouncements, there is no doubt about this proposition. This is not a case of *bona fide* requirement. The findings of fact in this case are not required to be closely scrutinised as the essential facts, which have been analysed by the courts below, clearly show the existence of a single tenancy. Issuance of a single notice and the filing of a single eviction petition, albeit raising different grounds for different portions of the premises, is an undisputed fact. Thus, the appellant is not expected to allege sub-letting of the whole premises if the sub-letting is only in part of the premises. No doubt the appellants have not specifically claimed that by sub-letting a portion, the whole premises is liable to be vacated, but then that is the legal consequence as is emerging from the legal position.

15. Learned counsel for the respondent did seek to contend that had he known all these consequences, he would not have accepted the judgment of the High Court, as he was maintaining the occupation of two of the rooms and had accepted the vacation of one room. But then we squarely put to him that the additional grounds were pleaded and thereafter leave was granted. Thus, nothing prevented the respondents from filing cross-objections/cross-appeals at that stage of time, which they chose not to do despite knowing the nature of plea which has been raised as an additional ground.

16. We are, thus, of the view that the appellants are entitled to a decree of eviction for the entire premises, mentioned as tenanted premises, on the ground of the respondents having sub-let a part of the premises, and a decree is accordingly passed.

17. In the given facts of the case, we grant the respondents six (6) months' time to vacate the premises.

18. The appeals are accordingly allowed, leaving the parties to bear their own costs.

Ankit Gyan Appeals allowed.