C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 9TH DAY OF FEBRUARY 2024 / 20TH MAGHA, 1945

RFA NO. 544 OF 2004

AGAINST THE JUDGMENT DT. 11.03.2004 IN OS 532/1997 OF II ADDITIONAL SUB COURT, THRISSUR

APPELLANT/FIRST DEFENDANT:

JOHNY PADIKALA, AGED 42,
S/O. PANDIKALA ANTHAPPAN, VELIYANNUR VILLAGE,DESOM,
THRISSUR TALUK, NOW RESIDING AT NEAR LATHIN CHURCH,
THRISSUR TALUK, DESOM, THRISSUR.

BY ADVS.
SMT.SUMATHI DANDAPANI
SRI.MILLU DANDAPANI

RESPONDENTS/PLAINTIFF AND DEFENDANTS 2 & 3:

1. P.C.HASSAN
S/O. CHIRAKALAVEETTIL MUHAMMED HAJI,
MULLASSERY VILLAGE, THIRUNELLUR DESOM,
CHAVAKKAD TALUK.

2. SHAJU, S/O.KUNDUKULAM VEETTIL FRANCIS,
KARUMATHRA VILLAGE, THALAPPILLY TALUK.

3. JOSE, S/O. ARANGASSERY LONAPPAN,
OLLUR VILLAGE, DESOM, THRISSUR TALUK, NOW RESIDING AT
ANJERY, NEAR MARIYAPURAM CHURCH, ANJERY, THRISSUR.

BY ADV SRI.G.SREEKUMAR (CHELUR)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 09.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C. R.

SATHISH NINAN, J.

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R.F.A. No.544 of 2004

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Dated this the 9th day of February, 2024

JUDGMENT

The first defendant in a suit for damages is in appeal challenging the decree against him.

2. The first defendant is the owner of a shop room. He had let out the room to the second defendant for storing explosive substances. The plaintiff is the owner of a building situated on the opposite side of the building of the first defendant. He is doing business therein. On 16.11.1997 at about 2.55 a.m., there occurred a huge explosion in the first defendant's building. Consequent thereto, the building of the plaintiff, including the articles therein, were completely damaged. The suit is filed claiming damages to the tune of ₹ 3 lakhs. The plaintiff alleges that defendants 1 to 3 were doing joint business as partners.

3. The first defendant denied the allegation of partnership and his involvement in the business. He denied the claim that he is liable for the damages. It was also pleaded that the building was leased out to the 2nd defendant who was conducting the business on the strength of the required licences.

4. The second defendant contended that he was doing the business with all necessary licenses. There was no negligence on his part and that all necessary precautions as required under the licence were taken by him.

5. The third defendant denied his involvement in the business.

6. The trial court found that the business belonged to the second defendant. The claim against the third defendant was dismissed. The first defendant was made liable, he being the owner of the building wherein the explosives were stored. The first defendant challenges

the decree against him.

7. I have heard Smt.Sumathi Dandapani, the learned Senior Counsel for the appellant-1st defendant and Sri.G.Sreekumar Chelur, the learned counsel for the contesting respondent-plaintiff.

8. The point that arises for determination is,

"Was the trial court right in having made the first defendant-the owner of the premises liable for the damages that resulted consequent on the explosion that occurred in the premises when it was occupied by his tenant, the second defendant ?

9. In this appeal we are concerned only regarding the liability of the first defendant. Decree is sought against the first defendant in two capacities; firstly, on the allegation that he is a partner in the business that was being conducted by the second defendant, and secondly, that he being the owner of the premises in which the explosion occurred, is liable for the damages.

10. As regards the claim that the first defendant was doing business in partnership along with the second defendant, there is absolutely no evidence. Ext.B3 is the licence deed between the first defendant and the second defendant evidencing that the premises were let out by the first defendant to the second defendant for the conduct of the business. Exts.B1 and B2 are the certified copies of profession tax register and demand register maintained at the Municipality in respect of the building. It shows that the business in the room in question was conducted by the second defendant. There is no evidence to find the involvement of the first defendant in the business. Therefore, the claim made against the first defendant in the capacity as a partner/joint business, fails.

11. Now the question regarding the liability of the first defendant in his capacity as the owner of the premises need to be considered. The learned counsel for

the first respondent-plaintiff would argue that, when the first defendant had granted lease of his premises for conducting an inherently dangerous activity, he takes with it the liability to indemnify the third parties against any damages that may result from the activity in the leased premises. The liability is an “absolute liability” subject to no exceptions, it is contended. The person who stores inherently dangerous articles is responsible for the damages resulting thereby. The first defendant having let the premises for such activity is equally responsible and liable, is the argument. Though the rule in ***Rylands v. Fletcher (1868) L.R. 3 H.L. 330*** regarding the liability of a person who stores inherently dangerous article provides for few exceptions, the Apex Court in ***M.C.Mehta v. Union of India AIR 1987 SC 1086*** held that, in India, we have evolved a principle at variance from that in England and provide for an absolute liability for such activity without any

exceptions. The principle was again reiterated in ***Indian Council for Enviro-Legal Action v. Union of India AIR 1996 SC 1446,*** he points out. The learned counsel would further rely on the judgment in ***Santha v. Secretary 2014 (1) KHC 723*** and ***Raman v. Cochin Devaswom Board 2015 (3) KHC 182*** to canvass his contention. The learned Senior Counsel for the appellant would on the other hand argue that, the owner of the premises cannot be made liable merely for the reason that he had let out the premises for the conduct of an inherently dangerous activity. Ext.B3 is the deed under which the first defendant leased out the room to the second defendant. In Ext.B3, it is specifically recited that the second defendant is permitted to conduct the business in explosives by strictly adhering to the Explosives Laws. It is further provided therein that, no articles prohibited by the Government or Municipality shall be kept in the premises. Therefore, the letting out of the premises by the owner was for the

conduct of business strictly in accordance with law and in due compliance with the Explosives Laws. The nature of business is one sanctioned under law. The leasing out is not for a prohibited or illegal activity. The owner had taken all necessary precautions by insisting the second defendant to conduct business in accordance with the explosives laws and further prohibiting him from storing any articles not sanctioned by the Government or Municipality. Under such circumstances the owner of the building, who was not the occupier of the premises at the relevant time and who was not the person who had stored the articles and was doing business therein could not be held liable for the incident.

12. In ***M.C.Mehta's*** case supra, the Apex Court held that the enterprise dealing with inherently dangerous articles owe absolute liability to the community and in the event of any accident arising on account of such activity, the enterprise has the liability to indemnify

those who suffer damage. The Apex Court held thus:

> *".....We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it was undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the*

> *enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource of discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra)"*

This was again reiterated in ***Indian Council's case*** supra.

13. In ***Raman v. Cochin Devaswom (supra),*** the Devaswom Board which owned the elephant which killed a devotee in a temple was held to be liable. There the Devaswom Board

was the owner of the elephant which had caused the incident. In ***Santha v. Secretary (supra),*** the Electricity Board was made liable for damages in the case of electrocution consequent to snapping of live wire. In both the cases, the respective authorities were the owners of the elephant, and the electricity and the cable which were directly responsible for the incident.

14. The 2nd defendant was the owner of the business and the articles. It was the 2nd defendant-tenant, who had control over the premises demised to him. It was he who was dealing with the explosive articles. As was noticed supra, Ext.B3 deed specifically required the second defendant to do the business in strict adherence to the relevant laws. At best it could be contended that the first defendant-owner of the premises was bound to see that the second defendant conducts the business in adherence with the terms of Ext.B3. There is no case that the second defendant was doing the business without

securing/possessing the necessary licenses and permissions. The owner of the premises could not be made liable for any damage that occurred to a third party consequent on the conduct of the business by the occupier of the premises-the second defendant. However, the position would have been different if the entrustment was for the conduct of a business which is not permitted under law.

15. On the discussions as above I hold that the 1st defendant cannot be held liable for the damages claimed. The trial Court has not discussed regarding the liability of the 1st defendant but proceeded to find that defendants 1 and 2 are liable. The finding is liable to be set aside and I do so. Consequently, the decree and judgment of the trial court insofar as it is against the 1st defendant is liable to be interfered with.

Resultantly, the appeal is allowed. The decree and judgment of the trial court insofar as it is against the 1st defendant is set aside. The suit as against the 1st defendant will stand dismissed. No costs.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX OF RFA 544/2004

PETITIONER ANNEXURES

ANNEXURE A1	THE CERTIFIED COPY OF THE JUDGMENT IN SC 31 / 2003 DATED 13.01.2012 PASSED BY THE HON'BLE ADDITIONAL SESSIONS COURT-THRISSUR.