

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:
THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

RCRev..No. 41 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 6/2009 of II ADDL. RENT CONTROL APPELLATE
AUTHORITY/DISTRICT JUDGE, KOZHIKODE- II DATED 4.11.2011**

**AGAINST THE ORDER/JUDGMENT IN RCP 147/2006 of RENT CONTROL COURT/ADDL.MUNSIFF
COURT-I, KOZHIKODE DATED 29.11.2008**

REVISION PETITIONER/APPELLANT/RESPONDENT:

V.SUBRAMANYAM
S/O. KUNHUTTY, RESIDING AT MATHRUMRUTHIYIL
CHERYMANASSERY ROAD, KALLAI, PANNIYANKARA AMSOM
DESOM, KOZHIKODE TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS/RESPONDENTS/PETITIONERS 1 & 2:

- 1. VALALIL SIDHARTHAN**
S/O. ACHUTHAN, NEDGUNGATTOOR AMSOM, DESOM
KOZHIKODE TALUK PINCODE 673010.
- 2. K.M. RANJINI,**
W/O SIVANANDAN, KATTILE PURAKKAL,
EAST SIDE OF GANDHI ASRAMAM, KOZHIKODE TALUK
NEDUNGATTOOR AMSOM, DESOM PINCODE 673010.
- 3. SHIBIN ANAND V.S,**
S/O SIVANANDAN, KATTILE PURAKKAL
EAST SIDE OF GANDHI ASRAMAM, KOZHIKODE TALUK
NEDUNGATTOOR AMSOM, DESOM PINCODE 673010.
- 4. SHIMNA V.S., D/O SIVANANDAN,**
- 5. P. SAVITHRI,**
D/O ACHUTHAN, MALAPRAMBA, NEDUNGOTTOOR AMSOM DESOM
KOZHIKODE TALUK. PINCODE 673010.
- 6. P. CHANDRIKA,**
D/O ACHUTHAN, PONNAPPURATH VEEDU, MALAPARAMBA
NEDUNGOTTOOR AMSOM, DESOM, KOZHIKODE TALUK. 67300.
- 7. P. DEVAKI**
D/O. ACHUTHAN, PONNAPPURATH VEEDU, MALAPARAMBA
NEDUNGOTTOOR AMSOM DESOM, KOZHIKODE TALUK. 673010.

R1 TO 4 BY ADV. SRI.K.P.SUDHEER
R1 TO 4 BY ADV. SRI.SUMODH MADHAVAN NAIR
R1 -R 4 BY ADV. SRI.R.SUDHIR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 02-02-2015,
A/W. R.C.R.NO.210/2012 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.Nos.41 & 210 of 2012

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Dated this the 2nd day of February, 2015

O R D E R

ANTONY DOMINIC, J.:

The petitioners in R.C.Rev.No.210/2012 filed R.C.P.No. 147/2006 on the file of the Rent Control Court, Kozhikode, seeking eviction of the tenant, the petitioner in R.C.Rev.No. 41/2012. In the petition, the grounds urged were under Secs. 11(2)(b), 11(3) and 11(4)(iii) of the Rent Control Act. The Rent Control Court by its order dated 29th November, 2008, allowed the petition as prayed for. This order was challenged by the tenant by filing R.C.A.No.6/2009. The Rent Control Appellate Authority, Kozhikode, disposed of the appeal by its judgment dated 4.11.2011, confirming the findings of the Rent Control Court insofar as the grounds under Secs. 11(2)(b) and 11(4)(iii) are concerned and reversed the finding insofar as Sec.11(3) is concerned. The tenant has filed R.C.Rev.No. 41/2012 and the landlords have filed R.C.Rev.No.210/2012, aggrieved by the order to the extent it is against them.

2. We heard the learned counsel for the landlords and the learned counsel appearing for the tenant.

3. Insofar as R.C.R.No.41/2012 filed by the tenant is concerned, his grievance is against the finding of the lower

authorities under Secs.11(2)(b) and 11(4)(iii). Insofar as Sec.11(2)(b) is concerned, the case of the landlords was that the petition scheduled rooms were let out to the tenant on a monthly rent of Rs. 2,800/- and that rent was paid only upto 24.5.2004, leaving rent for the subsequent period in arrears. However, the tenant contended that rent upto to January, 2006 has been paid and that the rent for the subsequent period was deposited in the Rent Control Court. Therefore, in essence, the dispute on this issue was confined to the period between 24.5.2004 and January, 2006. Reading of the orders show that though it was the case of the tenant that he had paid rent during the aforementioned period and that he had documents evidencing such payments, he did not produce any of those documents to substantiate his contention. It was in such circumstances, the Rent Control Court accepted the case of the landlords under Sec.11(2)(b) of the Rent Control Court. This finding of the lower authorities does not suffer from any illegality.

4. The second ground, that is concurrently upheld by both the lower authorities, is under Sec. 11(4)(iii) of the Act. Insofar as this contention of the landlords is concerned, their case was that the tenant had in his possession building Nos.19/1775 and 19/1776,

which could be made use of conveniently for the purposes of his business establishment, M/s.Equipment Agencies. The relevant averments are contained in paragraph 6 of the petition, which reads thus:

"6. എത്യുക്കുഷിക്ക് ഹർജിപട്ടിക കെട്ടിടത്തിൽ ടിയാൻ നടത്തിവരുന്ന എക്സിപ്‌മെന്റ് ഏജൻസിസ് എന്ന കച്ചവടം ചെയ്യുവാൻ പറ്റിയ തരത്തിൽ 19/1775, 19/1776 എന്നീ നമ്പർ കെട്ടിടങ്ങളും ആയതിനോട് ചേർന്ന ഷെഡും ചെരിവും കൈവശത്തിലുള്ളതും എത്യുക്കുഷിയുടെ ആവശ്യത്തിന് വളരെയധികം മതിയായതും ഹർജിപ്പട്ടിക കെട്ടിടത്തിന്റെ എതിർവശത്ത് കല്ലായി റോഡിന്റെ കിഴക്ക് ഭാഗത്തായി സ്ഥിതിചെയ്യുന്നതും ഹർജിപ്പട്ടിക കെട്ടിടത്തേക്കാൾ വളരെയധികം സൗകര്യ കൂടുതലുള്ളതുകൊണ്ടുമാകുന്നു. ആ കാരണത്താലും ഹർജിപ്പട്ടിക കെട്ടിടം എത്യുക്കുഷി ഹർജിക്കാർക്ക് ഒഴിഞ്ഞു തരുവാൻ ബാധ്യസ്ഥനായിട്ടുള്ളതും നിയമ പ്രകാരം ഒഴിപ്പിക്കാൻ ഹർജിക്കാർക്ക് അധികാരവകാശം സിദ്ധിച്ചിട്ടുള്ളതുകൊണ്ടുമാകുന്നു."

The answer to this plea of the tenant is contained in paragraph 5 of the objections filed by the tenant, which is extracted below for reference:

"5. ഹർജി 6-ാം വകുപ്പിൽ പ്രസ്താവിച്ച സംഗതികളും ശരിയൊ സത്യമൊ ആയിട്ടുള്ളതല്ല. എത്യുക്കുഷിക്ക് ഉണ്ട് എന്നു പറയുന്ന മുറികൾ എത്യുക്കുഷി ചെയ്യുവരുന്ന കച്ചവടത്തിന് അനുയോജ്യമായിട്ടുള്ളതല്ല. ആയത് ഗോഡൗണായി മാത്രമെ ഉപയോഗിക്കാൻ പറ്റുകയുള്ളൂ."

Reading of the above shows that the fact alleged by the landlords, that the tenant had building Nos.19/1775 and 19/1776, in their possession was not denied in the objection. On the other hand, the only contention raised was that the buildings mentioned above could be used only for the purpose of go-down or in other words, was unsuitable for his business. The evidence of the tenant shows that the said building is also situated in a commercially important area and the total area of the building was 260 sq. mtrs. It is

appreciating this evidence that the Rent Control Court and the Appellate Authority came to the conclusion that the building in question was more than sufficient and convenient for the tenant to carry on his business.

5. For the first time before this Court the counsel for the tenant contended that Sec.11(4)(iii) is not attracted to the facts of this case. According to him, to attract Sec.11(4)(iii) the tenant must be having in his possession a building or should subsequently acquire possession of a building or should put up a building, which is reasonably sufficient for his requirements in the same city, town or village. The counsel contended that while the petitioner in his individual capacity is the tenant of the scheduled building, it is M/s.Equipment Agencies, which is in the possession of building Nos.19/1775 and 19/1776. Therefore, according to him, since the requirements of Sec. 11(4)(iii) are not satisfied, this provision could not have been pressed into service.

6. We are unable to appreciate this argument. First of all the fact of possession of building pleaded in paragraph 6 of the rent control petition was not disputed by the tenant in paragraph 5 of his objection, extracted above. The only dispute raised was that it was

not suitable for his requirements. The only dispute raised was that it was not suitable for his requirements. The title deeds pertaining to the said building which may have substantiated the case now argued before us are also not available on record. Therefore, the truth of this contention also is not established. Therefore, the truth of this contention also is not established. Thirdly, the rent deed, Ext.A-1 shows that the tenant has signed the document describing himself as the managing partner of Equipment Agencies, a partnership firm and the building in question was also used for the purposes of the business of the firm only. It is despite this, that a belated argument is now raised before us that Sec.11(4)(iii) could not have been invoked by the landlords. We, therefore, reject this contention raised now before us.

7. This being issues that are relevant insofar as R.C.Rev.No. 41/2012 is concerned, the R.C.R. lacks merits and is only to be dismissed.

8. Insofar as R.C.Rev.No. 210/2012 filed by the landlords is concerned, that revision is confined to the finding of the Rent Control Appellate Authority in relation to Sec.11(3) of the Act urged by the landlords. The landlords filed the rent control petition in

which they urged Sec.11(3) by contending that the son of the 2nd petitioner was a third year medical student and that on completion of his course, he wanted to set up a clinic of his own. However, when the 2nd petitioner was examined as PW-1, in answer to the question whether his son intended to go for further studies, he gave a vague answer that it was upto his son to decide whether to go for higher studies or not. Therefore, this shows that he was not certain that his son would come and set up a clinic. In such a situation, in proof of their claim of bona fide need of the building for the occupation of the 2nd petitioner's son, the landlords should have examined the 2nd petitioner's son, which also was not done. This is one the main reasons, which persuaded the Rent Control Appellate Authority to interfere with the finding of the Rent Control Court under Sec.11(3). We are unable to see any fault with the logic of the Rent Control Appellate Authority. In such circumstances, we decline to interfere with the order passed by the Appellate Authority as prayed for by the landlords in R.C.Rev.No.210/2012. Therefore, R.C.Rev.No. 210/2012 is only to be rejected.

Accordingly, R.C.Rev.Nos.41/2012 and 210/2012 are dismissed.

9. At this stage, the learned counsel for the petitioner in R.C.Rev.No. 41/2012, sought a reasonable time to surrender vacant possession of the building to the landlords. When this request was made, the learned counsel for the landlords submitted that rent is in arrears from November, 2011. Taking note of the submissions made by both sides and having regard to the fact that the premises in question is used for commercial purposes, we allow six months' time to the tenant to surrender vacant possession of the scheduled premises to the landlords. This shall, however, be subject to the condition that within three weeks from today, the tenant shall file an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession of building in question to the landlords on or before the expiry of the six months' time allowed by us and also on their paying the arrears of rent due and continuing to pay the same. The arrears of rent, if any, shall be paid within the aforesaid three weeks' time.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

