

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

RCRev..No. 42 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN RCA 5/2009 of DISTRICT JUDGE/II ADDL.RENT
CONTROL APPELLATE AUTHORITY, KOZHIKODE DATED 4/11/11

AGAINST THE ORDER/JUDGMENT IN RCP 146/2006 of RENT CONTROL COURT/
ADDL.MUNSIFF COURT-I,KOZHIKODE- DATED 29/11/2008

REVISION PETITIONER/APPELLANT/RESPONDENT:

K.K.BABY
W/O SUBRAMANYAM, RESIDING AT MATHRUSMRUTHIYIL
CHERUMANASSERRY 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, NEDUNGATTOOR AMSOM, DESOM
KOZHIKODE TALUK 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, KATTILE PURAKKAL
EAST SIDE OF GANDHI ASRAMAM, KOZHIKODE TALUK
NEDUNGATTOOR AMSOM, DESOM PINCODE 673010.
5. P. SAVITHRI,
D/O ACHUTHAN, MALAPRAMBA, NEDUNGOTTOOR AMSOM DESOM
KOZHIKODE TALUK. 673 010.

6. P. CHANDRIKA,
D/O. ACHUTHAN, PONNAPPURATH VEEDU, MALAPARAMBA
NEDUNGOTTOOR AMSOM, DESOM, KOZHIKODE TALUK. 673010.

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-R4 BY ADV. SRI.R.SUDHIR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 30-01-2015, ALONG WITH RCR. 209/2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. Nos. 42 & 209 of 2012
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Dated this the 30th day of January, 2015

O R D E R

Antony Dominic, J.

These revision petitions arise from the proceedings in RCP No.146/06 on the file of the Rent Control Court, Kozhikode. The said RCP was filed by the landlords, who are the revision petitioners in RCR No.209/12, against the tenant, who has filed RCR No.42/12. In RCP No.146/06, the landlords sought eviction of the tenants under Sections 11(2) (b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, (hereinafter referred to as the Act for short). The Rent Control Court by its order dated 29/11/2008 ordered eviction as prayed for. This order was challenged by the tenant by filing RCA No.5/09 on the file of the Rent Control Appellate Authority, Kozhikode, and, by judgment dated 4/11/11, confirmed the order of the Rent Control Court under Sections 11(2)(b) and 11(3) of the Act and reversed the order under Section 11(4)(iii) of the Act. It is aggrieved by these orders, the tenant has filed RCR No.42/12 and to the extent the Appellate Authority has decided against them, the landlords have filed RCR No.209/12.

2. Briefly stated, the facts of the case are that, according to the landlords, the petition schedule room was rented out to the 1st respondent in RCR No.209/12 on a monthly rent of ₹1,500/-. The rent was in arrears from 25/5/2004 and despite notice, arrears were not paid. According to the landlords, the first petitioner in RCR No.209/12, being a doctor, was carrying on his medical practice in a rented room at Kakkodi. He had decided to shift his medical practice to the petition schedule room and therefore they bona fide needed the room for the own occupation of the first petitioner in RCR No.209/12. They contended that they had no other room in their possession for the said purpose. It was also contended by them that the tenant had in her ownership and possession, building Nos.19/1775 and 19/1776, which were sufficient to carry on her business.

3. The tenant contended that she had paid rent up to January 2006. It was contended that the landlords did not issue rent receipt from January 2004. They disputed the bona fide need urged by the landlords and they also contended that the landlords were in possession of Room No.14/78, which is right in front of the

petition schedule room. The tenant also contended that she was depending upon the income from the petition schedule room for her livelihood and that there is no other room available in the locality to shift her business.

4. We notice from the orders of the Rent Control Court and the Appellate Authority that while the landlords contended that rent was paid only up to 24/5/2004, according to the tenant, they had paid rent till January, 2006. Since the rent from February 2006 was deposited before court, the controversy regarding the arrears of rent was confined to the period from 25/5/2004 to January, 2006. This issue was examined by the lower authorities and both have concurrently found that despite the claim of the tenant that she had document evidencing payment of rent till January, 2006, she did not produce anything to substantiate the said contention. It was in the absence of any proof of payment of rent for the period in question that the Rent Control Court and the Appellate Authority entered a finding against the tenant under Section 11(2)(b) of the Act. This finding, in our view, does not suffer from any illegality for interference.

5. In so far as the bona fide need urged by the landlords is concerned, the admitted factual position is that the first petitioner in RCR No.209/12 is a qualified Doctor. He is conducting a clinic in a rented premises at Kakkodi, which is about 16 kms away from Calicut city. He wanted to shift his medical practice to Calicut city. It was therefore that they demanded vacant possession of the rooms in question. The aforesaid factual aspects are admitted by the tenant. But, however, the tenant's contention was that the first petitioner in RCR No.209/12 having established his medical practice at Kakkodi, had no reason to shift his practice to Calicut city sacrificing the goodwill that he has already earned. As rightly held by the Rent Control Court and the Appellate Authority, this by itself cannot be a reason for doubting the bona fides of the need urged by the landlords. If for some reasons the 1st petitioner in RCR No.209/12 has chosen to shift his practice from the rented premises in Kakkodi to his own residence in Calicut city, the bona fides of that decision cannot be questioned. It was therefore that the Rent Control Court and the Appellate Authority has accepted the bona fides of the need

projected by the landlords.

6. We notice that it was the contention of the tenant that the landlords have room Nos.14/78 and 2/2931 in their possession, where, the 1st petitioner in RCR No.209/12 can start his medical practice, if at all it is so required. This contention has been examined by both the Rent Control Court and the Appellate Authority. In so far as room No.2/2931 is concerned, though there was no pleading in this respect in the objection filed by the tenant, on an examination of this claim, the courts below have found that the said room is in front of the house of the first petitioner in RCR No.209/12 and according to him, the room is in the possession of his nephew, who is also a doctor and was being used for storing firewood as well as waste materials. While the evidence tendered by the petitioners was to the above effect, no evidence to contradict this was adduced by the tenant. The tenant also did not take out a commission from the court to ascertain the nature of the building as to whether it was suitable for the use of the first petitioner in RCR No.209/12. In the circumstances, the courts declined to accept the case of the

tenant that the landlords were in possession of the aforesaid room.

7. In so far as room No.14/78 alleged to be in the possession of the first petitioner in RCR No.209/12 is concerned, the landlords contended that the said room was in the possession of the son of the first petitioner in RCR No.209/12, who was using it as a web designing centre. The Advocate Commissioner appointed by the Court had also reported that, in this room, there were computers and other materials. Although it is true that the tenant had contended that in the absence of any license produced by the landlords, the case pleaded by them was incorrect, in the absence of any evidence adduced by the tenant and on account of the report of the Advocate Commissioner and the evidence tendered by the landlords, the court has found that there was nothing to prove that the landlords had this room in their possession. These findings with respect to room Nos.2/2931 and 14/78 are perfectly consistent with the evidence available on record and we are unable to disagree with the view concurrently taken by the Rent Control Court and the Appellate Authority.

8. It is true that the tenant claimed the benefit of the two provisos to Section 11(3) of the Act. The tenant had claimed that she was depending mainly on the income derived from the petition schedule room and there are no other room available in that locality. Orders passed by the Rent Control Court and the evidence tendered by the parties show that the tenant failed in proving that she was running any business in the room in question. Once the tenant had failed to prove that she was utilizing the rented premises for business, the tenant cannot be heard to contend that she was mainly depending on the income derived from the business for her livelihood. Therefore, we are unable to accept this claim of the tenant. This is all the more so for the reason that when the Advocate Commissioner inspected the premises in question, what was found was that the room in question was used for storing goods belonging to M/s.Equipment Agencies, the business establishment of the tenant's husband. Regarding the non availability of the rooms that was pleaded by the tenant is concerned, though that contention may not have much relevance in view of the above findings, still, on evidence,

the courts below have found that the tenant failed in proving this contention.

9. The result of the above discussions is that the courts below have rightly found that the landlords were entitled to an order of eviction under Section 11(3) of the Act and this concurrent finding also does not suffer from any infirmity.

10. What remains is the finding of the Rent Control Court and the Appellate Authority under Section 11(4)(iii) of the Act. As we have already stated, though the Rent Control Court ordered eviction under Section 11(4)(iii), that finding of the Rent Control Court was reversed by the Appellate Authority and it is aggrieved by the finding of the Appellate Authority that the landlord has filed RCR No.209/12. The case of the landlords on this issue was that the tenant is in possession of room Nos.19/1775 and 19/1776, which are just opposite to the petition schedule room. This contention of the landlords was resisted by the tenant, who was examined as RW1, by contending that she has no connection with the rooms in question. According to her, the rooms were in the possession of her husband. However, the Rent Control Court

drew adverse inference against the tenant by finding fault with her for not producing the title deeds of the building in question. As rightly discussed by the Appellate Authority, if the buildings are not owned by the tenant, she could not have been faulted for non production of the title deeds and if so, adverse inference could not have been drawn. Therefore, we agree with the Appellate Authority that the finding of the Rent Control Court under Section 11(4)(iii) is an untenable one. Therefore, we affirm the said finding of the Appellate Authority.

11. Result of the above discussion is that the orders passed by the lower authorities do not call for any interference.

12. RCRs are therefore dismissed.

13. At this stage, learned counsel for the tenant sought some time to surrender vacant possession of the rooms to the landlords. We heard the learned counsel for the landlords also. According to the learned counsel, the rent is in arrears since November, 2011.

Taking note of the submissions made by both sides, we allow the tenant three months' time from today to surrender

vacant possession of the room to the landlord. This shall, however, be subject to the condition that the tenant shall clear the entire arrears due to the landlords and file an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession of the room on the expiry of three months from today. The payment shall be made and the affidavit shall be filed within three weeks from today.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge