

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

RCRev..No. 107 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 25/2010 OF RENT CONTROL APPELLATE
AUTHORITY/ADDL.DISTRICT COURT, VATAKARA DATED 21-11-2011**

**AGAINST THE ORDER/JUDGMENT IN RCP 62/2009 of RENT CONTROL
COURT/MUNSIFF COURT, VATAKARA DATED 3/2/2010**

REVISION PETITIONER/RESPONDENT/PETITIONER IN THE RCP:

**VADAKKE RAYARANGOTH GANGADHARAN
S/O.JANU, BHAKTHI VILASAM, MELADY AMSOM
KIZHUR DESOM, KILOOR, KOYILANDY TALUK
KOZHIKODE-673 522.**

**BY ADVS.SRI.V.V.ASOKAN
SMT.RUKHIYABI MOHD KUNHI
SMT.M.RAMANYA GAYATHRI**

RESPONDENT(S)/APPELLANT/RESPONDENT IN RCP:

**VARUN KUMAR
S/O.MUTHU SWAMY, 1/163, CHERIYOTH ROAD
RAJ BHAVAN, MAHE.P.O., PONDECHERRY TALUK
PIN-673 310.**

R1 BY ADV. SRI.K.LAKSHMINARAYANAN

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 20-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 107 of 2012
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Dated this the 20th day of March, 2015

O R D E R

Antony Dominic, J.

Petitioner is the landlord of building bearing No.30/57 of Vatakara Municipality. By Ext.A1 dated 1/7/2008, the building in question was leased out to the respondent/tenant. Subsequently, the petitioner filed RCP No.62/2009 on the file of the Rent Control Court, Vatakara seeking eviction of the tenant under Section 11(4)(iii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act. That petition was allowed by the Rent Control Court.

2. The tenant challenged the order before the Rent Control Appellate Authority, Vatakara in RCA No.25/10. The appellate authority reversed the finding of the Rent Control Court under Section 11(4)(iii), but confirmed the order under Section 11(4)(v). The tenant challenged the order of the Rent Control Appellate Authority to the extent it is against him, by filing RCR No.235/11 before this Court. This Court by judgment dated 2nd of August, 2011 set aside the order and remitted the case to the Rent Control Appellate Authority with directions for reconsideration of the matter.

3. In so far as it is relevant for the purpose of this order, paragraphs 7.(i) and 7.(v) of the order in RCR No.235/11 read thus;

*“7.(i) The judgment of the Appellate Authority is set aside. RCA No.25/2010 is remanded to the Additional Rent Control Appellate Authority, Vatakara. The Learned Additional Rent Control Appellate authority is directed to permit the petitioner to produce whatever documentary evidence which the petitioner wants to adduce for substantiating his contention that he has been occupying the building in question as godown for Varun Agency. If the petitioner adduces further evidence as permitted, the respondent/landlord also should be permitted to adduce further documentary evidence in rebuttal of the revision petitioner's evidence.
v). We clarify that the Rent Control Appellate Authority will have to take fresh decision on the basis of the evidence already on record and the evidence which the parties may adduce pursuant to this judgment.”*

4. Accordingly, the matter stood remitted to the appellate authority. Before the appellate authority, the tenant produced Ext.B21 to Ext.B31C and also re-examined himself as RW1.

Referring to the oral and documentary evidence, the appellate authority disposed of the appeal by its judgment dated 21st November 2011, allowing the appeal and setting aside the order of the Rent Control Court. It is aggrieved by these proceedings, the landlord is in revision before us.

5. We heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

6. As we have already stated, in the order in RCR No.235/11, the liberty granted by this Court to the respondent tenant was to produce whatever documentary evidence which he wanted to produce to substantiate his contention that he has been occupying the building in question as godown for Varun Agencies, his business establishment. This liberty was granted in order to enable the tenant to contradict the case of the landlord under Section 11(4)(v), which enables the landlord to seek eviction of the tenant on the ground that the tenant has, without reasonable excuse, ceased to occupy the tenanted premises for more than six months. It was taking advantage of this liberty that the tenant has produced Ext.B21 to Ext.B31C. Therefore, the primary question that was required to be answered is whether,

with the documents produced by the tenant, he was able to substantiate his contention that he has been occupying the building in question as a godown for Varun Agencies at least during the six months period prior to 3/8/2009, when the rent control petition was filed by the landlord.

7. Ext.B21 is the registration under the Kerala Value Added Tax Act issued in favour of M/s.Varun Agencies and there, the address shown is 30/129C, Near Mini Civil Station, Vatakara and this registration was granted w.e.f. 01/4/2005. This document does not mention building No.30/57, the tenanted premises. Ext.B22 is the certificate dated 19/7/11 issued by the Commercial Tax Officer, Vatakara, which shows that Varun Agencies is a live registered dealer on the rolls of his office. This also does not contain any reference to the tenanted premises. Exts.B23A to B23H are all receipts issued by the Kerala Headload Workers Welfare Fund Board and all these receipts were issued after 3/8/2009, the date of presentation of the RCP. Ext.B24 is the assessment order issued under the KVAT Act. Ext.P25 is the balance sheet of Varun Agencies. These also do not contain any reference to the tenanted premises.

8. Ext.B26 is the registration obtained by M/s.Varun Agencies under the Central Sales Tax Act for the period from 21/6/2001 and the godown indicated in this certificate of registration is building No.30/129A, 129D and 129E. Similarly, Ext.B27, the registration obtained by M/s.Varun Agencies under the Kerala General Sales Tax Rules also contains the godown numbers, which are the same as those mentioned in B26. Ext.B28 is the certificate issued by the Kozhikode District Kayattirakku Thozhilali Union dated 24/9/11. This document was marked through RW3. In this document, it is stated that the union has been doing loading and unloading work at the godown of Varun Agencies situated in building No.30/57 during 2008-09. Exts.B29 and B30 series are invoices issued by dealers who have sold various articles to M/s.Varun Agencies. These dealers are from Pollachi in Tamil Nadu and the address of Varun Agencies is shown as building No.30/57. In so far as Ext.B31 (a), (b) and (c) are concerned, these are receipts issued by the Kerala Headload Workers Welfare Fund Board, Vadakara-Quilandy Committee, Vadakara and these documents are dated 24/5/11, 27/9/11 and 28/6/11 and are after 3/8/2009, when the rent control petition was

filed. In so far as Ext.B31 series of documents are concerned, not only that these are issued to M/s.Varun Agencies, but also these documents are issued after the filing of the rent control petition. Therefore, for both the reasons, these documents do not advance the case of the tenant to show that they were occupying the godown in question.

9. Thus, out of Exts.B21 to B31C, apart from Ext.B28 certificate, Exts.B29 and B30 invoices, no other document even contains mention of building No.30/57. As far as Ext.P28 is concerned, apart from the mere statement that loading and unloading work was done at the scheduled building, there is nothing on record to substantiate that assertion. In so far as Exts.B29 and B30 are concerned, when a dealer outside the State has sold the goods to a dealer inside the state, the address to be shown in the invoice is the dealer's address, which should be the address in the CST registration certificate or the certificate issued under KVAT Act. According to the tenant, building No.30/57 is a godown and going by their own contention, the place of business as defined in the Kerala Value Added Tax Act does not require registration of godown under the Act. Despite all this, since the

invoices are issued in the address of the godown, that makes the invoices suspicious. Therefore, we do not intend to place any reliance on these invoices. As we have already stated, only Ext.B28, the certificate issued by the Union, says that they have been loading and unloading goods at building No.30/57. Though it is true that this document was proved through RW3, for the reasons already stated, relying on this document alone, we are not prepared to come to a conclusion that the tenant has succeeded in showing that he has been occupying the building as a godown.

10. Counsel for the tenant made reference to Exts.B17 to B19 to show that though the building in question was being used as godown, authorities declined to include the same in the certificate of registration for want of valid rent deed and municipal licence. However, we note from Ext.B17 that this application was made only on 1/7/2009 and Ext.B18, the reminder was made only on 17/8/2009. To these two letters, sales tax officer gave his reply dated 11/1/2010. These documents, by no stretch of imagination can prove that the tenant had not ceased to occupy the same as alleged by the landlord or that the tenant

was occupying the same as claimed by the tenant. That apart, Ext.B17 application was made exactly one year after the building was entrusted to the tenant on 1/7/2008. Therefore, the documentary evidence, additionally adduced by the tenant after remission of the case to the appellate authority did not in any manner establish the continued occupation of the premises as claimed by him.

11. Added to this, is Ext.A9, the written statement filed by the tenant, in OS No.183/10 of the Munsiff's Court, Vatakara. That was a suit filed by his own father and in the written statement, the tenant himself has conceded that he is not occupying the room in question and that it is the father, who was occupying the scheduled building.

12. In the light of all these materials, the Rent Control Appellate Authority was totally unjustified in reversing the finding of the Rent Control Court under Section 11(4)(v). Therefore, the judgment of the Rent Control Appellate Authority in RCA No.25/10 is set aside and the order of the Rent Control Court in RCP No.62/09 under Section 11(4)(v) is restored.

13. RCR is disposed of as above.

At this stage, learned counsel for the tenant sought a reasonable time to surrender vacant possession of the tenanted premises to the landlord. Though this prayer was opposed by the learned counsel for the landlord, still, having regard to the facts of the case, we are inclined to give the tenant six months' time from today to surrender vacant possession to the landlord. However, this shall be subject to the condition that the tenant shall file an affidavit before the Rent Control Court within three weeks from today, unconditionally undertaking to surrender vacant possession of the building to the landlord on the expiry of the six months' period allowed by this Court and also on their continuing to pay the rent without default till the building is surrendered.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge