

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

RCRev.No. 78 of 2008 ()

AGAINST THE ORDER/JUDGMENT IN RCA 16/2006 & 14/06 of D.C./RENT CONTROL
APPELLATE AUTHORITY,KOZHIKODE DATED 15-11-2006
IN RCP 67/2005 of ADDL.M.C.,KOZHIKODE-I DATED 30-11-2005

REV.PETITIONER/RESPONDENT IN RCA.NO.14/06/APPELLANT IN
RCA NO.16/06 AND RESONDENT IN CROSS OBJECTION IN RCA
NO.16/2006/PETITIONER:

PONNAMPARAMBATH ANAND KUMAR
S/O.RAGHAVAN, AGED 49 YEARS, EDAKKAD AMSOM
PUTHIYANGADI DESOM, KOZHIKODE TALUK.

BY ADVS.SRI.K.M.FIROZ
SRI.GEORGE SEBASTIAN

RESPONDENT(S)/APPELLANT IN RCA 14/06/RESPONDENT IN
RCA NO.16/06 AND CROSS APPELLANT IN RCA NO.16/06/RESPONDENT:

CHEMMALAPPURATH DEVADASAN (*) DIED
AGED 61 YEARS, EDAKKAD AMSOM, PUTHIYANGADI DESOM
KOZHIKODE TALUK.

(*) ADDITIONAL RESPONDENTS

ADDL.R2. PRASANNA,
W/O LATE CHEMMALAPPURATH DEVADASAN,
EDAKKAD AMSOM, PUTHIYANGADI DESOM
KOZHIKODE TALUK-673576.

ADDL.R3. PRAJEESH,
S/O. --DO-- --DO--

ADDL.R4. PRAJINA,
D/O. --DO-- --DO--

ADDL.R5. SAJINA,
D/O. -DO- -DO--

(*ADDL RESPONDENTS R2 TO 5 ARE IMPEADED BEING THE LEGAL REPRESENTATIVES OF THE DECEASED 1ST RESPONDENT AS PER ORDER DATED 27/9/2013 IN IA 704/12 IN RCR 78/2008)

R1,R2-R5 BY ADV. SRI.SATHISH NINAN
R1 BY ADV. SRI.SANTHOSH MATHEW
R1 BY ADV. SRI.ARUN THOMAS

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R.No.78 of 2008
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Dated this the 6th day of January, 2015

O R D E R

Antony Dominic, J.

This Rent Control Revision is filed by the landlord. The rent control petition was filed urging grounds under Section 11(4)(ii), 11(4)(iii) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as the Act for short). After trial, the Rent Control Court allowed eviction accepting ground under section 11(4)(ii) and rejected grounds under Section 11(4)(iii) and 11(8). RCA Nos.14/2006 and 16/2006 were filed before the Rent Control Appellate Authority, Kozhikode by the tenant and the landlord respectively. By the common order passed by the Rent Control Appellate Authority, RCA 14/06 was allowed and RCA 16/06 filed by the landlord was dismissed. It is in these circumstances, the landlord has filed this revision under Section 20 of the Act.

2. We heard the learned counsel for the revision petitioner landlord and the learned counsel appearing for the respondent tenant and have considered the submissions made.

3. As we have already stated, the grounds urged in the rent control petition are under Section 11(4)(ii), 11(4)(iii) and 11(8). Section 11(4)(ii) of the Act provides that if the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently, that is a ground for the landlord to seek eviction. In so far as this case is concerned, Ext.B6 shows that room No.2240 is situated to the south of room No.2241, which is now in the occupation of the landlord. To the north western corner of the northern wall of room No.2241 is a fire hearth used by the tenant. The case of the landlord was that on account of the constant use of fire hearth, cracks have developed in the northern wall of room No.2241. It is on that basis, the ground under Section 11(4)(ii) was urged by the landlord.

4. Though this contention was accepted by the Rent Control Court, appellate authority reversed that finding. The reason stated by the appellate authority in its order is that the expression “destroy or reduce its value or utility” occurring in Section 11(4)(ii) relates to the demised building and that on the

admitted case, destruction or reduction is not in relation to building No.2240, but in relation to building No.2241 in the possession of the landlord. It was therefore that the appellate authority interfered with the finding of the Rent Control Court. We have already referred to Section 11(4)(ii) of the Act. As rightly held by the appellate authority, the use by the tenant and the destruction and reduction of its value or utility should be in relation to the demised premises. In so far as this case is concerned, even the case of the landlord is in the context of the cracks that have developed on the northern wall of room No.2241, which admittedly is not the demised premises and hence Section 11(4)(ii) was inapplicable to the facts of the case. Therefore, we are unable to interfere with the finding of the appellate authority on Section 11(4)(ii).

5. Coming to the ground urged under Section 11(4)(iii) is concerned, this section provides that if the tenant already has in his possession a building or subsequently acquires possession of or puts up a building, reasonably sufficient for his requirements in

the same city, town or village, the landlord is entitled to seek his eviction.

6. The case of the landlord was that the tenant has in his possession building No.39/2244 and that the same is reasonably sufficient for his requirements. The tenant also admitted possession of the said building which also is in the same town and is situated adjacent to the demised premises. The Rent Control Court considered this contention under point Nos.2 and 5. Though the Rent Control Court also accepted the factual correctness of the contention raised by the landlord, the Court rejected the prayer for eviction on this ground in view of Section 15 of the Act which provides that the decisions which have become final are not to be reopened. This conclusion of the Rent Control Court was essentially based on A2 order passed in RCP No.65/1996. In that RCP filed by the petitioner against the respondent, admittedly the ground under Section 11(4)(iii) with the same factual contentions were urged and accepting that contention, eviction from room No.39/2241 was ordered by the Rent Control Court. That order was confirmed by the appellate

authority and this Court also and it was accordingly that the landlord got vacant possession of room No.39/2241.

7. Though it is true that the mere fact of filing such a petition did not disable the landlord from filing a petition on the same ground at a future point of time, such filing of a second petition is possible only if the landlord succeeds in establishing change of circumstances justifying the second petition. As held by this Court, the change of circumstances is a factual issue, which is to be pleaded and proved by the landlord himself. (*See in this connection, the judgment of this Court in **Shamsudheen v. Balan Nair** (2014 (2) KLT 978)*). Reading of the rent control petition shows that no such change of circumstances has been pleaded by the landlord. If that be so, in view of Section 15 of the Act, landlord could not have filed a second petition on the very same factual contentions which were urged in RCP 65/1996 filed by him. Therefore, the finding of the Rent Control Court confirmed by the Rent Control Appellate Authority on Section 11(4)(iii) does not merit interference.

8. Now what remains is the ground urged by the landlord under Section 11(8) of the Act. Section 11(8) of the Act provides

that a landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use. The pleadings in the rent control petition, particularly paragraphs 4 and 7, show that the case of the petitioner was that room No.39/2241 is too small and a major portion thereof is occupied by a S.T.D. booth licensed in the name of his wife. He says that in this room, he is also running a business by name Rahul Electricals where repair works of electrical appliances are being undertaken by him. According to the petitioner, the remaining space in the room is too inadequate for his repairing business and due to constraints of space, he is even forced to relinquish business, which is prospering. It was therefore he says that, he needs the remaining portion of the building, which is now in the occupation of the respondent.

9. The fact that he is conducting the repairing business is admitted by the respondent in his objections. The additional

requirement of space has been spoken to by the landlord who has been examined in the Trial Court as PW1. Despite this, this contention was negated in paragraph 11 of the order passed by the Rent Control Court on the finding that there is no evidence that the landlord is occupying the remaining portion of the room in question. This finding of the Rent Control Court was confirmed by the appellate authority on the ground that the revision petitioner did not produce evidence regarding the volume of business and that the evidence of his requirement is insufficient.

10. However, what we find is that his requirement for additional accommodation has been satisfactorily pleaded by the petitioner in the petition filed and that is also reiterated by him in his testimony as PW1. Ext.A6 is the SSI registration obtained by the revision petitioner for conducting the repairing business in question. The fact that he is carrying on the business has been admitted by the tenant and has also been noticed by the Commissioner, who has visited the room in question. The Commissioner has also noticed the constraints of space in building No.2241 now in the occupation of the landlord. There is

nothing to doubt the bonafides of the claim made by the landlord for the additional accommodation. It is also in evidence that he had applied for loan to a bank, which came to be rejected on the ground that he did not have sufficient space for expanding his business as canvassed by him. If that be so, the Rent Control Court and the appellate authority should not have rejected the grounds urged by the landlord under Section 11(8).

11. It is true as contended by the learned counsel for the respondent that the bills, the note book containing the details of the business and the licence obtained by the landlord were not produced by him. In fact, it was pointing out these facts, counsel placed reliance on the Supreme Court judgment in **Gopal Krishnaji Ketkar v. Mohamed Haji Latif**(AIR 1968 SC 1413) and contended that this is a case where best evidence was suppressed. Though it is true that these documents were not made available by the landlord and the non production was confessed by him in his deposition, still, having regard to the nature of the pleadings, the evidence of PW1 and the other documentary evidence that are available, we are satisfied that his

claim for additional accommodation in terms of Section 11(8) of the Act was a bonafide one and should not have been rejected.

12. Therefore, the finding of the Rent Control Court as confirmed by the Rent Control Appellate Authority on Section 11 (8) urged by the revision petitioner is set aside. Respondent is directed to surrender vacant possession of the petition scheduled premises to the landlord. However, having regard to the fact that the respondent is also carrying on his business in the demised premises, we allow him six months time to surrender vacant possession to the landlord.

R.C.R. is disposed of as above.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

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PA to Judge