

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

RCRev..No. 226 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 7/2009 of RENT CONTROL APPELLATE
AUTHORITY/ADDITIONAL DISTRICT JUDGE-I, TRIVANDRUM DATED 07-07-2011**

**AGAINST THE ORDER/JUDGMENT IN RCP 34/2006 of RENT CONTROL COURT/
ADDL.MUNSIFF'S COURT, TRIVANDRUM DATED 24-11-2007**

REVISION PETITIONER(S)/RESPONDENT/RESPONDENT:

**VENUGOPAL
TESTIGI, K.K.BUILDING, KUMARAPURAM
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM, PIN-15.**

**BY ADVS.SRI.S.RAJASEKHARAN NAIR
SRI.RAJU SEBASTIAN VADAKKEKKARA**

RESPONDENT(S)/APPELLANTS/PETITIONER:

- 1. THOMAS ALEXANDER, AGED 46 YEARS
S/O.EAPPEN THOMAS, RESIDING AT MUSCAT
SULTANATE OF OMAN, P.O.BOX NO.20009
RUVI FROM KANDANALLOOR, KIZHAKKETHIL, ADOOR
PATHANAMTHITTA.**
- 2. MRS.BEENA ALEXANDER,, AGED 43 YEARS
W/O.THOMAS ALEXANDER, RESIDING AT MUSCAT
SULTANATE OF OMAN, P.O.BOX NO.20009
RUVI FROM KANDANALLOOR, KIZHAKKETHIL, ADOOR
PATHANAMTHITTA
REPRESENTED BY THEIR POWER OF ATTORNEY HOLDER
GEOME T.GEORGE
S/O.THOMAS GEORGE, RESIDING AT FLAT NO.504
ANUGRAHA APARTMENTS, KESAVADASAPURAM
THIRUVANANTHAPURAM.**

**R1-R2 BY ADV. SRI.PHILIP T.VARGHESE
R1-R2 BY ADV. SRI.THOMAS T.VARGHESE
R1-R2 BY ADV. SMT.ACHU SUBHA ABRAHAM
R1-R2 BY ADV. SMT.T.M.BINITHA**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 06-04-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 226 of 2012

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Dated this the 6th day of April, 2015

ORDER

ANTONY DOMINIC, J.:

The respondents are the landlords of the building occupied by the petitioner-tenant. Through the power-of-attorney holder, the respondents filed R.C.P.No.34/2006 on the file of the Rent Control Court, Thiruvananthapuram, seeking eviction of the tenant urging grounds under Secs.11(3) and 11(8) of the Rent Control Act. The need projected in the petition was that the building was needed for the bona fide occupation of the power-of-attorney holder, who is their dependent nephew. The Rent Control Court dismissed the petition. The order of the Rent Control Court was challenged by the landlords in R.C.A.No.7/2009 on the file of the Rent Control Appellate Authority, Thiruvananthapuram. By the impugned judgment, the Appellate Authority set aside the order of the Rent Control Court and ordered eviction accepting the bona fide need projected by the landlords under Sec.11(3). It is challenging this order, the tenant has filed this Revision.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

3. Before us the contention raised by the learned counsel for the petitioner tenant was that in view of certain subsequent developments the bona fide need urged does not survive any longer. In the affidavit dated 25th June, 2013, the tenant has pointed out that the power-of-attorney holder, was having his own business in a portion of the building and that after abandoning the same, he has started a business of his own at Kumarapuram under the name and style, "avie Communications". It is also pointed out that the dependant has ceased to be the power-of-attorney holder of the landlords and this contention is raised on the basis that the landlords have filed E.P.No.192/2012 seeking execution of the order passed by the Rent Control Appellate Authority, appointing one Ismail Sherief as their power-of-attorney holder. However, in the affidavit dated 4th April, 2015, filed by the power-of-attorney holder, through whom the Rent Control Petition and the Rent Control Appeal were filed, it is stated that in order to use the entire building as a hotel and loading, the power-of-attorney holder has vacated from the portion that he was occupying to run his business.

It is stated that thereafter he has occupied a new premises at Kumarapuram, where he is now carrying on his business. The counsel for the landlords also states that except the portion occupied by the tenant, the remaining portions of the building are already in the possession of the landlords, which have already been converted into hotel and lodging house. Pointing out the above, the landlords submit that the contention of the tenant that the bona fide need urged no longer survives is factually incorrect.

4. In our view, even if the sum and substance of the contention of the tenant is accepted, at best it may lead to a conclusion that the dependant of the landlords is already engaged in a business. Since the dependency contemplated under Sec.11(3) is not financial, but is for the building, even if the contention of the tenant is accepted, that does not either result in loss of dependency or disappearance of the bona fide need projected by the landlords. Therefore, the contention urged by the tenant cannot be accepted.

5. We, therefore, find no reason to interfere with the order passed by the Rent Control Appellate Authority.

6. Be that as it may, having regard to the fact that the

tenant is carrying on a business in the building occupied by him, we are inclined to give him a reasonable time to search out a new premises and to shift his business from the tenanted premises. On this consideration, we allow the tenant six months' time from today to surrender vacant possession of the building to the landlord. However, this shall be subject to the condition that the tenant shall, within three weeks from today, file an affidavit before the execution court unconditionally undertaking to surrender vacant possession of the building to the landlords on or before the expiry of the six months' time allowed by this Court. He shall also continue to pay the rent without default during the aforesaid period.

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

Sd/-
ANTONY DOMINIC, JUDGE

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge