

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

RCCRev..No. 360 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 21/2011 of RENT CONTROL APPELLATE
AUTHORITY, KASARAGOD DATED 31-05-2012**

**AGAINST THE ORDER/JUDGMENT IN RCP 9/2010 of RENT CONTROL COURT
(MUNSIFF) OF HOSDRUG DATED 26-07-2011**

REVISION PETITIONER (1ST RESPONDENT IN RCA/1ST RESPONDENT IN RCP):

**P.MUHAMMEDKUNHI, AGED 52 YEARS,
S/O IBRAHIM, RESIDING AT N.M.MANZIL, HOSDRUG BEACH
KANHANGAD VILLAGE & POST, HOSDRUG TALUK.671 315
KASARGOD DIST.**

**BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON**

**RESPONDENTS (APPELLANTS AND 2ND RESPONDENT IN RCA/PETITIONERS & 2ND
RESPONDENT IN RCP):**

- 1. ITTAMMAL ABDULLA ALIAS MOILAKIRIYATH ABDULLA,, AGED 60 YEARS
S/O.T.M.KUNHAMMED, RESIDING AT ITTAMMAL, BALLA VILLAGE
HOSDRUG TALUK, P.O.
KANHANGAD-671 315. KASARGOD DISTRICT.**
- 2. ITTAMMAL HASSAN ALIAS MOILAKIRIYATH HASSAN,, AGED 58 YEARS
S/O.T.M.KUNHAMMED, RESIDING AT ITTAMMAL, BALLA VILLAGE
HOSDRUG TALUK, P.O.
KANHANGAD-671 315. KASARGOD DISTRICT.**
- 3. ITTAMMAL HAMZA,, AGED 56 YEARS
S/O.T.M.KUNHAMMED, RESIDING AT ITTAMMAL, BALLA VILLAGE
HOSDRUG TALUK, P.O.
KANHANGAD-671 315. KASARGOD DISTRICT.**

R1 & 2 BY ADV. SRI.SURESH KUMAR KODOTH

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 24-02-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 360 of 2012
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Dated this the 24th day of February, 2015

O R D E R

Antony Dominic, J.

Respondents 1 and 2 filed RCP No.9/2010 on the file of the Rent Control Court, Hosdurg seeking eviction of the petitioner and the 3rd respondent from building bearing No.KMC 1/141 of Kanhangad Municipality. The grounds urged were under Section 11 (2) and 11 (4)(v) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court by its order dated 26th of July, 2011 dismissed the petition. The landlords filed RCA No.21/11 before the Rent Control Appellate Authority, Kasaragod. The appellate authority by its judgment dated 31st of May, 2012 allowed the appeal. It is aggrieved by the judgment of the appellate authority that the petitioner, the 1st respondent before the Rent Control Court, has filed this revision under Section 20 of the Act.

2. We heard the learned counsel for the petitioner and the learned counsel appearing for respondents 1 and 2. Though notice has been served, there is no appearance or representation on behalf of the 3rd respondent.

3. Before us the arguments raised were only in so far as the findings under Section 11(2)(b) are concerned and therefore, we are confining our examination only on that issue.

4. The contention raised by the learned counsel for the petitioner is that in 1999, the building in question was taken on lease by a partnership consisting of the petitioner and the 3rd respondent, who is also a co-owner of the building in question. The lease was for the purpose of a pharmaceutical business. Accordingly, the firm conducted the business, but on account of the continued losses suffered, the business was closed down on 30th of June, 2003. It is stated that at that stage, one Sri.Gireesh, an employee of the firm, had agreed to purchase the business and to conduct the same. Accordingly, Sri.Gireesh conducted the business till the end of October, 2003, when he also abandoned the proposal to take over the business of the firm.

5. According to the petitioner, the firm paid rent till the end of June, 2003 and Sri.Gireesh paid the rent till the end of October, 2003. It is stated that in November, 2003, Sri.Gireesh returned one key of the room in question to the petitioner and the other key to the 3rd respondent, co-owner. On this basis, it is

contended that the lease itself was determined at the end of November, 2003 and therefore the claim of the landlords raised in RCP No.9/10 that rent is in arrears from February, 2003 was incorrect. He therefore contends that the dismissal of the RCP by the Rent Control Court was perfectly legal order and the Appellate Authority ought not have interfered with the same. It is also the contention of the petitioner that the lessees (the petitioner and the 3rd respondent) were partners and that the petitioner did not have any individual responsibility for the arrears claimed.

6. These contentions were refuted by the learned counsel for the landlords. We have considered the submissions made.

7. It is true that according to the landlords, rent was in arrears from February, 2003 and the contention of the petitioner tenant was that rent was paid till the end of October, 2003 and that the lease was determined from the end of that month. If as contended by the tenant, rent was paid till the end of October and the lease was also determined from the beginning of November, 2003, the landlords could not have sustained their claim for arrears of rent as made by them in RCP No.9/10.

8. While appreciating the above contention, we must take note of the factual situation that the petitioner does not dispute that the building in question was taken on lease, though according to him, it was not in his individual capacity, but as a partner of the firm consisting of himself and the 3rd respondent. It is his further case that rent was paid till the end of October, 2003 and that in November, 2003 key was handed over to a co-owner. Even if the case of partnership pleaded by the tenant is accepted, that at best would lead to a situation where the partners of the firm would be equally liable for the arrears of rent, if any. From the judgment and decree passed by the Appellate Court, what we find is that the Appellate Court has made both the petitioner and the 3rd respondent, the other partner of the firm, also equally liable for the arrears of rent. This, therefore, means that even if the case of partnership raised by the tenant is accepted, that does not absolve the petitioner from the liability. Therefore, this case canvassed does not warrant a view different from what is taken by the Appellate Authority.

9. In so far as the claim of payment of rent till the end of October, 2003 and the termination of lease in November, 2003 is

concerned, when a plea of discharge and termination is raised by the tenant, it is for the tenant to prove these contentions. As we have already stated that the case of the petitioner was that from 30/6/2003 onwards, Sri.Gireesh was continuing the business and it was he who paid the rent till the end of October, 2003. It was also his case that Sri.Gireesh had handed over the key to the petitioner and that he had handed over one key to the 3rd respondent. In so far as the payment of rent till the end of October, 2003 and the handing over of the keys to the petitioner is is concerned, Sri.Gireesh was the best person to tender evidence. But for some reason or the other, Sri.Gireesh was not examined in Court. This, therefore, means that there was no evidence whatsoever to substantiate the payment of rent till the end of October 2003 or regarding the handing over of key to the petitioner. There is also no dependable evidence regarding the assertion of the petitioner that the key was handed over to the 3rd respondent, the co-owner. This, therefore, means that the petitioner failed in establishing his case regarding payment of rent till the end of October 2003 and also his case regarding the termination of lease as claimed by him. If that be so, the landlords

were justified in contending in RCP No.9/10 that the lease of right continued entitling them for arrears of rent. This precisely is the finding of the Appellate Authority and we do not think that any circumstances have been made out for upsetting that finding.

10. However, learned counsel for the petitioner contended that since any amount due prior to three years of the RCP was barred by limitation, the landlords could not have sustained a claim for arrears of rent from February, 2003 in RCP No.9/10 filed by them. Admittedly, for recovery of arrears of rent, OS No.169/12 has been filed and therefore the plea of limitation is a matter to be adjudicated by the tenant in that suit.

RCR is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

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PA to Judge