

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

RCRev..No. 376 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 97/2007 of RENT CONTROL APPELLATE
AUTHORITY/ADDL.D.C.,THALASSERY**

**AGAINST THE ORDER/JUDGMENT IN RCP 55/2005 of RENT CONTROL
COURT/MUNSIFF COURT, TALIPARAMBA**

REVISION PETITIONER(S)/APPELLANTS/R1-3 IN RCP:

- 1. KIZHAKKUMBAD PUTHIYAPURAYIL ABDUL AZEEZ, AGED 53 YEARS
S/O.MUHAMMED, KURUMATHOOR AMSOM DESOM, P.O.KURUMATHOOR
TALIPARAMBA TALUK, KANNUR DISTRICT.**
- 2. CHULLIYODA PATTUVAN VALAPPIL ABDULLA
S/O.UMMER KUTTY, UMMERKUTTY FIREWORKS, MAIN ROAD
TALIPARAMBA P.O., KANNUR DISTRICT.**
- 3. PARAPPURATH MAVINTA VALAPPIL MUHAMMED KUNHI
S/O.ABDULLA HAJI, AGED 52, BUSINESS
MAIN ROAD, TALIPARAMBA P.O., KANNUR DISTRICT.**

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S)/RESPONDENTS/PETITIONER AND R4 IN RCP

- 1. KODIYIL MUMTAZ, AGED 21 YEARS
W/O.K.T.BASHEER, RESIDING AT TALIPARAMBA AMSOM DESOM
MAIN ROAD, TALIPARAMBA P.O., KANNUR DISTRICT
PIN-670141.**
- 2. K.K.NOUSHAD,
S/O.MOOSAN, KATTIKOOTTATHIL HOUSE, TALIPARAMBA P.O.
KANNUR DISTRICT, PIN-670141.**

**ADV. SRI.K.P.SREEKUMAR(CAVEATOR)
ADV. SATHISH P M
ADV. SRI.K.P.SREEKUMAR
ADV. SRI.P.M.SATHEESH**

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

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 376 of 2012

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Dated this the 3rd day of March, 2015

O R D E R

ANTONY DOMINIC, J.:

The 1st respondent landlady filed R.C.P.No. 55/2005 on the file of the Rent Control Court, Thaliparamba, seeking eviction of the petitioners and the 2nd respondent, who was impleaded as the sublessee, urging grounds under Secs.11(2)(b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Rent Control Court, by order dated 2.8.2007, allowed the petition as prayed for. The petitioners challenged the order of eviction before the Rent Control Appellate Authority, Thalassery. The Appellate Authority, by its judgment dated 13.1.2012, dismissed the appeal. This is the background in which this revision is filed.

2. We heard the learned counsel for the petitioners and the learned counsel appearing for the 1st respondent.

3. According to the learned counsel, the findings of the Rent Control Court as confirmed by the Rent Control Appellate Authority, are absolutely illegal and against the evidence on record. Therefore, he contended that the orders are liable to be vacated.

4. As we have already stated, the grounds urged in the

petition are under Secs.11(2)(b), 11(3) and 11(4)(i). Before the Rent Control Court, on behalf of the 1st respondent, PW-1 and PW-2, the husband of the 1st respondent and the Secretary of the Municipality, were examined and Exts.A-1 to A-14 were marked. On behalf of the tenants, the 1st petitioner, 2nd respondent and the father of the 1st respondent landlady, were examined as RWs 1 to 3 and Exts.B-1 to B-10 were also marked. Ext.C-1 is the report submitted by the Advocate Commissioner.

5. Insofar as the case of arrears of rent set up by the 1st respondent is concerned, the case of the 1st respondent was that the rent from 1.9.2005 was in arrears. This has been spoken to by PW-1. Even the case pleaded by the tenants was that they had deposited arrears from 1.9.2005 to 31.12.2005 in the court. They did not care to remit the rent for the period subsequent thereto, nor did they remit the cost of notice and interest as required under Sec.12. This therefore means that the landlady established her case under Sec.11(2)(b). If that be so, the finding of the Rent Control Court as confirmed by the Appellate Authority under Sec.11(2)(b) is absolutely unassailable.

6. The next ground urged by the landlady is under Sec.11

(3), which provides that a landlord may seek eviction of the tenant, if he bona fide need the tenanted premises for his own occupation or for the occupation of his dependent. In this case, the case of the landlady is that her dependant husband wanted to start business in vegetables in the scheduled room and sought eviction for that purpose. This need urged by the landlady was spoken to by PW-1, her husband. Though he was cross-examined in detail, nothing could be elicited to doubt the bonafides of the case pleaded by the landlady. Such being the case, we are unable to find any vitiating circumstances, calling for interference with the findings of the lower authorities under Sec.11(3) of the Act.

7. It is true that the learned counsel for the petitioners sought to claim the benefit of the proviso to Sec.11(3). However, this is a case where the landlady has also sought eviction of the tenants, urging ground of objectionable sublease of as provided under Sec.11(4)(i). According to the landlady, the tenanted premises were transferred by the petitioners against consideration to the 2nd respondent, the sub lessee, and that it was the 2nd respondent, who was conducting the vegetable business in the room, under the name and style, "N.S.Vegetables". Although it was the case of the tenants

that the 2nd respondent and two other persons, whose presence has been noticed by the Commissioner in Ext.C-1 report, were their employees, nothing has been produced by them to substantiate this case. This is despite the claim of RW-1 in court that the shop is registered with the Labour Department, that he is obtaining receipts for payment of salary to his workers and that his workers are paying professional tax. This therefore means that admittedly the presence of the sub tenant was established by the landlady and that the tenants did not discharge their burden in proving that they were only their employees.

8. That apart, it is also in evidence that the 1st petitioner, one of the tenants, was frequently visiting a middle east country and that he is holding a valid job visa. It is also in evidence that petitioners 2 and 3 are conducting independent businesses in the Thaliparamba town itself. Though the 2nd respondent was examined as RW-2 and he also contended that he is only an employee of the shop, he too did not produce any document to establish that his presence in the shop was in the capacity of an employee. As RW-3, the father of the landlady, was examined by the petitioners. However, his evidence also did not improve the case of the tenants

in any manner. All these therefore conclusively show that this is a clear case where the petitioners had transferred the possession of the tenanted premises to the 2nd respondent, sub-lessee, as contended by the 1st respondent.

9. As we have noticed earlier, the learned counsel for the petitioners sought to invoke the protection of the proviso to Sec.11 (3). In a case where objectionable sublease is established and the possession of the tenanted premises is found to be with the sub lessee, the benefit of proviso to Sec.11(3), which protects the tenants from the eviction, if they establish the ingredients of both provisos, cannot be invoked. This legal position has been laid down by this Court in Tellicherry W. Co-operative Society v. Safiya Beebi Umma [2002 (3) KLT 863].

We therefore do not find anything vitiating the orders passed by the Rent Control Court as confirmed by the Appellate Authority.

The Revision therefore fails and is dismissed.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

