

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

RCRev..No. 391 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 35/2009 of ADDITIONAL DISTRICT COURT,
IRINJALAKUDA DATED 21-08-2012**

**AGAINST THE ORDER IN RCP NO.5/2007 OF RENT CONTROL COURT, IRINJALAKUDA
DATED 27/2/2009**

REVISION PETITIONER/RESPONDENT/RESPONDENT:

**THOMAS
S/O.KURUTHUKULAM ANTHONY, KATTOOR VILLAGE, DESOM
MUKUNDAPURAM TALUK.**

**BY ADVS.SRI.RENJITH THAMPAN (SR.)
SRI.V.M.KRISHNAKUMAR
SMT.P.R.REENA**

RESPONDENT(S)/APPELLANT/PETITIONER:

**MONY
S/O.CHITILAPPILLY JOHNY, PARIYARAM VILLAGE
MUKUNDAPURAM TALUK, PIN 680303.**

**R1 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
R1 BY ADV. SRI.P.VISWANATHAN**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 391 of 2012
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Dated this the 10th day of March, 2015

O R D E R

Antony Dominic, J.

The respondent/landlord filed RCP No.5/07 before the Rent Control Court, Irinjalakuda seeking eviction of the petitioner/tenant under Section 11(3) and 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act. It appears that during the pendency of the petition, the tenant had cleared the arrears of rent and therefore the landlord did not press his ground under Section 11(2)(b) of the Act.

2. In so far as Section 11(3) of the Act is concerned, though the need projected by the landlord was found to be a bona fide need, the Rent Control Court gave the benefit of the second proviso to Section 11(3) to the tenant and declined an order of eviction. This order was challenged by the landlord before the Rent Control Appellate Authority, Irinjalakuda in RCA No.35/09. By its order dated 21/8/12, the Rent Control Appellate Authority allowed the appeal and ordered eviction. It is aggrieved by the order of the appellate authority, the tenant has filed this revision.

3. We heard the learned counsel for the petitioner/tenant and also the learned counsel appearing for the respondent/landlord.

4. As we have already stated, the only issue in dispute before the Rent Control Appellate Authority was the correctness of the finding of the Rent Control Court on the second proviso to Section 11(3) of the Act. The second proviso to Section 11(3) provides that if the tenant is depending upon the income from the business carried on by him in the tenanted premises as his main source of livelihood, he shall not be evicted from the tenanted premises, provided no other suitable building is available in the locality for him to carry on his business. Although the learned counsel for the tenant contended that the finding of the appellate authority in relation to the second proviso to Section 11(3) of the Act is illegal and irregular, having regard to the nature of the evidence that is available, we are not in a position to differ from the conclusions of the appellate authority.

5. It is the settled position of law that by the provisos to Section 11(3) incorporated in the Act, benefit has been conferred on the tenant in order to avoid an order of eviction. Therefore, the

Courts have interpreted the proviso in such a manner that the burden of proving the ingredients of the provisos are entirely on the tenant. If the second proviso is read, it can be seen that the proviso consists of two limbs. One is that the tenant should prove that he is depending on the income from the business carried on by him in the tenanted premises as his main source of livelihood. The second limb of the proviso, which is conjunctive with the first limb, requires him to establish that there are no suitable buildings in the locality for him to carry on his business.

6. In so far as this case is concerned, evidence let in by the landlord shows that it was his specific case that buildings are available in the locality. He has also spoken about the specific buildings that were vacant and available for the tenant to take on rent. Although the landlord has established the fact of availability of building, the tenant did not prove its non availability by adducing any independent evidence and has contended himself by general statement made by him as RW1 regarding its non availability. He has neither examined the Accommodation Controller nor has he got the fact of non availability ascertained by the Advocate Commissioner appointed by the Court. Therefore,

he has failed in the second limb of the second proviso to Section 11(3).

7. Similar is the case with the first limb, where also, he has not let in any evidence apart from the oral assertion made on his claim that he was mainly depending upon the income from the business as his source of livelihood. In other words, the conclusion of the appellate authority overruling the finding of the Rent Control Court on the issue of the second proviso to Section 11(3), which was the sole issue raised in the rent control appeal, was valid. We, therefore, do not find any reason to disagree with the order passed by the Rent Control Appellate Authority.

8. RCR is dismissed.

At this stage, learned counsel for the petitioner sought a reasonable time to surrender vacant possession of the building to the landlord and in fact requested for a period of one year. We heard the learned counsel for the landlord on this request and he opposed the prayer. He also pointed out that rent is now in arrears. Admittedly, the tenant is conducting a furniture business in the tenanted premises. Even if it is assumed that buildings are available to shift his business, still fact remains that he will

require a reasonable time to locate a new premises and to move out from the tenanted premises. Taking note of this reality and in order not to affect the continuity of the business, we are inclined to allow the tenant a period of nine months from today to surrender vacant possession of the building to the landlord. However, this shall be subject to the condition that within three weeks from today, the tenant shall file an unconditional undertaking in the form of an affidavit before the Rent Control Court/Execution Court to surrender vacant possession of the building to the landlord on or before the expiry of the nine months' period allowed by us. He shall also clear the arrears of rent, if any, within four weeks and shall continue to pay the rent during the period allowed by this Court.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge