

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

RCRev..No. 194 of 2013 ()

AGAINST THE JUDGMENT IN RCA 92/2010 of RENT CONTROL APPELLATE AUTHORITY
(ADDL.DISTRICT JUDGE, ADHOC II), THALASSERY DATED 11-04-2013

AGAINST THE ORDER IN RCP 28/2006 of RENT CONTROL COURT (MUNSIF COURT)
KUTHUPARAMBA DATED 29-01-2010

PETITIONER IN RCR-APPELLANTS 1 TO 4 AND 6 IN R.C.A/RESPONDENTS 2 TO 5 AND 7
IN RCP:

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1. KOYILANKANDY THODUVAYIL KUNHALEEMA AGED 53 YEARS
W/O LATE MERADAN MUHAMMED ASHRAF, RIYAZ MANZIL
KEEZHOOR AMSOM, DESOM, P.O.IRITTY
PIN:670 703.
 2. RIYAS K.T. AGED 33 YEARS
S/O LATE MUHAMMED ASHRAF, RIYAZ MANZIL, KEEZHOOR AMSOM
DESOM, P.O.IRITTY, PIN:670 703.
 3. SAFEER K.T., AGED 29 YEARS
S/O LATE MUHAMMED ASHRAF, RIYAZ MANZIL, KEEZHOOR AMSOM
DESOM, P.O.IRITTY, PIN:670 703.
 4. THANSEERA K.T. AGED 27 YEARS
D/O LATE MUHAMMED ASHRAF, RIYAZ MANZIL, KEEZHOOR AMSOM
DESOM, P.O.IRITTY, PIN:670 703.
 5. RAYEES K.T., AGED 24 YEARS
S/O LATE MUHAMMED ASHRAF, RIYAZ MANZIL, KEEZHOOR AMSOM
DESOM, P.O.IRITTY, PIN:670 703.

BY ADVS.SRI.P.B.KRISHNAN
SMT.GEETHA P MENON
SRI.N.AJITH
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN

RESPONDENTS IN RCR-RESPONDENT AND APPELLANT NO.5 IN RCA-PETITIONER
AND RESPONDENT NO.6 IN RCP:

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1. NAYANA BABY, AGED 42 YEARS
D/O GOPALAN, KEZHOOR AMSOM DESOM, P.O.KEEZHOOR
REPRESENTED BY HER POWER OF ATTORNEY HOLDER
M.SOMASNDARAM, S/O KRISHNA SWAMI, AGED 59
KEEZHOOR AMSOM DESOM, P.O.KEEZHOOR, TELLICHERRY TALUK
PIN:670 703.

2. SAMEER K.T., AGED 24 YEARS
S/O LATE MUHAMMED ASHRAF, RIYAZ MANZIL, KEEZHOOOR AMSOM
DESOM, P.O.IRITTY, PIN:670 703.

R1 BY ADV. SRI.CIBI THOMAS(CAVEATOR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
09-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.194 of 2013

Dated this the 9th day of March, 2015

O R D E R

Antony Dominic, J.

- 1.This revision is filed by the tenants who are ordered to be evicted in RCP.28/06 which order is confirmed by the appellate authority by dismissing RCA.92/10 filed by them.
- 2.We heard learned senior counsel for the petitioners and the learned counsel appearing for the respondents.
- 3.Briefly stated, facts of the case are that on 3.11.1978, the predecessor-in-interest of petitioners, Muhammed Ashraf, obtained on lease building Nos.XIII/676 and 677 of Iritty town from one Nayana Meenakshi Amma. Meenakshi Amma expired in 1996. She had executed a will on 24.2.1991 and on the strength of the will and being a legatee under the will, Nayana Ramachandran, her brother's son, received rent from the tenant. Subsequently, Sri.Nayana Ramachandran filed RCP.52/98 before the

Rent Control Court, Koothuparamba seeking eviction of the tenant, late Sri.Mohammed Ashraf urging grounds under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, for the occupation of the husband of the first respondent herein, PW1, to start a stationary business. A copy of that petition is Ext.P1. Subsequently, the dispute was settled by Ext.B2 dated 10.8.2000 whereby, rent in respect of the premises was increased.

4.On 7.1.2004, by Ext.A2, Nayana Ramachandran gifted the property to his sister, the first respondent herein. The first respondent, thereafter, filed RCP.45/04 under section 11(2)(b) of the Act. That issue also was apparently settled and the petition was dismissed as withdrawn as per Ext.B3 dated 25.5.2005. Still further, the first respondent caused Ext.A3 notice issued demanding surrender of the tenanted premises stating that she needed the building for the occupation of her dependant husband, PW1, to start a Cool-bar and Restaurant. The tenant disputed the assertion in the notice in Ext.A5 reply. Later, on 12.10.2006, the first respondent filed

RCP.28/06 urging grounds under section 11(3). Before the Rent Control Court, the tenant contended that there is no bonafides in the need projected. According to him, the husband of the first respondent Somasundaran, PW1, is too old to start a new business and that he was already engaged in rearing of buffaloes.

5. During the pendency of the RCP, the tenant Muhammed Ashraf expired and his Legal Representatives got impleaded and contested the petition. Before the Rent Control Court, husband of the first respondent was examined as PW1 and the third respondent in the RCP was examined as RW1. In addition to Exts.A1 to A5 mentioned above, the first respondent produced Exts.A6 to A12 indicating the availability of other buildings and on behalf of the tenants, Exts.B1 to B3 mentioned above were marked. On conclusion of the trial, the Rent Control Court, Koothuparamba, by its order dated 29.1.2010, allowed the petition. This order was confirmed by the Rent Control Appellate Authority which dismissed RCA.92/10 filed by the tenants by its judgment dated 11.4.2013. It is

aggrieved by this, the tenants have filed this revision petition.

6.The main contention raised by the counsel for the tenants is regarding the bonafide need urged by the landlady. According to the tenants, there is no bonafides in the need projected and this contention was raised mainly on the basis that the husband of the landlady, PW1, who was then 56 years, has already engaged in rearing of buffaloes. Therefore, according to the counsel, it is very unlikely that such a senior person would venture into a new business and that too, running of a Cool-bar and Restaurant.

7.In our view, even if the contention of the learned counsel for the tenants regarding the age of PW1 is factually correct, that does not mean that PW1 cannot venture into a new business of Cool-bar and Restaurant as claimed by him. It may be true, as contended, that PW1 has no experience in the business. However, law is settled that it is unnecessary to insist that the person whose bonafide

need is urged be an experienced person to start a business. In such circumstances, we are unable to differ from the view taken concurrently by the courts below on the bonafides of the need urged by the landlady. The orders also show that several other buildings are also available in the locality and that has also been proved by Exts.A6 to A12 and the tenants did not claim the benefit of the provisos to section 11(3) of the Act. In such circumstances, we are not inclined to interfere with the impugned order.

8. At this stage, learned counsel for the petitioners sought for a reasonable time to surrender vacant possession of the building in question. According to him, the petitioners should be given at least one year period. On this request, we heard the learned counsel for the respondents also, who opposed the prayer. Admittedly, the tenants are now running a textile business in the room in question. The petitioners have to search out a new premises and shift the existing business to that new one. Therefore, we allow the tenants 9 months' time from

today to surrender vacant possession of the premises to the landlady. However, this shall be subject to the condition that within three weeks from today, the tenants should file an affidavit before the Rent Control Court, Koothuparamba with an unconditional undertaking to surrender vacant possession of the buildings to the landlady on or before the expiry of the nine months' period allowed to them. The tenants shall also pay the arrears of rent, if any, within four weeks from today and continue to pay the rent without default till surrender of vacant possession of the building.

Subject to the above, the revision is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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/True copy/

PS to Judge