

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE P.D. RAJAN

WEDNESDAY, THE 10TH DAY OF DECEMBER 2014/19TH AGRAHAYANA, 1936

RCRev.No. 425 of 2011 (B)

AGAINST THE JUDGMENT IN RCA 94/2008 ON THE FILE OF THE RENT CONTROL
APPELLATE AUTHORITY (II ADDL. D.C.), KOZHIKODE DATED 23-08-2011

AGAINST THE ORDER IN RCP.NO.104/2007 ON THE FILE OF THE RENT CONTROL
COURT (ADDL.MUNSIFF I), KOZHIKODE DATED 28-07-2008

REVISION PETITIONER/IST RESPONDENT/PETITIONER:

P.K.MOIDEEN KOYA, AGED 70 YEARS,
S/O.KHALEEFINTAKATH UMMAR, 17/2249
RESIDING AT PUTHIYAKOVILAKAM PARAMBU
KASABA AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS/APPELLANT & 2ND RESPONDENT/RESPONDENTS:

1. K.RAMESH, AGED 46 YEARS,
S/O.K.K.SUKUMARAN, METHALE HOUSE, SINDHU NILAYAM
BUSINESS AT ROOM NO.17/2246, M.M.ALI ROAD
KASABA AMSOM DESOM, KOZHIKODE TALUK- 673 001.
2. P.A.RASHEED,
BUSINESS AT ROOM NO.17/2246, M.M.ALI ROAD
KASABA AMSOM DESOM, KOZHIKODE TALUK - 673 001.

R1 BY ADV. SRI.R.D.SHENOY (SR.)
R1 BY ADV. SRI.K.M.FIROZ
R1 BY ADV. SMT.M.SHAJNA

THIS RENT CONTROL REVISION HAVING COME UP FOR HEARING ON
10-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

NO REPRESENTATION FOR THE PETITIONER AND THE RESPONDENTS. THE
REVISION IS ACCORDINGLY DISMISSED FOR DEFAULT.

SD/- **K.T.SANKARAN, JUDGE**

10/12/2014

SD/- **P.D.RAJAN, JUDGE**

//TRUE COPY//

AHZ/

**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R. No.425 of 2011

Dated this the 16th day of June, 2015

O R D E R

Surendra Mohan, J.

The petitioner landlord has filed this revision challenging the judgment of the Rent Control Appellate Authority, Kozhikode in RCA.No.94 of 2008 dismissing a Rent Control Petition filed by him. The landlord had filed RCP No.104 of 2007 before the Rent Control Court, Kozhikode seeking an order of eviction against the respondents on the grounds under Sections 11(2)(b), 11(4) (i) and 11(8) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The landlord alleged that the first respondent tenant had sublet the premises to the second respondent. According to the landlord, he also needed the tenanted premises for the purpose of expanding the business in fruits that he was conducting in another portion of the very same building. It

was also alleged that, the rent in respect of the premises was in arrears.

2. The Rent Control Petition was resisted by the tenant disputing the allegations of the landlord. According to him, there was no subletting as alleged. The ground under Section 11(8) of the Act was also disputed. After trial, the Rent Control Court ordered eviction under Section 11(2)(b) and 11(4)(i) of the Act. The eviction on the other ground was declined.

3. The first respondent tenant challenged the order of the Rent Control Court in RCA No.94 of 2008. The landlord preferred a cross appeal against the findings under Section 11(8) of the Act. On a reappraisal of the evidence, the Appellate Court found that the ground under Section 11(4)(i) was not made out by the landlord. The tenant had in the meantime paid off the entire arrears of rent. Therefore, the appeal filed by the tenant was allowed and the Cross Appeal filed by the landlord was dismissed. The landlord is

aggrieved by the dismissal of the Rent Control Petition filed by him.

4. According to Sri. Mohammed Nias, the counsel for the petitioner, the first respondent tenant was conducting a jewellery shop from the tenanted premises. At present, the business that is being conducted is in fruits. It is alleged that the said business is being conducted by the second respondent. According to the counsel, the business is conducted under the name "Messrs A.R. Fruits Center". The letters A and R stands for the name of the second respondent, who is Abdul Rasheed. Reference is made to Exhibit A2 notice issued by the landlord on 16.01.2006 to point out that the tenant had been directed to terminate the sublease. However, in Exhibit A6 reply notice, the first respondent has refuted the sublease. He had taken the stand that, he did not even know the second respondent. However, when the Advocate Commissioner inspected the premises on 06.03.2006, it was found that the second

respondent's son was carrying on the business in the shop. The landlord having, prima facie established that there was a stranger in the shop room, who is none other than the son of the second respondent, the burden to prove the jural relationship between the tenant and the said person is squarely on the tenant. It is contended by the landlord that, the said burden has not been discharged by the tenant. Therefore, the only conclusion possible is that, the tenant had sublet the premises as alleged by the landlord.

5. The counsel takes strong exception to the action of the Rent Control Appellate Authority in receiving additional documents produced by the tenant in appeal and marking them as Exhibits B36 to B39. Reference is made to the judgment of the Appellate Court to point out that, reliance was placed on the said documents to conclude that the second respondent's son who was present in the shop was an employee of the tenant. Apart from the fact that, the additional documents were not properly proved by the

examination of a competent witness, it is pointed out that the said documents lack evidentiary value because of serious infirmities. Exhibits B36 to B38 do not bear any dates. Exhibit B39 is dated 02.02.2006, after the date of Exhibit A2 notice, and A6 reply notice. It is therefore contended that, the said documents were fabricated to support the case of the tenant.

6. The learned counsel for the petitioner further pointed out that, the additional documents marked by the Appellate Authority as Exhibits B36 to Exhibit B39 were produced only at the time of arguments. I.A.No.1510 of 2011 for receiving the said documents was filed only on 01.08.2011. The Rent Control Appeal itself was heard on 06.08.2011. Therefore, they were accepted as evidence without even giving a chance to the landlord to question the said documents properly. The landlord has therefore filed a petition in this revision producing additional documents. The additional documents sought to be produced, prove,

according to the counsel that Exhibits B36 to B39 were fabricated or manipulated to support the case of the petitioner. The further contention of the tenant that the letters A and R stand for the names of his wife and son is also not convincing. He had been conducting his Jewellery under the name 'Kanakamahala'. The counsel therefore contends that, it is absolutely necessary to permit him to produce the additional documents and mark them in evidence on his side.

7. With respect to the ground under Section 11(8), the counsel points out that, the location of the shop from where the petitioner is presently conducting business in fruits, just behind the tenanted premises, shows that he requires additional accommodation. Only the tenanted premises have frontage of the public road. Therefore, according to the counsel, the judgment of the Rent Control Appellate Authority is unsustainable and liable to be set aside.

8. The contentions of the counsel for the petitioner are seriously contested by Senior Counsel Sri R D Shenoi, who appears for the first respondent tenant. According to the learned counsel, Exhibit A2 notice had been issued to the tenant at the tenanted premises. He has received the notice and signed the Postal Acknowledgment Card in the tenanted shop room. Therefore, it is clear that, the tenant was present in the shop room, at that time. The above is pointed out as a circumstance supporting the case of the tenant that, he himself is conducting business from the premises. Though the Advocate Commissioner had inspected the shop room and has submitted his report, the learned Senior Counsel points out that, he had, without any authority recorded the statements made by the second respondent's son. The Commissioner was not examined in the present case. Therefore, according to the learned Senior Counsel, the statements alleged to have been made by the second respondent's son are not proved. Apart from

the above, Exhibits B1 to B3 are the licence fee receipts in the name of the first respondent. Exhibits B18 to B20 bank collection books, Exhibits B21 and B22 receipts for payment of licence fee and B24 demand for profession tax are all in the name of the second respondent showing that he himself is in occupation of the tenanted premises. In view of the above, according to the learned Senior Counsel, even if the additional documents Exhibits B36 to B39 are eschewed there is sufficient evidence available to justify the conclusion that the tenant himself is conducting the business in the shop room.

9. The learned Counsel takes serious objection to the attempt of the revision petitioner to produce additional documents before this Court. According to the counsel, the documents ought to have been produced before the authorities below. Any permission to produce additional documents would cause serious prejudice to the rights of the tenant, it is submitted. Therefore, it is contended that,

the petition filed by the landlord seeking permission to produce additional documents was only to be dismissed, accepting the contentions in the counter affidavit of the tenant.

10. The ground under Section 11(8) of the Act has been rightly found against by the Appellate Authority, according to the learned Senior Counsel. The petitioner is conducting wholesale business in fruits from the premises just behind the tenanted shop room. The said shop room enjoys sufficient road access as well as other amenities that are necessary for the convenient conduct of the business in fruits. As reported by the Advocate Commissioner even the present room is not properly occupied by the landlord, there is a lot of space left unoccupied by him. If at all the landlord wants additional accommodation as alleged, there are other vacant rooms in his possession, as admitted by him when he was examined as PW1. Therefore, according to the learned counsel, there are no grounds to interfere with the

judgment of the Appellate Authority.

11. Heard. Though the landlord had pleaded grounds under Section 11(2)(b), 11(4)(i) and 11(8) in the Rent Control Petition, the Rent Control Court had granted eviction only under Section 11(2)(b) and 11(4)(i). The eviction granted under Section 11(2)(b) has been vacated by the Appellate Court, since the tenant had paid the arrears of rent that was due. The eviction ordered under Section 11(4)(i) has been vacated by the Appellate Court. As far as the ground under Section 11(8) is concerned, both the authorities below have held against the landlord, though for different reasons. According to the Rent Control Court, the need of the landlord for additional accommodation was not bonafide. However, according to the Appellate Court while the need is genuine, the hardship that would be caused to the tenant by the grant of an order of eviction would outweigh the advantage that the landlord is likely to derive. Since the ground under Section 11(2)(b) does not

survive, we refrain from considering the same. As far as the ground under Section 11(4)(i) is concerned, though the initial stand of the tenant was that, he did not even know the second respondent, the Advocate Commissioner who inspected the premises found that the second respondent's son was carrying on business in the shop room. Presence of the second respondent's son is answered by the tenant by saying that he is an employee of his. This Court has held in **Gopi v. Mohammed Basheer** [ILR 2004(1) Kerala 577] and **Marzook v. Simon** [2009(2) KLT 262] that, once the landlord discharges the initial burden of showing the presence of a person other than the tenant in the premises, the burden would shift to the tenant. Thereupon, the tenant would have to prove the jural relationship between himself and the stranger who was found present in the shop room. The Rent Control Court found that, there was no evidence on record to show what was the jural relationship between the stranger who was found present in the shop room and

the tenant. The son of the second respondent has been examined as RW2. He has deposed that, he was an employee of the first respondent. The Rent Control Court was not satisfied that the oral testimony of RW2 was sufficient to discharge the burden that was on the tenant. It was for the said reason that, an order of eviction was granted under Section 11(4)(i). It is the above lacuna that has been filled up by producing the additional documents Exhibits B36 to B39 before the Appellate Authority. The Appellate Authority has received the said documents in evidence and has placed reliance on them.

12. In the above contest, the objection raised by the counsel for the petitioner assumes significance. It is pointed out that, Exhibit B36 relates to the year 2006-07, B37 relates to the year 2007-2008 and B38 to the year 2008. The said documents do not bear any dates. Those documents show that the applications have been received by the Assistant Labour Officer for renewal of registration.

A perusal of the documents show that, those were issued to AR Fruits Center. However, the documents themselves show that the nature of business is shown as Fruits without mention of the name of the concern. There is no explanation regarding the above discrepancy. The petitioner has sought to rely upon additional documents obtained by him under the Right to Information Act, 2005, to substantiate his contention that, Exhibits B37 to B39 are unreliable. The attempt of the petitioner to produce documents in these proceedings is stoutly opposed on behalf of the tenant.

13. On a consideration of the facts and circumstances referred to above, we are of the opinion that, the Appellate Court erred in accepting Exhibits B36 to B39 documents without sufficient proof, marking the said documents and placing reliance upon them. The proper course would have been to remand the matter to the Rent Control Court for the purpose of proving the said documents properly. Since the

tenant wants to rely upon the additional documents so let in and the landlord wants to produce additional documents to disprove the veracity of the additional documents produced by the tenant, it is only appropriate that both the parties are given another chance to adduce additional evidence. It shall be open to the landlord to produce additional evidence in support of his contentions both documentary as well as oral. The tenant shall also be at liberty to produce any further evidence that may be necessary to prove his case. For the purpose, it is only appropriate that the matter is remanded to the Rent Control Court, Kozhikode. It is necessary that, the Rent Control Court reconsiders the entire case in the light of the additional evidence that the parties may adduce or let in, in support of their respective contentions.

14. Since we have held that it is necessary to set aside the judgment of the Rent Control Appellate Authority and remand the Rent Control Petition for a fresh

consideration of the Rent Control Court, it is not necessary for us to consider the contentions advanced by the respective counsel on the ground under Section 11(8) of the Act.

In the result:

1. This Rent Control Revision is allowed. The judgment of the Rent Control Appellate Authority, Kozhikode is set aside, with respect to the grounds under Section 11(4)(i) and 11(8) of the Act.
2. The order of the Rent Control Appellate Authority under Section 11(2)(b) of the Act is confirmed.
3. The Rent Control Court, Kozhikode is directed to take up RCP No.104 of 2007 afresh, permit both parties to let in additional evidence, if any, in support of their respective contentions, to consider the effect of such additional evidence also along with the evidence already on record and to pass final orders thereon, expeditiously, considering that

the Rent Control Petition is of the year 2007. The Rent Control Court shall give priority to the same and shall finally dispose of the same, as expeditiously as possible, at any rate before 31.12.2015.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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