

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

RCRev..No. 233 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN RCA 92/2006 of ADDL.DISTRICT COURT,
THRISSUR DATED 31-12-2012

AGAINST THE ORDER/JUDGMENT IN RCP 40/2003 of I ADDL.M.C., THRISSUR.

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/RESPONDENT:

VASU

S/O SANKARAN, T.C.33/286, T.C.33/2

T.C.B6/34, MISSION QUARTERS, THRISSUR CORPORATION.

BY ADVS.M/S.N.P.SAMUEL & PLEASANT.T.SAMUEL

RESPONDENT(S)/RESPONDENTS/RESPONDENTS 2 TO 6/RESPONDENTS 2 TO 6:

1. THRESSIA

W/O LATE JOSE, MANALIPPADAM DESOM, OLLUR VILLAGE
THRISSUR-680 306.

2. THARU

S/O LATE JOSE, MANALIPPADAM DESOM, OLLUR VILLAGE
THRISSUR-680 306.

3. VARGHESE

S/O LATE JOSE, MANALIPPADAM DESOM, OLLUR VILLAGE
THRISSUR-680 306.

4. GEORGE

S/O LATE JOSE, MANALIPPADAM DESOM, OLLUR VILLAGE
THRISSUR-680 306.

5. POLY

S/O LATE JOSE, MANALIPPADAM DESOM, OLLUR VILLAGE
THRISSUR-680 306.

R1-R5 BY ADVS.M/S.T.K.VIPINDAS, P.K.PRIYA, K.V.SREE VINAYAKAN
& K.M.MUHAMMED HUSSAIN.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 29-
05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Surendra Mohan & Mary Joseph, JJ.

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R.C.R.233 of 2013

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Dated this the 29th day of May, 2015.

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ORDER

Surendra Mohan, J.

- 1.The tenant is the revision petitioner. The landlord sought eviction of the tenant under Section 11(2)(b) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the “Act”, for short).
- 2.The tenanted premises form part of a building, having a total number of four rooms. Two rooms are in the occupation of the landlords, while two rooms are occupied by the tenant. The landlords are conducting a business in partnership from the premises in their occupation. Originally, the business was being conducted by the father of respondents 2 to 5, who had filed

R.C.P.No.40 of 2003 before the Rent Control Court, Thrissur. Since the rent arrears were paid during the pendency of the petition, the parties gone to trial, only with respect to the ground under Section 11(8) of the Act. The Rent Control Court, on an appreciation of the evidence, found in favour of the landlords and ordered eviction. The tenant challenged the order of eviction before the Rent Control Appellate Authority, Thrissur in R.C.A.No.92 of 2006. The appeal has been dismissed by the judgment, against which the revision is filed.

3. The original landlord was conducting the business of dealing in second hand spare parts, under the name and style “M/s.K.J.Jose & Sons”, of which himself and his sons were the partners. The tenant is conducting an automobile workshop for two wheelers and certain allied works. The landlord had sought eviction, alleging that, he required the tenanted premises for the purpose

of additional accommodation for his business. He died during the pendency of the Rent Control Petition on 29.1.2005. The Rent Control Petition was finally disposed of, only on 19.7.2006.

4. According to the counsel for the petitioner, the ground under Section 11(8) is available only to a landlord, who requires additional accommodation for his “personal use”. Inasmuch as the landlord had expired during the pendency of the Rent Control Petition, it is contended that, his requirement for additional accommodation, had come to an end. Since the need for additional accommodation is his personal need, the Rent Control Petition itself was not maintainable, at the instance of the legal heirs. According to the learned counsel, the Rent Control Petition was filed on 21.5.2003. The landlord passed away on 29.1.2005, whereas the Rent Control Petition was finally disposed of only on 19.7.2006, long after his death.

Reliance is placed on the decision of this Court in *Jose v. Komalavally* (2002 (1) K.L.T. 51), to contend that, the Rent Control Petition ought to have been dismissed, finding that the need of the landlord, had come to an end. It is further contended that, the tenant, being a person, who is aged 80 years, a shifting of the business, that he had painstakingly built up over the past 50 years, was not practicable. He is neither young nor in a proper condition of health, to build up his business again from scratch. Therefore, the comparative hardship under Section 11 (10) of the Act, has also to be found in favour of the tenant, it is contended.

5. According to Adv.Smt.P.K.Priya, counsel for the landlords, this is a case in which, the need initially put forward by the landlords was itself for the purpose of providing additional accommodation to the business conducted by him and his sons,

in partnership. The need, being not confined to the landlord alone, being the common need of both himself and his sons, who were partners of the original partnership firm, the need does not cease, on the death of the original landlord. Reliance is placed on Ext.A4 partnership deed, to point out that, after the death of their father, the respondents have re-constituted the firm with themselves as partners and are continuing the same business. They had taken out a commission and report of the Advocate Commissioner shows that, the premises, from which they were conducting their business, was crammed with articles, showing that, they need more space for their business. The commission report also shows that other rooms are available in the locality. The petitioner has not even made enquiries regarding the availability of vacant rooms, as evidenced from his testimony as R.W.1.

6. With respect to the personal need, counsel for the petitioner Sri.P.K.Gopalakrishnan submits that the need under Section 11 (8) of the Act, would not survive the death of the original landlord. The counsel for the respondents, on the other hand, place reliance on the decision in **Rajan v. Sadanandan** (2004(3) K.L.T. 129), to contend that, in similar circumstances, this Court had allowed the proceedings to continue, despite the death of the original landlord. Reliance is placed on the decision in **Davis v. Sebastian** (1999 (3) K.L.T. 225 (SC)), to contend that, it is for the landlord to decide, whether additional accommodation is required or not. Therefore, it is contended that, there are absolutely no grounds to interfere with the concurrent findings of eviction, in this case.

7. Heard. A perusal of Ext.A1 notice shows that, the original landlord has specifically stated therein, the need for which

additional accommodation was sought. What is stated is that, the additional accommodation was required for the purpose of the business conducted by him in partnership as K.J.Jose & Sons in the adjacent shop room, along with himself, his wife and sons K.J.Tharu, K.J.Varghese, K.J.George and K.J.Poly. It is stated that, additional accommodation was necessary for the convenience of their partnership business. The said need has been repeated in the Rent Control Petition, R.C.P.No.40 of 2003 also. It is true that the Rent Control Petition was filed in the year 2003 and that the landlord had passed away on 29.1.2005.

8. We notice that, after the death of the landlord, his wife and four sons of the original landlord had got themselves impleaded. They had also amended the Rent Control Petition, as per order in I.A.223 of 2005. After the amendment, the need has been modified, to read that, the additional accommodation was

required for the purpose of the partnership business, that was being conducted in the adjacent room, by the sons of the deceased landlord, K.J.Tharu, K.J.Varghese, K.J.George and K.J.Poly. The sons, referred to in the Rent Control Petition, are respondents 2 to 5. Therefore, the pleadings had been suitably amended and the need for additional accommodation had been modified, to read as the additional accommodation for the personal use of the legal representatives, who had come on party array in the Rent Control Petition itself. It was on the above pleadings that the Rent Control Petition was tried by the Rent Control Court. It is also worth-remembering that, on the death of the father, the original landlord, the respondents had succeeded to the right of ownership of the landlord, in their capacity as his legal heirs. The parties had gone to trial, on the understanding that, the additional accommodation required was

for the personal use of the landlords, who are the present respondents. It is further to be noticed that, the partnership was re-constituted, on the death of the father and the re-constituted partnership deed, Ext.A4, shows that, respondents 2 to 5 are the present partners of the firm. The said document also shows that, the partners have unanimously decided to continue the business in their capacity as the legal heirs of the original landlord. The above, being the factual scenario, the contention that, the need, that is put forth by the original landlord, had come to an end, on the death of the original landlord, cannot be accepted.

9. It is true that, a Division Bench of this Court in **Jose v. Komalavally** (*supra*) has held that the need of the landlord under Section 11(8) of the Act cannot survive his death. However, we notice that, in the said case, the landlord was alive when the Rent Control petition was tried. It was thereafter that

the landlord in the said case had died. As already noticed above, in the present case, the landlord had expired even before the Rent Control Petition was tried. After his death, the Rent Control Petition was amended and it was the amended Rent Control Petition that was tried by the Court and eviction ordered. Therefore, the dictum in the said case does not apply to the facts of the present case. We notice that, it has been held by a Division Bench of this Court in Arjunan v. Eranu (1991(2) K.L.T. 279), the personal need of the landlord would include the need of his family members. The above aspect has been reiterated by another Division Bench of this Court in Pakran v. Kunhiraman Nambiar (2004 (1) K.L.T. 824). It has been brought to our notice by the counsel for the respondents that, where a landlord had expired during the pendency of the proceedings before this Court, and a contention was raised that

the need had come to an end, this Court in *Rajan v. Sadanandan* (2004 (3) K.L.T. 129), has concluded the issue in the following words:

Counsel appearing for the revision petitioner tenant submitted that since the landlord died while the revision petition was pending before this Court, the requirement does not survive. Counsel submitted that the requirement is personal. The statute has made the expression “personal”. Counsel submits since the landlord died “personal use” no more survives and hence the petition be dismissed. We find it difficult to accept the contention of the petitioner. Originally, landlord was conducting business in footwear. The legal heirs are continuing the business. Landlord felt the necessity of additional accommodation for expanding the existing business. The expression “personal use” used in Section 11(8) is not related to the person

but related to the business. On the death of the landlord, it would devolve on the legal heirs. Business is being conducted by the legal heirs and naturally the requirement would continue. It is not as if on the death of the landlord requirement would fade out or vanish. So long as there is requirement of additional accommodation, the requirement would continue and on the death of the landlord, such requirement would not extinguish unless legal heirs are not continuing the business.

10.It is true that, the Bench has not taken note of the earlier decision in *Jose v. Komalavally* (*supra*). However, as far as the facts of the present case are concerned, since we have already found that the parties had gone to trial, on the basis of the pleadings that were amended after the death of the original landlord, the said decision has no application. It is further

necessary to clarify that the need of a landlord would not automatically come to an end upon his death, in all cases. As already found in the present case, the need survives in many situations. Therefore, the answer to the question as to whether the need of the landlord under Section 11(8) of the Act would survive his death, would have to depend on the facts and circumstances of each case. The expression “personal use” of the landlord in Section 11(8) has been held to be wide enough to take in the use of the members of his family as well.

11. In the present case, the commission report evidences the location of the rooms occupied by the tenants as well as the landlords. They are adjacent to each other and form part of the same building. It has been reported by the Advocate Commissioner that the articles kept for the business of the landlord are stocked on the floor for want of space, leaving very

little area for the people to move around, inside the shop rooms. The scenario, definitely supports the case of the landlords for additional accommodation. We find that, the Advocate Commissioner has noted the availability of two rooms in the locality that were found vacant at the time of his visit. R.W.1, the tenant has deposed that, he had not conducted any enquiry about the availability of the rooms in the locality. On the comparative hardship that is required to be considered under Section 11(10) of the Act also, we find no grounds to interfere. The authorities below have considered the question of comparative hardship in the proper perspective. It is not in dispute that, one son of the petitioner is employed abroad, while another son is available with him. The tenant is aged 80 years. We are satisfied that the hardship of the landlords outweighs that of the tenant.

12. For the foregoing reasons, we find no grounds to interfere with the concurrent orders of the Authorities below. The Rent Control Revision is, accordingly, dismissed.

13. As a last submission, learned counsel for the petitioner sought for some time to vacate the premises. In the facts and circumstances of the case, we are satisfied that, it is necessary to grant time to the petitioner till 31.12.2015, to surrender vacant possession of the premises. However, in order to avail the benefit of the above, the tenant has to file an affidavit before the Rent Control Court, Thrissur in R.C.P.40/03, within a period of two weeks of the date of receipt of a copy of this judgment, undertaking to surrender vacant possession of the premises, on or before 31.12.2015. There shall be a further condition that, the tenant shall pay the entire arrears of rent, if any remaining unpaid and shall continue to pay the rent in respect of the

premises, without any delay or default, until vacant possession is surrendered to the landlords. It is made clear that, in the event of the tenant committing default in complying with any of the above conditions, the benefit of the directions contained in this order shall be forfeited and the respondents shall be at liberty to pursue further proceedings, in accordance with law, for obtaining vacant possession of the premises.

K. Surendra Mohan, Judge.

Mary Joseph, Judge.

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