

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

RRev..No. 246 of 2013 (B)

AGAINST THE JUDGMENT IN RCA 80/2010 of ADDITIONAL RENT CONTROL
APPELLATE AUTHORITY, ERNAKULAM DATED 20-10-2012
AGAINST THE ORDER IN I.A. NO.3622/2009 IN RCP NO.73/1983 OF 3RD ADDITIONAL
MUNSIFF AND RENT CONTROL COURT, ERNAKULAM

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

DR.C.R.RAMADAS
S/O. CHELUR RAVI, GOKULAM CHEMBUKKAVU
THRISSUR-680020.

BY ADVS.SRI.S.B.PREMACHANDRA PRABHU
SRI.G.SREENIVASA PRABHU

RESPONDENT(S)/ADDL. RESPONDENT NO.3/PETITIONERS:

1. M/S.INDUSTRIAL MARKETING AGENCIES
M.G. ROAD, KOCHI
REP. BY ITS MANAING PARTNER A.J. BENNY
INDUSTRIAL MARKETING AGENCIES, ANJIPARAMBIL HOUSE
KATHREKADAVU DESOM, KOCHI-682017.
2. A.J. BENNY, AGED 59 YEARS
S/O. A.J.JOSEPH, M/S. INDUSTRIAL MARKETING AGENCY
ANJIPARAMBIL HOUSE, KATHREKADAVU DESOM, KOCHI-682017.
3. A.J. MATHEW
S/O. A.M. JOSEPH, ANJIPARAMBIL CHELATH, KATHRIKADAVU
COCHIN-682017.

R1 BY ADV. SRI.SHIJU VARGHEESE ,CAVEATOR
R3 BY ADV. SRI.T.P.SANTHOSH KUMAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
08-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJJ

ANTONY DOMINIC & ALEXANDER THOMAS, JJ

R.C.R. No. 246 of 2013

Dated this the 8th day of January, 2015

ORDER

Antony Dominic, J.

The present revision is filed by the respondent in I.A. No.3622 of 2009 in R.C.P. No.73 of 1983 on the file of Rent Control Court, Ernakulam, which Order was confirmed by the Additional Rent Control Appellate Authority, Ernakulam, by dismissing the R.C.A. No.80 of 2010.

2. We heard the counsel for the petitioner and the learned counsel appearing for the respondents.

3. Briefly stated, the facts of the case are that the petitioner had filed R.C.P. No.73 of 1983 seeking eviction of the tenant of the building owned by him. The tenant was a firm by name 'M/s. Industrial Marketing Agencies' and the partners of the firm were also impleaded as respondents 2 to 6 in the said R.C.P. The ground urged in the petition

was under section 11(4)(iv) of the Rent Control Act. The Rent Control Court allowed the petition and the Order was confirmed by the appellate authority and this Court.

4. However, for reasons which may not be relevant for the purposes of this case, the reconstruction of the building was not completed. This made the respondents herein, to file I.A. No.3622 of 2009 before the Rent Control Court invoking its power under the 2nd proviso to Section 11 (4)(iv) of the Act. In the objection filed by the petitioner to I.A., he disputed the maintainability of the I.A. itself, by stating thus:

“The present petition filed by Mr.A.J. Benny alone is not maintainable either in law or on facts. The original tenant was Industrial Marketing Agencies, a Partnership firm and 5 of it's Partners viz., Mrs.Usha Ramadas, P.V. Helen, Abraham, Gokulan and A.J. Benny. It is understood that the Partnership firm Industrial Marketing Agencies is not

existing and doing any business. So, the firm and its Partners are not entitled to get any benefit under Section 11(4) of the Kerala Buildings (Lease & Rent Control) Act."

5. After considering the rival contentions, the Rent Control Court passed its Order dated 9th September, 2010, allowing the I.A. and directing the petitioner to complete reconstruction of the building within a period of six months. It was this Order which was challenged by the petitioner in R.C.A. No.80 of 2010 and which was dismissed by the appellate authority by its Order dated 20th October, 2012. This is the factual background in which this revision is filed.

6. The contention raised by the counsel for the revision petitioner is that the 2nd proviso to Section 11(4)(iv) of the Act recognizes a right only to the tenant and that insofar as this case is concerned, according to him, the firm which was the tenant, was dissolved by document dated 6.7.2001 and that thereafter a new firm was constituted on

the same day. Counsel submitted that though the firm, thus constituted on 6.7.2001, also carried the same name in which the dissolved tenant firm was also constituted, the new firm is a different entity and it being not the tenant, the I.A. filed was not maintainable.

7. However, this contention is resisted by the learned counsel appearing for the respondents by pointing out that the 1st respondent herein is only a reconstituted firm, which is entitled to the benefit of the lease arrangement and the rights under the 2nd proviso to Section 11(4)(iv) of the Act.

8. Thus, the main issue raised by the parties is in relation to the maintainability of the I.A. filed by the respondents and the finding of this issue will substantially determine the decision in the I.A. itself. However, from the order passed by the Rent Control Court, we find that though this issue has been discussed in paragraph 9, no specific finding has been arrived at. Instead, the Rent Control Court proceeded on the basis that this contention was not required

to be considered while considering the I.A. This finding of the Rent Control Court has been confirmed by the appellate authority also, by stating further that the contention need only be addressed at the stage when the prayer is made under the 3rd proviso to that Section.

9. We are unable to endorse the view taken by the Rent Control Court and the appellate authority. In our view the Rent Control Court should have specifically entered a finding on this issue which determines the maintainability of the I.A. itself. For that reason we are unable to sustain the orders passed by the Rent Control Court, as confirmed by the appellate authority. Accordingly, the orders passed by the IIIrd Additional Munsiff & Rent Controller, Ernakulam in I.A. No.3622 of 2009 in R.C.P. No.73 of 1983 and the Order passed by the Additional Rent Control Appellate Authority, Ernakulam, in R.C.A. No.80/2010 are set aside.

10. The matter will stand remitted to the Rent Control Court, which shall reconsider the I.A. and pass fresh orders

in the matter. The parties will be given liberty to produce both oral and documentary evidence.

11. However, having regard to the fact that the R.C.P. in question is of 1983 and the I.A. is of 2009, an expeditious finality is required. Therefore, we direct the Rent Control Court to pass fresh orders, as directed above, at any rate within six months from the date of receipt of the copy of this Order.

The parties will appear before the Rent Control Court on **18.02.2015**. Registry will return back the records.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
ALEXANDER THOMAS,
JUDGE.

jjj