

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 193720

RCRev..No. 262 of 2013 ()

AGAINST THE JUDGMENT IN RCA 68/2012 of RENT CONTROL APPELLATE
AUTHORITY- II, KOZHIKODE DATED 12-02-2013

AGAINST THE ORDER IN RCP 74/2010 of RENT CONTROL COURT, KOZHIKODE DATED
25-02-2012

REVISION PETITIONER(S)/APPELLANT/RESPONDENTS:

NATIONAL MIRROR MART

REPRESENTED BY ITS MANAGING PARTNER

P.A.PRAVEEN KUMAR, S/O.BHASKARAN, BUSINESS PARTNER

SM STREET, KOZHIKODE NAGARAM AMSOM AND DESOM

KOZHIKODE TALUK.

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S)/RESPONDENT/PETITIONER:

V.DORASWAMY

S/O.N.VV.CHETTYAR, RESIDING AT MINI PARADISE

NAGARAM AMSOM DESOM, KOZHIKODE TALUK-673 027.

R1 BY ADV. SRI.P.K.SAJEEV

R1 BY ADV. SRI.V.SREENATH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

vdv

K.SURENDRA MOHAN & MARY JOSEPH, JJ.
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R.C.R Nos.262 of 2013 & 263 of 2013
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Dated this the 26th day of May, 2015

ORDER

Surendra Mohan,J.

The tenant is in revision before us challenging the fixation of rent by the Rent Control Court, Kozhikode, confirmed in appeal by the Rent Control Appellate Authority. The tenant is in occupation of shop rooms situate on S.M street at Kozhikode, a commercially important locality in the said town.

2. According to the tenant, the shop room in R.C.R No.263 of 2013 was taken on rent in the year 1970 on a monthly rent of Rs.200/-. The shop room in R.C.R No.262 of 2013 was taken on rent in the year 1985 on a monthly rent of Rs.400/- The contention of the tenant is that the rent was being periodically enhanced by mutual consent and that the present rent paid in respect of the shop rooms are Rs.850/- and Rs.1500/- respectively. The said rent was enhanced and fixed by the Rent Control Court at Rs.3,000/- per month and Rs.7,500/- per month respectively. Thus, the rent with respect to the premises in R.C.R No.262 of 2013 has been increased from Rs.850/- to

Rs.3,000/- while the rent in respect of the premises in R.C.R No.263 of 2013 has been enhanced from Rs.1,500/- to Rs.7,500/-. Aggrieved by the fair rent fixed by the Rent Control Court, the tenant had preferred two Rent Control Appeals, R.C.A Nos.67 of 2012 and 68 of 2012. The landlord had preferred R.C.A No.66 of 2012 challenging the enhanced rent in R.C.R No.262 of 2013. All the appeals were dismissed by the Rent Control Appellate Authority. The present revisions are filed against the said judgment.

3. The contention of Sri.Cibi Thomas, who appears for the petitioners in both the cases is that, though the shop rooms are located in S.M street, a commercially important locality, the buildings are old and lacking in facilities that are available in other similar modern buildings in the same area. Facilities like car parking, lift etc. are not available in the building of which the tenanted premises form part. Consequently, the rent derived from modern buildings cannot be a reliable criterion for fixing the fair rent of buildings that are comparatively old. Secondly, it is contended that, the parties had been enhancing the rent by mutual consent during the period of tenancy. Therefore, there is no

justification for the enhancement that has been granted by the Rent Control Court and confirmed by the Appellate Authority in these cases. The counsel takes strong exception to the fact that, enhancement has been made relying upon the report of the Advocate Commissioner, who has referred to the rent paid in respect of other similar premises. According to the counsel for the petitioner, one of the shop rooms in the present case is having only an area of 195 square feet and therefore, without reference to the area of the shop room, rent has been enhanced. For the above reasons, it is contended that the judgment of the Appellate Authority is unsustainable and liable to be set aside.

4. Advocate Sri.V.Sreenath, who appears for the landlord, on the other hand, points out that, the enhancement in rent is only reasonable considering the locational advantages as well as the facilities enjoyed by the petitioner. The S.M street, according to the counsel, permits only one way traffic with no parking facility available. As far as the tenanted premises are concerned, there is facility for lorries to enter and park, enabling the tenant to unload his goods without difficulty. It is contended that he is enjoying the

common facilities of a security guard, common toilet, parking as well as various other facilities. He is also earning considerable amounts as profit from the business carried on in the premises. Though the landlord had sought for a reasonable enhancement, only a very modest rent has been granted by the Rent Control Court, considering the market rent prevailing in the locality, which ranges upwards from Rs.50 per square feet. The present rent fixed is only Rs.3,000/- in the case of one building Rs.7,500/- for the other. The rent fixed at present is also, according to the counsel, much less than the market rent prevailing in the locality. Therefore, according to the counsel, no interference is called for with the impugned proceedings.

5. Heard. We have been taken through the order of the Rent Control Court as well as the judgment of the Rent Control Appellate Authority. The authorities below have considered the issue in the proper perspective. The Advocate Commissioner has reported regarding the rent paid by the occupants of other similar premises situate in the area. The commercial importance of S.M street is also an aspect that cannot be lost sight of. It is true that, the petitioner

has been in occupation of the tenanted premises for a long period of time. The earlier enhancement in rent, relied upon by the tenant, cannot be described as substantial, they are only marginal. The authorities below have properly appreciated the fact that, the price of essential articles as well as land have steadily gone up over the years. The increase in prices is not properly reflected in the manner in which the enhancements have been effected in the case of the tenanted premises. It was taking into account all the above factors also that, the authorities have fixed the fair rent of the tenanted premises. Absolutely no material or evidence has been placed before us to justify a conclusion that the findings are irregular, improper or illegal.

For the above reasons, we find no grounds to interfere with the judgment of the Rent Control Appellate Authority. These revisions are accordingly dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE

Sd/-
MARY JOSEPH, JUDGE