

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

RCRev..No. 290 of 2013 (B)

**AGAINST THE JUDGMENT IN RCA 51/2011 of II ADDL.DISTRICT COURT,ERNAKULAM
DATED 19.11.2012**

**AGAINST THE ORDER IN RCP 143/2009 of III ADDL.MUNSIFF & RENT CONTROLLER,
ERNAKULAM, DATED 31.03.2011**

REVISION PETITIONER/RESPONDENT NO 1/RESPONDENT:

**M/S. QUILON RETREADING PRIVATE LTD.DOOR NO 29/1706,NH ROAD
THYKODAM,VYTTILA,ERNAKULAM COCHIN 682 019,
REPRESENTED BY ITS MANAGING DIRECTOR MR.LESLIE PHILIP**

**BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE**

RESPONDENT/APPELLANTS 1 AND 2 & RESPONDENT NO.2/PETITIONER

- 1. CHACKO ANTONY, AGED 42 YEARS
S/O.M.C ANTONY, MELEPARAMBIL HOUSE
KARTHIKADAVU DESDOM, ELAMKULAM VILLAGE
KANAYANNUR TALUK 682 017**
- 2. VARGHESE ANTONY, AGED 37 YEARS
S/O.M.C ANTONY, MELEPARAMBIL HOUSE
KARTHIKADAVU DESDOM, ELAMKULAM VILLAGE
KANAYANNUR TALUK 682 017**
- 3. SEBASTIAN ANTONY, AGED 33 YEARSS/O.M.C ANTONY,
MELEPARAMBIL HOUSE, KARTHIKADAVU DESDOM,
ELAMKULAM VILLAGE,KANAYANNUR TALUK, 682 017**

**R1 & R2 BY ADVS. SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM**

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

ANTONY DOMINIC & ALEXANDER THOMAS, JJ

R.C.R. No. 290 of 2013

Dated this the 8th day of January, 2015

ORDER

Antony Dominic, J.

The tenant is the petitioner in this revision petition.

2. Respondents 1 to 3, the landlords, filed R.C.P. No.143 of 2009 seeking eviction of the tenant from the petition scheduled building bearing Door Nos.229/1706 G, H & J in the ground floor, 29/1706 K in the first floor and 29/1706 L in the second floor of a three storied building situated in Survey No.1096/I of Poonithura Village. The entire building was let out to the tenant by an agreement dated 14.3.2002 and the lease was thereafter renewed periodically. According to the tenant, at the time of the last renewal separate rent deeds were executed by the 2nd petitioner, the 1st petitioner and the 3rd petitioner before the

Rent Control Court in respect of ground floor, first floor and the second floor of the building in question. Before the Rent Control Court, landlords sought eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. According to them, they are co-owners of the building and that petitioners 1 and 2 wanted to shift their business, 'Sareena Enterprises', from the rented premises at Kathrikadavu to the first and second floor of the building. It was also contended that the 3rd petitioner before the Rent Control Court, wanted to start a business in sports goods items in the ground floor of the building. The Rent Control Court, by its Order dated 31st March, 2011, rejected the *bonafide* need urged by petitioners 1 and 2 and upheld the *bonafide* need urged by the 3rd petitioner.

3. Aggrieved by this Order, the landlords and the tenant filed R.C.A. Nos. 51 and 70 of 2011. By a common

judgment rendered, the appellate authority allowed R.C.A. No.51 of 2011 filed by the landlords and upheld the *bonafide* need urged by petitioners 1 and 2. It also upheld the order of the Rent Control Court insofar as it concerns the *bonafide* need urged by the 3rd petitioner. Consequently, R.C.A. No. 70 of 2011 filed by the tenant was dismissed. It is aggrieved by this Order the revision is filed.

4. We heard the counsel for the petitioner and the learned counsel appearing for the respondent- landlords.

5. In sum and substance, there are two issues which arise for consideration. The first issue is in relation to the finding of the Rent Control Court, confirmed by the appellate court, in regard to the *bonafide* need urged by the 3rd petitioner/3rd respondent herein. The second issue is in relation to the correctness of the Order passed by the appellate authority, to the extent it reversed the finding of

the Rent Control Court, on the question of *bonafide* need urged by petitioners 1 and 2/respondents 1 and 2 herein.

6. In so far as the issue relating to the *bonafide* need urged by the 3rd petitioner is concerned, according to the petitioners, who are co-owners of the entire building, the 3rd petitioner was not permanently employed and he intended to start a business in sports items especially cricket items, in the ground floor of the petition schedule building. The fact that he was not permanently employed was undisputed. His capacity and intention to start the business in question, could not also be doubted in the light of the evidence tendered. He is also a co-owner of the building in question and the other co-owners also did not have any objection in the 3rd petitioner occupying the ground floor. It was taking note of these facts and evidences that the Rent Control Court accepted the case of the 3rd petitioner and ordered

eviction from the ground floor of the petition schedule building. This finding of the Rent Control Court was confirmed by the appellate authority also. On the material available, we see no illegality in the conclusion of the Rent Control Court or the appellate authority, justifying interference.

7. The second issue, as we have already stated, is in regard to the correctness of the order passed by the appellate authority to the extent it reversed the finding of the Rent Control Court on the bonafide need urged by petitioners 1 and 2. We have already taken note of the fact that the Rent Control Court rejected the case pleaded by petitioners 1 and 2 and declined their prayer for eviction of the first and second floors of the petition schedule building, occupied by the tenant. It is this finding which was reversed by the appellate authority. In so far as this aspect of the

matter is concerned, relevant pleadings in the Rent Control Petition are contained in paragraphs 4 and 5 of the petition, which are extracted below for reference.

"4. The petitioners 1 and 2 were doing business in food additives like food preservatives and colours in the name and style 'Sareena Enterprises' in a rented premises at Jews Street, Ernakulam in building No.XL/3503. When the landlord of the said building demanded vacant possession of said premises in the year 2008, petitioners requested the respondent to vacate the petition schedule buildings and to surrender the same in order to shift the said business to the scheduled building. The respondent assured the petitioners to do so. Accordingly, the petitioners agreed to the land lord to vacate the said building at Jews Street on 31.12.2008. But the respondent did not vacate the schedule building. When the petitioners pressed for their demand to surrender the petition schedule building, the respondent filed OS 1152 of 2008 before the Honourable Munsiff's Court, Ernakulam and obtained an order of injunction from forceful eviction. On the undertaking of the petitioners that the respondent will not be evicted forcefully, the above suit was disposed off. The petitioners 1 and 2 could vacate the building at Jews Street only on 10.1.2009 to a shed at Kathrikadavu.

5. After vacating the building at Jews Street the petitioners 1 and 2 are now conducting the business of M/s.Sareena Enterprises in the shed at Kathrikadavu. The said shed is insufficient for housing the office of the said business and for storing the stocks in trade goods there. Hence petitioners 1 and 2 are keeping the stock in trade goods in the godowns of the transporters as and when becomes necessary by paying substantial amount as demurrages to them. The petitioners 1 and 2 find it extremely difficult to carry on their business in such a manner. Hence the petitioners 1 and 2 are in dire need of the 1st and 2nd floors of the schedule building for their business purpose mentioned above."

8. A reading of the above averments would show that according to the petitioners, they were conducting business in the name and style of "Sareena Enterprises" in a rented premises at Jews Street, Ernakulam. They had to surrender vacant possession to the landlord and shift their business to a shed in Kathrikkadavu. The shed was not suitable for continuing their business. It was therefore, they demanded vacant possession of the first and second floors

of the building from the tenant for their own occupation. Though the above averments in the petition would give the impression that the business carried on by petitioners 1 and 2 is their own, while deposing in court, the evidence tendered was that the owner of the business is their father and that it is to shift their father's business, they were seeking eviction.

9. It was considering the above evidence and finding that the bonafide need urged was not that of the petitioners, but was that of the father of petitioners 1 and 2, the Rent Control Court rejected their case for eviction under Section 11(3) of the Act, of the first and second floors of the petition schedule building. However, this building was reversed by the appellate authority stating that since the petitioners were running the business of their father, the need urged by them is a bona fide need as contemplated under Sec.11(3)

of the Act.

10. We are unable to endorse the view taken by the appellate authority. The petitioners in the rent control proceedings were obliged to plead their need and prove that it was a bona fide one. The evidence adduced should be with reference to the case pleaded by them. In so far as this case is concerned, the pleadings in the petition do not contain a case that the bona fide need urged by petitioners 1 and 2 was for shifting the business of their father, which was managed by them. On the other hand, what they pleaded was that they needed the building for shifting their business, and this was projected as their bona fide need. The evidence adduced by them would belie this case. It was in such circumstances, that the Rent Control Court, came to the correct conclusion that the need urged in the court was not that of the petitioners, but that of their father. This

finding of the Rent Control Court, according to us, should not have been disturbed by the appellate authority and for that reason, we are unable to sustain the order passed by the appellate authority allowing R.C.A.No.51/2011 filed by the landlords.

11. In the result, this Revision Petition is disposed of upholding the order passed by the Rent Control Court in R.C.P.No.143/2009 and setting aside the order of the appellate authority in R.C.A.No.51/2011 and confirming the order in R.C.A.No.70/2011.

At this stage, the learned counsel for the tenant sought time for surrendering vacant possession of the ground floor of the building. On this request, we heard the learned counsel for the landlords. Taking note of the submissions made, we direct that the tenant will be given six months' time from today to surrender vacant possession of the

ground floor of the petition schedule building, subject to the tenant filing an affidavit before the Rent Control Court, undertaking to vacate from the premises and surrender vacant possession thereof to the landlords within six months from today and subject to their paying the rent till then without default. The affidavit shall be filed within one month from today.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
ALEXANDER THOMAS,
JUDGE.

jjj/sdk