

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.298 of 2013 (E)

AGAINST THE JUDGMENT IN RCA 97/2011 of RENT CONTROL APPELLATE
AUTHORITY (II ADDL.DISTRICT COURT), ERNAKULAM DATED 04-07-2013

AGAINST THE ORDER IN RCP 108/2010 of III ADDL. MUNSIFF COURT, EKM
(RENT CONTROL) DATED 16-07-2011

REVISION PETITIONER/APPELLANT/RESPONDENT:

P.K.MANICKYAN, AGED 79 YEARS
S/O.LATE KRISHNAN MOOPAN
NEAR KIZHAKKE KOTTAVATHIL RESTAURANT & NEAR SARASWATHI
AGENCIES (POOJA MATERIALS) TRIPUNITHURA-682301.

BY ADVS.SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH
SMT.SMITHA GEORGE
SMT.ASHA BABU
SMT.G.ASHWINI
SMT.AMMU CHARLES

RESPONDENTS/RESPONDENTS/PETITIONERS:

1. RAJALAKSHMI K.A., AGED 46 YEARS
D/O.SUBHADRAMMA, THATHAMPILLIL, NADAMA VILLAGE
TRIPUNITHURA-682301.

2. SIVASANKARAN,, AGED 54 YEARS
S/O.SUBHADRAMMA, THATHAMPILLIL, NADAMA VILLAGE
TRIPUNITHURA-682301.

R1 & R2 BY ADV. SRI.K.V.JAYACHANDRAN
R1 & R2 BY ADV. SRI.RAJU V.MATHEW

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.

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Dated this the 8th day of January, 2015.

O R D E R

Antony Dominic, J.

The petitioner is the tenant of building No.20/265 of Thripunithura Municipality. The 1st respondent landlady sought his eviction by filing R.C.P.No.108/2010 seeing eviction under Sec. 11(3) of the Kerala Buildings (Lease and Rent Control) Act and contending that the 2nd respondent, her unmarried dependant brother, needed the building to start a business of his own. This was contested by the petitioner questioning the bonafide need urged by the landlady. Before the Rent Control Court, the 2nd respondent and the petitioner's son were examined as PW1 and RW1. Exts.A1 to A10 were produced on behalf of the landlady and no documents were produced on behalf of the tenant.

2. The Rent Control Court accepted the bonafide need urged by the respondents and passed order dated 16.7.2011, allowing the petition. The petitioner thereupon filed Rent Control Appeal No.97/2011 before the Rent

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Control Appellate Authority. The Appellate Authority, vide judgment dated 10.10.2012 dismissed the appeal.

3. The tenant thereupon filed R.C.R.No.417/2012. After hearing both sides, this Court disposed of the revision by order dated 22.3.2013. In the revisional order it was held thus:

"20. In the result, we uphold the finding of the Appellate Authority upholding the need projected by the respondents as well as the findings under first and second proviso to section 11(3).

21. However, the order of eviction is set aside and the matter is remitted back to the Rent Control Appellate Authority to render a finding on the question of dependency of the second respondent after affording the respondents an opportunity to amend their pleadings. The revision petitioner shall be given an opportunity to file additional objection statement if such an amendment is made. Both parties shall be given an opportunity to adduce fresh evidence, if they choose.

22. The entire exercise shall be completed by the Rent Control Appellate Authority within a period of three months from the date of appearance of the parties.

The parties shall appear before the Rent Control Appellate Authority on 2nd April 2013.

The RCR is disposed of accordingly."

4. Accordingly, the matter stood remitted back to the Appellate Authority. When the appeal was thus pending before the appellate authority, respondents filed I.A.No.1432/2013 for amending the pleadings in the Rent Control Petition and the same was allowed by order dated

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27.5.2013. Paragraph 5 of the rent control petition as amended by order dated 27.5.2013 reads thus:

5. The 2nd petitioner is the elder brother who is unmarried and residing with the petitioner. The 2nd petitioner is unemployed and is dependant of the 1st petitioner. The 2nd petitioner bonafide require the plaint schedule building for starting own business. The 2nd petitioner needs a room to start a business for that the petition schedule building owned by the 1st petitioner is highly necessary. The petitioners are members of the same family and are living together. Therefore, the 1st petitioner bonafide require the petition schedule building for the use and occupation of the 2nd petitioner who is depending on the 1st petitioner. The said need of the petitioners is bonafide and urgent. There are buildings available in the locality for the respondent to run his business. The respondent is conducting business in other places and is having other businesses and sources of income and the respondent is also not depending on the income from the petition schedule building."

To the amended Rent Control Petition, the petitioner filed his objections. Before the Appellate Authority, the 1st respondent, landlady, was examined. In so far as the issue of dependency, which was directed to be examined is concerned, in the proof affidavit filed by the landlord it is stated thus:

"2-ാം ഹർജിക്കാരൻ എന്റെ സഹോദരനും ടിയാൻ അവിവാഹിതനും തൊഴിൽ രഹിതനും എന്നെ ആശ്രയിച്ച് ഞങ്ങൾ ഒന്നിച്ച് താമസിച്ചുവരുന്നതും ആകുന്നു."

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She was cross-examined in detail. But, however, no question whatsoever has been put to her challenging her assertion of the dependency of the 2nd petitioner on her. In compliance with the direction of this Court, the appellate authority reconsidered the matter and passed judgment dated 4.7.2013, dismissing the appeal. It is aggrieved by these orders, the revision is filed.

5. We heard the senior counsel for the petitioner and learned counsel for the respondents.

6. Referring to the provisions of Sec. 11(3) of the Act and placing reliance on the decision of the Supreme Court in **Koylerian Janaki and others v. Rent Controller (Munsiff), Cannanore and others** [2000 (9) SCC 406], the learned senior counsel contended that the ingredients of Sec. 11(3) are not pleaded or proved in this case. According to the counsel there is no evidence or proof of the claim that the 2nd petitioner (2nd respondent herein) is a member of the family of the 1st respondent. He also contended that the bonafide need of the 2nd petitioner was not proved in this case.

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7. These contentions were refuted by the learned counsel for the respondents herein. According to the learned counsel, after remand by this Court, the only issue that survived for consideration was the question of dependency of the 2nd respondent on the 1st respondent landlady. Therefore, according to him, no other issue was open to be agitated. He therefore contended that since the issue of dependency has been rightly appreciated by the appellate court, the revision deserves only to be dismissed.

8. We have considered the submissions made. It is true that in so far as Sec. 11(3) of the Kerala Building (Lease and Rent Control) Act is concerned, the Apex Court in **Koyilerian Janaki and others v. Rent Controller (Munsiff), Cannanore and others** [2000(9) SCC 406] has held thus:

"2. Thus where eviction of a tenant is sought by a landlord for occupation of any member of his family, the landlord is required to plead and substantiate three ingredients. Firstly, a person for whose need the premises is required is a member of the landlord's family. Secondly, such member of the family is dependant on the landlord and thirdly, there is a bonafide need. In the absence of any one of the three ingredients, the petition by a landlord under Section 11(3) would fail."

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9. Thus, it is evident that in a petition filed urging ground under Sec. 11(3), the three ingredients which are required to be proved are that the person for whose need the premises are required should be a member of landlord's family. Secondly, such member should be a dependant on the landlord and thirdly, the need projected should be a bonafide one. In so far as this case is concerned, a reading of the order passed by this Court in R.C.R.No.417/2012, the relevant portion of which has been extracted shows that this Court upheld the finding of the Appellate Authority in its judgment dated 10.10.2012 on the issue of bonafide need projected by the landlady. This Court also upheld the finding in relation to the first and second proviso to Sec.11 (3) of the Act. This is evident from paragraph 20 of the order in revision.

10. In paragraph 21 of the order, this Court specifically held that "the matter is remitted back to the Rent Control Appellate Authority to render a finding on the question of dependency of the 2nd respondent after affording the respondents an opportunity to amend their pleadings."

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This therefore demonstrate that on remand the scope of the enquiry was only on the issue of dependency of the 2nd respondent on the 1st respondent landlord.

11. On the issue of dependency, in the proof affidavit a specific assertion was made by the landlady that the 2nd respondent is her dependant. We have meticulously gone through the cross-examination of the landlady which shows that the assertion made by her on the dependency issue was not even challenged by the petitioner and not even a single question was put to her. This therefore means that the issue of dependency remained undisputed when the matter was considered by the Appellate Authority.

12. When the matter was remanded to the Appellate Authority leaving open only the question of dependency, rest of the issues are all concluded against the petitioner. Therefore, the petitioner cannot now seek to reopen the issue of proof of need or bonafides of the need or the issue as to whether the 2nd petitioner is a member of the family of the 1st respondent.

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13. The question whether the 2nd respondent is a member of the family of the 1st petitioner is concerned, though not relevant, in our view, is concluded against the petitioner in view of the principles laid down by the Full Bench of this Court in **Thalayodi Raghavan v. Koorantavitta Kelappan and others** [2006 (1) KLT 1], where even the brother-in-law was held to be a member of the family of the landlord.

For all these reasons, we do not find any merit in this revision. The revision is accordingly dismissed.

**ANTONY DOMINIC,
Judge.**

**ALEXANDER THOMAS,
Judge.**

bkn/-