

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

RCRev..No. 300 of 2013 ()

AGAINST THE JUDGMENT IN RCA 39/2010 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM DATED 23-03-2013

AGAINST THE ORDER IN RCP 41/2008 of RENT CONTROL COURT, ERNAKULAM
DATED 15-12-2009

REVISION PETITIONER(S)/REVISION PETITIONER:

S.SAI BABA PRABHU AGED 64 YEARS
S/O.LATE SADANANDA PRABHU, R/A.VIMALA HOUSE, T.D.ROAD
ERNAKULAM, COCHIN-31, MERCHANT
40/4280, JEWS STREET, ERNAKULAM

BY ADVS.SRI.P.A.AZIZ
SRI.I.G.MANOCHARAN
SRI.N.N.PANKAJAKSHAN

RESPONDENT(S)/RESPONDENTS:

V.M.MOHAMMED AFSAL
VALIAVEETIL HOUSE, KOVILVATTOM DESOM
ERNAKULAM VILLAGE, KANAYANUR TALUK, ERNAKULAM DIST

R1 BY ADV. SRI.VARGHESE C.KURIAKOSE (CAVEATOR)
ADV. SRI.NIXON PAUL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
26-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Surendra Mohan & Mary Joseph, JJ.

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R.C.R No.300 of 2013

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Dated this the 26th day of June 2015.

ORDER

The tenant is in revision before us challenging the judgment of the Rent Control Appellate Authority, Ernakulam in R.C.A No.39 of 2010. The appeal was filed by the tenant against the order of the Rent Control Court, Ernakulam in R.C.P No.41 of 2008. The respondent/tenant had filed the Rent Control Petition seeking eviction of the tenant alleging grounds under Sections 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). The landlord is conducting another business in a shop room just behind the tenanted shop room. Therefore, according to the tenant, by demolishing the separating wall of the shop room occupied by him, he could convert the premises into a single, large shop room. The shop room occupied by the landlord does not have frontage of the Jew street. It only has frontage of a private road. By converting the shop room into

a single one, the same would have frontage of the Jew street also. The need of the landlord was resisted by the tenant contending that the landlord had no necessity for additional accommodation. According to the tenant, even if the landlord wanted to expand his business, the same could be done within the shop room already occupied by him. The parties went to trial on the above pleadings. The evidence in the case consists of Exts.A1 to A3 documents and the oral evidence of P.W.1 on the side of the landlord and the oral evidence of R.W.1 on the side of the tenant. The tenant has not adduced any documentary evidence. Ext.C1 commission report was marked as court exhibit.

2. On a consideration of the evidence on record, the Rent Control Court found that the grounds under Sections 11(3) and 11(8) of the Act being mutually exclusive could not be pressed together. Therefore, the ground under Section 11(3) of the Act was disallowed. However, the need of the landlord for additional accommodation under Section 11(8) of the Act was found to be bona fide and an order of eviction was granted. The aggrieved tenant carried the

matter in appeal. R.C.A No.39 of 2010 was considered by the Rent Control Appellate Authority, Ernakulam. On a re-appreciation of the evidence on record, the Appellate Authority confirmed the order of eviction. The tenant is aggrieved by the said proceedings.

3. According to Sri. P.A.Aziz, the learned counsel, who appears for the revision petitioner/tenant, the landlord has not produced any evidence in support of his contention that he is the landlord of the building. According to the learned counsel, though the tenant is paying rent to the respondent herein, the said fact alone is not sufficient to conclusively establish that he is the landlord of the building. It is the contention of the learned counsel that, the said aspect ought to have been proved by other reliable evidence. Secondly, it is contended that the question of comparative hardship under Section 11(10) of the Act has not been considered properly by both the authorities below. The Appellate Authority has placed implicit reliance on the commission report to find that there were other buildings owned by the petitioner's wife, to one of which he could shift the business that is being carried on by him in the

tenanted premises. It is contended by the counsel that, the inspection conducted by the Advocate Commissioner was without notice to him and that, the said buildings are not available for the purpose of shifting his business. The counsel has a further contention that the landlord had lost his rights as landlord in respect of the tenanted premises for the reason that the building has been taken over by the Axis Bank, under Section 13 of the Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act', for short). Therefore, according to the counsel, the order of eviction granted to the respondent/landlord has to be set aside.

4. According to Sri.Varghese C. Kuriakose, who appears for the respondent/landlord, the tenant had no contention in his objections to the Rent Control Petition that the respondent was not the landlord of the building. In the absence of any pleading, it is pointed out that the said contention cannot be put forward at this stage. Relying on the evidence of the tenant as R.W.1, it is submitted by the counsel that, even with respect to the question of comparative hardship, the

tenant does not have a case in the box that the hardship that would be suffered by him would outweigh that of the landlord. On the question of the objection raised with respect to the proceedings under the SARFAESI Act, the counsel points out that there has been no divesting of the title of the landlord by any proceedings till date. Both the revision petitioner as well as the respondent/landlord continue to do their respective businesses from the tenanted premises without any hindrance . The amounts due to the Axis Bank was being paid by the landlord and it is for the said reason that, no further action was pursued by the Axis Bank. At any rate, since no sale of the property has been taken place under the said enactment, title of the respondent/landlord continues without any blemish. Therefore, it is contended that the revision is only to be dismissed.

5. Heard. We have been taken through the objections filed by the tenant to the Rent Control Petition. We notice that no contention questioning the status of the respondent as landlord has been raised therein by the tenant. In his evidence as R.W.1, the tenant has categorically admitted that the respondent is the landlord and that

the rent in respect of the premises is being paid by the tenant, to him. Therefore, in view of the above admissions, we did not find any substance in the contention that the respondent is not the landlord. In the face of the clear admission referred to above, it was not incumbent on the landlord to have produced any document to substantiate his case that he was the landlord.

6. A perusal of the evidence of R.W.1 further shows that when a pointed question was put to the tenant as to whether the comparative hardship of the landlord would not outweigh that of the tenant, his answer was that, he did not know. In other words, he had no case in the box that, his comparative hardships would outweigh that of the landlord. Apart from the above, Ext.C1 commission report shows that his wife owns other buildings in the same town. The Rent Control Court has found that the revision petitioner could shift his business to one of the buildings occupied by her. Though the counsel for the revision petitioner has objected to the said finding contending that such buildings were not suitable for his purpose, we find that there is absolutely no evidence on the above

aspect in these proceedings. Therefore, we do not find any infirmity in the findings of the authorities below on the question of comparative hardship.

7. The last submission urged on behalf of the tenant is that, since the building has been taken over by Axis Bank under the SARFAESI Act, the landlord has forfeited his status as landlord. The said contention has been considered by the Appellate Authority in detail. The tenant has a further contention that, though the documents relating to the proceedings under the SARFAESI Act had been produced before the said authority with a petition to receive the same under Order XL1 Rule 27 of the Code of Civil Procedure, the documents were not received. Since even the tenant has no case that any sale of the property has taken place divesting the landlord of his title, we are not satisfied that the said additional documents would have any bearing on the issue that arises for consideration in this case. Even assuming that the building has been taken over by Axis Bank, the fact remain that both the revision petitioner as well as the respondent are continuing in occupation of their respective premises,

doing their businesses without any hindrance. Therefore, there is no evidence justifying a conclusion that the circumstances obtaining as on the date of filing of the Rent Control Petition has been altered.

8. On an examination of the judgment of the Rent Control Appellate Authority, we find that the said authority has considered the issues in the proper perspective. We find no illegality, irregularity or impropriety justifying an interference therewith in exercise of our revisional jurisdiction.

9. In the result, the Rent Control Revision fails and it is accordingly dismissed.

10. As a last submission, the counsel for the petitioner/tenant sought for the grant of some time to surrender vacant possession of the premises to the landlord. The counsel for the landlord opposed the said prayer. However, having considered the contentions on either side, we are of the opinion that it is necessary to grant time to the tenant to vacate the premises, up to 30.09.2015, but, subject to conditions.

11. The tenant is therefore, granted time up to 30.09.2015 to surrender vacant possession of the premises to the landlord on condition that the tenant files an affidavit undertaking to surrender vacant possession of the building on or before 30.09.2015 to the landlord, within a period of two weeks of the date of receipt of a copy of this judgment and pays the arrears of rent, if any, remaining unpaid and continues to pay the rent in respect of the premises without any delay or default until vacant possession is surrendered in accordance with the above direction.

Sd/-
K. Surendra Mohan, Judge.

Sd/-
Mary Joseph, Judge.

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