

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

RCRev.No. 301 of 2013 ()

AGAINST THE JUDGMENT IN RCA 30/2011 of RENT CONTROL APPELLATE AUTHORITY
(1ST ADDL.DISTRICT JUDGE), KOZHIKODE- DATED 12-07-2013

AGAINST THE ORDER/JUDGMENT IN RCP 13/2007 of ADDL.RENT CONTROL COURT
(IInd ADDL. MUNSIFF COURT), KOZHIKODE DATED 30-11-2010

REVISION PETITIONER(S)/APPELLANT:

P.SUKUMARAN AGED 60 YEARS
S/O.CHOYI, POTTAMMAL HOUSE, KUNNAMANGALAM AMSOM
DESOM AND POST, KOZHIKODE TALUK.

BY ADV. SRI.AVM.SALAHUDEEN

RESPONDENT(S)/RESPONDENT:

ELLAMBILAM MANNIL ASSAN KUTTY, AGED 62 YEARS
S/O.ALI, NISMURA MANZIL, KUNNAMANGALAM AMSOM
KARATHUR DESOM AND POST, KOZHIKODE TALUK.

R BY ADV. SRI.G.UNNIKRISHNAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
03-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.301 of 2013

Dated this the 3rd day of March, 2015

O R D E R

Antony Dominic, J.

- 1.The respondent landlord filed RCP.No.13/07 on the file of the Rent Control Court -II, Kozhikode seeking eviction of the petitioner tenant. By its order dated 30.11.2010, the Rent Control Court allowed the petition as prayed for. The tenant challenged the order before the Rent Control Appellate authority, Kozhikode in RCA.30/11. That appeal was dismissed by judgment dated 12.7.2013. It is aggrieved by these orders, the revision is filed by the tenant.
- 2.We heard learned counsel for the petitioner and the learned counsel appearing for the respondent.
- 3.According to the learned counsel for the petitioner, the finding of the Rent Control Court as confirmed by the appellate authority that the tenant is liable to be evicted on the ground of bonafide need as provided under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 is totally untenable. It is also his case that the tenant was entitled to the

benefit of the provisos to section 11(3). These arguments were contradicted by the learned counsel for the respondent landlord.

4. We have considered the submissions made. The Rent Control Petition was filed by the landlord seeking eviction of the tenant under section 11(3) of the Act which provides that the landlord is entitled to an order of eviction if he bonafide need the tenanted premises for his own occupation or for the occupation of his dependants. In so far as this case is concerned, the pleadings of the landlord were to the effect that he was engaged in hotel business at Coimbatore and that on account of various ailments, he stopped his business there and came back to his native place. It is stated that he wanted to start a sanitary and hardware shop in the petition scheduled building, for which, he required an area of 1800 sq.ft. According to the landlord, the ground floor of the building in question consists of 4 rooms, of which, one has already been got surrendered by a tenant based on Ext.A12 order passed by the Rent control Court. It is also stated that among the

remaining three, the tenants in two rooms have agreed to surrender vacant possession as and when demanded by the landlord. He contended that the largest room in the building is the one occupied by the petitioner where the petitioner is conducting a hotel.

5.The need projected by the respondent was contested by the tenant by pointing out that the bonafide need urged was only a ruse to get him vacated. According to the petitioner, the landlord had in his possession other rooms of the building and that therefore, if at all he wanted to start a business as stated, he can start the same in those rooms. The tenant also contended that he is eligible for the benefit of the second proviso to section 11(3) which provides that a tenant who is depending upon the income from the business as his main source of livelihood and when other suitable rooms are not available in the locality, cannot be evicted from the tenanted premises.

6.The materials before this Court show that the landlord who was examined as PW1 has spoken in his

evidence about the circumstances which persuaded him to wind up his business in Coimbatore. According to him, on such return to his native place, he decided to start a new business and it was therefore that he wanted the tenanted premises vacated.

7. Considering the nature of the evidence available, we cannot say that there is anything to suspect the bonafides of the need projected by the landlord. In so far as the contention of the tenant is concerned, first proviso to section 11(3) provides that if the landlord has any suitable building in his occupation, unless there are special reasons, the tenant cannot be ordered to be vacated. Even according to the landlord, the only room that is available in the ground floor is the one he got vacated pursuant to Ext.A12. As we have already stated, according to the landlord, his requirement will be satisfied only when the entire ground floor is occupied by him. In such circumstances, even if we assume that one room in the ground floor is occupied by the landlord, that cannot attract the first proviso to section 11(3). The other room which is allegedly in the possession of

the landlord is stated to be in the first floor. This, as the courts below have found on examination of the facts, is the ceiling in the first floor which is unsuitable to be used as a commercial space. This, therefore, means that the requirement of the first proviso to section 11(3) are not satisfied in the facts of this case.

8. Turning to the second proviso to section 11(3), reading of this provision shows that a tenant who is depending mainly on the income from the business carried on in the tenanted premises and where suitable rooms are not available in the locality, cannot be ordered to be vacated under section 11(3). It is the settled position of law that the burden is entirely upon the tenant to prove that both limbs of this proviso are satisfied. In so far as the first limb that the tenant should be mainly depending upon the income from the business for his livelihood is concerned, no documentary evidence whatsoever has been produced by the tenant. Similarly, as regards the second limb regarding non-availability of other building in the locality, commission reports Exts.A13

and A13(a) and the evidence of Pws.1 and 2 would show that several rooms are available in the locality. The tenant who was examined as RW1 has confessed that he did not make any enquiry about the availability of rooms. He has also not taken out any commission from the court to prove this limb of second proviso. In fact, he has also admitted in evidence the presence of a new building that has come up in the neighbourhood. This also shows that the second limb of the second proviso to section 11(3) is not satisfied in this case.

9.Sum and substance of the above is that the landlord has established a case under section 11(3) and it was therefore that the lower courts have granted an order for eviction. We do not find any reason to interfere with those findings.

10.At this stage, learned counsel for the petitioner sought for a reasonable time to surrender vacant possession of the tenanted premises to the landlord. We heard the counsel for the landlord also in this regard. Admittedly, the tenant is conducting a hotel

in the tenanted premises. He, therefore, will have to be given a reasonable time to search out a new premises and shift his establishment. In order to enable him to do so, we deem it appropriate to give him 12 months' time from today to surrender vacant possession of the building to the landlord. However, this shall be subject to the condition that within 4 weeks from today, the tenant shall file an affidavit before the Rent Control Court, unconditionally undertaking to surrender vacant possession of the tenanted premises to the landlord on or before the expiry of the 12 months allowed to him. He shall also undertake to pay the rent till then without default. Needless to say that in the event any default is committed in complying with the aforesaid directions, the landlord will be free to seek eviction in accordance with law. Revision is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

kkb.

/True copy/

PS to Judge