

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

RCRev..No.328 of 2013 (E)

AGAINST THE JUDGMENT IN RCA 23/2012 of ADDL.RENT CONTROL APPELLATE
AUTHORITY-II, THIRUVANANTHAPURAM DATED 05-08-2013

AGAINST THE JUDGMENT IN RCP 21/2009 of RENT CONTROL COURT,
THIRUVANANTHAPURAM (ADDL.MUNSIFF) DATED 28.3.2012.

REVISION PETITIONER/APPELLANT/RESPONDENT:

V. AMUDINI, AGED 53,
D/O.VASUMATHI, KALPAKASSERY VEEDU
NOW RESIDING AT T.C.30/810, PUTHEN ROAD, PETTAH P.O
THIRUVANANTHAPURAM.

BY ADVS.SRI.S.V.RAJAN
SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH
SRI.R.SANTHOSH (VARKALA)
SMT.S.UMA

RESPONDENT/RESPONDENT/PETITIONER:

B. LEELA, D/O.BHANUMATHY
D/O.BHANUMATHY, BHANU COTTAGE, PUTHEN ROAD
PETTAH.P.O, PETTAH VILLAGE, THIRUVANANTHAPURAM-695035.

BY ADV. SRI.D.AJITHKUMAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 07-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.328 Of 2013

Dated this the 7th day of January, 2015.

ORDER

Antony Dominic, J.

This revision petition under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') is filed by the tenant in R.C.P.No.21/2009 on the file of the Rent Control Court, Thiruvananthapuram. The said R.C.P was filed by the respondent herein, landlady, seeking eviction of the petitioner from building Nos.T.C.30/810 and T.C.30/812. The grounds urged in the petition were under Secs. 11(2)(b), 11(3) and 11(4)(ii) of the Act. The Rent Control Court vide order dated 20.3.2012 allowed the petition as prayed for. The tenant challenged the said order in R.C.A.No.23/2012 before the appellate authority and also cleared the arrears of rent in the meanwhile. The appellate authority reversed the findings under Sec. 11(4)(ii) and sustained the finding under Sec. 11(3). It is in these circumstances, the tenant has filed this revision.

2. We heard the counsel for the petitioner and also the learned counsel appearing for the respondent-landlady.

3. The first contention raised by the counsel for the petitioner is that building Nos.T.C.30/810 and T.C.30/812 were given to the tenant by virtue of two rent deeds executed on

R.C.R.No.328 Of 2013

1.2.2008. It was pointed out that in the petition filed by the landlady, in so far as the bonafide need under Sec. 11(3) of the Act is concerned, it was pleaded that the building in T.C.30/810 was required for the residence of her dependant son and that the building in T.C.30/812 was required for her widowed dependant daughter, who wanted to open up a shop in the said building.

4. According to the counsel for the petitioner, the causes of action in relation to the two different buildings being distinct and different, a single petition could not have been filed and that therefore, the rent control petition was defective for misjoinder for causes of action. In support of this contention, counsel drew our attention to the principles laid down by a Division Bench of this Court in **Annie George v. Jamal** (2003 (2) KLT 530) and the Full Bench decision of this Court in **Jamal v. Safia Beevi** [2005 (2) KLT 359 (FB)].

5. In so far as the contention urged by the learned counsel for the petitioner is concerned, it is true that *Annie George's* case (supra) dealt with a petition filed under Sec. 11(3) of the Act. In that case, the Division Bench of this Court held that a single petition for eviction of two tenants for two different causes of action is not maintainable. Similarly, in *Jamal's* case

R.C.R.No.328 Of 2013

(supra), after discussing the various principles, Full Bench of this Court summarised the legal position thus:

"(i) Landlord can unite several causes of action against single tenant if he is occupying the same building in the event of which there will not be misjoinder of causes of actions and misjoinder of parties since tenant is single tenant occupying the same structure.

(ii) Landlord can prefer an application under S.11 (4)(iv) against various tenants who are occupying distinct portions of the same structure since the tenants are jointly interested in the causes of action and the defence available to all the tenants would be by and large common and hence there will not be any misjoinder of causes of actions or misjoinder of parties.

(iii) Landlord cannot unite different causes action in a single petition filed against various tenants whether they are in occupation of same building or different building. Such a petition would be bad for misjoinder of causes of actions and misjoinder of parties.

(iv) Objection as to the misjoinder of causes of actions and misjoinder of parties should be taken at the earliest opportunity; failing which Court would not interfere unless it is shown that serious prejudice has been caused to the parties.

(v) Rent Control Court can consolidate the applications for eviction if there are similarity or identity of the matters in issue in the petitions which is to be left to the discretion of the Rent Control Court, depending upon the facts and circumstances of each case."

6. In so far as this case is concerned, though it is true that there are two rent deeds executed on 1.2.2008, the tenant is one single person and buildings occupied also form part of the same structure. Such a case would fall within principle No.(i) laid

R.C.R.No.328 Of 2013

down by the Full Bench. Secondly, the objection on the ground of misjoinder of causes of action was not taken by the tenant in the Rent Control Court or the Appellate Authority. If that be so, in view of principle No.(iv), it is not open to the tenant to raise that ground at this revisional stage. For both these reasons, we are unable to accept this contention raised before us.

7. It was then contended by the counsel for the petitioner that under Sec. 11(3) of the Act, the entitlement of the landlord is to make an application for an order directing the tenant to put the landlord in possession of the building if he bonafide needs the building for his own occupation or for the occupation by any member of his family depending on him. Counsel contended that the dependency contemplated under Sec. 11(3) is not merely on the landlord, but should be for the building. This according to the counsel should be pleaded in the petition and proved by the landlord. It was argued that there was no such pleading and that therefore this ground should not have been allowed. In this context, learned counsel invited our attention to the principles laid down by the Division Bench in **Ismail v. Kesavan** (2004 (2) KLT 56).

R.C.R.No.328 Of 2013

8. We have considered the submissions made. A plain reading of Sec. 11(3) of the Act shows that the entitlement of the landlord to seek eviction of the tenant is not only for his own occupation, but also for the occupation of any member of his family dependant on him. Though dependency on the landlord is what is contemplated expressly by the words in the Section, interpreting the section, it has been held that dependency does not mean financial dependency but dependency for the building which belongs to the landlord.

9. In so far as the requirement of pleading is concerned, interpreting Sec. 11(3) of the Act, in the judgment in **Koylerian Janaki and others v. Rent Controller (Munsiff), Cannanore and others** [2000 (9) SCC 406], the Apex Court held that where eviction of a tenant is sought by a landlord for any member of his family, the landlord is required to plead and substantiate three ingredients of the section. The first ingredient to be pleaded and substantiated is that the person for whose need the premises is required, is a member of the landlord's family. The second ingredient is that such member of the family is dependant on the landlord and the third ingredient is that there should be bonafide need.

R.C.R.No.328 Of 2013

10. Therefore, while evaluating the pleadings of the landlord what is to be seen is whether the aforesaid three ingredients of Sec. 11(3) are pleaded or not. In this context, Paragraphs 6 & 7 of the Rent Control Petition, being relevant, are extracted below for reference.

"6. The petitioner's elder daughter Premalatha who is a widow and who is a dependant on the petitioner bonafide in need for own use for conducting a fancy store business in the building bearing T.C.No.30/812 for maintaining herself and her child and the petitioner has no other vacant building to give fro (sic) conducting fancy store business except T.C.30/812.

7. The petitioner's younger son Prasannakumar who is a dependant on my client has to building for the residence of himself and his family on my client is bonafide is need of his own occupation for the building T.C.30/810 for the residence other vacant building for giving him for his residence except T.C.30/810. Thus the building need for conducting a Fancy store business for the elder daughter of the petitioner who is a dependant on her and the building bearing T.C.30/810 is in urgent bonafide need for the residence for the petitioner's younger son Prasannakumar who is also a dependant on her. Hence the counter petitioner is liable to be evicted from the buildings T.C.30/810 and T.C.30/812 under Section 11(3) of the B.R.C. Act."

In our view a reading of the averments in these paragraphs in the petition discloses that it satisfies the three ingredients of Sec. 11(3) of the Act. Therefore, there is no merit in the contention that dependency for the building has not been pleaded by the landlord.

R.C.R.No.328 Of 2013

11. The counsel then contended that the Rent Control Court did not give the tenant the benefit of second proviso of Sec. 11(3) of the Act. Second proviso to Sec. 11(3) of the Act being one beneficial to the tenant, it is the duty of the tenant to plead and prove the requirements of the proviso. Admittedly, there is neither any pleading nor any evidence to substantiate this claim. Similar is the case with the first proviso to Sec. 11(3) of the Act also. Therefore, the order cannot be invalidated on this ground as well.

12. For these reasons, we are unable to interfere with the order passed by the Rent Control Court and confirmed by the Appellate authority and the revision is only to be rejected and we do so.

13. At this stage, counsel for the revision petitioner told us that the business carried on in building No.TC.30/812 is already sealed by the Trivandrum Corporation and hence closed and that the tenant should be given reasonable time to vacate from the building No.TC.30/810 which is used for residential purposes. When this submission was made, counsel for the respondent complained that the tenant is already in arrears of rent and that in spite of the direction by this Court for clearing

R.C.R.No.328 Of 2013

the same, arrears have not been paid. Taking note of the submissions made and having regard to the fact that building No.TC.30/810 is used for the residential purposes of the tenant, we are inclined to give her reasonable time for surrendering vacant possession to the landlord. In such circumstances, we pass the following order.

1. Tenant will be given six months time from today to surrender vacant possession of the building No.TC.30/810.

2. This shall be subject to the condition that the tenant shall surrender vacant possession of building No.TC.30/812 within 30 days from today. The tenant shall also pay the entire arrears of rent remaining unpaid and shall continue to pay the rent till building No.TC.30/810 is surrendered.

3. It is also directed that within two weeks from today, the tenant shall file an affidavit before the Rent Control Court undertaking unconditionally to surrender vacant possession of building No.TC.30/810 on the expiry of six months allowed by this Court.

Subject to the above, the rent control revision is dismissed.

**ANTONY DOMINIC,
Judge.**

**ALEXANDER THOMAS,
Judge.**

bkn/-