

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

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

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

RCRev..No. 337 of 2013 ()

JUDGMENT IN RCA 86/2012 of RENT CONTROL APPELLATE
AUTHORITY/ADDL.DISTRICT COURT. KOZHIKODE-III DATED 27.6.2013

ORDER/JUDGMENT IN RCP 119/2010 of ADDL.RENT CONTROL COURT/ADDL. MUNSIFF
COURT II.,KOZHIKODE- DATED 7.2.2012

REVISION PETITIONER(S)APPELLANT/RESPONDENT:

K.P.ABDUL SALEEM
S/O.K.P.SAID MOIDEEN, MAMMAYAM THOMMA NILAM PARAMBIL
NAGARAM AMSOM AND DESOM, KOZHIKODE TALUK.

BY ADVS.SRI.KRISHNA PRASAD. S
SRI.K.A.VINOD ANTONY

RESPONDENT(S)RESPONDENTS/PETITIONERS:

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1. ALI, AGED 61 YEARS
S/O.CHEMBAM KUNHI KHADAR HAJI, CHEMBAN HOUSE, KOOMANNA
OLAKKARA AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.
 2. MUHAMMED, AGED 63 YEARS
S/O.CHEMBAM KUNHI KHADAR HAJI, CHEMBAN HOUSE, KOOMANNA
OLAKKARA AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.
 3. ABOOBACKER, AGED 56 YEARS
S/O.CHEMBAM KUNHI KHADAR HAJI, CHEMBAN HOUSE, KOOMANNA
OLAKKARA AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.
 4. USMAN, AGED 53 YEARS
S/O.CHEMBAM KUNHI KHADAR HAJI, CHEMBAN HOUSE, KOOMANNA
OLAKKARA AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.

R1 BY ADV. SRI.K.M.FIROZ ,CAVEATOR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.337 of 2013

Dated this the 6th day of February, 2015

O R D E R

Antony Dominic, J.

1.The respondents, landlords, filed RCP.119/10 before the Rent Control Court, Kozhikode seeking eviction of the petitioner, tenant, from the scheduled premises under sections 11(2)(b), 11(3) and 11(4) (iii) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter, the 'Act', for short. By its order dated 7.2.2012, the Rent Control Court allowed the petition. The tenant challenged the order by filing RCA.86/12 before the Rent Control Appellate Authority, Kozhikode. By judgment dated 27.6.2013, the appeal was dismissed. It is aggrieved by these orders, this revision is filed by the tenant.

2.Heard the learned counsel for the petitioner tenant and the learned counsel for the respondents who are the landlords.

3.Before us, the arguments were confined to the grounds under sections 11(3) and 11(4)(iii) of the Act and

therefore, we are not going into the findings under section 11(2)(b) of the Act.

4. In the RCP, respondents pleaded that they bonafide needed the petition scheduled premises for the occupation of the third respondent herein, who is one of the co-owners. It was also their case that the tenant has in his possession another building, acquired subsequently, where he is carrying on the business and therefore, section 11(4)(iii) of the Act is also attracted.

5. According to the tenant, he was conducting business in Glass and Plywood in a building by name ATB Complex and that the petition scheduled room was being used as godown for storing glass and plywood and also for other purposes. It was his case that there was no bonafides in the need projected by the landlords and he also contended that the alleged need was projected by them only to get him evicted from the room in question and to rent it out to others for higher rent. It was also contended by him that the landlords have several other buildings in their

possession and particularly one room in the ground floor of the building in question. It was also his contention that the third respondent had other businesses, including in dry fish and that therefore, there was no need for him to start a business as contended. Pointing out these facts, the tenant contended that there was no bonafides in seeking his eviction under section 11(3) of the Act.

6. In so far as section 11(4)(iii) of the Act urged by the landlords is concerned, the case of the tenant was that the other building said to have been acquired by him is the showroom from where he is conducting his business in glass and plywood. It was his contention that due to dearth of space, he could not store his merchandise in the showroom and that he needed additional space not only for storing but also for other purposes, including for cutting and shaping of glass. Therefore, he contended that the fact that there is another room in his possession did not disentitle him from continuing occupation of the premises in question. These contentions were rejected by both the Rent Control Court and the

appellate authority and it is therefore that the tenant is before us.

7.Learned counsel for the petitioner reiterated the contentions before us and these contentions were refuted by the counsel for the respondents.

8.In so far as section 11(3) urged by the landlords is concerned, as we have already stated, the need projected by the landlords was that they needed vacant possession of the room in question as according to them, the third respondent herein had decided to start a business in hardware, electrical and plumbing materials in the said room. On their behalf, PW1 and PW2, who was the third respondent himself, were examined. Before the appellate authority, they reiterated their need for the rooms in question and despite detailed cross examination, nothing could be elicited from these witnesses to doubt the veracity of the need canvassed. Although the tenant contended that the third respondent herein had other businesses, nothing was brought on record to substantiate this contention.

9. In so far as the case of the petitioner that one room in the ground floor of the building was in the occupation of the landlords is concerned, findings of the courts below show that according to the landlords, this room was in the occupation of one Shibu Chandran who was examined as PW3. The rent deed executed on 26.3.2000 in his favour was also produced as Ext.A9. The room in question was inspected by the Advocate Commissioner whose report also indicated the occupation by a tenant. It was in the light of these evidence that the courts below did not accept the case pleaded by the petitioner that the said room was in the possession of the landlords. The other two rooms pointed out by the petitioner are in the first floor of the building. According to the landlords, these rooms were also let out and lease deed executed by them with respect to these rooms was also produced and marked as Ext.A10. This room was also inspected by the Advocate Commissioner who found it to be well furnished and to be used as an office. The board of a commercial establishment was also available there. It was in the aforesaid circumstances that this contention was declined to be

accepted.

10. In the light of the above evidence, we can only uphold the findings of the Rent Control Court which was confirmed by the appellate authority in so far as section 11(3) of the Act is concerned.

11. It is true that the tenant claimed the benefit of the provisos to section 11(3). In so far as the first proviso which provides that the Rent Control Court shall not order eviction of the tenant if the landlord is in possession of other rooms except in a case where special reasons are made is concerned, this contention was opposed by the tenant with reference to the aforesaid three rooms which were allegedly in the possession of the landlords. This question was examined by the courts below while answering the contention with reference to section 11(3). Therefore, in the light of the above findings, the tenant could not have sustained this claim.

12. The second proviso to section 11(3) dis-entitles the landlord from the order of eviction in a case where a

tenant proves before the court that he is mainly depending upon the income from the business carried on in the building in question for his livelihood and that there are no other suitable rooms available in the locality. In so far as this issue is concerned, the source of income should be from the business carried on in the tenanted premises. Even according to the case pleaded by the tenant, the scheduled rooms were used as a godown and his business establishment is the one in ATB Complex. In such circumstances, the tenant could not have been earning any income from the godown but his income must have been only from the business establishment. Even apart from that, no evidence whatsoever was produced by the tenant that he was earning any income from the premises in question. He did not adduce any evidence on the non-availability of any suitable building in the locality. This, therefore, means that the second proviso also could not have come to the rescue of the tenant.

13. Now what remains is the finding of the Rent Control Court under section 11(4)(iii) of the Act. This

section provides that if the tenant already has in his possession a building or subsequently acquired possession of or puts up a building, reasonably sufficient for his requirement in the same city, town or village, the landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building. It is the admitted case of the tenant that he has subsequently acquired possession of the building in ATB Complex which is being used by him as a showroom for his glass and plywood business. In such a situation, the only escape route available to the tenant was that he should have proved that the room in question was unsuitable for his business purposes. In so far as this aspect of the matter is concerned, as rightly noticed by the Rent Control Court, this is a matter of evidence and the tenant did not take any endeavour to show the unsuitability of the building assessed by the Advocate Commissioner. In such circumstances, this finding of the Rent Control Court also has to be upheld.

14. Counsel for the petitioner made complaint that the petitioner had filed IA.313/13 before the appellate

authority for appointment of a fresh Advocate Commission for reporting certain matters and that the appellate authority had dismissed the same. We note that most of the issues were already covered by the Advocate Commissioner deputed from the trial court. In such circumstances, in the absence of any special reasons, the tenant could not have brought in additional evidence at the trial stage. We cannot find fault with the view taken by the appellate authority for declining this request of the tenant.

15. For all the aforesaid reasons, we do not find any ground to interfere with the findings of the Rent Control Court as confirmed by the appellate authority.

16. At this stage, learned counsel for the petitioner sought for a reasonable time to surrender vacant possession of the building in question. On this request, we heard the learned counsel for the respondents also. Taking note of this request and considering the fact that the room in question is being used as a godown for his business establishment

and as the petitioner has to search out a new premises and shift the godown, we allow the tenant 9 months' time from today to surrender vacant possession of the schedule premises to the landlords. However, this shall be subject to the condition that within one month from today, the tenant should file an affidavit before the Rent Control Court with an unconditional undertaking to surrender vacant possession of the buildings to the landlord on or before the expiry of the nine months' period allowed to him and also on his continuing to pay the rent during the said period, without default.

Revision is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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