

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

RCRev..No. 338 of 2013 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 32/2008 of RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 18-07-2013**

**AGAINST THE ORDER/JUDGMENT IN RCP 74/2006 of RENT CONTROL
COURT, THRISSUR DATED 26-02-2008**

REVISION PETITIONER(S)/REVISION PETITIONER/ RESPONDENT/ PETITIONER:

**K.K.SADANANDAN,
S/O KOCHUPARAMBATH KRISHNANKUTTY, PERINJANAM VILLAGE
DESOM, KODUNGALLOOR TALUK
REPRESENTED BY THE POWER OF ATTORNEY HOLDER VIJAYAN.B
S/O BALAKRISHNA PANICKER, ARI SREE WHOOL ROAD, B/5
ANARK APARTMENTS, THRISSUR CORPORATION**

**BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SMT.M.M.DEEPA
SRI.UNNI SEBASTIAN KAPPEN**

RESPONDENT(S)/APPELLANT/ RESPONDENT:

**M/S.DELITE SWEET PARLOUR,
PATHANS BUILDING, THRISSUR
REPRESENTED BY THE MANAGING PARTNER, K.C LALITHA
W/O THOTTATHIL MOHANAN, CHEMBUKKAVU VILLAGE
THRISSUR 680684**

**R. BY ADV. SRI.SHYAM PADMAN
R. BY ADV. SRI.A.RANJITH NARAYANAN
R. BY ADV. SRI.S.K.SAJU
R. BY ADV. SMT.A.SIMI
R. BY ADV. SRI.C.V.JOSEPH**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
16-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

kkj

**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R. No.338 of 2013

Dated this the 16th day of June, 2015

O R D E R

Surendra Mohan, J.

This is a landlord's revision against the dismissal of the Rent Control Petition by the Appellate Authority. The landlord had approached the Rent Control Court with RCP No.74 of 2006 alleging that the tenant was using the building in such a manner as to destroy or reduce its value or utility materially and permanently. The Rent Control Court found in favour of the landlord. The tenant carried the matter in appeal to the Rent Control Appellate Authority, Thrissur as RCA No.32 of 2008. On a re-appreciation of the evidence, the Rent Control Appellate Authority has found in favour of the tenant and has allowed the appeal. The landlord is before us in revision challenging the judgment of the Appellate Authority.

2. The petitioner landlord had purchased the

tenanted premises, which is part of a shopping complex by name Pathans Building Complex at Thrissur. The tenanted premises consists of two rooms as well as a basement portion. The tenant is conducting a bakery from the tenanted premises. A fire occurred in the premises on 28.02.2006. It is stated that, the fire had occurred when the petrol tank of a generator set burst due to sparking. An employee of the tenant was killed in the incident. Exhibit A3 is the First Information Report while Exhibit A4 is the report of the Fire Force. The case of the landlord is that, the fire was caused by the unauthorised use of the basement portion by the tenant as a kitchen. The landlord has a case that, the generator was also installed in the premises, unauthorisedly. The tenant disputed the contentions of the landlord and contested the Rent Control Petition.

3. The evidence in the case consists of Exhibits A1 to A5 documents and the oral testimonies of PWs 1 and 2 on the side of the landlady and the oral testimony of the tenant

as RW1. The Rent Control Court on an appreciation of the evidence in the case found that, the First Information Statement given by the son of the tenant who was in charge of the bakery had stated that, the fire occurred in the basement portion. Immediately, the person who was in charge of the generator had rushed to the kitchen, but he was suffocated by the smoke that had filled the kitchen. The fire had spread to the remaining portion of the building as well as the roof. The total damage caused has been assessed at an ₹2,05,000/-. According to the Rent Control Court, the tenant was using the basement portion as his kitchen. Particular reliance was placed on the description of the room as kitchen by the son of the tenant. The Rent Control Court also found that the fire was the result of negligent use of the building by the employee of the tenant. Reliance was placed on the fact that, the generator had been installed unauthorisedly. Therefore, the landlord was held entitled to an order of eviction under Section 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965

(hereinafter referred to as 'the Act' for short). According to the Appellate Authority on the other hand, the fire that was caused was an accident, the responsibility for which could not be attributed to anyone. The landlady according to the Appellate Authority was trying to take advantage of an unfortunate accident that had occurred. The Appellate Authority found that, there was no evidence of damage being caused by the fire to the building in question. Accordingly, it is held that, the ground under Section 11(4) (ii) of the Act had not been made out.

4. According to the counsel for the petitioner, Exhibit A3 First Information Report and the First Information Statement given by the son of the tenant repeatedly referred to the kitchen that forms part of the bakery. Therefore, it is contended that, the tenant was using that particular room as a kitchen, unauthorisedly. The fire had occurred due to the negligence of the employee of the tenant who according to the counsel was pouring petrol into the tank of a running generator. The fire

therefore was caused not by an accident, but due to the negligence of the employee. The above fact taken together with the fact that the tenant was unauthorisedly using the basement room as a kitchen satisfy the requirement of Section 11(4)(ii) of the Act. The conduct of the tenant amounted to the use of the building in a manner so as to destroy or reduce its utility.

5. We have heard the counsel at length. We have also been taken through the documents on which reliance has been placed. To a pointed question from the Court as to whether Exhibit A1 rent deed contain any restrictive clause prohibiting use of the tenanted premises or a portion thereof as a kitchen, the counsel fairly admit that there is no such clause. Therefore, it has to be held that, there was no prohibition against using a portion of the premises as kitchen. It is true that, in the First Information Statement one of the rooms in the tenanted premises has been referred to as a kitchen by the son of the tenant. It is also possible that the room was being used as a kitchen.

However, the fact remains that there is no evidence in the present case of any damage caused to the building of the landlord by such use. It is necessary to satisfy the ground under Section 11(4)(ii) that the tenant should use the building in such a manner as to destroy or reduce its value materially and permanently. The Appellate Authority has taken note of the fact that, the petitioner had not taken out a Commission to note and report the damage that was caused by the fire. Therefore, it is not possible to ascertain whether any damage has been caused to the building by reason of the fire. If damage has been caused, it would have to be ascertained whether the same has reduced the value or utility of the building materially and permanently. Apart from the above, it would also have to be established that such reduction in utility or value is attributable to use of the building by the tenant. We notice that, neither the Rent Control Court nor the Appellate Authority has considered the issue in the above perspective. In the nature of the peculiar facts and circumstances of the said case, we

are of the view that, it is necessary to permit the petitioner to seek the appointment of a Commissioner to conduct an inspection of the building to ascertain whether any damage satisfying the ingredients of Section 11(4)(ii) has been caused by the fire. For the purpose, it is necessary that the matter is remanded to the Rent Control Court, Thrissur. The petitioner shall be at liberty to adduce such further evidence as may be necessary in support of the tenant's contention that he is entitled to an order of eviction under Section 11(4)(ii) of the Act, including the appointment of an Advocate Commissioner to make a local inspection. The tenant shall also be at liberty to adduce further evidence to rebut any such additional evidence that may be let in. In the result it is ordered as follows:-

1. This Rent Control Revision is allowed.
2. The order of the Rent Control Appellate Authority, Thrissur in Rent Control Appeal No.32 of 2008 is set aside.
3. The Rent Control Court is directed to take up RCP

No.74 of 2006 afresh, permit both the parties to let in additional evidence including evidence by way of a local inspection by appointing an Advocate Commissioner, to consider the matter afresh and to finally dispose of the Rent Control Petition on the merits.

4. The Rent Control Court, Thrissur shall make an endeavour to finally dispose of the RCP, as expeditiously as possible and at any rate within a period of six months of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE