

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

RCRev..No. 366 of 2013 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 84/2010 of II ADDL.DISTRICT COURT &
RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM DATED 16-07-2013**

**AGAINST THE ORDER/JUDGMENT IN RCP 111/2008 of III ADDL. MUNSIFF & RENT
CONTROL COURT, ERNAKULAM DATED 14-07-2010**

REVISION PETITIONER(S)/RESPONDENT/RESPONDENT:

**MAREENA ALIAS SANTHA AGED 63 YEARS
W/O.LATE T.C.DAVID, C.C.NO.39/1310
NEAR SOUTH OVER BRIDGE, NORTH WESTERN SIDE
KOCHI-682016.**

**BY ADVS.SRI.SHAJI P.CHALY
SRI.R.SANJITH**

RESPONDENT(S)/APPELLANTS/PETITIONERS:

**1. ELIZABETH, AGED 52 YEARS
W/O.JOHN T.G., THATHUTHARA, VADUTHALA
KOCHI-682023.**

**2. MITHUN GEORGE.T.J., AGED 29 YEARS
S/O.JOHN T.G., THATHUTHARA, VADUTHALA
KOCHI-682023.**

BY ADV. SRI.B.RAMACHANDRAN

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 09-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 366 of 2013
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Dated this the 9th day of March, 2015

O R D E R

Antony Dominic, J.

Respondents, mother and son, filed RCP No.111/08 before the Rent Control Court, Ernakulam seeking eviction of the petitioner/tenant. In the petition, she pressed into service the ground under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act for short). That petition was dismissed by the Trial Court. By the judgment dated 11/7/12, the RCA was allowed. The tenant filed RCR No.416/12, in which this Court set aside the order passed by the appellate authority and remanded the case back to the appellate authority with a direction to allow the respondents to amend the pleadings. Accordingly, the landlady/1st respondent filed IA No.2292/13 for amendment which was not opposed by the tenant and was allowed by order dated 30/5/13. By this amendment, the landlady sought to incorporate necessary pleadings supporting special reasons as contemplated under the first proviso to Section 11(3) of the Act. It appears that though the order dated 30/5/13 required the landlady

to carry out the amendment within three days, that was not done. To the amended RCP, the tenant filed her objections on 11/6/13. Subsequently, on 24/6/13, the first respondent was examined before the appellate authority as PW2. Thereafter, the case was heard on 29/6/13 and finally judgment was rendered on 16th of July, 2013. It is challenging this judgment of the appellate authority, the tenant has filed this revision.

2. We heard the learned counsel for the petitioner and the learned counsel appearing for the respondents/landlady.

3. The first contention raised by the learned counsel for the petitioner is that the amendment pursuant to the order in IA No.2292/13 was carried out by the tenants only on 16/7/13. According to the counsel, since the judgment was rendered on that day itself, tenant did not get an opportunity to file her objections to the amended RCP. In so far as this contention raised by the learned counsel for the tenant is concerned, a perusal of the orders on IA No.2292/13 show that, on 30/5/13, stating that the respondents have no objection, the IA was allowed and the landlady was directed to carry out the amendment in the rent control petition within three days. It is thereafter that the tenant

filed her objection on 11/6/13 and the objection itself shows that the objection filed is to the amended RCP (though it is wrongly stated in the first sentence that the amendment is to the RCA). Verification of the records show that the landlady erroneously carried out the amendment in the appeal memorandum although the amendment allowed was in the rent control petition itself. Subsequently, finding out the mistake, amendment carried out in the rent control appeal was struck off and corresponding amendment was carried out in the rent control petition itself. Such amendment carried out in the rent control petition was on 11/7/13 and thereafter a copy of the amended rent control petition is concededly handed over to the learned counsel for the tenant on 16/7/13.

4. The contention now raised is that since the judgment was also delivered on 16/7/13, the tenant did not have an opportunity to file her objection to the amended rent control petition. In our view, this contention cannot be accepted for the reason that the objection filed by the tenant on 11/6/13 itself show that the said objection is to the amended rent control petition. Therefore, the plea that the tenant did not have an

opportunity to file any objection is factually incorrect and is only to be rejected.

5. In so far as the petition filed by the landlady is concerned, we have already stated that the ground urged is under Section 11(3) of the Act which provided that if the landlady *bona fide* needs vacant possession of the building for the *bona fide* occupation of himself or his dependents, he can seek eviction of the tenants.

6. In so far as this case is concerned, the 1st respondent is the landlady and the second respondent is her dependent son. The case of the landlady is that she wanted vacant possession of the building for the occupation of her dependent son, the 2nd respondent herein. The 2nd respondent was examined as PW1. The pleadings and the evidence adduced by the 2nd respondent show that he is a diploma holder in electronics and he wanted to start business of computer spare parts and also a service centre. Though PW1 was cross examined in detail, nothing has been brought out to doubt the veracity of his testimony. Therefore, the *bona fides* of his decision to start business in the building owned by his mother cannot be doubted.

7. Pleadings show that the tenant had claimed the benefit of both provisos to Section 11(3). The first proviso to section 11 (3) of the Act provides that if the landlord has another building in his occupation, Rent Control Court shall not pass an order of eviction unless there are special reasons justifying the same. The case of the tenant was that there is a building on the first floor, from where the tenant was got evicted during the pendency of the rent control proceedings and that instead of occupying the same, that was let out by the landlady.

8. First of all, the proviso can apply only if the landlord is in vacant possession of the building. In this case, even according to the tenant, the building has been given on rent to somebody else. Secondly, evidence adduced by the landlady, who was also examined at the appellate stage as PW2, would show that the said building is in the first floor without any road frontage and therefore, was not suitable for the business in question. Therefore, according to the landlady, the building in question is not a suitable one for the need of her dependent son. Reading of the appellate order shows that considering the nature of the business that her dependent son has decided to start, the

appellate court was satisfied with the case canvassed by the landlady that the building was not suitable for the need of her dependent son. Having considered this finding in the light of the submissions made and also the evidence adduced, we do not find any reason to disagree with the view taken by the appellate authority. In our view, the unsuitability of the building is certainly a special reason as contemplated under Section 11(3) of the Act.

9. The tenant also claimed the benefit of the second proviso. The second proviso to Section 11(3) states that if the tenant is depending mainly on the income from the business carried on as her source of livelihood, she cannot be evicted from the tenanted premises unless there are suitable buildings available in the locality for the tenant to carry on her trade or business. It is settled legal position that the burden of proving both the limbs of the proviso viz., that the income from the building is the main source of livelihood and that there are no other suitable building available in the locality are entirely on the tenant.

10. A reading of the order passed by the appellate authority shows that, on evidence, the appellate authority was

satisfied that the first limb was satisfied by the tenant. However, in so far as the second limb is concerned, cross examination of the tenant discloses that she did not make any enquiry about the availability of the building in the locality. When she was cross examined with specific reference to the vacant buildings, she pleaded ignorance. This therefore shows that the tenant did not succeed in proving the second limb of the proviso.

11. It is true that the learned counsel for the petitioner relied on the judgment of this Court in ***Sadanandan v. Kunheen*** (1991 (2) KLT 628) to contend that when a tenant has asserted non availability of the building, it is for the landlords to prove the availability of the building. Though we do not doubt the correctness of this principle, according to us, assertion of the tenant must be based on facts and not otherwise. In so far as this case is concerned, evidence of the tenant shows that the said assertion regarding the non availability was made by her without making any enquiry about the availability of the building. When she was asked about the specific building, she also pleaded ignorance. Therefore, this judgment relied on by the counsel does

not in any manner help the tenant to take advantage of the second proviso.

12. We, therefore, do not find any error in the view taken by the appellate authority.

13. RCR is dismissed.

At this stage, learned counsel for the petitioner told us that the tenant is conducting a tailoring business in the room in question, which in fact was started by her deceased husband. According to the counsel, in order to search out a new premises and to shift from the tenanted premises, she should be given at least a year's time. On this request, we heard the learned counsel for the petitioner. Though according to him, the time asked for is too long and should not be given, we are inclined to think that having regard to the fact that the tenant has to search out a new premises and shift the tailoring business from the room in question, one year time sought for by the counsel is a reasonable period. Therefore, we allow the tenant one year time from today to surrender vacant possession of the building to the landlady. This shall, however, be subject to the condition that the tenant shall, within four weeks from today, file an unconditional

undertaking in the form of an affidavit before the Rent Control Court, Ernakulam, to surrender vacant possession to the landlady on or before the expiry of the one year period allowed by us. She shall also continue to pay rent without default during the period.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge