

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

RCRev..No. 383 of 2013 ()

AGAINST THE JUDGMENT IN RCA 4/2010 of THE RENT CONTROL APPELLATE
AUTHORITY,KALPETTA DATED 30-10-2013

AGAINST THE ORDER/JUDGMENT IN RCP 7/2009 of THE RENT CONTROL
AUTHORITY, SULTHAN BATHERI DATED 09-04-2010

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

HAMZA, AGED 49 YEARS
S/O.ANTHRU, BUSINESS, RESIDING AT KIZHAKKAYIL HOUSE
KAMBALAKKAD POST, KANIYAMBATTA AMSOM, VYTHIRI TALUK.

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.SAJU.S.A

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

1. MUHAMMED ASIF,, AGED 51 YEARS
S/O.LATE MAMOOTTY HAJI, WORKING IN QUTAR
KIZHAKKAYIL HOUSE, SULTHANBATHERY AMSOM AND TALUK
REPRESENTED BY POWER OF ATTORNEY HOLDER SHABEER AHAMMED
S/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK-673592.

2. ABDUL ARIF,, AGED 49 YEARS
S/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK-673592.

3. MUHAMMED SHERIF,, AGED 42 YEARS
S/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK-673592.

4. RASIYA,, AGED 38 YEARS
D/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK-673592.

5. RAMLATH @ RAMLA,, AGED 47 YEARS
D/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK
REPRESENTED BY POWER OF ATTORNEY HOLDER SHABEER AHAMMED
S/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK-673592.

RCRev..No. 383 of 2013 ()

6. SHABEER AHAMMED,, AGED 39 YEARS
S/O.LATE MAMOOTTY HAJI, KIZHAKKAYIL HOUSE
SULTHANBATHERY AMSOM, SULTHANBATHERY TALUK-673592.

R1-R6 BY ADV. SRI.C.P.MOHAMMED NIAS

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
31-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R. No.383 of 2013

Dated this the 31st day of July, 2015

O R D E R

Surendra Mohan, J.

The tenant is in revision challenging the order of eviction granted by the Rent Control Court, Sulthan Bathery in RCP No.7 of 2009, confirmed by the Rent Control Appellate Authority, Kalpetta, Wayanad, in RCA No.4 of 2010. The tenant is conducting business by name 'Bathery Sweet Bazaar' from the tenanted premises. Originally, the premises consisted of two shop rooms. The same has been converted into a single room by demolishing the partition in between. The tenant has a case that, the partition wall was demolished by him at his expense while, according to the landlords, the same was demolished by their predecessor in title. The monthly rent in respect of the building is alleged to be ₹2750/-. The shop room originally belonged to the mother of the respondents herein who are the landlords.

On her death, the respondents have succeeded to her rights.

2. The Rent Control Petition was filed on the grounds under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The need alleged by the landlords was that, the third respondent wanted to start a Margin free supermarket on the tenanted premises. The need of the landlords was seriously disputed by the tenant. According to the tenant, the third respondent herein was conducting another business by name, " The Cake Shop", nearby and that, he did not require the tenanted premises for any purpose. According to the tenant, a total amount of ₹1,30,000/- had been paid as security to the mother of the landlords for which she had also issued a receipt. After her death, the tenant had been depositing the rent at the rate of ₹50/- per day into his own bank account. According to the tenant therefore, there were no arrears of rent and the need that was put forward was without any bonafides

whatsoever. Therefore, they sought for disposal of the Rent Control Petition.

3. The Rent control Court tried the case on the above pleadings. The evidence on the side of the landlords consists of the oral testimonies of PW1 and PW2 and Exhibits A1 to A16 documents. RWs 1 and 2 were examined as witnesses on the side of the tenant. Exhibits B1 to B10 documents were marked. The Rent Control Court on an evaluation of the evidence on record found that, the landlords were entitled to an order of eviction both on the grounds of arrears of rent as well as bonafide need. Accordingly, the Rent Control Petition was allowed. The tenant challenged the order of the Rent Control Court before the Rent Control Appellate Authority in RCA No.4 of 2010. On a re-appreciation of the evidence on record, the Appellate Authority has confirmed the findings of the Rent Control Court. This Revision is filed challenging the judgment of the Appellate Authority.

4. According to Sri T.Krishnanunni, the Senior

Counsel who appears for the revision petitioner tenant, both the authorities below have erred in finding that there were arrears of rent in respect of the premises. According to the learned Counsel, even after the death of the original title holder, mother of the respondents herein, the tenant was depositing rent at the rate of ₹50/- month into his account for the reason that he was not aware of the identity of the proper person to whom the same could be paid. Therefore, it is contended that, there was no default in payment of rent, even though the rent is remaining in arrears. On the question of bonafide need, according to the learned Senior Counsel, the third respondent is actually conducting another business in a shop nearby. If at all, the need that was projected was genuine, the landlords had another premises of their own which is a building by name "Sathramkunnu". The proposed business could very well be started from the said building. At any rate, according to the counsel, the tenant should have been held entitled to the benefit of the provisos to Section 11(3) of the Act.

5. Advocate C.P.Mohammed Nias who appears for the respondents refuted the contentions of the learned Senior Counsel. It is contended that both the authorities below have considered the issues that arise for consideration, in the proper perspective. The alternative building pointed out by the tenant is a residential one that cannot be used for the purpose for which eviction has been sought. Both the authorities below have found in favour of the landlord on the above aspects and there are no grounds to interfere with the said contentions. Therefore, the counsel seeks dismissal of the revision.

6. Heard. We have been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority. We find that, both the authorities below have considered the contentions of the parties properly. It may be true that, the tenant has been depositing the rent in respect of the premises at the rate of ₹50/- per day into his account. As rightly found by the authorities below, depositing the amount in his bank

account cannot amount to payment of rent. Even assuming that he was not certain about the identity of the proper person to whom payment was to be made, he could have tendered the payment on receipt of Exhibit A3 notice issued on behalf of the landlords. Since the rent was not paid in spite of the demand, the finding that there was default in payment of rent is justified. Therefore, the order of eviction granted under Section 11(2)(b) is confirmed.

7. With respect to the need put forward by the landlord under Section 11(3) of the Act, though the genuineness thereof is seriously disputed by the tenant, nothing has been brought out in the evidence to justify a conclusion that, the need is not genuine. Both the authorities below have placed reliance upon evidence of the third respondent as PW1 as well as the evidence of PW2 who is the 6th respondent to find that the need put forward is bonafide. The question of bonafide need being a question of fact, we find no grounds to interfere with the same.

8. Though it has been contended that, the landlords

have another building at 'Sathramkunnu' the existence of which has not been disclosed in the Rent Control Petition, we find that the issue has been properly considered by both the authorities. It has been found that, the said building is a residential one, situate at a level substantially lower than the main road. The finding that the said building is not suitable for starting the proposed business, therefore, does not call for any interference.

9. On the question of the benefit of the second proviso, Exhibit A15 extract of the Building Tax Assessment Register of Kaniyambetta Grama Panchayat shows that, the tenant was conducting a business in spices in shop No.728. Therefore, there is no evidence to show that the main source of livelihood of the tenant is from the business carried on in the tenanted premises. Exhibit A12, A13, A14 and A16 have been produced to prove that other vacant buildings were available in the locality. The authorities below have placed reliance on the said documents. We find that the findings on the applicability of the second proviso

are also justified. Therefore, we do not find any grounds to interfere with the judgment of the Appellate Authority in revision.

10. As a last submission, the learned Senior Counsel for the revision petitioner sought for the grant of some time to surrender vacant possession of the premises. The request is opposed by the counsel for the respondents. Having considered the contentions advanced by the respective parties, we are of the view that it is necessary to grant some time to the tenant to surrender vacant possession of the premises.

In the result,

1. This RCR is dismissed.
2. The tenant is granted time up to 31.12.2015 to surrender vacant possession of the tenanted shop room to the landlords on condition that he files an affidavit before the Rent Control Court Sulthan Bathery in RCP No.7 of 2009, within a period of two weeks of the date of receipt of a

copy of this judgment, unconditionally undertaking to surrender vacant possession of the premises to the landlords, on or before 31.12.2015.

3. It shall be a further condition for the grant of time that the tenant pays the entire arrears of rent in respect of the premises and continues to pay rent in respect thereof each month, without any delay or default, until vacant possession is surrendered to the landlords.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE