

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. 385 of 2013 ()

AGAINST THE JUDGMENT IN RCA 4/2010 of THE RENT CONTROL APPELLATE
AUTHORITY, TIRUR DATED 31-01-2013

AGAINST THE ORDER IN RCP 38/2008 of THE RENT CONTROL COURT, TIRUR
DATED 30-11-2009

REVISION PETITIONER(S)/PETITIONERS/RESPONDENTS 2 TO 7/LRS. OF
PETITIONER:-:

1. FATHIMA, AGED 43 YEARS
W/O.KUNNATH MUHAMMEDKUTTY, KUNNATH HOUSE
VANIYANNUR P.O., IRINGAVUR AMSOM, VANIAYNNUR DESOM
TIRUR TALUK, MALAPPURAM.

2. JAMSHEENA, AGED 27 YEARS
D/O.KUNNATH MUHAMMEDKUTTY, KUNNATH HOUSE
VANIYANNUR P.O., IRINGAVUR AMSOM, VANIAYNNUR DESOM
TIRUR TALUK, MALAPPURAM.

3. SAMREENA, AGED 25 YEARS
D/O.KUNNATH MUHAMMEDKUTTY, KUNNATH HOUSE
VANIYANNUR P.O., IRINGAVUR AMSOM, VANIAYNNUR DESOM
TIRUR TALUK, MALAPPURAM.

4. SEENATH, AGED 24 YEARS
D/O.KUNNATH MUHAMMEDKUTTY, KUNNATH HOUSE
VANIYANNUR P.O., IRINGAVUR AMSOM, VANIAYNNUR DESOM
TIRUR TALUK, MALAPPURAM.

5. MOHAMMED SHAKKER, AGED 23 YEARS
S/O.KUNNATH MUHAMMEDKUTTY, KUNNATH HOUSE
VANIYANNUR P.O., IRINGAVUR AMSOM, VANIAYNNUR DESOM
TIRUR TALUK, MALAPPURAM.

6. MOHAMMED SHAHID, AGED 22 YEARS
S/O.KUNNATH MUHAMMEDKUTTY, KUNNATH HOUSE
VANIYANNUR P.O., IRINGAVUR AMSOM, VANIAYNNUR DESOM
TIRUR TALUK, MALAPPURAM.

BY ADVS.SRI.SAJU.S.A
SMT.P.A.SHEEJA
SRI.K.C.KIRAN

RCRev..No. 385 of 2013 ()

RESPONDENT (S) /RESPONDENT/APPELLANT/RESPONDENT:-:

K.M.SEETHI,, AGED 50 YEARS
S/O.K.M.KADER HAJI, KUNHUSAN MARAKKARAKATH HOUSE
MANGALAM AMSOM, PUNNAMANNA DESOM, TIRUR
PIN - 676 101.

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

kkj

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

R.C.R. No.385 of 2013

Dated this the 31st day of July, 2015

O R D E R

Surendra Mohan, J.

The landlords, the legal representatives of the original title holder are in revision. The landlord had leased out seven rooms on the upper floor of a building owned by him to the respondent as per a lease agreement dated 03.10.2007. We shall refer to the parties herein, in accordance with their status in the Rent Control Petition.

2. The landlord had filed RCP No.38 of 2008 before the Rent Control court, Tirur alleging non-occupation of the tenanted premises by the tenant, as stipulated by Section 11 (4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The premises were leased out on a monthly rent of ₹21,000/-. The Rent Control Petition was resisted by the tenant contending that he was prevented from occupying the

premises for the reason that, the landlord had not given him consent letter, which was necessary for obtaining a licence from the local authority. Therefore, according to the tenant his non-occupation was for justifiable reasons. The case of the tenant was that, at the time of execution of the lease deed, he had paid an amount of ₹19 lakhs as 'pagidy'. The receipt was agreed to be given on the next day by the landlord who stated that he had no stamps with him. But on the next day, he left India without giving him either the receipt or the consent letter for obtaining a licence. The tenant had undertaken and completed the interior decoration of the premises, flooring, furnishing, wiring etc, spending an amount of ₹28lakhs. Since no consent letter was given in spite of repeated requests, a notice was issued on 15.05.2008, which is Exhibit B1. However, when the consent letter was demanded, the landlord demanded payment of a further amount of ₹5lakhs. The tenant had, in the circumstances, preferred a complaint to the Deputy Superintendent of Police, Tirur on 10.10.2008. The furious

landlord had thereupon tried to evict the tenant forcibly. Thereupon, he had to file O.S.No.295 of 2008 against the forcible dispossession. According to the tenant, the Rent Control Petition has been filed thereafter putting forward the ground under Section 11(4)(v). It was contended that, in the facts and circumstances narrated above, the ground under Section 11(4)(v) was not attracted.

3. The parties went to trial on the above pleadings. On the side of the landlord, he examined himself as PW1 and marked Exhibit A1 document. On the side of the tenant, RWs 1 to 3 were examined and Exhibits B1 to B6 documents were marked. The Advocate Commissioner was examined as CW1. His report and plan were marked as Exhibits C1 and C2.

4. The Rent Control Court on a consideration of the evidence on record found that the landlord had succeeded in making out the ground under Section 11(4)(v) of the Act. It was found that, the tenant had not done anything to occupy the premises before the expiry of the statutory

period of six months calculated from the date of the lease agreement, 3.10.2007. The Rent Control Court also found that, there was no evidence to prove the payment of the amount of ₹19lakhs alleged to have been made by the tenant. The notice Exhibit B1 is dated 05.05.2008 and has been issued after the expiry of the statutory period of six months. For the above reasons, an order of eviction was granted. The aggrieved tenant challenged the order of eviction before the Rent Control Appellate Authority, Tirur in RCA No.4 of 2010. The Appellate Authority has on a re-appreciation of the evidence held that, the landlord had a duty to issue a consent letter to the tenant even assuming that he had not requested for the issue of such a letter, considering the fact that the premises were taken on rent for the purpose of conducting a business and the further fact that such a consent letter was necessary for obtaining a licence from the local authority. In the above view of the matter, the Appellate Authority has set aside the order of eviction granted by the Rent Control Court. This revision is

filed challenging the said judgment.

5. According to the learned Senior Counsel, Sri.T.Krishnanunni who appears for the petitioner, though the tenant had executed the lease agreement on 03.10.2007, he had not done any activity in the said premises at any point of time within the statutory period of six months commencing from the said date. Since he has other businesses at Chennai, he has not even visited the tenanted premises. Our attention is drawn to Exhibit B1 notice to point out that, the same is dated 05.05.2008 after the expiry of the period of six months contemplated by the provision. He alleged the police complaint was given by the tenant only on 10.10.2008. The application for licence submitted by the tenant, Exhibit B3(a) is dated 22.10.2008. Therefore it is contended that, the tenant had not done anything to occupy the premises, as alleged. Exhibit A1 passport of the landlord is relied upon to contend that, he had not left India as alleged by the tenant immediately after the agreement was signed. Exhibit A1 passport shows that

he left India only on 06.03.2008 long after the date of the agreement which was executed on 03.10.2007. According to the learned Senior Counsel, the Appellate Authority has proceeded on the assumption that the amount of ₹19lakhs had been paid as alleged by the tenant. The Appellate Authority has also found fault with the landlord for not having volunteered and given a consent letter since such a letter was necessary for obtaining a licence to conduct business in the premises. The said reasoning according to the learned Senior counsel is illegal and unsustainable.

6. Heard. It is admitted that after the entrustment on 03.10.2007, no business has been conducted by the tenant in the premises at anytime. His case is that, though he had undertaken and completed the work of interior decoration of the premises including the flooring, wiring etc. expending an amount of ₹28 lakhs, he could not start the business therein, for the reason that the landlord had not issued a consent letter for enabling him to obtain a licence from the Municipality. It is also alleged that the

landlord had left India on the next day after executing the lease agreement. Though the date of agreement was 03.10.2007, as per the entry in Exhibit A1 Passport, the landlord had left India only on 06.03.2008. Therefore, the Rent Control Court has found that, the said case put forward by the tenant stood falsified by Exhibit A1.

7. Though it is the case of the tenant that, he had paid an amount of ₹19 lakhs at the time of execution of the lease agreement, he has not mounted the box to swear to the above fact. On his side, he has only examined his Power of Attorney holder who has no direct knowledge of the said payment that is alleged to have been made. Therefore, there is absolutely no evidence either documentary or oral in support of the contention that the amount of ₹19lakhs was paid by him as alleged and that the landlord had promised to issue a receipt to him on the next day because he did not have stamps with him, at that time. The further case of the tenant is that, the landlord had left India on the next day without informing him. The said allegation as

already noticed above is falsified by Exhibit A1. Therefore, the contention that an amount of ₹19lakhs have been paid by the tenant to the landlord at the time of executing the lease agreement is only to be rejected.

8. The contention put forward by the tenant, for not having occupied the premises for the statutory period of six months is that, the landlord had not issued him with a consent letter which was necessary to enable him to obtain a licence from the Municipality. As already noticed above, Exhibit A1 Passport shows that, the landlord was available in India up to 06.03.2008. There is nothing on record to show that, the tenant had at any time requested the landlord for the issue of a consent letter to him for the purpose applying for a licence from the Municipality. The only document evidencing the demand for a consent letter is Exhibit B1 which is dated 05.05.2008. The same has been issued after the expiry of the statutory period of six months. The Police complaint filed by the tenant against the landlord is dated 10.10.2008. The Original Suit,

O.S.No.298 of 2008 was also filed by the tenant at about the same time. Exhibit B6(a) Commission Report is dated 19.11.2008. It is also worth noticing that, the Rent Control Petition itself was filed on 28.11.2008. Therefore, it was only just before the filing of the Rent Control Petition that, the tenant had started taking steps to get a consent letter from the Landlord. In other words, there is absolutely no explanation for the non-occupation of the tenanted premises by the tenant for a period of six months commencing from 03.10.2007 onwards. This is a case in which, the tenant has no case that, he had occupied the tenanted premises at any time or conducted any business therefrom. Therefore, it was for the tenant to have established the reason for his non-occupation for the statutory period of six months commencing from 03.10.2007.

9. The application for licence submitted by the tenant is Exhibit B3(a) and is dated 22.10.2008. Therefore, there is nothing on record to show that the tenant had made any application for the issue of a licence

before Exhibit B3(a). We find that the Rent Control Court has considered all the above aspects in detail and has found that, the landlord was entitled to an order of eviction under Section 11(4)(v) of the Act. We find that, the said order is fully justified in the facts and circumstances of the present case.

7. The Appellate Authority has proceeded to upset the order of eviction passed by the Rent Control Court on the basis of mere surmises. The Appellate Authority has proceeded on the assumption that, an amount of ₹19 lakhs had been paid by the tenant, as alleged, though there is no proof of such payment available. The Appellate Authority has further found fault with the landlord for not having volunteered a consent letter to the tenant, considering the fact that, the tenant had taken the premises on rent for the purpose of starting a business for which licence was necessary. We are not satisfied that the said reasoning of the Appellate Authority is right. It was for the tenant to have approached the landlord for the grant of a consent

letter, if such letter was necessary for him to obtain a licence to start his business. In this case, the tenant was all along keeping silent and inactive without taking any steps to occupy the tenanted premises. The above being the position, it is held that the judgment of Appellate Authority is liable to be set aside.

For the foregoing reasons, this revision is allowed on the following terms:-

1. The order of the Appellate Authority, Tirur dated 31.01.2013 In RCA No.4 of 2010 is set aside.
2. The order of the Rent Control Court, Tirur dated 30.11.2009 in RCP No.38 of 2008 is restored and confirmed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE