

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

OP (RC).No. 91 of 2015 (O)

PETITIONER(S):

**ANOOP NAZAR AGED 30 YEARS
S/O.K.U.NAZER, PEECHINGA PARAMBIL HOUSE, VATTEKUNNAM
EDAPPALLY NORTH P.O., KOCHI - 24.**

**BY ADVS.SMT.M.S.LETHA
SRI.K.R.VINOD
MS.JENCY SUSAN JOSE
SRI.V.SRI NATH**

RESPONDENT(S):

**M/S. KALATHIL BUILDERS & DEVELOPERS PVT. LTD, AGED 43 YEARS
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956
WITH ITS OFFICE AT BUILDING NO.IX/474-A-3
CSI GOLDEN JUBILEE COMPLEX, SASTHRI ROAD
KOTTAYAM - 01, REP. BY ITS MANAGING DIRECTOR
MR.SUNNY JACOB, S/O.MATHEW CHACKO, KALATHIL HOUSE
VEROOR P.O., VADAKKEKKARA, CHANGANASSERY - 686 101.**

**THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

kkj

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: THE COPY OF THE RCP NO.127/2013 IN THE FILES OF THE HON'BLE RENT CONTROL COURT, ERNAKULAM.

EXT.P-2: THE COPY OF THE OBJECTION FILED BY THE PETITIONER IN RCP NO.127/2013

IN THE FILES OF THE HON'BLE RENT CONTROL COURT, ERNAKULAM.

EXT.P-3: THE TYPE WRITTEN COPY OF THE DEPOSITION OF PW1 IN RCP NO.127/2013

EXT.P-4: THE COPY OF THE PETITION TO PRODUCE THE DOCUMENTS, IA NO.5507/2015 IN RCP NO.127/2013

EXT.P-5: THE COPY OF THE OBJECTION FILED BY THE RESPONDENT HEREIN IN I.A. NO.5507/2015 IN RCP NO.127/2013.

EXT.P-6: THE CARBON COPY OF THE ORDER DATED 22.7.2015 IN I.A.NO.5507/2015 IN RCP NO.127/2013 OF THE HON'BLE RENT CONTROL COURT, ERNAKULAM.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

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

O.P.(R.C) No.91 of 2015

Dated this the 27th day of July, 2015

J U D G M E N T

Surendra Mohan, J.

The tenant has filed this original petition challenging Exhibit P6 order of the Rent Control Court in I.A.No.5507 of 2015 in RCP No.127 of 2013. The petitioner is the respondent in RCP No.127 of 2013. The premises occupied by the petitioner forms part of a larger building complex which has a number of shop rooms, therein. The landlord has filed RCP Nos.126 of 2013, 129 of 2013, 131/2013, 68 of 2014, 69 of 2014, 70 of 2014, 71 of 2014, 72 of 2014 and 73 of 2014. All the Rent Control Petitions are being tried by the Rent Control Court together. The tenants in each of the Rent Control Petitions have filed their objections disputing the ground of eviction put forward by the respondent landlord. The Rent Control Petitions have been filed seeking eviction under Section 11(3) of the Kerala Buildings

(Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). According to the landlord, they need the building for the purpose of starting a textile business. The case of the tenant is that, the landlord does not have the necessary financial resources to start the business. The evidence in the cases are complete and the matter stands posted for hearing. It is submitted by the learned counsel for the petitioner that, the cases had been posted for hearing today but has been adjourned to tomorrow, that is, 28.07.2015. I.A.No.5507 of 2015 was filed by the petitioner herein seeking a direction to the respondent landlord to produce certain documents. The tenant questions the financial capacity of the landlord to start the textile business. According to the tenant, the case of the landlord is that, they had sold a hotel that belonged to a sister concern and therefore they had the necessary funds for starting the textile business. According to the counsel for the petitioner, if the said statement made by PW1 was true,

there would certainly be a resolution of the Board of Directors deciding to start a business in textiles. In the absence of such a Board resolution, the case put forward that a sister concern had sold a hotel belonging to it and had raised sufficient funds to start a business in textiles is false, it is contended. The falsity of the contention put forward by the landlord according to the counsel for the petitioner would be proved, if the document called for is produced. According to the learned Counsel, the Company is in possession of Minutes certified by the Registrar of Companies, which is necessary to be produced. Apart from the said document, the petitioner had also sought for production of the Board Resolution authorizing the Managing Director to file the Rent Control Proceedings. The said document also is necessary for a full and complete adjudication of the issues that arise for consideration in the Rent Control Petitions, according to the learned Counsel.

2. We have heard the counsel appearing for the

petitioner at length. This Original Petition has come up before us for admission. We notice that, 11 Rent Control Petitions are being tried, jointly. Evidence is complete and the matter now stands posted for hearing. As rightly noticed by the Rent Control Court, the burden to prove the bonafides of the need under Section 11(3) of the Act is squarely on the landlord. If the landlord has not proved the bonafides of the need put forward by adducing sufficient evidence in the case, it is only to the advantage of the tenants. Therefore, it is not necessary for the tenant to call for documents for the purpose of disproving the need that has been put forward. If there is no evidence to show the financial capacity of the landlord to start the proposed business, it is only to the advantage of the tenant. With respect to the Board resolution authorising the Managing Director to institute the Rent Control Proceedings, it has been found by the Rent Control Court that, the tenants have not questioned the status or the authority of the Managing

Director to institute the Rent Control Proceedings, in the objections filed by them. In the absence of any such contention, production of the Board Resolution authorizing the Managing Director to institute the Rent Control Proceedings is also unnecessary. He has already produced a copy of the resolution, which was admitted in evidence, according to the impugned order, without any objection from the tenants. The above being the state of affairs, we do not find any grounds to hold up the final hearing of the Rent Control Petitions for the purpose of production of the documents that are sought for by filing I.A.No.5507 of 2015. It is only appropriate that, the Rent Control Proceedings that are posted for final hearing are heard and finally disposed of in one way or the other, without further delay.

For the foregoing reasons, we do not find any grounds to admit this original petition and the same is accordingly dismissed. It is made clear that the observations made hereinabove are only for the purposes of disposing of this

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Original Petition. Therefore, the Rent Control Court shall consider the contentions of the parties, untrammelled by any of the observations made by us hereinabove.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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