

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP (RC) .No. 93 of 2015 (O)

PETITIONER(S) /TENANT:

C.K GOPINATHAN AGED 60 YEARS
S/O.M.GOVINDANKUTTY, C.K.G SUPER MARKET
GURUVAYOOR ROAD, KOOTTANAD (PO) , PALAKKAD DISTRICT.

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S) /LAND LORD:

KAKKUZHIYIL BASHEER
S/O.AHAMMEDKUTTY, THRIKKANDIYOOR AMSOM DESOM
TIRUR TALUK, MALAPPURAM DISTRICT.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP (RC).No. 93 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- A TRUE COPY OF THE PETITION IN R.C.P 15/2014 BEFORE THE RENT CONTROL COURT TIRUR DATED 19.02.2014.

P2- A TRUE COPY OF THE COUNTER IN R.C.P 15/2014 BEFORE THE RENT CONTROL COURT TIRUR DATED 17.06.2014.

P3- A TRUE COPY OF THE APPLICATION FOR REOPENING EVIDENCE AS I.A 1949/2015 IN R.C.P 15/2014 BEFORE THE RENT CONTROL COURT TIRUR DATED 20.07.2015.

P4- A TRUE COPY OF THE APPLICATION FOR AMENDMENT OF PETITION AS I.A 1950/2015 IN R.C.P 15/2014 BEFORE THE RENT CONTROL COURT TIRUR DATED 20.07.2015.

P5- A TRUE COPY OF THE COUNTER TO THE I.A 1949/2015 IN R.C.P 15/2014 BEFORE THE RENT CONTROL COURT TIRUR DATED 21.07.2015.

P6- A TRUE COPY OF THE COUNTER TO THE I.A 1950/2015 IN R.C.P 15/2014 BEFORE THE RENT CONTROL COURT TIRUR DATED 21.07.2015.

P7- A TYPED COPY OF THE ORDER DATED 27.07.2015 IN R.C.P.15/2014 BEFORE THE RENT CONTROL COURT TIRUR.

RESPONDENT(S) ' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

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

O.P.(R.C) No.93 of 2015

Dated this the 29th day of July, 2015

J U D G M E N T

Surendra Mohan, J.

The tenant in RCP No.15 of 2014 has filed this Original Petition challenging the orders in I.A.No.1949 of 2015 and I.A.No.1950 of 2015 passed by the Rent Control Court, Tirur on 28.07.2015. The Rent Control Petition was filed by the respondent landlord seeking eviction of the tenant on grounds under Section 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act) for short. According to the landlord, he requires vacant possession of the building for his wife to start a business of her own. It has been stated in the Rent Control Petition that, the income that he was earning abroad was not sufficient for the sustenance of himself and his family and that for the said reason, it had become necessary for his wife to start a business of her

own, in textiles. For the purpose, it is pleaded that the tenanted shop room is the most suitable one. However, it has nowhere been pleaded that, the wife was dependent on the respondent landlord.

2. It has further been stated in paragraph 3 of Exhibit P1 Rent Control Petition that it was necessary for the Rent Control Court to pass an order directing the tenant to put the landlord in possession of the tenanted shop room. However, what has been stated thereafter is that, the landlord was not depending on the income derived from the business carried on in the tenanted premises for his livelihood, that he had other businesses and establishments of his own in Malappuram and Palakkad Districts, apart from landed properties of his own and that he was in possession of other rooms just opposite to the tenanted shop room. The references made to the landlord in the said portions of the Rent Control Petition were the result of a mistake according to the landlord and what he meant to plead was that the tenant was an affluent person in

possession of other properties and sources of income. Since the above mistakes were not noticed earlier, he had filed I.A.No.1950 of 2015 for amending the Rent Control Petition to correct the mistakes. He had also filed I.A.No.1949 of 2015 for reopening the evidence. As per Exhibit P7 order dated 27.07.2015, the Rent Control Court allowed the petition for amendment on costs and posted the petition on 28.07.2015. According to the learned Counsel for the petitioner, the costs have already been deposited, the evidence has been reopened and the matter was posted to today on 29.07.2015, as last chance for filing objections. The counsel submits that the case has been kept aside because of the pendency of this Original Petition.

3. According to Sri. Jamsheed Hafiz, who appears for the petitioner, the petition for amendment was moved after the entire evidence in the case was over and the matter was posted for hearing. Reliance is placed on Exhibit P2 copy of the objections filed by the tenant to point out that, in paragraph 10 thereof, the stand of the tenant

was that, even according to the statements made in the Rent Control Petition, the landlord and his family had other sources of income. Therefore, it was contended that, it was not necessary for the landlord' wife to start any business for generating additional income. The objections were filed on 17.06.2014. Therefore, according to the learned counsel, the landlord had sufficient opportunity to seek for amendment of his Rent Control Petition. However, he was not vigilant. At present, the entire evidence is completed, crucial admissions have been extracted from the landlord when he was examined as PW1 and what remains is only for the case to be argued. The amendments are intended to set at naught the advantage that the tenant has obtained from cross examining PW1. It is also contended by the learned counsel that, the landlord had no case that his wife was dependent on him in the Rent Control Petition. For the above reason, it is contended that the effect of the amendment would be to incorporate a new case into the Rent control Petition.

4. Apart from the above, the counsel also contends that after the amendments were allowed, the matter has been posted for objections as last chance to 29.07.2015 denying even a breathing time to the tenant to file proper objections to the amended Rent Control Petition. For the above reasons, the counsel seeks interference with the impugned order, Exhibit P7.

5. Heard. We have been taken through the averments in Exhibit P1 Rent Control Petition. From a perusal thereof, we are not satisfied that by allowing the amendments, a new case has been permitted to be introduced. The decision to allow the amendment has been taken by the Rent Control Court in exercise of the discretion vested in the said Court by law. We do not find that the exercise of discretion in allowing the amendments is in excess of the jurisdiction conferred on the Rent Control Court by law. Therefore, we do not find any grounds to interfere with Exhibit P7 order.

6. In order to allay the apprehensions expressed by

the counsel for the petitioner, we make it clear that the tenant shall be granted a reasonable opportunity to file proper objections to the amended Rent Control Petition and if necessary, to let in additional evidence in support of the contentions that he may take in the additional objections to be filed. The Rent Control Court shall give sufficient opportunity for the said purpose. In order to save time, the tenant is granted 10 ten days time from today, to file objections to the amended Rent Control Petition, so that the Rent Control Court would be able to proceed in the matter from that stage, without loss of further time.

The Original Petition is dismissed with the above observations.

**K.SURENDRA MOHAN,
JUDGE**

**MARY JOSEPH
JUDGE**

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