

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

OP (RC).No.118 of 2015 (O)

AGAINST THE JUDGMENT IN RCA 69/2014 of II ADDL.DISTRICT COURT, RENT
CONTROL APPELLATE AUTHORITY, ERNAKULAM DATED 14/7/15

PETITIONERS:

1. THE HANDICRAFTS DEVELOPMENT CORPORATION OF KERALA LTD.
PB NO.171, PUTHENCHANTHAI,
THIRUVANANTHAPURAM - 695 001.
2. THE MANAGING DIRECTOR,
HANDICRAFTS DEVELOPMENT CORPORATION OF KERALA LTD.,
PB NO.171, PUTHENCHANTHAI,
THIRUVANANTHAPURAM - 695 001.

BY ADVS. SRI.K.ANAND (SR.)
SMT.LATHA ANAND

RESPONDENTS:

1. P.I.ISSAC, S/O IPPORAH, AGED 70 YEARS,
PALAL HOUSE, PUTHENCNUZ - 682 308.
2. P.I.MATHEW, S/O IPPORAH, AGED 68 YEARS,
PALAL HOUSE, PUTHENCNUZ - 682 308.
3. P.I.GEORGE, S/O IPPORAH, AGED 63 YEARS,
PALAL HOUSE, PUTHENCNUZ - 682 308.
4. LILLY ITTOOP, W/O LATE P.I.ITTOOP, AGED 51 YEARS,
PALAL HOUSE, PUTHENCNUZ - 682 308.
5. P.I. JOSEPH, S/O LATE ITTOOP, AGED 32 YEARS,
PALAL HOUSE, PUTHENCNUZ - 682308.
6. P.I.SMITHA, D/O LATE ITTOOP, AGED 29 YEARS,
PALAL HOUSE, PUTHENCNUZ - 682 308.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No.118 of 2015 (O)

APPENDIX

PETITIONER'S EXTS

EXT.P1:- TRUE COPY OF THE ORDER OF THE 3RD ADDL. MUNSIFF AND RENT CONTROL COURT, ERNAKULAM IN RCP 23/13.

EXT.P2:- TRUE COPY OF THE MEMORANDUM OF RENT CONTROL APPEAL NO.69/14.

EXT.P3:- TRUE COPY OF THE IA NO.3536/15.

EXT.P4:- TRUE COPY OF THE ORDER OF THE RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM IN IA 3536/15.

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**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

O. P. (RC) No.118 of 2015

Dated this the 23rd day of September, 2015

JUDGMENT

P. N. Ravindran, J.

The petitioners are the tenants in R.C.P.No.23 of 2013 on the file of the III Addl. Munsiff and Rent Control Court, Ernakulam. The respondents are the landlords therein. The respondents/landlords had in R.C.P.No.23 of 2013 filed under section 5 of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short, prayed for fixation of fair rent for the petition schedule shop room in the occupation of the tenants. By Ext.P1 order passed on 30-06-2014, the Rent Control Court fixed the fair rent for the petition schedule building at the rate of ₹80/- per sq. ft. The Rent Control Court also held that the landlords will be entitled for periodical enhancement of rent at the rate of 30% after every five years. The Rent Control Court had while fixing the fair rent relied on Ext.A1 registered sale deed executed on 01-11-2013 in respect of the adjacent shop room. Challenging Ext.P1 order of eviction, the petitioners/tenants have filed

R.C.A.No.69 of 2014 and it is presently pending on the files of the Rent Control Appellate Authority, Ernakulam.

2. Shortly after the appeal was filed, the petitioners filed I.A.No.3536 of 2015 (Ext.P3) under Order XVIII Rule 17 of the Code of Civil Procedure read with section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 praying for that PW1 may be recalled and the appellant may be permitted to cross examine him. Such a relief was sought on the following averments occurring in paragraph 3 of the affidavit filed in support of I.A.No.3536 of 2015 which reads as follows:

“3. It is respectfully submitted that the appellants reliably learned after the order passed by the Rent Control Court that the lease deed relied on by the Rent Control Court was created by the petitioners for the purpose of the said RCP. During the cross examination the said lease deed was not disputed by the appellants. Now it is inevitable to cross examine PW1 based on Ext.A1. Therefore, PW1 may be recalled and the appellants may be permitted to cross examine PW1. I am filing a separate petition for the recalling PW1 which may kindly be allowed. Otherwise irreparable injury and hardship will be caused to the Appellants. There is no wilful negligence or laches on the part of appellants.”

3. The second respondent, on his own behalf and on behalf of the other respondents, filed written objections. The court below considered the rival contentions and dismissed I.A.No.3536 of 2015 in R.C.A.No.69 of 2014 by Ext.P4 order passed on 14-07-2015. The said order is under

challenge in this original petition filed under Article 227 of the Constitution of India.

4. It is evident from a reading of paragraph 3 of the affidavit filed in support of I.A.No.3536 of 2015 in R.C.A.No.69 of 2014 that the petitioners/tenants had no case that the lessee under Ext.A1 did not occupy the tenanted premises; that there was no payment of rent; that the lease deed was not acted upon and that the landlord himself had paid the stamp duty and registration charges. The petitioners/tenants have no case that the shop room in respect of which Ext.A1 lease deed was executed was lying vacant. There was only a vague averment that Ext.A1 lease deed was created for the purpose of R.C.P.No.23 of 2013. In short, there was no averment in the affidavit filed in support of I.A.No.3536 of 2015 to prima facie show that Ext.A1 lease deed was not acted upon and that it was created only for the purpose of the rent control petition. In view of the lack of pleadings, we are of the considered opinion that the application filed by the tenants was liable to be dismissed.

We, therefore, find no good ground to entertain the challenge to Ext.P4. The original petition fails and it is accordingly dismissed, but

with the observation that it will be open to the petitioners to pursue all the contentions raised in the memorandum of appeal in R.C.A.No.69 of 2014 at the time of arguments.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE