

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

OP (RC).No. 130 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN I.A.NO.2365/2015 IN RCP 15/2014 of RENT
CONTROL COURT, TIRUR DATED 15.10.2015
PETITIONER(S)/TENANT:

C K GOPINATHAN AGED 60 YEARS
S/O.M.GOVINDANKUTTY, C.K.G.SUPER MARKET
GURUVAYOOR ROAD, KOOTTANAD P.O., 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 29-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 130 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1. TRUE COPY OF THE PETITION IN RCP 15/2014 BEFORE THE RENT
CONTROL COURT, TIRUR, DATED 19/2/2014.
EXT.P2. TRUE COPY OF THE COUNTER IN RCP 15/2014 BEFORE THE RENT
CONTROL COURT, TIRUR, DATED 17/6/2014.
EXT.P3. TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER HEREIN
DIRECTING THE RESPONDENT TO PRODUCE DOCUMENTS AS IA 2049/2015 IN RCP
15/2014 BEFORE THE RENT CONTROL COURT, TIRUR,
EXT.P4. TRUE COPY OF THE COUNTER TO THE IA 2049/2015 IN RCP 15/2014
BEFORE THE RENT CONTROL COURT, TIRUR.
EXT.P5. TRUE COPY OF THE ORDER DATED 18/8/2015 IA 2049/2015 IN RCP
15/2014 BEFORE THE RENT CONTROL COURT, TIRUR.
EXT.P6. TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER TO SERVE
THE INTERROGATORIES TO THE RESPONDENTS AS IA 2049/2015 IN RCP 15/2014
BEFORE THE RENT CONTROL COURT, TIRUR.
EXT.P7. TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT IA 2365/2015
IN RCP 15/2014 BEFORE THE RENT CONTROL COURT, TIRUR.
EXT.P8. TRUE COPY OF THE ORDER DATED 15/10/2015 IN IA 2365/2015 IN RCP
15/2014 BEFORE THE RENT CONTROL COURT, TIRUR.

RESPONDENT(S) ' EXHIBITS

NIL

// TRUE COPY //

P.S. TO JUDGE

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

O.P.(R.C.)NO.130 of 2015

Dated this the 29th October, 2015

JUDGMENT

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.15 of 2014 on the file of the Rent Control Court, Tirur. The respondent/landlord instituted the rent control petition praying for an order of eviction under sections 11 (3) and 11(4)(iii) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlord had, in the petition for eviction, averred that he bonafide needs the petition schedule building so as to enable his wife to start a business. He had also averred that the tenant has come by possession of other vacant buildings in the same locality.

2. Upon receipt of summons, the tenant entered appearance and filed a counter statement dated 17.6.2014 resisting the petition for eviction. The rent control petition stood listed for trial on 15.7.2015. On that day, the landlord was examined as PW1 and the rent control petition was adjourned to 17.7.2015 for the tenant's evidence. On

17.7.2015 the tenant was examined as RW1, evidence in the case was closed and the rent control petition was posted to 20.7.2015 for arguments. On that day, the landlord filed I.A.No.1950 of 2015 to amend the rent control petition and I.A.No.1949 of 2015 to reopen the evidence. I.A.No.1950 of 2015 was filed praying for amendment of the rent control petition by substituting the word 'respondent' in the place of the word 'petitioner' in the last four sentences in paragraph 3 of the rent control petition. He had also prayed that the words 'who is dependent on him' may be incorporated in the sentence "the petitioner bonafide needs the petition schedule building for his wife." Though the tenant opposed the applications, the rent control court overruled his objections and allowed both the applications by order passed on 28.7.2015. The tenant thereupon filed O.P.(RC) No.93 of 2015 in this court. By judgment delivered on 29.7.2015 a Division Bench of this court dismissed O.P.(RC) No.93 of 2015. This court, however, directed that in view of the amendment to the rent control petition, the tenant shall be given an opportunity to file additional objections to the rent control petition and to let in additional evidence to prove the additional

objections which he may file in the rent control petition. This court also directed that the tenant shall file such additional objections within ten days from 29.7.2015.

3. The tenant, it appears, did not file additional objections. He has no such case in this original petition. Instead, he filed I.A.No.2049 of 2015 under Order XI Rule 14 of the Code of Civil Procedure for an order directing the respondent/landlord to produce a notarized copy of his passport, his income tax returns relating to the period 2010-2015, the document of title in respect of the lands held by him in Tirur town as also the title deed relating to his residential house and the lands lying adjacent to it. The landlord opposed the said application by filing a counter affidavit. The rent control court considered the rival contentions and dismissed I.A.No.2049 of 2015 by Ext.P5 order passed on 18.08.2015. The tenant did not challenge Ext.P5 order immediately thereafter. Instead, he filed I.A.No.2365 of 2015 under Order XI Rule 12 of the Code of Civil Procedure for leave to serve interrogatories on the landlord. The interrogatories were also framed in such a manner that the answers sought to be elicited were in relation to the subject

matter of I.A.No.2049 of 2015. The landlord opposed the said application as well by filing a counter affidavit. The rent control court considered the rival contentions and dismissed I.A.No.2365 of 2015 by Ext.P8 order passed on 15.10.2015. Exts.P5 and P8 orders dismissing I.A.No.2049 of 2015 and I.A.No.2365 of 2015 in R.C.P.No.15 of 2014 are under challenge in this original petition filed under Article 227 of the Constitution of India.

4. We heard Sri.Jamsheed Hafiz, learned counsel appearing for the petitioner. We have also gone through the pleadings and the materials on record. The principal contention raised in the instant original petition and reiterated by the learned counsel appearing for the petitioner is that the landlord has no case that his wife is desirous of starting a business, that the case of the landlord is that the income which he earns is not sufficient for his needs and therefore, he wants his wife to start a business in the petition schedule premises. It is contended that in such circumstances, the court below ought to have allowed I.A.No.2049 of 2015 and directed the landlord to produce the documents referred to therein or in the alternative, allowed I.A.

No.2365 of 2015 and granted leave to the tenant to serve the interrogatories accompanying that application on the landlord and directed the landlord to answer the interrogatories.

5. The rent control petition discloses that the landlord has prayed for an order evicting the tenant from the petition schedule premises on the ground that he needs it for the purpose of enabling his wife to start a business in textiles. Though initially he had not described his wife as a person dependent on him, by the amendment which was carried out pursuant to the order passed by the rent control court on I.A.No.1950 of 2015, the wife of the landlord is described as his dependent. The challenge to the order allowing I.A.No.1950 of 2015 was repelled by this court when this court dismissed O.P.(RC) No.93 of 2015. As matters now stand, the case set out by the landlord in the rent control petition is that he bonafide needs the petition schedule building to enable his wife, who is dependent on him, to start a business.

6. It is now well settled by a series of decisions of this court that the dependency need not be financial, it can be dependency in respect of the building, the tenant of which is sought to be evicted. In such

circumstances, even assuming that the landlord is a person who has amassed wealth, we are of the opinion that nothing turns on the question whether he owns other immovable properties or is an income tax payee. The rent control court was in our opinion perfectly right in holding that the documents referred to in I.A.No.2049 of 2015 or the interrogatories sought to be served in I.A.No.2365 of 2015 are really not necessary or relevant for the purpose of deciding the dispute involved in R.C.P.No.15 of 2014. The said applications were in our opinion, rightly dismissed by the rent control court. The attempt of the tenant appears to be to show that the landlord is a man of means and is so wealthy and that it is not necessary for his wife to start a business. The attempt appears to be to show that the case set out by the landlord that the income which he earns is not adequate to meet his needs, is not true. In our opinion, where the need put forward is that the wife of the landlord wants to start her own business in the building belonging to him, the question whether the landlord owns immovable properties, is irrelevant. It is not the law that the wife of wealthy landlord should sit idle and while away her time. No court can take exception to a married

woman starting her own business, be it for the purpose of keeping herself occupied or for the purpose of earning her livelihood. It is evident from the conduct of the petitioner that his attempt is to delay the disposal of the rent control petition.

We therefore find no good grounds to entertain the challenge to the impugned orders. The original petition fails and is accordingly dismissed.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

kav/vpv