

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

RCRev..No. 6 of 2015 ()

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AGAINST THE ORDER/JUDGMENT IN RCA 151/2009 of ADDL.D.C. &
ADDL.MACT,THALASSERY DATED 23-08-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 11/2007 of PRL.M.C.,KANNUR
DATED 29-09-2009**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT :

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PATTARAKATH PUTHIYAPURAYIL NARAYANAN AGED 85 YEARS
S/O. AMBU, PROPRIETOR, MINERVA BAKERY
KANNADIPARAMBA AMSOM, DESOM, KANNUR TALUK
P.O.KANNADIPARAMBA, KANNUR-670604.**

**BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
SRI.E.MOHAMMED SHAFI**

RESPONDENT(S)/RESPONDENTS/PETITIONERS :

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SUSHEELA, AGED 78 YEARS
W/O. LATE KARIMBINKARA KRISHNAN, NO OCCUPATION
RESIDING AT KANNADIPARAMBA AMSOM, DESOM, KANNUR TALUK
P.O.KANNADIPARAMBA, KANNUR-670 604.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 12-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 6 of 2015

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Dated this the 12th day of January, 2015

O R D E R

ANTONY DOMINIC, J.

The tenant in R.C.P.No.11/2007 on the file of the Rent Control Court, Kannur, is the revision petitioner herein. The respondent herein, the landlady, filed the aforesaid Rent Control Petition urging grounds under Sec.11(2)(a)(b), Sec.11(3) and Sec.11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court disallowed eviction under Sec.11(3) and allowed the eviction on the other two grounds. The tenant and the landlady filed R.C.A.Nos.151/2009 and 152/2009. Both the appeals were dismissed by the Rent Control Appellate Authority by a common order. It is aggrieved by this order that this revision is filed by the petitioner, the tenant.

2. We heard the counsel for the petitioner and considered the submissions made.

3. The first contention raised by the counsel for the petitioner is that the petitioner had raised the question of title and

both the rent control court and the appellate court rejected the same without any valid reasons. It is true that the orders disclose that such a contention was raised by the petitioner. But, however, the order also shows that previously the landlady had filed O.S.No.702/1998 seeking eviction of the tenant contending that it was a license arrangement. In that case, the tenant raised a contention that he was occupying the premises on lease and that he can be evicted only in accordance with the provisions of the Rent Control Act. This contention was accepted by the civil court and the suit was dismissed. It was thereafter that the landlady filed rent control proceedings. The admitted facts being as above, the tenant having urged the contention that he is a lessee under the Rent Control Act and that he can be evicted only in accordance with the rent control proceedings and when the court has accepted the said contention and dismissed the suit, it is not possible for the tenant to thereafter raise a contention to the contrary when the landlady has initiated proceedings under the Kerala Buildings (Lease and Rent Control) Act. Therefore, we do not find any illegality in the finding of the Rent Control Court on that issue.

4. Insofar as the finding of the Rent Control Court, as confirmed by the appellate authority on the ground under Sec.11(4) (ii) is concerned, both the orders show that the commission report revealed that the building shown as "D" in the petition schedule is not in existence and the remnants are available there. Therefore, this means that the tenant, who had the statutory liability to preserve the building leased out, has not only failed in doing so, but has also caused damages to the building. Therefore, the lower authorities cannot be faulted for the view they have taken.

5. In the result, we do not accept either of the contentions raised. Petition fails and is dismissed.

6. At this stage, the learned counsel for the petitioner prays for reasonable time to surrender vacant possession of the building. Taking note of the fact that the tenant is running a bakery business in the schedule building, we allow him three months from today to surrender vacant possession to the landlady. This shall be subject to the condition that within ten days from today, the tenant shall file an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession to the landlady on the

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expiry of the three months allowed by us. He shall also clear the entire arrears of the rent due within ten days and shall continue to pay the same without default.

sd/-
ANTONY DOMINIC, JUDGE
sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge