

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

RCRev..No. 9 of 2015 ()

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AGAINST THE JUDGMENT IN RCA 100/2011 of ADDL. D.C. & SESSIONS COURT -IV,
THRISSUR DATED 22-08-2014
AGAINST THE ORDER IN RCP 92/2009 of PRL. MUNSIFF COURT, THRISSUR
DATED 16-02-2011**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

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JEEVANANDAN, S/O.SREEDHARAN BHAT,
'THANAL', KOLAZHY DESOM, VILLAGE,
THRISSUR TALUK.**

**BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA
SRI.BABU SHANKAR**

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

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- 1. VISWANATHAN, S/O.LATE RAGHAVA MENON,
KOUSTHUBHAM, KALLAMPILLY,
SREEKARYAM P.O., TRIVANDRUM, 695 017**
 - 2. MRS.CHANDRA MENON, D/O.LATE RAGHAVA MENON,
169, GULMOHAR ENCLAVE, NEW DELHI, REP. BY
POWER OF ATTORNEY HOLDER,
VISWANATHAN. 110 006.**

**R1 BY ADV. SRI..VIVEK VARGHESE P.J. (CAVEATOR)
SRI.JACOB VARGHESE (SR.).**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 15-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 9 of 2015

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Dated this the 15th day of January, 2015

O R D E R

ANTONY DOMINIC, J.:

The tenant in R.C.P.No.92/2009 on the file of the Rent Control Court, Thrissur, whose order of eviction was confirmed by the Rent Control Appellate Authority by dismissing R.C.A.No.100/2011, is the revision petitioner.

2. We heard the learned counsel for the petitioner and the learned Senior Counsel appearing for respondents 1 and 2.

3. Respondents 1 and 2 filed R.C.P. No.92/2009 seeking eviction of the tenant under Secs.11(2)(b), 11(3) and 11(4)(1) of the Kerala Buildings (Lease and Rent Control) Act. Accepting the grounds under Secs.11(3) and 11(4)(i), the Rent Control Court ordered eviction. This order was challenged by the tenant before the Appellate Authority by filing R.C.A.No.100/2011. That is now dismissed by order dated 22.8.2014. It is in this background, that this revision is filed.

4. Insofar as the ground under Sec.11(3) is concerned, the contention raised by the learned counsel for the petitioner is that the 1st respondent is a person, who retired from the service of the

FCI as early as in 2005 and that he is settled in Trivandrum. It is stated that the projected need for starting of an engineering consultancy in Thrissur is not a bona fide one and is only a ruse to get the petitioner evicted from the building.

5. However, from the impugned orders, we notice that the 1st respondent, who was examined before the Rent Control Court as PW-1, has deposed that he is a qualified engineer by profession and has retired from the service as a Deputy General Manager of FCI. Upon retirement, he started a consultancy firm along with another person in Thiruvananthapuram, which was not a success. According to him, now his wife is working as an officer in the Syndicate Bank at Thrissur and that he is a native of Thrissur. Therefore, he has purchased an apartment and has shifted his residence to Thrissur. On such shifting, he has decided to start an engineering consultancy in Thrissur and it was for that purpose, he has sought the eviction of the tenant under Sec.11(3).

6. Orders show that this need urged by the landlord was deposed by him in court and despite a searching cross examination, nothing could be brought out to discredit his evidence. Having considered this ground urged by the landlord, we do not see

anything to disbelieve the bona fide need and therefore endorse the finding of the Rent Control Court as confirmed by the Appellate Authority.

7. Insofar as ground under Sec.11(4)(i) is concerned, both sides are in agreement that the petitioner was initially conducting a business by name, "Jayaram Electricals" in a building adjacent to the scheduled premises and that the scheduled premises was being used for storing his goods. On being evicted, he had shifted his business establishment to another building by name, "Ambika Arcade". According to the landlord, since the shifting of the business, he is not using the premises and has sublet the room to RW-3.

8. However, this claim of the landlord was sought to be contradicted by contending that in the room in question, the petitioner is conducting repair centre of telephones and mobile phones and for also recording and sale of compact disk. It is his case that for this purpose, he had appointed RW-3 as his employee. However, the petitioner did not produce any document whatsoever showing that he is conducting a business in the scheduled premises. There was also no record evidencing the employer-

employee relationship between the petitioner and the RW-3.

9. Moreover, in the premises in question, a telephone has been installed, which is in the name of RW-3. In fact, in his evidence, RW-3 has admitted that when he asked for increased wages, the petitioner has permitted him to instal a telephone booth in the room and take the entire income therefrom. The fact that RW-3 is present in the room throughout is also undisputed. It is based on these circumstances, the Rent Control Court has come to the conclusion that this is a case of sublease. In the light of these evidence, according to us also, the Rent Control Court or the Appellate Authority cannot be faulted for inferring a case of parting with possession of the room in question and sublease as contemplated under Sec.11(4)(i) of the Rent Control Act.

10. Before us the tenant contended that he ought to have been given the benefit of the second proviso to Sec.11(3). The law is settled that when the tenant is claiming the benefit of proviso to Sec.11(3), it is for the tenant to plead and prove the same. There is no evidence whatsoever to show that he was depending on the income he was earning from the business carried on in the room in question. Though he admitted that he had accounts, he did not

produce it. He also did not produce anything to substantiate his contention that the electrical business, which was shifted to Ambika Arcade is conducted by his children. He also did not make enquiry about the availability of other rooms in the locality.

11. At the appellate stage, the tenant made an attempt to show that the room in Ambika Arcade was vacated by him based on a compromise between himself and the landlord of that building. However, that order, which is a development subsequent to the order passed by the Rent Control Court, did not show that the tenant parted with possession in that building. Therefore, we are not in a position to place any reliance on that argument. This therefore shows that the tenant did not succeed in proving that he was entitled to the benefit of the proviso to Sec.11(3).

We therefore are unable to accept any one of the contentions urged by the learned counsel for the petitioner. The revision petition fails and is dismissed.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

