

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

RCRev..No. 15 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 132/2013 of RENT CONTROL APPELLATE AUTHORITY/II
ADDL. DISTRICT JUDGE, KOZHIKODE DATED 30-09-2014**

**AGAINST THE ORDER IN RCP 144/2012 of RENT CONTROL COURT/MUNSIFF COURT,
KOZHIKODE DATED 30.9.2013**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**KUNIYIL KOMALAM, AGED 52 YEARS,
D/O.CHAYICHUTTY, DOOR NO.15/1233, OLAVANNA BAZAR,
OLAVANNA AMSOM AND DESOM, KOZHIKODE TALUK 673 019.**

**BY ADVS.SRI.V.T.MADHAVANUNNI
SRI.V.A.SATHEESH
SRI.J.ABHILASH**

RESPONDENT/RESPONDENT/PETITIONER:

**KURUPPAMKANDY PREMARAJAN, AGED 68 YEARS,
S/O.SEKHARAN, KURUPPAMKANDY HOUSE,
OLAVANNA AMSOM AND DESOM, KOZHIKODE TALUK 673 019.**

BY ADV. SRI.K.A.SALIL NARAYANAN

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

vpv

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

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R.C.R.No.15 of 2015

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Dated this the 9th day of October, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.144 of 2012 on the file of the Rent Control Court, Kozhikode. The respondent is the landlord therein. The respondent/landlord had in R.C.P.No.144 of 2012 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 the fair rent in respect of a shop room having an area of 130 sq. ft. situate in Olavanna town. The entrustment of the shop room was in the year 1991 on a rent of Rs.250/-. The case set out by the landlord is that in the year 1993 the rent was enhanced to Rs.300/- per mensem and that there has been no increase thereafter. He contended that there are many business establishments, other institutions and offices adjacent to the tenanted premises and that it is situate in a densely populated and commercially important area. He had in the petition for fixation of fair rent prayed that the sum of Rs.2,000/- may be fixed as the fair rent. The tenant opposed the application by filing a counter statement. She contended that the

building is more than 30 years old, that it is not situate in a commercially important place as alleged by the landlord and that in Olavanna town there is no shop room which fetches a rent of Rs.1,500/- per mensem.

2. Before the rent control court, the wife of the landlord was examined as PW1 and Exts.A1 to A4 were produced and marked on his side. The tenant examined herself as RW1. The rent control court considered the rival contentions and held that having regard to the interval of time that has elapsed after the entrustment was made, the locality where the building is situate and inflation and consequential reduction in purchasing power of money, that a fourfold increase from the present rate of rent would be just and equitable. The rent control court accordingly fixed the sum of Rs.1,200/- as the monthly rent. The tenant carried the matter in appeal by filing R.C.A.No.132 of 2013 on the file of the Rent Control Appellate Authority, Kozhikode. By judgment delivered on 30.9.2014, the rent control appellate authority concurred with the rent control court and dismissed the appeal. Hence this revision petition.

3. We heard Sri.V.T.Madhavanunni, learned counsel appearing for the petitioner and Sri.K.A.Salil Narayanan, learned counsel appearing for the respondent. We have also gone through the impugned orders. The shop room is admittedly situate in Olavanna

town. It has an area of 130 sq. ft. The entrustment was in the year 1991. The rent initially fixed was Rs.250/- per mensem. Later it was fixed at Rs.300/-. It is not in dispute that more than two decades have passed thereafter. Such being the situation, we are of the opinion that no exception can be taken to the impugned judgment/order.

4. The Apex Court has in **Mohammad Ahmad & Another v. Atma Ram Chauhan & Others** (AIR 2011 SC 1940) held that if the rent is too low (in comparison to the market rent) having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently. In the instant case, the rent control court has taken note of the fact that after the entrustment, there has been manifold increase in the cost of construction including cost of labour and materials and that it is having regard to these facts that the rent has to be fixed. It is also not in dispute that the building is situate in a commercially important part of Olavanna town. In such circumstances, we are not persuaded to agree with the learned counsel appearing for the petitioner that the impugned judgment/order suffer from any infirmity or illegality. We however notice that the rent control court has awarded an increase in the fair rent fixed by it by 10% per annum. The guidelines framed by

the Apex Court in **Mohammad Ahmad & Another v. Atma Ram Chauhan & Others** (supra) contemplates enhancement of the rent according to the terms of the agreement or atleast by 10% after every three years. Having regard to the aforesaid guidelines, we are of the opinion that the enhancement in the instant case should be only once in three years and that such enhancement, having regard to the ground realities, should be by 15%.

We accordingly modify the impugned judgment/order and direct that the fair rent fixed by the rent control court and upheld by the Rent Control Appellate Authority namely Rs.1,200/- per mensem with effect from the date on which R.C.P.No.144 of 2012 was filed, shall stand increased by 15% once in every three years, commencing from the date on which the petition for fixation of fair rent was filed. The impugned judgment/order shall stand in all other respects. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/TRUE COPY/

P.A. TO JUDGE