

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

RCRev..No. 32 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 50/2013 of ADDL. DISTRICT COURT &
RENT CONTROL APPELLATE AUTHORITY, VADAKARA DATED 19-11-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 41/2012 of MUNSIF COURT, VADAKARA
DATED 26-03-2013**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT/TENANT:

**GOPI, S/O.KANNAN AGED 60 YEARS
TRADER, CHEEKOYIL THAZHAKUNIYIL, VATOLIKARA
KUNNUMMAKARA AMSOM, VATAKARA TALUK
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA**

RESPONDENT(S)/RESPONDENT/PETITIONER/LANDLORD:

**K.K.KUNHIKANNAN, AGED 74 YEARS
S/O KELAN, SHARIKA, ONCHIYAM AMSOM
KUNNUKARA, PO ONCHIYAM CHOMBALA (VIA),
VATAKARA TALUK
KOZHIKODE DISTRICT.**

R1 BY ADV. SRI.R..PARTHASARATHY (CAVEATOR)

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 16-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 32 of 2015
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Dated this the 16th day of February, 2015

O R D E R

Antony Dominic, J.

The tenant in RCP No.41/2012 on the file of Rent Control Court, Vatakara, who suffered an order of eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act and who also lost before the Rent Control Appellate Authority, which dismissed RCA No.50/13 filed by him, is the revision petitioner.

2. RCP No.41/12 was filed by the respondent landlord seeking eviction from Room Nos.488 and 489 of Kunnummakkara Amsom in Vadakara Taluk. The said rooms were let out to the petitioner herein. Petitioner is conducting a grocery and tea shop in the rooms. It is while so that the respondent landlord, a retired teacher, who also worked as reporter in Deshabhimani Daily for a short while, applied for his eviction under Section 11(3) contending that he bonafide needed the room for his occupation for starting a printing press.

3. The tenant contested the petition by disputing the *bona fide* of the need urged by the landlord and also claiming the benefit

of the second proviso to Section 11(3). These contentions were negated by the Rent Control Court and this order was confirmed by the Rent Control Appellate Authority as well. It is in this background, the revision is filed.

4. We heard the learned counsel for the petitioner and also the learned counsel appearing for the respondent landlord.

5. Before us, the learned counsel for the petitioner contended that though the petitioner had claimed the benefit of the second proviso to Section 11(3) and that the Rent Control Court has found in his favour the first limb of the proviso, the Court declined to grant the benefit thereunder on the basis that the second limb of the proviso was found against him. This finding, according to him, has been entered into ignoring the evidence let in by the tenant, who was examined before the Rent Control Court as RW1.

6. Having considered the above contention raised, we have to confess our inability to accept the same. The second proviso to Section 11(3) provides that if a tenant is depending on

the income from the business carried on from the tenanted premises for his livelihood and if he proves the non availability of suitable rooms in the locality, the Rent Control Court cannot grant an order of eviction under Section 11(3). It is the settled legal position that the burden of proving both the limbs of the proviso is on the tenant.

7. In so far as this case is concerned, on evidence, the Courts below were satisfied that the first limb of the proviso that the tenant is depending upon the income from the business carried on in the tenanted premises as his main source of livelihood has been established. However, in so far as the second limb regarding the non availability of suitable rooms in the locality is concerned, the report of the Advocate Commissioner indicated the availability of other rooms in the locality. To that report, the tenant did not even file an objection. However, in the box, he deposed that the aforesaid report of the Advocate Commissioner was incorrect. But this assertion made by the tenant was declined to be accepted by the courts below for the reason that

he had not objected to the report of the Advocate Commissioner and also did not let in any independent evidence on that aspect. This view taken by the lower authorities cannot be said to be irregular and therefore, we are unable to take a different view from the one taken by the Courts below. We, therefore, do not find any merit in the revision now filed.

8. RCR is dismissed.

At this stage, learned counsel for the petitioner sought a reasonable time to surrender vacant possession of the rooms to the landlord. On this request, we heard the learned counsel for the landlord also. It is a fact that the tenant is conducting a grocery and a tea shop in the premises in question. Therefore, even if he is to shift from the premises, he requires some time to locate a suitable room. Taking note of this fact and also that he is depending on the income as his source of livelihood, we allow six months' time from today to surrender vacant possession of the premises to the landlord. However, this shall be subject to the condition that within two weeks from today, the tenant should file

an affidavit before the Rent Control Court/Execution Court unconditionally undertaking to surrender vacant possession of the rooms to the landlord on or before the expiry of the six months allowed by us and also subject to his paying the rent without default.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge