

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

RCRev..No. 36 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 2/2014 of II ADDL.DISTRICT JUDGE/RENT
CONTROL APPELLATE AUTHORITY, KOLLAM DATED 31-10-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 16/2011 of PRINCIPAL RENT CONTROL
COURT,, KOLLAM DATED 30-09-2013**

REVISION PETITIONER(S)/APPELLANT/COUNTER PETITIONER:

**K.E.LEELAMMA, AGED 56 YEARS
W/O.BABYKUTTY, PARAMBIL BINO BHAVAN, MARUTHOORTHEKKU
AYANIVELIKULANGARA VILLAGE, AYANIVELIKULANGARA P.O.
KARUNAGAPPALLY, KOLLAM.**

**BY ADVS.SMT.K.G.BINDU
SMT.T.S.MAYA (THIYADIL)**

RESPONDENT(S)/RESPONDENT/PETITIONER:

**RAVEENDRAN NAIR,, AGED 68 YEARS
S/O.RAMAN NAIR, THYKKOTTATHIL, KANNIMELCHERRY
SAKTHIKULANGARA VILLAGE, KAVANAD P.O., VALLIKKEEZHU
KOLLAM TALUK, KOLLAM DISTRICT.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 27-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 36 of 2015
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Dated this the 27th day of February, 2015

O R D E R

Antony Dominic, J.

The petitioner is the respondent in RCP No.16/11 on the file of the Rent Control Court, Kollam. The landlord filed the said petition seeking eviction urging grounds under Section 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court allowed eviction only under Section 11(4)(v). The tenant challenged the order by filing RCA No.2/14 on the file of the Rent Control Appellate Authority.

2. Before the Rent Control Court, the landlord sought reversal of the finding under Section 11(3). However, in the judgment dated 31st of October, 2014, the appellate authority confirmed the finding of the Rent Control Court under Section 11(3), but confirmed the order of eviction granted by the Rent Control Court under Section 11(4)(v). It is in these circumstances, the tenant has filed this revision.

3. We heard the learned counsel for the petitioner and considered the submissions made.

4. As we have already stated, the only surviving ground on which eviction is ordered concurrently by the lower authorities is under Section 11(4)(v), which provides that, if the tenant ceases to occupy the building in question for a continuous period of six months or more, the landlord is entitled to an order of eviction. In so far as this case is concerned, the case of the landlord is that from October, 2010, the tenant has not been occupying the room in question and it is urging that ground, he filed the RCP on 12/4/11.

5. Before the Rent Control Court, oral evidence of PWs1 to PW3 was adduced to sustain the grounds urged by them. The Advocate Commissioner also had made a report which indicated cessation of occupation. However, this case pleaded by the landlord was sought to be contradicted by the tenant by contending that the discontinuance of the business was only from December 2010 and was on account of her ailment, viz., bronchitis. But apart from making this assertion, no scrap of paper or other independent evidence was adduced by the tenant to sustain this contention. When the landlord has discharged his burden of proving the case of cessation of occupation of the

building, the tenant had the responsibility of producing evidence and contradict the case pleaded by the landlord and to substantiate the case pleaded by her. There was total failure on the part of the tenant in this respect. In such a situation, we can only endorse the view taken by the lower authorities ordering eviction under Section 11(4)(v) of the Act. We do not find any reason to interfere with the orders passed by the Rent Control Court and the Rent Control Appellate Authority.

RCR is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

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PA to Judge