

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

RCRev..No. 39 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 72/2013 of RENT CONTROL APPELLATE
COURT/ADDL.DISTRICT COURT-IV, ERNAKULAM DT 19.11.14**

**AGAINST THE ORDER/JUDGMENT IN RCP 125/2012 of THIRD ADDL.MUNSIFF AND
RENT CONTROL COURT, ERNAKULAM DATED 4/10/2013**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

**P.C. CHERIAN, AGED 49 YEARS
S/O.LATE P.T.CHUMMAR, 38/522/A5, CHERIN JOLLY
MANORAMA JUNCTION, ERNAKULAM, KOCHI-16.**

BY ADV. SRI.T.A.RAJAN

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**S. UMESH PAI,, AGED 44 YEARS
S/O.LATE SUNDARESH PAI, SUDHEENDRA, ESI HOSPITAL ROAD
CEMETERY JUNCTION, ERNAKULAM, KOCHI-18.**

R1 BY ADV. SRI.LAKSHMI NARAYAN(CAVEATOR)

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 25-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 39 of 2015
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Dated this the 25th day of February, 2015

O R D E R

Antony Dominic, J.

The respondent herein, the landlord, filed RCP No.125/12 before the Rent Control Court, Ernakulam seeking eviction of the petitioner tenant from the scheduled building urging grounds under Section 11(4)(iii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act. The tenant contested the case by contending that the building in question is used for his business in the Manorama Junction as godown and that therefore there was no cessation of occupation also. Considering the pleadings and the evidence available, the Rent Control Court passed order dated 4th of October, 2013 allowing the petition and ordered eviction. This order of the Rent Control Court was challenged by the tenant in RCA No.72/13 filed before the Rent Control Appellate Authority, Ernakulam. The appellate authority in its order dated 19th of November, 2014 reversed the finding of the Rent Control Court on the ground under Section 11(4)(v) and confirmed the order of eviction under Section

11(4)(iii). It is this order which is under challenge before us in this revision filed by the tenant.

2. We heard the learned counsel for the petitioner/tenant and the learned counsel appearing for the respondent/landlord.

3. As we have noticed, the ground accepted by the Rent Control Appellate Authority is under section 11(4)(iii). The case of the landlord is that after the lease was granted in favour of the tenant, the tenant acquired another building in the vicinity of the scheduled building itself and that the said building is reasonably sufficient to accommodate the purpose for which the building was leased out. The case that the building has been acquired by the tenant is undisputed. The report submitted by the Advocate Commissioner shows that the said building is a three storied one and that the area of the ground floor is 1500 sq.ft and the second and third floors have an area of 2500 sq.ft each. Though the entire building is used for the business of the tenant, the report of the Advocate Commissioner indicates that there is sufficient space which could accommodate the godown of the tenant also.

Even as RW1, the tenant could not explain to the satisfaction of the court as to why the building acquired by him could not accommodate his requirements of a godown. It was in such circumstances that the lower authorities have found in favour of the landlord the ground under Section 11(4)(iii). There is absolutely no reason to upset this concurrent finding of fact. We, therefore, do not find any reason to interfere with the orders passed by the lower authorities.

4. At this stage, learned counsel for the petitioner sought a reasonable time to surrender vacant possession of the room to the landlord. On this request, we heard the learned counsel for the landlord. Taking note of the submissions made at the Bar and also that the godown is to be shifted from the tenanted premises, we allow the tenant six months' time from today to surrender vacant possession thereof to the landlord. This shall however be subject to the condition that, within two weeks from today, the tenant shall file an affidavit before the Execution Court unconditionally undertaking to surrender the scheduled premises

RCR No.39/15

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to the landlord on expiry of the six months allowed by this Court.

The tenant shall also continue to pay the rent without default.

Subject to the above, RCR is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge