

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

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

**THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936**

**RCRev..No. 43 of 2015 ()**  
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**AGAINST THE ORDER/JUDGMENT IN RCA 196/2010 of RENT CONTROL APPELLATE  
AUTHORITY/ADDL.DISTRICT JUDGE-III, THALASSERY DATED 24-11-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 64/2008 of RENT CONTROL COURT  
(ADDL.MUNSIFF), KANNUR DATED 09-04-2010**

**REVISION PETITIONER(S)/APPELLANT/R7:**  
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**PARTHARAJ AGED 44 YEARS  
S/O.BALAKRISHNAN, MATHUMMAL HOUSE, KOTTAMARKANDI  
PANNENPARA, KANNUR-4.**

**BY ADV. SRI.P.U.SHAILAJAN**

**RESPONDENT(S)/RESPONDENTS/PETITIONER AND R1-6 AND 8-10.:**  
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- 1. NELLIYERI GIREESHAN, AGED 48 YEARS  
S/O.LATE N.P.VASUDEVAN, ELAYAVOOR AMSOM  
MUNDAYAD DESOM, P.O.THAZHECHOVVA  
KANNUR DISTRICT-670006.**
- 2. MRS.SANTHA BALAKRISHNAN, AGED 72 YEARS,  
W/O.LATE BALAKRISHNAN, MATHUMMAL HOUSE, KOTTAMARKANDI  
PANNENPARA, KANNUR DISTRICT-620004.**
- 3. RAJALAKSHMI, AGED 54 YEARS,  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.**
- 4. THANKARAJ, AGED 54 YEARS,  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.**
- 5. JAYARAJ, AGED 50 YEARS,  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.**
- 6. DHANRAJ, AGED 48 YEARS,  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.**

7. NATRAJ, AGED 46 YEARS,  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.
8. RAJASREE, AGED 42 YEARS  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.
9. MADHUSREE, AGED 40 YEARS  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.
10. BABURAJ, AGED 38 YEARS  
RESIDING AT MATHUMMAL HOUSE, KOTTAMARKANDI, PANNENPARA  
KANNUR-620004.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 26-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ANTONY DOMINIC & ALEXANDER THOMAS, JJ.**  
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**R.C.R. No. 43 of 2015**  
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**Dated this the 26<sup>th</sup> day of February, 2015**

**O R D E R**

Antony Dominic, J.

The 1<sup>st</sup> respondent landlord filed RCP No.64/2008 seeking eviction of the respondents therein, among whom, the 7<sup>th</sup> respondent is the revision petitioner. Eviction was sought on grounds under Section 11(3), 11(4)(ii) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court by its order dated 9<sup>th</sup> of April 2010 ordered eviction under Sections 11(3) and 11(4)(iii). This order was challenged before the Rent Control Appellate Authority in RCA No.196/10 filed by the petitioner. The appellate authority by its judgment dated 24/11/14 dismissed the appeal. It is aggrieved by these orders, the revision is filed.

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

3. According to the learned counsel, the findings of the Rent Control Court both under Section 11(3) and 11(4)(iii) are totally against the facts and the evidence and therefore are untenable.

4. In so far as Section 11(3) is concerned, the case of the landlord was that he needed vacant possession of the room in question in order to shift his tailoring business. He has given evidence which shows that he had genuinely decided to shift his tailoring business to the premises in question. This need of the landlord was resisted by the tenant by contending that the ground floor of the building is already in the possession of the landlord and that there are vacant rooms in the ground floor which could accommodate the needs of the landlord even if he wanted to shift his tailoring business. However, evidence show that the rooms in the ground floor is with the mother of the landlord and that the remaining room, as found by the courts concurrently, was too small and it could not accommodate the needs of the landlord. It was therefore that the Rent Control Court and the appellate authority refused to accept the case pleaded by the tenant.

5. Turning to the benefit of the first and second provisos of Section 11(3) claimed by the tenant, in so far as the first proviso is concerned, the room in the possession of the landlord

has already been found to be unsuitable for the needs of the landlord. This has been stated as the special reason contemplated in the proviso to Section 11(3).

6. As far as the second proviso is concerned, though the tenant claimed to be depending on the income from the printing press in the tenanted premises for his livelihood, as found by the lower authorities, he did not prove the second limb of the proviso to Section 11(3). It was in such circumstances that this benefit also has been denied by the lower authorities. Evidence being as above, we cannot disagree with the view taken by the lower authorities.

7. Turning to Section 11(4)(iii), the 6<sup>th</sup> respondent, a brother of the petitioner, is also running a press at a place called Pallikkunnu. Although it was contended that the said business is that of the 6<sup>th</sup> respondent in his individual capacity, there is no evidence either to prove that the press in the tenanted premises or the press at Pallikkunnu were owned individually by either the petitioner or the 6<sup>th</sup> respondent. If that be so, it cannot be

disputed that the co-tenants have acquired another premises attracting the provisions of Section 11(4)(iii).

8. True, it was contended by the learned counsel for the petitioner that the press of the 6<sup>th</sup> respondent is in Pallikkunnu Panchayath and that since the tenanted premises is within the Kannur Municipality, requirements of Section 11(4)(iii) are not satisfied. As admitted by the learned counsel himself, the distance between the two places is only 3 km and therefore this technical argument, cannot be entertained. We are not satisfied that the tenant has made out a case for interference.

9. RCR is dismissed.

However, taking note of the request made by the learned counsel for the petitioner for reasonable time to shift the press from the tenanted premises, we allow the tenant four months' time from today to surrender vacant possession of the tenanted premises 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 Rent Control Court/Execution Court

unconditionally undertaking to surrender vacant possession of the building to the landlord on or before the expiry of the period allowed by us and also on continuing to pay the rent without default.

Sd/-  
**ANTONY DOMINIC  
JUDGE**

Sd/-  
**ALEXANDER THOMAS  
JUDGE**

Rp

//True Copy//

PA to Judge