

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

RCRev..No. 60 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 32/2014 of I ADDL.DISTRICT COURT/RENT
CONTROL APPELLATE AUTHORITY, ERNAKULAM DATED 25-08-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 10/2012 of III ADDL.MUNSIFF & RENT
CONTROL COURT, ERNAKULAM DATED 16-01-2014**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

**RENJITH THALIYADATH AGED 32 YEARS,
S/O.T.BALAN,
HOUSE NO.166, CC 27/52,
GIRINAGAR COLONY, KADAVANTHRA,
KOCHI -682020.**

**BY ADVS.SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR**

RESPONDENT(S)/RESPONDENT:

**VARGHESE DANIEL,
S/O LATE N.K.DANIEL,
AGED 55 YEARS,
KUTTIKATTIL HOUSE,
ADOOR, PATHANAMTHITTA DT.**

BY SRI.SHAJI P.CHALY

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23-
03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 60 of 2015
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Dated this the 23rd day of March, 2015

O R D E R

Antony Dominic, J.

The respondent, the landlord of the premises occupied by the petitioner on lease, has filed RCP No.10/12 on the file of the Rent Control Court, Ernakulam seeking eviction of the petitioner under Section 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Rent Control Court allowed the petition by its order dated 16th of January, 2014. That is confirmed by the appellate authority by its judgment in RCA No.32/14. It is challenging these proceedings, the tenant has filed this revision.

2. We heard the learned counsel for the petitioner and Sri.S.P.Chaly, learned counsel who entered appearance on behalf of the respondent on caveat.

3. The landlord sought eviction under Section 11(3) and 11(4)(ii) of the Act. The landlord-tenant relationship was not under dispute in these proceedings. In so far as Section 11(3) urged by the landlord is concerned, the case of the landlord is that he is an employee of Indian Bank and was then posted at Adoor, where he

was living in a rented house. According to him, he is due to retire on 31/12/16 and that as per service conditions, he is entitled to get a posting at the place of his choice. He, therefore, expected to get posted to Kochi early and on his transfer back to Kochi, he wanted to occupy the building, where he also wanted to settle down after retirement. Although the Rent Control Court and the appellate authority found that the hope of the landlord to get transfer and posting to Kochi prior to his retirement did not materialise, still, accepting the *bona fide* need of the landlord that on retirement, he intended to settle down in his own house in Kochi, the Rent Control Court and the appellate authority have ordered eviction under Section 11(3). The authorities have also disallowed the claim of the tenant for the benefit of the proviso to Section 11(3) of the Act.

4. Similarly, in so far as Section 11(4)(ii) is concerned, evidence adduced before the Rent Control Court shows that the building in question was leased out to the petitioner for use as a residential premise. However, that was converted for his professional use as an Architect. This was found to be attracting

the provisions of Section 11(4)(ii). The ground under Section 11(4)(ii) was accepted by the appellate authority also.

5. Both the findings of the Rent Control Court as confirmed by the appellate authority are entirely based on the evidence that was available. These findings do not suffer from any irregularity justifying interference.

6. RCR is dismissed.

At this stage, learned counsel for the petitioner/tenant requested that he be given reasonable time to surrender vacant possession of the building in question. On this request, we heard the learned counsel for the landlord also. As we have already stated, though the landlord expected to get a posting in Kochi prior to his retirement, that has not materialised so far. We are also informed that during the pendency of the proceedings, he was transferred from Adoor and is posted at Kottayam. Therefore, the landlord is likely to come to Kochi only on his retirement. In such circumstances, we see no reason to disturb the tenant now. Therefore, at the request of the learned counsel for the tenant, we allow the tenant time till 1/11/16 to surrender vacant possession of the building in question to the landlord. However, this shall be

subject to the condition that the tenant shall, within three weeks from today, file an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession of the building to the landlord on or before 1/11/16. He shall also continue to pay the rent without default during the period allowed by this Court. Subject to the above, the orders passed by the lower authorities will stand confirmed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge