

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

RCR.No. 62 of 2015 ()

RCA 28/2013 of ADDITIONAL DISTRICT COURT, KOZHIKODE-III

RCP 1/2010 of MUNSIFF-RENT CONTROL COURT, PERAMBARA

REVISION PETITIONER(S)/APPELLANT/RESPONDENTS:

- 1. THE PRESIDENT, PAYYORMALA WEAVERS CO-OPERATIVE SOCIETY
NEAR MUNSIFF MAGISTRATE COURT, PO PERAMBRA-673 525
KOZHIKODE DISTRICT.**
- 2. THE SECRETARY
PAYYORMALA WEAVERS CO-OPERATIVE SOCIETY, NEAR MUNSIFF
MAGISTRATE COURT
PO PERAMBRA-673 525, KOZHIKODE DISTRICT.**

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENT(S)/PETITIONERS:

- 1. KUNNATH JANAKI
AGED 74 YEARS, D/O.RAMAN, SWASTHAM
NOCHAD VILLAGE, KALPATHOOR (PO), PERAMBRA
KOZHIKODE DISTRICT, PIN-673 525.**
- 2. BROTHER N.BALAN
AGED 67 YEARS, "SANTHI" BUSINESS ERAVATTUR AMSOM
KIZHINJANNIAM DESOM, (PO) PERAMBRA, KOZHIKODE DISTRICT
PIN-673 525.**
- 3. SISTER N.SARADA, AGED 62 YEARS
"ANAND" SWASTHAM,
THURAYOOR AMSOM DESOM PO PAYYOLI ANGADI
KOZHIKODE DISTRICT, PIN-673 525.**
- 4. KOZHIKODAN VEETIL JANAKI
W/O.LATE KUTTIKRISHNAN, AGED 59 YEARS, SWASTHAM
CHERUVANNUR AMSOM, P.O.CHERUVANNUR, KOZHIKODE DISTRICT
PIN-673 524.**

R1 -R 4 BY ADV. SRI.NIRMAL. S

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 24-06-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SKV

**K. SURENDRA MOHAN &
P.V.ASHA, JJ.**

R.C.R No.62 of 2015-A

Dated this the 24th day of June, 2015

O R D E R

Surendra Mohan, J.

The revision petitioners are the President and Secretary of a Co-operative Society conducting retail sale of handloom products from the tenanted shop room. The monthly rent thereof is Rs.85/-, which according to the landlords is remaining defaulted for the past 28 months. The landlords had sought for an order of eviction against the tenants by filing R.C.P No.1 of 2010 before the Rent Control Court, Perambra on grounds under Sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the 'Act' for short). The case of the landlords was that, the tenants had other suitable premises in the same town and that those premises were reasonably sufficient for the conduct of the business that was being conducted from the tenanted shop room. The need put forward was that of the 4th respondent and her husband to conduct retail sale of handloom products from the shop room.

2. The need was disputed by the revision petitioners/tenants. The parties went to trial on such pleadings. Exts.A1 to

A8 documents were marked on the side of the landlords and the husband of the 4th respondent was examined as PW1. On the side of the respondents, there is no evidence. Exts.C1 to C5 - Commission reports, plans and an expert report, have been marked. On an appreciation of the evidence on record, the Rent Control Court found that the landlords had succeeded in making out the ground under Section 11(4)(iii) of the Act. Therefore eviction was ordered on the said ground. The ground of bonafide need was found against.

3. The aggrieved tenants challenged the order of eviction passed by the Rent Control Court in RCA No.28 of 2013 before the Rent Control Appellate Authority, Kozhikode. The landlords also challenged the denial of an order of eviction under Section 11(3) by filing a Cross Appeal. Both the appeal and cross appeal were heard together. On an appreciation of the evidence on record, the Rent Control Appellate Authority found that the order of eviction under Section 11(4)(iii) was only to be confirmed. The appellate authority found that the Rent Control Court ought to have found in favour of the landlords on the question of bonafide need also. Thus, the tenants' appeal was dismissed and the cross appeal filed by the landlords was

allowed. The tenants are before us in revision against the said judgment of the appellate authority.

4. According to Sri Zubair Pulikool, the learned counsel for the revision petitioners, respondents 1 to 4 are the landlords in respect of the premises. Section 11(4)(iii) contemplates the grant of an order of eviction where the tenanted premises are required for the bonafide 'own occupation or for the occupation of any member of his family dependent on him'. In the present case, none of the landlords have been examined as a witness. Therefore according to the learned counsel, the landlords have not even testified to the bonafides of the need that has been put forward. PW1 who has been examined in this case is the husband of the 4th respondent and not one of the landlords. It is contended by the learned counsel that the above crucial aspect has not been noticed by the authorities below. It is the further case of the revision petitioners that PW1 was a Vice President of the first revision petitioner/co-operative society. He had resigned from his post and has instituted the above proceedings, without any bonafides.

5. With respect to the ground under Section 11(4)(iii), the learned counsel for the revision petitioners points out that

the other room that is in the possession of the tenants is situate in a different ward, as evident from the report of the Advocate Commissioner. It is contended that there is also no evidence regarding the fact that the said room is “reasonably sufficient” for the conduct of the business that is being carried on in the tenanted shop room. For the above reasons, it is contended that the proceedings of the authorities below require interference in revision.

6. Advocate S.Nirmal, who appears for the landlords on the other hand points out that, PW1 is none other than the husband of the 4th respondent, who is admittedly one of the landlords. It is for the projected need of PW1 as well as the 4th respondent that vacant possession of the tenanted shop room has been sought. It is for the said reason that PW1 has been examined. It is pointed out that examination of the deponent is sufficient for the purposes of Section 11(3) of the Act, as held by a Full Bench of this Court. It is also contended that the bonafides of the need put forth has not been disputed by the tenants. The 4th respondent and her husband-PW1, are in a situation where they have no income of their own. Therefore it is contended that the need is bonafide. With respect to the ground

under Section 11(4)(iii) the contention of the learned counsel for the respondents is that both the authorities below have concurrently found in favour of the landlords. It cannot be disputed that the revision petitioners have other premises in their possession. The said premises are reasonably sufficient for the conduct of the business that they have been conducting in the tenanted shop room. At any rate, since there is no evidence on the side of the revision petitioners on the above aspect also, the findings of the authorities below are justified. The onus of proving that the premises in possession of the tenants are not “reasonably sufficient” for his business, being on the tenants, in the absence of any evidence on their side, the issue has to be held in favour of the landlords, it is contended.

7. Heard. As rightly pointed out by the learned counsel for the respondents, there is no evidence on the side of the revision petitioners/tenants, in this case. They have not adduced any oral or documentary evidence to support their contentions. With respect to the order under Section 11(4)(iii) of the Act, both the authorities have been correctly found in favour of the respondents. It has come out in evidence that the revision petitioners are in possession of other premises. No doubt they

have a contention that the said premises are not 'reasonably sufficient' for their business. However, the burden to prove that the premises in their possession are not 'reasonably sufficient' is squarely on the revision petitioners. They have not adduced any evidence in discharge of the said burden. The attempt of the learned counsel for the revision petitioners has been to place reliance on the reports of the Advocate Commissioner, to make out a case that the premises in the possession of the revision petitioners are situate at a commercially less important locality and that the same was bounded by compound walls. The authorities below have considered the above aspect and held that the premises being owned by the tenants, it was open to them to make necessary modifications and even remove the compound wall to provide a commercially viable mean of access to the premises. It was up to the tenants to have pointed out by adducing evidence as to why the said premises were not suitable for the conduct of the business that they have been conducting from the tenanted shop room. They have not done so. There is no evidence to justify a conclusion that the premises in their possession are situate in a commercially less important locality. The learned counsel for the revision petitioners stresses on the

door numbers of the rooms to contend that both the shop rooms are in different wards. However, the said fact alone is insufficient to support a conclusion that one or either of them is located in a commercially less important locality. No details, regarding the name of the business that is conducted from the tenanted shop room or the space occupied by them, to be compared with the space in possession, are available. In the absence of such details, we do not find any grounds to enter a finding that there has been any error in the approach adopted by the authorities below. For the above reasons, we confirm the order of conviction granted under Section 11(4)(iii) of the Act.

8. The case of the landlords in the Rent Control Petition is that the tenanted shop room is needed by them for the occupation of PW1 to start a business in the sale of handloom products. PW1 who has been examined had deposed that he was dependent on the 4th respondent for the purpose of the shop room, that he was a weaver who had lost his profession, leaving himself and his wife with no income and that he was desirous of starting a business of his own. His need is spelt out by the fact that he has lost his avocation as a weaver. Nothing has been brought out in the cross examination to doubt the bonafides of

the need put forward. The Rent Control Court had concluded on the basis of the fact that he had been functioning as the Vice President of the first revision petitioner society and that he had resigned from the said post, to conclude that his need was not bonafide. The said facts are not sufficient to doubt the bonafides of the need. The other question is whether the examination of PW1 was sufficient to make out the boanfide need under Section 11(3). In view of the dictum of this Court in **JCR Trading Private Limited v. Varghese** [2009(1) KLT 963], it has to be held that the examination of PW1 is sufficient for the purpose of finding bona fide need in this case. We do not find any irregularity, illegality or impropriety in the judgment of the appellate authority to warrant an interference with the same in revision.

For the above reasons, the Revision Petition is dismissed.

As a last submission the learned counsel for the revision petitioners sought for the grant of some time to vacate the premises. According to the learned counsel, even if the business is shifted to the premises in the possession of the revision petitioners, modifications would have to be effected to make the same suitable. A decision would have to be taken in the matter

by the Society. He therefore seeks the grant of one year time. The learned counsel for the respondents opposes the plea for the grant of any time. Having considered the contentions advanced by the respective counsel, we are satisfied that it is necessary to grant time to the revision petitioners to surrender vacant possession of the premises, upto 31.12.2015, but, subject to conditions. The respondents shall file an affidavit before the Rent Control Court in RCP No.1 of 2010, within a period of two weeks of the date of receipt of a copy of this order undertaking to surrender vacant possession of the premises to the landlords/owner on or before 31.12.2015 and shall pay the entire arrears of rent, if any remaining unpaid, till date. The tenants shall also pay without any delay or default the rent in respect of the premises regularly, until vacant possession thereof is surrendered to the landlords.

Sd/-

(K.SURENDRA MOHAN, JUDGE)

Sd/-

(P.V.ASHA, JUDGE)

rtr/

/true copy/

P.S to Judge