

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

RCRev..No. 74 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 15/2013 of RENT CONTROL APPELLATE
AUTHORITY (ADDL.DISTRICT COURT - II), MANJERI DATED 20-12-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 16/2011 of RENT CONTROLLER (MUNSIF
COURT), MANJERI DATED 27-02-2013**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT NO.2:

**SIVADASAN AGED 55 YEARS,
S/O BALAKRISHNA PILLAI, JRG SECURITY LTD.,
OPP METRO SUPER MARKET, KALIKAVU ROAD,
WANDOOD PO,
WANDOOD AMSOM,
VANIYAMBALAM DESOM, MALAPPURAM DT.**

**BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU**

RESPONDENT(S)/RESPONDENTS & PETITIONER & 1ST RESPONDENT:

- 1. ABDULLA, S/O NOTTATH SIDHIQUE,
PUNNANPPALLA AMSOM,
CHADAMKALAM DESOM,
NILAMBUR TALUK,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
ABDUL NAZAR 679 328.**
- 2. RAM SAIT,
GOLD WORK,
OPPOSITE METRO SUPER MARKET,
KALIKAVU ROAD,
WANDOOD PO,
WANDOOD AMSOM,
VANIYAMBALAM DESOM, MALAPPURAM DT 679328.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 07-
04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 74 of 2015
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Dated this the 7th day of April, 2015

O R D E R

Antony Dominic, J.

1st respondent herein filed RCP No.16/11 on the file of the Rent Control Court, Manjeri seeking eviction of the tenants, among whom, the 2nd respondent herein was the 1st respondent and the petitioner herein was the 2nd respondent. The ground urged in the petition was under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, in as much as according to the landlord, he, who is now employed abroad, wanted to come back to the native place and start a business of construction materials in the building in question.

2. Before the Rent Control Court, the 1st respondent in the petition remained *ex parte* and the 2nd respondent, the petitioner herein, contested the matter. He disputed the *bona fides* of the landlord and also claimed the benefit of the second proviso to Section 11(3) of the Act. Before the Rent Control Court, the Power of Attorney holder of the landlord was examined as PW1 and the petitioner was examined as RW1. Considering the matter, the Rent Control Court passed order dated 27th of February, 2013 allowing

eviction. This order was confirmed by the Rent Control Appellate Authority by dismissing RCA No.15/13 filed by the petitioner.

3. Before us, the contention raised by the learned counsel for the petitioner is that the *bona fide* need being a state of mind, can be proved only by examination of the landlord himself. According to him, since the Power of Attorney holder of the landlord alone deposed in court, such evidence could not have been accepted to find *bona fide* needs in favour of the landlord. On this basis, counsel contended that the orders passed by the lower authorities cannot be sustained. In support of this contention, counsel also placed reliance on the judgments of the Apex Court in ***Janki Vashdeo v. Indusind Bank*** (2005 (2) KLT 265) and ***Joseph Mathew v. Jose Thomas*** (2005 KHC 1834).

4. In so far as this case is concerned, admittedly, the landlord is presently stationed abroad. The need projected by him is that he wanted to return to his native place and start a business. The Rent Control Petition was presented by his brother, who is his Power of Attorney holder. The Power of Attorney holder, who was examined before the Rent Control Court as PW1, deposed in Court that he was completely managing the affairs of

the principal and that it was he who purchased and let out the building to the tenant. The question is whether in such a situation, the Power of Attorney holder is proved to have been completely managing the affairs of the principal. Evidence of the Power of Attorney holder can be accepted on issues including one of *bona fide* need. In our view, this issue need not detain us any further, because, this has been answered by the Apex Court in its judgment in ***Man Kaur v. Hartar Singh Sangha*** [(2010) 10 SCC 512], where it has been held thus;

“18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) xxx

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his “state of mind” or “conduct”, normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who

seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

5. In the light of the above authoritative principles, which binds this Court, we cannot accept the contention raised by the learned counsel for the petitioner. We, therefore, do not find any reason to interfere with the order passed by the Rent Control Court as confirmed by the appellate authority.

6. RCR is dismissed.

However, having regard to the fact that the petitioner is now running a commercial establishment in the tenanted premises and as he requires reasonable time to shift out from the premises in question, we allow the tenant six months' time from today to surrender vacant possession of the building to the landlord. This shall, however, be subject to the condition that the petitioner shall file an affidavit before the Execution Court unconditionally undertaking to surrender the building in question to the landlord on or before the expiry of the six months' time allowed by this Court and on his continuing to pay the rent without default. Having regard to the closing of the courts for summer vacation, we direct that the affidavit shall be filed before 26/5/15.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge