

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

RRev..No. 79 of 2015 ()

AGAINST THE JUDGMENT IN RCA 51/2011 of RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 10.7.2014

AGAINST THE ORDER IN RCP 12/2008 of RENT CONTROL COURT, THRISSUR DATED
17.1.2011

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/RESPONDENT:

A.V.SIDDIQUE,
S/O .KARUPPAMVEETIL KILLIYATH ABOOBACKER HAJI
WARD NO.25/1396, 25/1395, MARAR ROAD
THRISSUR DISTRICT.

BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI

RESPONDENT(S)/RESPONDENTS/RESPONDENTS :

1. ASLAM ABDUL RAHIMAN,
S/O.PUTHENVEETIL LATE ABDUL RAHIMAN
IRINGAPURAM DESOM, CHAVAKKAD TALUK, THRISSUR DISTRICT
PIN-680103.

2. BASHEER ABDUL RAHIMAN,
S/O.PUTHENVEETIL LATE ABDUL RAHIMAN
IRINGAPURAM DESOM, CHAVAKKAD TALUK, THRISSUR DISTRICT
PIN-680103.

3. VAHID ABDUL RAHIMAN,
S/O.PUTHENVEETIL LANE ABDUL RAHIMAN
IRINGAPURAM DESOM, CHAVAKKAD TALUK, THRISSUR DISTRICT
PIN-680103.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
19-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.SURENDRA MOHAN & MARY JOSEPH, JJ.

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R.C.R No.79 of 2015

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Dated this the 19th day of June, 2015

ORDER

Surendra Mohan,J.

The tenant is the revision petitioner. He has filed this revision challenging the judgment of the Rent Control Appellate Authority, Thrissur in R.C.A No.51 of 2011. The respondents are the landlords. They had filed R.C.P No.12 of 2008 before the Rent Control Court, Thrissur for an order of eviction against the tenant on the ground under Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). The petition was contested by the tenants. Exts.A1 to A5 documents were marked by the landlords and B1 to B15 documents were marked by the tenant. P.Ws.1 and 2 were examined on the side of the landlords while R.W.1 is the tenant. Ext.C1 commission report was also marked. The Rent Control Court on an appreciation of the evidence found that the ground under Section 11(4)(v) was made out and

ordered eviction. Aggrieved, the landlords challenged the order before the Rent Control Appellate Authority. On a re appreciation of the evidence, the Appellate Authority confirmed the order of eviction and dismissed the appeal. The aggrieved tenant has filed this revision.

2. According to the counsel for the petitioner, both the courts below have placed reliance on Ext.A5, copy of commission report in O.S No.1830 of 2007 of the Munsiff's Court, Thrissur to enter the finding that the tenant had been keeping the shop room locked for more than six months. It is contended by the learned counsel that, the inspection as per Ext.A5 was conducted in the year 2007 whereas the Rent Control Petition itself was filed only in the year 2008. Therefore, the commission report would not disclose the situation that existed on the date of filing of the Rent Control Petition. It is also pointed out that, in the Rent Control Petition, at the instance of the tenant, an Advocate Commissioner had conducted an inspection. Though he had reported the presence of certain articles in the tenanted premises, both the authorities below have not accepted the said fact. They were of the opinion that, the tenant had stage managed the whole situation.

It is the contention of the learned counsel that, though the premises were taken on rent for the conduct of a hotel and that a hotel had been conducted there for some time, there is no clause in the rent deed against using the premises for other purposes. The tenant is conducting a hotel nearby and the tenanted premises is used to store the articles necessary for the conduct of the said business, which according to the counsel, cannot be found fault with. Therefore, the counsel seeks the interference of this Court with the order of eviction.

3. This revision is posted before us for admission. We have gone through the order of the Rent Control Court as well as the judgment of the Appellate Authority. In this case, on 09.07.2007, the Advocate Commissioner, who has been examined as P.W.2, had conducted an inspection of the tenanted premises on the orders of the Munsiff's Court, Thrissur in O.S No.1830 of 2007. P.W.2 found that, the tenanted premises presented an appearance of long disuse. The board of the hotel was without bulbs, the doors were rusted, the furniture as well as the utensils were remaining rusted and in disuse. The windows were not capable of being opened, the back door was

rusted and could not be opened. He has given a description of the state of disuse in which the tenanted premises was found. It is true that what he has reported is the state of affairs as on 09.07.2007, which is before the filing of the Rent Control Petition. As rightly held by the Appellate court, Ext.A5 has been properly proved by the examination of the Advocate Commissioner as PW2. The above situation continues to be in existence even when the premises were inspected by the Advocate Commissioner deputed by the Rent Control Court. Ext.C1 report shows that, the doors, windows, furniture as well as the utensils were remaining more or less in the same condition as reported by the earlier commissioner. Only difference was that, a few bags containing groceries were found placed in the premises. The authorities below have referred to the presence of such articles as having been placed there immediately prior to the inspection of the Advocate Commissioner.

4. The reports of the Advocate Commissioners clearly proves that the tenanted premises were not being used for any purposes whatsoever. The tenant is admittedly conducting a hotel nearby.

5. The tenanted premises are remaining in disuse, as rightly held by the authorities below. We find no infirmity in the proceedings of the authorities below warranting interference under Section 20 of the Act. In view of the above, this Rent Control Revision is dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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