

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

RCCRev..No. 97 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 3/2013 of ADDL. D.C. & SESSIONS
COURT - I, KALPETTA

AGAINST THE ORDER/JUDGMENT IN RCOP 5/2011 of MUNSIF COURT, KALPETTA

REVISION PETITIONER(S)/APPELLANT/COUNTER PETITIONER:

KUDAKAYINTAVIDE POCKER
SON OF MUTHIYANGA MAMMED, PATTAYAM AMSOM DESOM
THALASSERY TALUK, KANNUR DISTRICT.

BY ADVS.SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

1. MAVULLATHIL AVULLA HAJI, AGED 73 YEARS
SON OF LATE SOPPY, CHATHOTH HOUSE, CHATHOTHAVAL
VYTHIRI TALUK, WAYANAD DISTRICT.

2. K.P.SUBAIR, SON OF K.P.KUNJU,
JUBILE HOTEL, KALPETTA POST AND VILLAGE
VYTHGIRI TALUK, WAYAND

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
08-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

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

RCR NO. 97 OF 2015

Dated this the 8th June, 2015.

O R D E R

Surendra Mohan, J.

The tenant has filed this revision challenging the concurrent orders of eviction passed by the Rent Control Court as well as the Rent Control Appellate Authority. The landlord had sought eviction of the tenant who is conducting a restaurant in the tenanted premises on grounds under Section 11(3) and 11(4)(i) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (the 'Act' for short). The tenant resisted the claim of the landlord alleging that the need was not bonafide. The Rent Control Court tried RCP5/2011, considered the evidence on record and found against the landlord on the ground under Section 11(4)(i) of the Act. The Rent Control Court ordered eviction under Section 11(3) of the Act. Both the tenant as

well as the landlord challenged the order of the Rent Control Court before the Rent Control Appellate Authority, Kalpetta in RCA 1/2013 & 3/2013. After a re-appreciation of the evidence the Rent Control Appellate Authority has dismissed both the appeals. It is against the said judgment that this revision is filed.

2. According to Adv. John Joseph Vettikad who appears for the revision petitioner tenant, the landlord in the present case does not require the tenanted premises for the need that is put forward. The need according to the landlord is for the purpose of his son to start a hotel business. It is pointed out by the learned counsel for the petitioner that the landlord's son who was examined as P.W.2 has admitted in the box that he owns several shop rooms, in his individual capacity. Therefore, according to the learned counsel he is not dependent on his father for even the tenanted shop room. The learned counsel submits that the tenant is not a tenant of the son but the tenant of the father. He could very well seek eviction of one of his tenants. It is not open to him to seek

eviction of his father's tenant for satisfying his personal need. According to the counsel, this is an aspect that has not been considered by the authorities below. Therefore, it is contended that the orders of eviction passed by the authorities below require to be interfered with in revision. A caveat has been filed and Adv.Mohammed Nias enters appearance for the first respondent. We have heard the caveator also. According to the learned counsel for the first respondent this is not a case in which, the landlord had suppressed the ownership of his son over the other shop rooms. It is a fact that has been disclosed in the Rent Control Petition. However, ownership of other shop rooms would not disentitle the landlord from seeking vacant possession of the tenanted premises for the reason that the said rooms are all occupied by other tenants. It is not open to the tenant in the present case to dictate that it was for PW2 to initiate proceedings against his tenants, for satisfying his need of starting a hotel business. It is also pointed out that, the rooms owned by the son of the landlord are not suitable for conduct of the

business that is proposed to be started. According to the learned counsel, though the Advocate Commissioner had conducted an inspection, the tenant was not in a position to point out any vacant room either in the possession of the landlord or his son. The tenant had not filed any objection to the commission report also. Therefore, it is contended that the grounds now raised are also without any basis. The son, according to the learned counsel is depending on his father, the landlord for a suitable premises to start the proposed business.

3. Heard. We have been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority. We notice that both the authorities have referred to and considered the evidence on record. We are of the opinion that the evidence has been considered in the proper perspective. Though it is true that the landlord's son, PW2 owns other shop rooms close to the tenanted premises, it is in evidence that the said shop rooms are all occupied by the tenants.

4. The specific contention raised that, since PW2 owns other shop rooms, he is not depending on his father for the purpose of a shop room requires examination. The counsel for the petitioner has placed reliance on the decision of this Court in Prathapan v. Rama Warriar [2004KHC 621]. Paragraph 3 of the said judgment reads as follows:–

“S.11(3) uses the expression “any member of his family dependant on him”. The word “dependant” is used as an adjective and it literally means person who depends on or looks to another for support or favour or for his maintenance or livelihood. Since dependant means depending upon something else, that is, dependant has to satisfy that he is a member of the family. Dependant member must be a member of the landlord’s family. With regard to that, two tests have to be satisfied; that he must be a member of the family and consequently that member must be dependant on the landlord and dependency is not financial dependency, but dependency so far as the tenanted premises is concerned.”

Therefore, what is necessary to be examined is whether the

two tests referred to above stands satisfied in the present case.

5. The first ingredient is whether the person whose need has been projected is a member of the family and the second is whether he is dependant on the landlord. In the present case, the need that has been put forward is that of the landlord's son. There cannot be any doubt that the son is dependant on the landlord. There may be cases where the son is financially independent but would still be dependent on the father for the premises. The second question is whether the son is dependent on the landlord for the purpose of the tenanted premises. In the present case, though it is in evidence that the tenant owns other shop rooms by himself, they are not suitable for the business that is proposed to be conducted by the landlord's son. It is also in evidence that, the rooms in the possession of the tenant are occupied by other tenants. Therefore, for the purpose of a suitable room for conducting the business that is proposed, it has to be held that the son is dependent on his father who is the landlord in

this case. The above being the position we are not satisfied that there is any illegality, irregularity or impropriety in the judgments against which this revision is filed.

6. As a last submission the counsel for the petitioner sought for some time to vacate the premises as the petitioner tenant has been conducting his hotel business from the shop room since 1990. According to the counsel he has got 15 employees whose claims are required to be settled. Therefore, he seeks the grant of an exceptionally long period of time, for the purpose of surrendering vacant possession of the premises. The prayer of the counsel for the petitioner is opposed by the counsel for the landlord. Having considered the rival submissions we are of the view that it is necessary to grant time to the tenant to vacate the premises up to 31.3.2016.

In the result:

- i) This rent control revision is dismissed.
- ii) The revision petitioner tenant is granted time to surrender vacant possession of the premises to the landlord

up to 31.3.2016 on condition that the tenant pays off all the arrears of rent, if any remaining unpaid in respect of the tenanted premises and continues to pay rent in respect thereof without delay or default until he surrenders vacant possession. He shall also file an affidavit before the Rent Control Court, Kalpetta in RCP 5/2011 undertaking to surrender vacant possession of the premises to the landlord on or before 31.3.2016 within a period of two weeks of the date of receipt of a copy of this order.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
P.V.ASHA
Judge

jj

/True copy/

P.S.to Judge

