

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 193720

RRev..No. 103 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 39/2014 of THE RENT CONTROL
APPELLATE AUTHORITY, KOZHIKODE DATED 01-04-2015

AGAINST THE ORDER/JUDGMENT IN RCP 18/2013 of THE RENT CONTROL COURT,
NADAPURAM DATED 28-01-2014

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

RAJEEVAN K.P
S/O.VASUDEVAN, KAYALULLAPARAMBATH
KUNNUMMAL AMSOM DESOM, VADAKARA TALUK, KOZHIKODE.

BY ADV. SRI.G.UNNIKRISHNAN

RESPONDENT(S)/RESPONDENT/PETITIONER:

JANU AMMA KOORIKANDIYIL
D/O.KELU NAMBIAR, MURIKKUMTHOTTATHIL
CHANGAROTH AMSOM DESOM, KOILANDY TALUK
KOZHIKODE-673305.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R No. 103 of 2015

Dated this the 26th day of May, 2015

O R D E R

Surendra Mohan, J.

The tenant is the revision petitioner. The respondent landlady had filed R.C.P. No.18 of 2013 before the Rent Control Court, Nadapuram seeking eviction of the tenant on the ground of bona fide need under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). According to the revision petitioner, he has been conducting a medical shop in the petition schedule shop room since 1997. The business was started by his father and later on continued by the petitioner. The income earned from the business is his only source of livelihood. There are no arrears of rent. The need alleged by the respondent is for her daughter and son-in-law to start a garment shop. It is stated in the Rent Control Petition that, her daughter aged 40 years and her

husband have no employment or income. Therefore, they want to start a business in their shop room. The tenant disputed the bona fides of the need put forward. After trial, the Rent Control Court found that the need was bona fide and ordered eviction. Though the petitioner challenged the order of the Rent Control Court before the Rent Control Appellate Authority, Kozhikode in Rent Control Appeal No.39 of 2014, the appeal has also been dismissed. This Revision is therefore filed against the concurrent orders of eviction.

2. According to Sri. G.Unnikrishnan Advocate who appears for the petitioner, it is nowhere stated in the Rent Control Petition that the landlady requires the tenanted premises for her bona fide own occupation. In fact, according to the learned Counsel, nowhere in the petition has it been stated that her need was bona fide. In the absence of such a pleading, it is contended that, the authorities below erred in ordering eviction.

3. We have been taken through the depositions of PWS 1 and 2 to point out that, when questioned, both the landlady as well as her daughter had admitted that, the daughter was living on her own income. Consequently, it is contended that, they are not depending on the landlady. The Counsel also places reliance on the decisions of this Court in **Kurian v. Prathapan and others** [1992(2) KLJ 370] to contend that, bona fides is a state of mind that has to be inferred from the surrounding circumstances. A mere desire cannot qualify to be a need. Therefore, according to the learned Counsel, in the absence of proper pleadings, it cannot be said that the landlady bona fide needed the building. At best, she has only a desire to start the garment shop. Reliance is placed on the decision in **Kizhakkayil Suhara V. Manhantavida Aboobacker** [(2001) 8 SCC 19] also.

4. This revision comes up before us for admission. A perusal of the statements in the Rent Control Petition shows

that, according to the landlady, her daughter is aged 40 years and her husband is unemployed. They want to start a garment shop for eking out a livelihood for themselves. It is stated that the landlady wants the petition schedule shop room for satisfying the need of her daughter to start a business in garments. It is true that, the word bona fide does not find a place in the pleadings. However, the decisions on the point are clear to the fact that, bona fides is a state of mind that has to be inferred from the surrounding circumstances. The fact that the petitioner's daughter is aged 40 years and that her husband is unemployed certainly supports their need to have some source of income for their sustenance. A mother's anxiety to provide a means for satisfying the said need cannot be described as anything but bona fide. Therefore, we are not satisfied that, the omission to specifically plead that the need was bona fide should prejudice the landlady in any manner. It has been held by both the authorities below that

the need projected was bona fide. We do not find any grounds to interfere with the said findings.

5. The other ground of attack made by the counsel for the petitioner is on the basis of the statement made by both PW1 and PW2 while in box that the daughter was living on the strength of her own income. It is the settled position of law that the dependency contemplated by Section 11(3) is not mere financial dependency. Nobody has a case that, the landlady has another room that is sufficient for satisfying the need that is put forth. Nor has the landlady has any other rooms. Therefore, it has to be held that the daughter is dependent on the landlady for the premises that are required for starting the garment business. It is the said dependency that is contemplated by the Statute. In the above view of the matter, we find that the authorities below were justified in ordering eviction.

6. It is further contended that, the tenant is entitled to the benefit of the second proviso to Section 11(3).

According to the learned Counsel, the Appellate Authority has found that the petitioner was depending on the income from the business conducted by him in the petition schedule premises for his livelihood. It is no doubt true that, the Appellate Authority has entered such a finding. However, it is the settled position of law that the burden of proving both the limits of the Proviso is on the tenant. Absolutely no evidence has been let in by the tenant to show that, no suitable rooms are available in the locality for shifting his business. Though the counsel for the petitioner tried to take shelter under the answer of the petitioner in cross examination that no rooms were available in the locality, we are not satisfied that, the said answer is sufficient to discharge the burden that is cast on him. Therefore, we do not find any grounds to interfere with the proceedings of the authorities below on the said ground also. As a last submission, the counsel for the petitioner sought some time to vacate the premises. According to the counsel for the

petitioner, he has been conducting the business in the premises from 1997 onwards. He needs some time to seek out a suitable premises to which he could shift his business. Having considered the contentions advanced before us, we are satisfied that it is necessary to grant time to the petitioner up to 31.12.2015 to surrender vacant possession of the premises.

In the result, it is ordered as follows:-

1. This Rent Control Revision is dismissed.
2. The petitioner is granted time up to 31.12.2015 to surrender vacant possession of the premises on condition that he files an affidavit before the Rent Control Court, Nadapuram in Rent Control Petition 18 of 2013 within a period of two weeks of the date of receipt of a copy of this judgment undertaking to surrender vacant possession of the premises to the landlady on or before 31.12.2015 and continues to pay the rent in respect of the premises without any delay or default until he surrenders the vacant

possession of the premises. It is made clear that in the event of the tenant committing default in complying with any of the above conditions, he shall forfeit the benefit of these directions and that the respondent shall be at liberty to seek vacant possession of the premises in accordance with law.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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