

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, 1937

RRev..No. 104 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 3/2010 of ADDL. D.C. & SESSIONS
COURT - III, THALASSERY DATED 23-10-2014

AGAINST THE ORDER/JUDGMENT IN RCP 104/2008 of ADDL.MUNSIFF COURT,
KANNUR DATED 13-10-2009

REVISION PETITIONER(S)/APPELLANT:

DAWOOD BAI AGED 71 YEARS

S/O. NEWMAN BAI, PLUMBER, BUILDING NO. CW 35/3387
NEAR "BAKER BOYS", ONDEN ROAD, KANNUR - 670 001.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
SRI.E.MOHAMMED SHAFI

RESPONDENT(S)/PETITIONER:

C.C.AMEERA
D/O. ABDUL RAHIMAN, AMEERA
OPPOSITE MENCOS SEVRICE CENTRE, P.O. CHOVVA
KANNUR - 670 006.

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

kkj

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

R.C.R No.104 of 2015

Dated this the 26th day of May, 2015

O R D E R

Surendra Mohan, J.

The tenant has filed this revision challenging the concurrent orders of eviction under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, (hereinafter referred to as 'the Act' for short). The respondent landlady had filed the Rent Control Petition, RCP.No.104 of 2008 before the Rent Control Court, Kannur alleging that she needed the premises for starting a business in textiles and tailoring for herself. Her husband is employed in the Gulf countries. The petitioner tenant is conducting a business in plumbing and electrical works. He resisted the petition for eviction disputing the bonafides of the need that was put forward.

2. After trial, the Rent Control Court found that the need put forth was bona fide and ordered eviction.

Aggrieved by the order of eviction, the tenant challenged the same in RCA No.3 of 2010 before the Rent Control Appellate Authority, Thalassery. The Appellate Authority has on a reappraisal of the evidence found that, the order of eviction passed by the Rent Control Court was proper. This revision is directed against the judgment of the Appellate Authority.

3. According to the Counsel for the petitioner, though the initial pleadings of the landlady was that she needed the building for the purpose of conducting a textile and tailoring business by herself, she has improved her case in the box by stating that she wanted to conduct the business by employing others to do the tailoring and other allied works. Actually, she was intending only to manage the business. According to the learned Counsel, the above improvement clearly shows that the need is not bona fide. It is pointed out by the learned counsel that, the tenant is aged 71 years and is eking out a livelihood on the income earned from the plumbing and electrical works carried on

by him in the premises. Therefore, according to the counsel, this is a case in which the affluent landlady is determined to evict the petitioner who is a poor person, somehow or the other.

4. Heard. The case of the landlady is that, she wants to start a business in textiles and tailoring from the premises. It is true that, when she was in the box, she has stated on being questioned that what she wants to do was to engage workers to carry on the said works, to be supervised and managed by her. The said statement does not militate against the case pleaded by her in the Rent Control Petition. In fact, her case is consistent with the initial need put forth. She maintains her consistent stand that, she wants to do business in textiles and tailoring. How she wants to carry on the business is a matter that is entirely within her discretion. Therefore, we do not find any infirmity in the answers that are projected as a ground of attack against the bonafides of the landlady.

5. It is true that, the tenant is aged 71 years and is

conducting plumbing and electrical works from the premises. However, there is absolutely no evidence available on the basis of which, it could be contended that the tenant is entitled to the benefit of the second proviso to Section 11(3). In the above circumstances, we do not find anything wrong in the order of the Rent Control Court or the judgment of the Appellate Authority in ordering eviction. We find no grounds to interfere with the said proceedings.

6. As a last submission, the petitioner sought one year's time to vacate the premises. Having considered the contentions of the counsel, we are satisfied that, it is necessary to grant time up to 31.12.2015 to vacate the premises.

In the result, it is ordered as follows:-

- 1.This Rent Control Revision is dismissed.
- 2.The petitioner tenant 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,

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Nadapuram in Rent Control Petition 104 of 2008 undertaking to surrender vacant possession of the premises to the landlady on or before 31.12.2015 within a period of two weeks of the date of receipt of a copy of this judgment and continues to pay the rent in respect of the premises without any delay or default until he surrenders 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

kkj