

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

RRev..No. 112 of 2015 ()

AGAINST THE JUDGMENT IN RCA 3/2014 of ADDL.DISTRICT COURT-I,
MAVELIKKARA DATED 20-03-2015

AGAINST THE ORDERIN RCP 1/2013 of MUNSIFF COURT,HARIPAD DATED
31-07-2014

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

SMT. PHILLAMMA GEORGE
KALLUPURACKAL HOUSE, CHEKKIDICKADU MURI
THAKAZHI VILLAGE
PROPRIETOR OF HOLY TRINITY MEDICALS, HARIPAD

BY ADVS.SRI.JOHN K.GEORGE
SRI.M.A.PRABHU

RESPONDENT(S)/RESPONDENT/RESPONDENT/PETITIONER:

SMT. SARA CHRISTY ALEX
ALEMPALLIL HOUSE
KARTHIKAPPALLY, NOW RESIDING AT VALAYAKALAYIL HOUSE
ANGADI VILLAGE, RANNI

R1 BY ADV. SRI.V .SETHUNATH CAVEATOR
R BY SRI.V.SETHUNATH

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
28-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

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

R.C.R. No.112 of 2015

Dated this the 28th day of May, 2015

O R D E R

Surendra Mohan, J.

The tenant is the revision petitioner. The respondent had filed RCP No.1 of 2013 before the Rent Control Court, Haripad seeking eviction of the petitioner 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 landlady, she wanted vacant possession of the petition schedule building for the purpose of starting a supermarket. Her husband was employed in Saudi Arabia. He had lost his job. Therefore, it was stated that she wanted to start a business of her own.

2. The need of the landlady was resisted by the petitioner tenant alleging that the same was only a ruse for eviction. It was pointed out that, an earlier Rent Control Petition, RCP No.3 of 2000 instituted by the landlord was

not pursued. This was pointed out as a circumstance against the bonafides of the present need. It is also the case of the tenant that, she is depending for her livelihood mainly on the income derived from the medical shop that is being conducted from the tenanted premises and that, no suitable rooms are available in the locality for her to shift the business.

3. The Rent Control Court tried the petition on the above pleadings. The evidence in the case consists of Exts. A1 to A13 documents on the side of the landlady and Exts.B1 to B12 on the side of the tenant. Exts. C1 to C6 documents were also marked. The oral evidence consists of the testimonies of PWs 1 to 4 and DWS 1 to 5 on the side of the tenant. On a consideration of the pleadings and the evidence in the case, the Rent Control Court ordered eviction finding that the need of the landlady was bonafide. The petitioner challenged the order of eviction passed against her in RCA No.3 of 2014 before the Rent Control

Appellate Authority, Mavelikkara. As per the judgment sought to be revised, the Appellate Authority has upheld the order of eviction. The petitioner is aggrieved by the concurrent orders of the authorities below.

4. According to Advocate John K.Georege who appears for the petitioner, though the landlady has alleged that she wanted vacant possession of the shop room for the purpose of starting a supermarket, she has not pleaded that she had the wherewithal to start the business. According to the learned Counsel, there is a total lack of pleadings regarding the ability of the petitioner to commence and carry on the business of a super market. Even according to her, her husband has lost his job. In view of the above, it is contended that she ought to have adduced evidence regarding her financial capacity to start the business. With respect to the benefit of the second proviso to Section 11(3) of the Act, the contention of the learned counsel is that, the income that the petitioner earns from the medical shop is

her main source of sustenance. Though her husband who was examined as a witness has stated that he was getting pension, it is contended that the petitioner had availed a loan of ₹12lakhs from a bank to meet the educational needs of her daughter. It is out of the income derived by her from her business, that they eke out their livelihood. Though she had sought to produce evidence regarding the above fact before the Appellate Authority, the evidence was not accepted. It is also contended that, though other rooms are available in the locality, they are not suitable for the purpose of shifting her business. On the above grounds, it is contended that, the order under revision is required to be interfered with and set aside.

5. Advocate V.Sethunath has entered appearance for the respondent landlady. According to the learned counsel for the landlady, the landlady's husband was employed in Saudi Arabia. Though he has lost his job at present, they have sufficient financial resources to start the proposed

business. The need has been found to be bonafide by both the authorities below. Absolutely no grounds have been made out for an interference by this Court, according to the counsel. It is submitted that, the rental agreement had expired in the year 2000 and that the tenant had been holding over all these years. With respect to the benefit of the proviso, the counsel pointed out that, the Advocate Commissioner who had been deputed at the instance of the landlady had reported about the availability of sufficient number of rooms in the locality. Since the husband of the tenant had deposed that he was receiving pension, the contention of the tenant that the income from the business was the main source of livelihood is only to be rejected, as rightly held by the Courts below. On the above grounds, the counsel seeks dismissal of the revision.

6. Heard. We have been taken through the order of the Rent Control Court and the judgment of the Appellate Authority. As already noticed above, the need put forth by

the landlady is for starting a supermarket in the tenanted premises. It is not disputed that, the landlady's husband was employed in Saudi Arabia. However, the allegation that he has lost his job is disputed by the tenant. Be that as it may, even assuming that the landlady's husband has not lost his job, the landlady cannot be found fault with for desiring to start a business of her own. The need has been found to be bonafide by the authorities. Nothing has been brought to our attention to conclude that, the above finding is erroneous in any manner. Since the petitioner's husband was admittedly working abroad, it cannot be said that she does not have the financial capacity to commence the business. Therefore, we do not find any infirmity in the finding of the authorities below that the need of the landlady was bonafide.

7. With respect to the applicability of the 2nd proviso to the Section 11(3) of the Act as noticed by the authorities below, the Advocate Commissioner has reported regarding

the availability of vacant rooms, in the locality. It is settled of position of law that the burden to prove both the limits of the proviso is on the tenant. The petitioner's husband has admitted that he is receiving pension. There is absolutely no evidence let in, to show that the income from the business conducted in the tenanted premises is the main source of livelihood of the petitioner. Since vacant rooms are available in the locality, it was for the tenant to have adduced evidence to substantiate why the said rooms were not suitable for shifting her business. In the absence of any such evidence, it has to be held that the findings of the authorities below in denying the benefit of the proviso to the petitioner is justified.

8. For the foregoing reasons, we do not find any grounds to interfere with the order sought to be revised. This Rent Control Revision is therefore dismissed.

9. As a last submission, the counsel for the petitioner seeks some time to vacate the premises pointing out that,

the process of identifying a suitable room for shifting the business and transferring the licence and permissions necessary for conduct of the business would take some time. The request of the tenant is opposed by the counsel for the petitioner. Having considered the rival contentions, we are satisfied that it is necessary to grant some time to the petitioner to surrender vacant possession of the premises. We accordingly grant time to the tenant up to 31.12.2015 to surrender vacant possession of the premises on condition that, the petitioner files an affidavit before the Rent Control Court, Haripad in RCP No.1 of 2010 undertaking to surrender vacant possession of the shop room 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. There shall be a further direction that the tenant makes payment of all arrears of rent, if any remaining unpaid and continues to pay the rent in respect of the premises regularly, without any delay or default until vacant

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possession is surrendered. It is made clear that, in the event of the tenant committing default in complying with any of the above conditions, she 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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