

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

RCRev..No. 113 of 2015 ()

AGAINST THE JUDGMENT IN RCA 27/2013 of RENT CONTROL APPELLATE
AUTHORITY (ADDL.DISTRICT JUDGE), TIRUR DATED 13-03-2015

AGAINST THE ORDER/JUDGMENT IN RCP 30/2011 of RENT CONTROL COURT,
TIRUR DATED 30-07-2013

PETITIONER/APPELLANT/RESPONDENT (TENANT)

THAZHATHETHIL ISMAIL
S/O.KUNHIMUHAMMED
PONMUNDAM AMSOM, CHILAVIL DESOM
PONMUNDAM(PO)
TIRUR TALUK, MALAPPURAM DISTRICT

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT/PETITIONER (LANDLORD):

KANNANCHERY KALAYIL RUKHIYA
W/O.THOTTUKANNI ABDURAHIMAN
PONMUNDAM AMSOM DESOM
VAILATHUR (PO), PIN - 676 106
PONMUNDAM, TIRUR TALUK
MALAPPURAM DISTRICT

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
29-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH,JJ.

R.C.R NO.113 OF 2015

Dated this the 29th May, 2015.

O R D E R

Surendra Mohan, J.

The tenant is the revision petitioner. The respondent landlady had filed Rent Control Petition 30/2011 before the Rent Control Court, Tirur seeking eviction of the tenant on the ground of bonafide need. According to the landlady her son had completed computer course and wanted to start a computer shop in the tenanted premises. The tenant is conducting a grocery shop.

2. The need was resisted by the tenant questioning the bonafides of the landlady. It was alleged that, though another shop belonging to the landlady had fallen vacant in the year 2007 the same had been rented out to another person. Had the need been bonafide, the landlady could have started the

proposed business from the said shop room. It was also alleged that, the son was not dependent on the landlady and that there were other rooms in her possession that would satisfy the need put forth. The landlady examined her son as PW1 and marked Exts.A1 to A6 documents. The respondent examined himself as RW1. Exts.C1 to C4 commission reports and plans have been marked as court exhibits.

3. On an appreciation of the evidence on record, the Rent Control Court found that the need that was put forth was bonafide. The tenant was found not entitled to the benefit of second proviso to Section 11(3) of Kerala Buildings (Lease and Rent Control) Act, 1965 and eviction was ordered. Though the tenant challenged the order of eviction in RCA 27/2013 the Rent Control Appellate Authority, Tirur on a re-appreciation of the evidence found that the order of eviction was justified. The petitioner has filed this revision challenging the judgment of the Rent Control Appellate Authority.

4. According to Adv. Jamsheed Hafiz who appears for the petitioner the landlady had filed the Rent Control Petition on the ground of bonafide need. She had not mounted the box to affirm on oath that she bonafide required the building. Consequently she has also not testified that her son was dependent on her. The above according to the learned counsel is a serious defect that cuts at the root of the need that is put forth. The counsel also contends that the adjacent room that had fallen vacant in the year 2007 had been rented out to another tenant which is yet another fact pointing to the lack of bonafides in the need alleged. This revision comes up before us for admission.

5. Having gone through the order of the Rent Control Court as well as the judgment of the Appellate Authority, we do not find any grounds to interfere with the said proceedings. We find that the Rent Control Court has approached the issue in the proper perspective and that the order of eviction is justified in the facts and circumstances of the case. The

Appellate Authority has also considered the issues properly and entered findings that are justified. PW1 is none other than the son of the petitioner. He is the person for whose requirement, vacant possession of the shop room is sought. He has testified to the need put forth and also with regard to his dependency. We do not find that the omission to examine the landlady affects the merits of the need put forth in any manner. There is absolutely no evidence to justify a conclusion that the son is not dependent on his mother for the shop room that is required for starting his business. With respect to the second point that is argued, when questioned PW1 has stated that the room that had fallen vacant had been given to a tenant in the year 2007 long before he completed his computer course. It was only after he completed his computer course, the present need had arisen. In view of the above, we find no merits in this revision.

5. The counsel for the petitioner as a last submission, sought some time to surrender vacant possession of the

premises. It is stated that the tenant is conducting a grocery shop and that some time is necessary for shifting the business to a suitable premises. Having considered the submissions made on behalf of the petitioner, we are satisfied that it is necessary to grant the tenant time up to 31.12.2015 to surrender vacant possession of the premises.

In the result:

i) The Rent Control Revision is dismissed.

ii) The petitioner tenant is granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlady on condition that he files an affidavit before the Rent Control Appellate Authority, Tirur in RCP 30/2011 undertaking to surrender vacant possession of the premises to the landlady on or before 31.12.2015. The affidavit shall be filed within a period of two weeks of the date of receipt of a copy of this order. There shall be a further condition that the tenant shall pay all arrears of rent, if any remaining unpaid and pays the rent in respect of the premises regularly, without delay or

default until vacant possession is surrendered to the landlady.

iii) It is made clear that in the event of the tenant committing default in complying with any of the above conditions, the respondent shall be at liberty to pursue further proceedings to recover possession of the premises in accordance with law.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

jj

/True copy/

