

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYASHTA, 1937

RCCRev..No. 129 of 2015 ()

RCA 129/2010 of RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL
DISTRICT JUDGE - III) THALASSERY DATED 13-01-2015

RCP 19/1998 of RENT CONTROL COURT (MUNSIFF COURT),
THALIPARAMBA DATED 23-03-2010

REVISION PETITIONER/APPELLANT/RESPONDENT:

PUTHIYA VANIYAN VEETIL KAMALAKSHI
AGED 55 YEARS, D/O. MEENAKSHYAMMA,
KOPPAD HOUSE, PO VENGARA
KANNUR DISTRICT

BY ADV. SRI.M.V.AMARESAN

RESPONDENT/PETITIONER:

MEETHALEPURAYIL IBRAHIMKUTTY
S/O.MARIYUMMA, MADAI AMSOM, VENGARA DESOM
TALIPARAMBA TALUK, KANNUR DISTRICT
REPRESENTED BY POWER OF ATTORNEY HOLDER MP
MUHAMMED RASHID
S/O.MOIDEEN, MADAI AMSOM DESOM, PIN-670 104

THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION ON 11-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

R.C.R. No.129 of 2015

Dated this the 11th day of June, 2015

ORDER

Antony Dominic,J.

This revision petition is filed by the tenant in RCP No.19 of 1998 on the file of the Rent Control Court (Munsiff), Taliparamba, which was filed by the respondent/landlord pressing into service ground under Section 11(3) of the Rent Control Act which was allowed by order dated 23.03.2010. This order was confirmed by the Rent Control Appellate Authority, Thalassery in RCA No.129 of 2010.

2. We heard the learned counsel for the petitioner and considered the submissions made.

3. As we have already stated, RCP No.19 of 1998 was filed by the respondent/landlord seeking eviction of the petitioner/tenant urging the ground of bonafide need as provided under Section 11(3) of the Act. In the first round, the Rent Control Court ordered eviction which was confirmed in RCA No.109 of 1999 on the files of the Appellate Authority,

Thalassery. That judgment was challenged by the tenant before this Court in RCR No.241 of 2005. By judgment dated 29.10.2009, that RCR was allowed and the orders passed by the lower authorities were set aside. In the said order it was found that the landlord had failed to prove his pleaded case that he was expelled from Saudi Arabia and that he was then unemployed.

Proceeding further, this Court also held:

“At the same time, the need of a person belonging to Payyannur presently working abroad to come back to Payyannur can ordinarily be accepted to be a bonafide need provided proper pleadings are there.”

4. After entering into such finding, this Court took the view that the landlord can be given an opportunity to amend the pleadings and to adduce fresh evidence on all aspects including on bonafide need and the first proviso pressed into service by the tenant. The findings of the lower authorities on the second proviso claimed by the tenant was confirmed by this Court.

5. Accordingly the matter stood remitted to the trial court and pleadings were amended and evidence was adduced by landlord. It was thereafter that by order dated 23.03.2010 the

Rent Control Court ordered eviction which order was confirmed by the Rent Control Appellate Authority by the impugned judgment.

6. The first contention raised by the counsel for the petitioner is that the original pleaded case of the tenant was that he came back to India from Saudi Arabia on being expelled and that the said case which was originally held not proved, was not improved either by amendment of pleadings or by adducing evidence. Therefore, according to the counsel, when the case pleaded was not proved by the landlord, the Rent Control Court should not have ordered eviction of the tenant. For this reason, the counsel also argued that the appellate authority equally erred in confirming the order of eviction.

7. From the pleadings referred to by the Rent Control Court and Appellate Authority, we notice that after remand more stress was given by the landlord on the circumstances which compelled him to return to the middle east country in search of employment and his unsuccessful endeavour in that behalf. It was in that background that evidence was let in by the landlord, while at the

same time the tenant did not bother to adduce any further evidence after the remand.

8. In our view, even if it is assumed that the landlord could not improve his evidence to substantiate his plea that he had to return to India on being expelled, as held by the Division Bench in the order in RCR No.241 of 2005, if the landlord has succeeded in proving his bonafide need to get the tenant evicted, irrespective of the reasons which made him to return to India or the manner in which he came back, he is entitled to an order of eviction under Section 11(3) of the Act. In such circumstances, we do not find any force in the contention raised by the counsel for the petitioner.

9. Counsel then contended that it is his case that the landlord is still employed abroad. In our view, if the tenant had such a plea to resist the ground of bonafide need pressed into service by the landlord, it was upto him to have adduced evidence and proved the same. We do not find that he has either attempted or succeeded in proving this aspect. Yet another issue that engaged the attention of the Rent Control Court and the

Appellate Authority is the claim of the tenant for the benefit of the first proviso to Section 11(3). In so far as this aspect of the matter is concerned, from the orders we find that the tenant could not adduce any evidence to prove the ingredients of the proviso, viz; that the landlord has another building of his own in his possession in the same city, town or village. Such evidence ought to have been adduced especially when the landlord had pleaded in his petition that, he had no such building.

10. For all these reasons we do not find any reason to interfere with the orders under challenge.

11. Revision fails and it is accordingly dismissed.

12. At this stage the counsel for the petitioner seeks reasonable time to surrender vacant possession of the building to the landlord.

13. Taking note of this submission, we allow the tenant two months time from today to surrender vacant possession of the building to the landlord subject to the condition that the tenant shall, within two weeks from today, file an affidavit before the Rent Control Court/Execution Court unconditionally undertaking

to surrender vacant possession of the building to the landlord on or before the expiry of the period allowed by this Court.

We make it clear that if above condition is violated by the revision petitioner, the respondent is at liberty to move the execution court for executing the order passed by the Rent Control Court irrespective of the time granted by this Court.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. to Judge

smv