

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

RCRev..No. 139 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 1/2008 of RENT CONTROL APPELLATE
AUTHORITY, KALPETTA

AGAINST THE ORDER/JUDGMENT IN RCP 7/2007 of RENT CONTROLLER, KALPETTA

REVISION PETITIONER(S)/APPELLANT IN RCA/RESPONDENT IN RCP:

P.P. VARGHESE, AGED 52 YEARS
S/O.P.V. POULOSE, PANAKKAL HOUSE, KARIAMBADY POST
MEENANGADI, WAYANAD DISTRICT.

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA

RESPONDENT(S)/RESPONDENT IN RCA/PETITIONER IN RCP:

N.R. RAMALINGAM, AGED 51 YEARS
S/O. RAMASWAMY AYYER, NEDUNKOTTU KUNNU ESTATE
KALPETTA NORTH POST, WAYANAD DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
02-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

R.C.R.NO. 139 OF 2015

Dated this the 2nd July, 2015.

O R D E R

Surendra Mohan, J.

The tenant is in revision before us challenging the order of eviction granted by the Rent Control Court, Kalpetta in RCP 7/2007 and confirmed in appeal by the Rent Control Appellate Authority, Kalpetta in RCA 1/2008. The landlord had approached the Rent Control Court seeking eviction of the tenant under Section 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the 'Act' for short). The Rent Control Petition was resisted by the tenant. After trial, the Rent Control Court disallowed the claim under Section 11(3), ordered eviction under Section 11(2)(b) and 11(4)(v) of the Act. The revision petitioner tenant challenged the order of eviction in appeal. The Appellate Authority has

confirmed the order of eviction. The tenant has filed this revision aggrieved by the said judgment.

2. According to Adv.T.Sethumadhavan, Senior Counsel who appears for the revision petitioner, the petitioner is conducting a business in coffee. He is exporting the same. For the purpose of export, he procures the coffee from cultivators at different places. Therefore his use of the tenanted premises is not regular, it is used only occasionally. It is contended that the authorities below have not taken note of the above crucial fact. In the nature of the business conducted by the petitioner, it is not necessary to open the shop room every day. The authorities have implicitly relied upon the report of the Advocate Commissioner. What the Advocate Commissioner has reported is only that, on looking through the shop room he found that the inside thereof was full of cobwebs. The Advocate Commissioner has tried to

improve upon his commission report in his evidence by furnishing additional details, it is pointed out. Therefore, according to the learned Senior Counsel, the proceedings of the authorities below require interference in revision.

3. This revision is posted before us for admission. We have carefully gone through the order of the Rent Control Court as well as the judgment of the Appellate Authority. A copy of the report of the Advocate Commissioner has been handed over to us by the Senior Counsel. A perusal thereof shows that the shop room is on the first floor of a double storeyed building. The shop room was found locked at the time of inspection. The inside portion of the room was visible through a window that was remaining open. The Advocate Commissioner has reported that the room was full of cobwebs. It is evident from a reading of the report of the Advocate Commissioner that the room was not being used by the

revision petitioner. The learned counsel has referred to the documents marked as Exts.B1 to B20. All the documents so produced refer to the business conducted by the revision petitioner. However, there is nothing on record to indicate that any business was being carried on from the tenanted premises. It is not in dispute that the revision petitioner has other premises in his possession from which, the various activities of his business are carried on. Had the petitioner been using the tenanted premises as contended there would certainly have been other documents to evidence such use. The revision petitioner also could have examined the neighbouring shop owners or other persons to prove such occupation. Absolutely no effort has been taken to dispel the veracity of the commission report that has been marked as Ext. C1. A perusal of the order of the Rent Control Court as well as the judgment of the Appellate Authority show that the

authorities below have addressed the questions in the proper perspective. The evidence has been considered properly. We do not find any illegality, impropriety or irregularity, warranting an interference with the proceedings of the authorities below, in exercise of our power of revision.

For the above reasons this revision is dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

jj

/True copy/

