

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

RCRev..No. 149 of 2015 ()

AGAINST THE JUDGMENT IN RCA 19/2013 of THE RENT CONTROL APPELLATE
AUTHORITY, TIRUR

AGAINST THE ORDER IN RCP 30/2010 of THE RENT CONTROLLER (MUNSIFF) ,
PARAPPANANGADI

REVISION PETITIONER(S)/RESPONDENTS/ RESPONDENTS:

1. K.AMMU

REPRESENTED BY ITS MANAGING PARTNER N.SADASIVAN
S/O. APPU, CHEMMAD, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK.

2. SADASIVAN

S/O. APPU, CHEMMAD, TRIKKULAM AMSOM DESOM
TIRURANGDI TALUK.

3. P.M.MOIDEEN KOYA

S/O. KUNNATH KOYA, PUTHIYA MALIYEKKA HOUSE
PATHUKANDAMPARAMBA, AYICHAVATTAM, KOZHIKODE.

BY ADVS.M/S.T.KRISHNAN UNNI (SR.),VINOD RAVINDRANATH &
SAJU.S.A

RESPONDENT(S)/APPELLANTS/ PETITIONER:

1. NAFEESA, AGED 90 YEARS

W/O. CHEMBAN KUNHUMHAMMED, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT - 676 505.

2. SAINABA, AGED 55 YEARS

D/O. CHEMBAN KUNHIMHAMMED, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT - 676 505.

3. SUBAIDA, AGED 50 YEARS

D/O. CHEMBAN KUNHIMHAMMED, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT - 676 505.

4. HAMZA, AGED 41 YEARS
S/O. CHEMBAN KUNHIMUHAMMED, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT - 676 505.

5. YOOSSUF, AGED 39 YEARS
S/O. CHEMBAN KUNHIMUHAMMED, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT - 676 505.

6. SAITHALAVI, AGED 47 YEARS
S/O. CHEMBAN KUNHIMUHAMMED, TRIKKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT - 676 505.

R1-R6 BY ADVS. M/S.SRI.V.K.BEERAN (SR.) & V.P.REGHURAJ

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
18-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“CR”

K. Surendra Mohan & Mary Joseph, JJ.

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R.C.R.No.149 of 2015

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Dated this the 18th day of August, 2015.

ORDER

Surendra Mohan, J.

1. The tenants are in revision challenging the order of the Rent Control Appellate Authority, Tirur in R.C.A.No.19 of 2013. The Rent Control Appellate Authority, by the order under revision, set aside the order of the Rent Control Court, Parappanangadi in R.C.P.No.30 of 2010, dismissing the Rent Control Petition. The petitioners are conducting a business in timber from the tenanted shop room, which forms part of a larger building that belongs to the respondents. The respondents/landlords sought eviction of the tenants under Sections 11(2), 11(3), 11(4)(ii) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the “Act”, for short). According to the landlords, they require the shop room along

with the other rooms in the building for the purpose of starting a super market. According to them, many of them have returned to their native land, leaving their employment in the gulf countries. They have no other source of income or building of their own and therefore want to start a supermarket. It was also contended that the tenants had, in their possession, other shop rooms closeby, which were sufficient for them to conduct their business. Therefore, the landlords invoked the ground under Section 11(3) also.

2. The tenants disputed the need that was put forward by the landlords.

According to them, they needed the tenanted shop room for the conduct of their business. They were conducting a business in wooden furniture. For the purpose, the finished timber sections were brought and stocked in the tenanted shop room. The furniture that was made out of the timber stocked were displayed and sold in the other rooms occupied by them. Therefore, it was contended that, the activity that was carried on in the tenanted shop room, was an integral part of the timber business that they were carrying on

dealing in timber.

3. The Rent Control Court tried the case on the above pleadings. The evidence on the side of the landlords consists of Exts.A1 to A10 documents and the oral evidence of P.W.1. On the side of the tenants, Exts.B1 to B11 were marked and R.W.1 was examined as witness. Exts.C1 and C2 commission reports were marked.
4. The Rent Control Court considered the evidence on record and found that the landlords had not succeeded in establishing any of the grounds put forward. Therefore, the Rent Control Petition was dismissed. The landlords challenged the order of the Rent Control Court in R.C.A.No.19 of 2013. Before the Appellate Authority, both sides filed petitions under Order XLI Rule 27 of the Code of Civil Procedure for production of additional documents. As per orders passed in I.A.Nos.3598 of 2014 and 670 of 2015, the landlords were permitted to produce documents, which were marked as Exts.A1 to A14. As per order in I.A.No.632 of 2015, the tenants produced and marked Ext.B12 document. The Appellate Authority, on a re-

appreciation of the evidence, including the additional documents produced, found that, the Rent Control Court had erred in dismissing the claim of the landlords. The Appellate Authority found that the landlords were entitled to an order of eviction under Section 11(3) and 11(4)(iii) of the Act. Accordingly, the appeal was allowed and the order of the Rent Control Court was set aside. The aggrieved tenants are in revision before us.

5. According to the Senior Counsel Sri..Krishnanunni, firstly, the additional documents permitted to be produced by the Appellate Authority by both sides have not been properly proved. Therefore, the judgment of the Appellate Authority passed, placing reliance on the said additional documents also, is liable to be set aside. Secondly, it is pointed out that the Appellate Authority had seriously erred in not finding in favour of the tenants under the 2nd proviso to Section 11(3) of the Act. According to the learned Senior Counsel, the business that is being carried on by the tenants, comprises of different stages. The first stage is to procure the necessary timber

sections which are thereafter used to manufacture various items of furniture. The furniture so manufactured are displayed and sold from the showroom occupied by the tenants. It is the said shoproom portions that are referred to for the purpose of sustaining the ground under Section 11(4)(iii) of the Act. The contention of the learned Senior Counsel is that, without procuring and storing the timber sections, the subsequent manufacturing process of furniture could not be undertaken. Therefore, vacating the tenanted premises would disrupt the business. The fact that the tenants had two other shop rooms in their occupation would not satisfy the requirement of Section 11(4)(iii), for the reason that, it is one and the same business that is being carried on from the tenanted shop room as well as the other shop rooms occupied by the tenants. It is the further contention of the learned Senior Counsel that the said shop rooms were already occupied by the tenants. Out of the shop rooms so occupied by the tenants, two shop rooms had been acquired by the tenants by Exts.B8 and A12 documents. Ext.B8 is of the year 1997,

while Ext.A12 is of the year 2004. The said shop rooms are not sufficient for the business of the tenants. It is also contended that, since the tenants were already in occupation of the shop rooms, it cannot be said that, they had subsequently acquired possession thereof so as to attract Section 11(4)(iii) of the Act. For the above reasons, it is contended that the judgment of the Appellate Authority requires interference and correction in revision.

6. Senior Counsel Sri.VK.Beeran appears for the landlords. According to the learned Senior Counsel, this is a case in which the landlords are desirous of starting a supermarket of their own. The tenanted shop room forms part of a larger building, which is the only building owned by them. Recognising and accepting the *bona fides* of the need put forward by the the landlords, the other tenants have vacated the respective premises occupied by each of them, as evidenced by Exts.A4 to A7 documents. The tenanted shop room is also necessary for the landlords to start a supermarket. They want to do so by removing the separating walls in between and converting the

building into a single hall. According to the learned Senior Counsel, the finished timber sections that are stocked in the tenanted shop room could be stored anywhere else, even at a place away from the showroom. It is not necessary that the said timber sections should be stocked in the tenanted shop room itself. It is pointed out that the tenants sold even such finished sections apart from the furniture made by them. Such business is being carried on from both the premises in their occupation. Therefore, it is contended that the Appellate Authority has rightly granted an order of eviction. Learned Senior Counsel has placed reliance on a number of decisions of this Court also in support of his contentions.

7. Heard. A perusal of the order of the Rent Control Court shows that the court had not entered any specific finding regarding the *bona fides* of the need put forward by the landlords. However, the Appellate Authority has considered the above question also. The Appellate Authority has found in favour of the landlords on the *bona fides* of the need put forward by them. We have also considered the

nature of the need that is put forward. It is a settled proposition of law that the need put forward by the landlords has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra. It is not disputed that the landlords are persons who have returned to their native place, leaving their employment abroad. Their desire to start a supermarket cannot be found fault with. It is not in dispute that the tenanted shop room is part of the only building owned by them. They want to remove the separating walls and convert the same into a hall for the purpose of starting the proposed business. P.W.1 has spoken to the need. The Appellate Authority has accepted the need as *bona fide*. We find no grounds to take a different view of the matter. Therefore, we confirm the finding that the need put forward by the landlords is *bona fide*.

8. The other question that arises for consideration is whether the proviso to Section 11(3) is applicable to the facts of the present case. It is true that the landlords are in possession of other rooms that are remaining vacant and forming part of the very same building.

However, Exts.A4 and A7 documents show that, they have been vacated by the tenants in occupation thereof accepting the *bona fides* of the need put forward by the tenants. The case of the landlords is that unless vacant possession of the tenanted shop room is also obtained, their business cannot be started. The said special reason has been accepted by the Appellate Authority. We also accept the said special reason.

9. With respect to the 2nd proviso to Section 11(3), it is the settled position of law that the burden to prove both the limbs thereof is on the tenants. In the present case, the tenants had produced the accounts of their business. However, the accounts relate to the timber business that is being carried on by them. The sales tax documents produced by the tenants also are in support of the above contention. However, what requires to be taken note of is that, the tenants are carrying on business not only in the tenanted shop room but also in other shop rooms that are occupied by them. The tenanted shop room is used mainly to stock the finished timber

sections before they are utilized in the manufacture of furniture items. Ext.B11 is a copy of the commission report in R.C.P.No.13 of 2011, an earlier RCP filed by the landlords against the tenants. Ext.B11 shows that finished timber sections were being stocked by the tenants not only inside the shop room but also in a lean to put up in front of the shop room extending into the neighbouring Government land and also in sheds put up by them on the nearby Government land. It has also been reported that such timber sections were stocked close to the compound wall inside the said property, covered by tarpaulin sheets. Ext.C1 commission report further shows that only timber sections are stocked in the petition schedule shop room. It is clear from the above, that the only activity for which the tenanted shop room is used by the tenants is to stock the finished timber sections. It is also necessary to notice that the timber sheds put up on Government land are being utilised for the said purpose. The Advocate Commissioner has reported stocking of timber sections in the open area covered with tarpaulin sheets.

Therefore, the nature of activity for which the tenanted shop room is being used is something that could be undertaken by putting up temporary sheds on any vacant land. In other words, it cannot be said that use of the tenanted shop room is indispensable for the conduct of the business of the tenants in the room occupied by them. The stocking of timber sections in the manner reported by the Advocate Commissioner cannot be considered to be an integral part of the business conducted by the tenants. Therefore, it cannot be said that the tenants are depending on the income derived by them from the activity conducted in the tenanted shoproom so as to attract the benefit of the 2nd proviso to Section 11(3) of the Act. Further, with respect to the 2nd proviso to Section 11(3), we also do not find that the tenants have discharged their burden. Therefore, it is held that, the findings of the Appellate Authority disentitling the tenants of the benefit of the proviso to Section 11(3) of the Act is fully justified. The said findings are confirmed.

10.The next question that arises for consideration is whether the

landlords have succeeded in establishing the ground under Section 11(4)(iii) of the Act. It is not in dispute that the tenants are in occupation of other shop rooms, which, according to them, are being used as showrooms for their finished products. The petition schedule shoproom is being used for stocking the timber necessary for making such finished products. For the above reason, the contention is that the premises in their occupation are not sufficient for their business. Learned counsel also placed reliance on Ext.B11 commission report to put forward a contention that even the space available being insufficient, the timber is stocked in temporary sheds on Government land also. The above being the situation, it cannot be said that Section 11(4)(iii) is attracted. It is also contended that since the tenants had purchased the other rooms that were in their possession, much earlier, the said provision is not attracted.

11. Section 11(4)(iii) is extracted hereunder for convenience of reference:

“If the tenant already has in his possession a building or subsequently acquires possession of or puts up a

building, reasonably sufficient for his requirements in the same city, town or village.”

12.The above provision is applicable in all cases where:

- i) The tenants already have in their possession a building; or
- ii) subsequently acquires possession of; or
- iii) puts up a building;
- iv) reasonably sufficient for their requirements in the same town or village.

13.The above provision contemplates, not only a situation where a tenant subsequently acquires a building, but also a situation where a tenant is already in occupation of another building. In the present case, the tenants already have in their possession other shoprooms. The above is not a fact that is disputed by the tenants. The contention is that the rooms in their occupation are not sufficient for their business.

14.This Court has in **Ahammed v. Krishnalal** (2005 (3) K.L.T. 1004) considered the scope of the above provision and held that, merely because other rooms in the possession of the tenants are lesser in

area, it cannot be said that the provision is not attracted. It is enough that the premises are “reasonably sufficient” for the purpose. It has also been held that, where the tenants are shown to have other buildings in their possession, the burden to prove that the buildings are not reasonably sufficient for their purpose, would be on the tenants. In **Ramamoorthy v. Musthapha Rawther** (2002 (3) K.L.T. 685) also this Court has considered a similar situation and held as follows:

“When it was proved that tenant is in possession of another building, it is for the tenant to prove that it was not sufficient for his use. Since he was found to be in possession of the shop “Supriya” and it was not proved by the tenant that it was not sufficient to accommodate the business, the Court should not have interfered in the order of eviction passed by the lower court under Section 11(4)(iii) of the Act.”

15. Therefore, the position of law is that it is for the tenants to establish that the rooms in their possession are not “reasonably sufficient” for their business.

16. As we have already found, the tenants are using the shoproom in

their possession only for the purpose of stocking the finished timber sections. We have already found that occupation of the tenanted shoproom is not necessary for satisfying the said requirement. It is in evidence that they have been stocking timber in temporary sheds as well as in the open area on Government land. It is also not necessary that such timber should be stocked close to the shoproom which sells the finished goods. The same could be stocked or stored in any godown meant for the said purpose. Such a godown could even be located at a place away from the shoproom.

17.It has further come out in evidence that the tenants are in possession of one shoproom on the first floor of the building from which the shoproom is functioning. According to the counsel for the tenants, the room on the upper floor cannot be used for stocking timber. The said submission may be correct, but when the tenants have other rooms in their occupation, it is possible for them to shift the showroom upstairs and use the room on the ground floor as a place to stock their timber. The question as to how they should adjust their

activity within the space available at their disposal is an aspect on which the tenants would have to take a decision. For the above reasons, the contention that the vacant room on the first floor cannot be utilized for the business of the tenants, does not convince us. The Appellate Authority has considered all the relevant aspects and has found that the ground under Section 11(4)(iii) is also made out. We find no infirmity in the said finding.

18.For the above reasons, we find no grounds to interfere with the order of the Appellate Authority.

19.As a last submission, learned counsel for the tenants sought for some time to vacate the premises. Counsel for the landlords opposed the said request. Having considered the contentions of the respective counsel, we are satisfied that, it is necessary to grant six months' time to the tenants to surrender vacant possession of the premises.

In the result,

i) The Rent Control Revision is dismissed.

ii) The revision petitioners are granted time upto

18.1.2016 to surrender vacant possession of the premises to the landlords, on condition that the Managing Partner of the tenants/firm swears to an affidavit before the Rent Control Court, Parappanangadi in R.C.P. No.30/10, within a period of two weeks of the date of receipt of a copy of this order, unconditionally undertaking to surrender vacant possession of the premises, on or before 18.1.2016. It shall be a further condition that, the tenants pay the entire arrears of rent, if any remaining unpaid and continue to pay the rent in respect of the premises, without any delay or default, until vacant possession is surrendered to the landlords.

K. Surendra Mohan, Judge.

sl.

Mary Joseph, Judge.