

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RCRev.No. 162 of 2015

AGAINST THE JUDGMENT IN RCA 50/2014 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM DATED 31-01-2015

AGAINST THE ORDER IN RCP 179/2012 of RENT CONTROL COURT, ERNAKULAM
DATED 25-02-2014

REVISION PETITIONER/APPELLANT/RESPONDENT:

RAGHAVAN AGED 68 YEARS
S/O.LATE CHATHU, PROPRIETOR, ROYAL BAKERS
KOTTARAM JUNCTION, MAIN ROAD, MARADU PO
ERNAKULAM DISTRICT

BY ADVS.SRI.ABRAHAM K.JOHN
SMT.C.G.ARUNDHATHI

RESPONDENT/RESPONDENT/PETITIONER:

S.R.SUMATH BABU
S/O.S.S.RAMACHANDRAN, 10/700, AMARAVATHY DESOM
FORT KOCHI PO, ENAKULAM DISTRICT, 582 001.

R1 BY ADV. SRI.C.K.GOVINDAN
R1 BY ADV. SRI.L.P.ARAVINDAKSHAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 30-
09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANNEXURES:

PETITIONER'S ANNEXURES:

ANNEXURE A1: THE CERTIFIED COPY OF THE JUDGMENT DATED 31.1.2015 IN RCA 50/2014 OF THE 2ND ADDITIONAL DISTRICT COURT, ERNAKULAM.

ANNEXURE A2: THE PHOTOSTAT COPY OF THE ORDER DATED 25.02.2014 IN RCP 179/2012 OF THE RENT CONTROL COURT, ERNAKULAM.

ANNEXURE A3: THE CERTIFIED COPY FO THE DEPOSITION OF PW1 IN RCP 179/2012 OF THE RENT CONTROL COURT, ERNAKULAM.

RESPONDENTS'; ANNEXURES: NIL

KS.

True copy

P.S. (Hr.Gr.)To Judge

P.N. RAVINDRAN

&

BABU MATHEW P. JOSEPH, JJ.

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R.C.R. No. 162 OF 2015

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Dated this the 30th day of September, 2015

O R D E R

P.N. Ravindran,J.

The petitioner is the tenant in R.C.P.No.179 of 2012 on the file of the Rent Control Court, Ernakulam. The respondent is the landlord therein. The respondent instituted R.C.P.No.179 of 2012 under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act" for short, praying for an order of eviction in respect of a shop room having an area of 120 sq.ft. situate at Maradu Junction on the southern side of Maradu-Tripunithura Road. He contended that he bona fide needs the petition schedule building to start a fast food business. The petitioner herein filed a counter statement contending that the bona fide need alleged is not true, that

the landlord is having other sources of income, that the statement in the rent control petition that he bona fide needs the petition schedule building for conducting a business to earn his livelihood is totally false and that the need put forward is not believable. The tenant further contended that he is depending for his livelihood mainly on the income derived by him from the bakery run in the petition schedule premises and that no other suitable room is available in the locality. He also contended that the petition schedule shop room is not suitable for running a fast food business and that the need put forward is only a ruse to evict him and to let out the same to the landlord's relative who is conducting a business in the room on the western side of the petition schedule building.

2. On application filed by the landlord, an Advocate Commissioner was appointed and he submitted Ext.C1 report dated 11.12.2013 accompanied by Ext.C1(a) rough sketch. Before the Rent Control Court, the landlord examined himself as PW1 and the Advocate Commissioner as PW2. He also produced and marked Exts.A1 to A3. The tenant examined himself as RW1 and a resident of the locality as RW2. He also produced and marked as Ext.B1. The Rent Control Court considered the rival contentions and held that the need put

forward is bona fide. The Rent Control Court also held that the tenant has not proved the ingredients of both the limbs of the second proviso to sub-section (3) of section 11 of the Act. An order for eviction was accordingly passed. Aggrieved thereby, the tenant filed R.C.A.No.50 of 2014 on the file of the Rent Control Appellate Authority, Ernakulam. By judgment delivered on 31.01.2015, the Appellate Authority concurred with the Rent Control Court and dismissed the appeal. Hence, this revision petition.

3. We heard Sri Abraham K. John, learned counsel appearing for the petitioner and Sri C.K. Govindan, learned counsel appearing for the respondent. Sri Abraham K. John, learned counsel appearing for the petitioner/tenant contended that it has come out in evidence that the landlord is running a business under the name and style "Sreelakshmi Enterprises" at Amaravathy, near his residence, that he had suppressed the said fact in the rent control petition and also in the affidavit filed by him in lieu of chief examination, that the landlord had in his cross examination admitted the fact that his wife is running the said establishment, that the landlord had a duty to disclose to the court as to whether who is the owner of the premises where the wife is running the business and in such circumstances, as the landlord had

not disclosed the true state of facts, in the light of the evidence on record, the courts below erred in holding that the need put forward is bona fide. The learned counsel also canvassed the correctness of the finding entered by the Rent Control Court and the Appellate Authority as regards the protection available to the tenant under the second proviso to section 11(3) of the Act.

4. Per contra, Sri C.K. Govindan, the learned counsel appearing for the respondent/landlord submitted that the landlord purchased the petition schedule shop room having an area of 120 sq.ft. in a court sale held on 03.04.2008, that the sale was confirmed on 05.07.2008, but the sale certificate was issued only on 12.03.2009. He submitted that in view of the fact that the room purchased by him was in the occupation of the petitioner/tenant, only symbolic delivery was effected and that it was done on 24.09.2009. The learned counsel contended that it was with a view to start a business in the petition schedule premises, that he had purchased the said shop room in court auction paying a sum of ₹5,05,000/, that the tenant had no case in Ext.A3 reply notice that the landlord is in possession of another building of his own building in the same city/town or village, that it was only during cross examination of PW1 that an attempt was made to

establish that the landlord is running a business establishment under the name and style "Sreelakshmi Enterprises" in his own building, that the testimony tendered by PW1 discloses that the said business is conducted by the landlord's wife in a rented premises, that there is no material on record to show that the landlord is running the aforesaid establishment or that it is run in his own premises and, therefore, no exception can be taken to the findings entered by the Rent Control Court/Appellate Authority as regards the protection available to the tenant under the second proviso to section 11(3) of the Act. The learned counsel for the respondent/landlord contended that as rightly held by the courts below, the tenant has not discharged the burden to prove the two limbs of the second proviso to section 11(3) of the Act.

5. We have considered the submissions made at the Bar by the learned counsel on both sides. We have also gone through the impugned judgment/order. The main thrust of the argument of the petitioner/tenant is that the landlord is in possession of another building at Amaravathy in Fort Kochi about 11 kilometres away from the petition schedule building and, therefore, the need put forward is not bona fide. The tenant has no such case either in Ext.A3 reply notice issued by him or in the objections filed by him to the rent

control petition. It was only when PW1 was cross examined on 12.2.2014 that a suggestion was made that the landlord is the owner of the shop where he is running a business under the name and style "Sreelakshmi Enterprises". The landlord denied the said suggestion and deposed as follows:

"അമരാവതി ഭഗവതി ക്ഷേത്രത്തിനടുത്തുള്ള ശ്രീലക്ഷ്മി എൻ്റർപ്രൈസസ് എൻ്റെ ഭാര്യയുടെ പേരിലുള്ളതാണ്. അത് മൂന്ന് വർഷമായി ശ്രീലക്ഷ്മി എൻ്റർപ്രൈസസ് ഭാര്യ തുടങ്ങിയിട്ട്. അത് ഭാര്യ വാടകയ്ക്ക് നടത്തുന്നതാണ്." (A)

He further deposed that he is residing 300 metres away from Sreelakshmi Enterprises. It was only after PW1 was subjected to cross examination that the tenant filed his proof affidavit and in that proof affidavit he has averred as follows:

"ഹർജിക്കാരൻ ഹർജിപട്ടിക മുറിയിൽ നിന്നും ഏകദേശം 15 കി.മീറ്ററോളം അകലെ അമരാവതി ക്ഷേത്രത്തിനടുത്ത് "ശ്രീലക്ഷ്മി എൻ്റർപ്രൈസസ്" എന്ന പേരിൽ സ്റ്റേഷനറി, ജോബ് ടൈപ്പിങ്ങ്, എൽ.ഐ.സി. ഏജൻസി എന്നിവ നടത്തുന്ന ഏകദേശം 300 സ്ക്വയർ ഫീറ്റ് വിസ്തീർണ്ണമുള്ള കടമുറിയും കച്ചവടവും സ്വന്തമായിട്ടുള്ളതും ആയതിൽ നിന്നും ധാരാളം വരുമാനം ഉള്ളതും ആണ്."

He deposed that it was only from persons present in the locality that he came to know of the aforesaid facts. He did not however for the reasons best known to him, take steps to furnish the door number of

the building where the petitioner's wife is admittedly running a business establishment or make any attempt to prove that it is really the landlord, who is running the business. He could have in our opinion produced the details of the licence issued by the Cochin Corporation for running the said establishment. He could have also found out the details regarding the ownership of the building from the records of the Cochin Corporation. He could have also called upon the landlord to produce the rent deed or documents in respect of the premises where the aforesaid establishment is being run. Instead, an attempt is now made on vague averments in the proof affidavit filed in the chief examination that the landlord was, on the date of rent control petition filed, in possession of his own premises and, therefore, in the absence of special reasons, an order for eviction could not have been passed. It was only when PW1 was subjected to cross examination that the tenant put forward a suggestion that the landlord is the owner of the building where "Sreelakshmi Enterprises" was established. As stated above, there is no material on record to show that the landlord is the owner of the building or that he is running the business. In such circumstances, we find no ground to set aside the finding entered by the Rent Control Court/Appellate Authority that the need put forward

by the landlord is bona fide. We also find no reason to interfere with the finding entered by the Rent Control Court and the Appellate Authority that the tenant has signally failed to prove the essential ingredients of the second limb of second proviso to section 11(3) of the Act. The impugned judgment/order do not in our opinion suffers from any infirmity or illegality. We accordingly hold that there is no merit in the revision petition. It fails and is dismissed. No costs.

6. After the revision petition was dismissed, learned counsel appearing for the petitioner/tenant prayed for four months' time from today to surrender vacant possession of the building. Learned counsel for the landlord/respondent opposed the said request. However, having regard to the fact that the petitioner has been running a bakery in the petition schedule premises for the past more than a decade, we grant him four months' time from today to surrender vacant possession of the petition schedule shop room to the landlord, subject to the condition that he shall within two weeks from today file an undertaking in the form of an affidavit before the Rent Control Court undertaking to surrender vacant possession of the petition schedule shop room within four months. The tenant shall also pay the arrears of rent if any within the said period and undertake to continue to pay

the rent payable in respect of the petition schedule shop room till the date of surrender. He also undertake that he will not induct third parties into possession of the petition schedule shop room. In the event of failure on the part of the tenant to file an undertaking within the time limit stipulated above, it will be open to the landlord to forthwith apply for execution of the order of eviction.

**Sd/-
P.N. RAVINDRAN
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH
JUDGE**

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True copy

P.S. (Hr.Gr.)To Judge

