

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

RRev..No. 164 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 12/2011 of THE RENT CONTROL
APPLLEATE AUTHORITY, TIRUR DATED 12-02-2015

AGAINST THE ORDER/JUDGMENT IN RCP 10/2010 of THE RENT CONTROL
COURT, PARAPPANANGADI DATED 20-06-2011

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

SRI. CHEKKITHANAKATH MUHAMMED ASHRAF AGED 54 YEARS
S/O.C.P.KADERKUTTY @ BAVA, P.O.TANUR
MALAPPURAM DISTRICT.

BY ADVS.SRI.J.R.PREM NAVAZ
SRI.P.T.SHEEJISH

RESPONDENT(S)/RESPONDENT/PETITIONER:

SRI. VALIYAKATH PUTHIYA MALIYEKKAL BASHEER, AGED 49 YEARS
S/O.HASSAN KUTTY NAHA, P.O.PARIYAPURAM
MALAPPURAM DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
08-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

**K.SURENDRA MOHAN &
MARY JOSEPH, JJ.**

R.C.R. No.164 of 2015

Dated this the 8th day of July, 2015

O R D E R

Surendra Mohan, J.

The tenant in R.C.P.No.10 of 2010 of the Rent Control Court, Parappanangadi who has suffered an order of eviction under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 ('the Act') which is confirmed by the Rent Control Appellate Authority, Tirur in RCA No.12 of 2011 has filed this revision. The respondent landlord had sought eviction alleging that the rented premises that consists of two shop rooms and a godown were entrusted on two different occasions, one in the year 2001 and the other in the year 2005. The landlord claimed that, the rate of rent was ₹2,000/- per month. No rent deed had been executed since the parties were close relatives. When the rent fell into arrears from May 2009 onwards, Exhibit A1 lawyer's notice was issued. The Revision

Petitioner issued Exhibit A2 reply notice disputing the liability to pay rent. Therefore, the Rent Control Petition was filed by the landlord. The tenant contested the claim of the landlord as well as the rate of rent. The case of the tenant is that, there were no two entrustments as contended. Both the shop rooms as well as the godown were entrusted in the year 2001 itself. The rate of rent was also disputed. According to the tenant, the total rent is only ₹2000/-. The tenant has a further case that, the landlord was not issuing receipts for payment of the rent.

2. The Rent Control Court tried the petition on the above pleadings. The evidence in the case consists of Exhibits A1 and A2 copies of the lawyer's notice and reply notice as well as the oral evidence of PWs 1 and 2 on the side of the landlord. On the side of the tenant, no evidence either documentary or oral was adduced. Therefore, this is a case where, there is evidence only on one side. On an appreciation of the evidence on record, the Rent Control Court granted an order of eviction under Section 11(2)(b) of the Act, finding that the rent was in arrears as claimed. The

aggrieved tenant challenged the order of eviction in RCA No. 12 of 2011. However, the Rent Control Appellate Authority has confirmed the findings of the Rent Control Court.

3. According to Sri. J.R.Prem Navaz who appears for the petitioner, neither the Rent Control Court nor the Appellate Authority has framed an issue regarding the question as to when the tenanted premises was entrusted to the tenant. There is absolutely no evidence regarding the rate of rent in respect of the tenanted premises. In spite of the above, both the Rent Control Court as well as the Appellate Authority has found that the entrustment was in the year 2001 and 2005 as claimed by the landlord. The rate of rent has also been found in favour of the landlord. The procedure adopted according to the learned counsel is irregular, improper and calls for interference in revision by this Court.

4. We have heard the counsel for the petitioner at length. The matter is posted before us for admission. As we have already noticed, this is a case in which there is

evidence only on one side. The case of the landlord is that, the tenant being a close relative, son of his uncle, no formal rent deed was executed. There is no dispute that the tenanted premises are being occupied by the tenant. The tenanted premises consists of two shop rooms as well as a godown. There is also the appurtenant land in which the tenant who is conducting a business in marbles is stocking his merchandise. The rent according to the landlord is ₹2,000/- for the shop rooms and ₹2,000/- for the godown. The case of the landlord is that, the shop rooms were entrusted in the year 2001 and godown in the year 2005. The question as to when actually the shop rooms as well as the godown were entrusted is not relevant for the reason that, the revision petitioner tenant is admittedly occupying both the shop rooms and the godown at present. He is also conducting business therefrom. The rent is being claimed by the landlord only from the year 2009. The case of the landlord is that, the rent was paid up to May 2009. It is only thereafter that the rent is alleged to have fallen into arrears. Therefore, according to us, the question as to the

date of actual entrustment is not a relevant aspect. In spite of the above, both the Rent Control Court as well as the Appellate Authority have considered the contention that was raised by the tenant and found that, in the absence of any evidence adduced by the tenant in support of his case, both the premises were entrusted on different dates, the case of the landlord being the more acceptable one. We do not find any infirmity in the said conclusion.

5. On the question of the rate of rent, it is true that there is no documentary evidence. However, the landlord has deposed as PW1 regarding the rate of rent. PW2 who is another close relative of both the landlord and the tenant has supported the version of PW1. The testimonies of both PWs 1 and 2 have been relied upon by the authorities below. We do not find anything wrong in the approach adopted. As rightly found by the authorities below, despite raising contentions against the claims put forward by the petitioner landlord, the tenant has not sought to let in any evidence in support of the case pleaded by him. He has not even mounted the box to swear the case pleaded by him. In

the above state of affairs, we are not persuaded to accept the contentions of the counsel for the revision petitioner that an interference with the judgment of the Appellate Authority is called for in this case. We find no illegality, impropriety or irregularity justifying an interference with the judgment of the Appellate Authority, in revision.

For the above reasons, this revision fails and is accordingly dismissed. The Revision petitioner is granted one month's time from the date of receipt of a copy of this judgment to deposit the arrears of rent with interest and costs before the Rent Control Court under Section 11(2)(c) of the Act.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE