

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

RCCRev..No. 165 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 83/2013 of RENT CONTROL APPELLATE
AUTHORITY & ADDL. DISTRICT JUDGE KOZHIKODE-III

AGAINST THE ORDER/JUDGMENT IN RCP 7/2010 of RENT CONTROLLER/
MUNSIFF, QUILANDY

REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS (TENANTS):

1. GEETHA AGED 55 YEARS, W/O.LATE VELUTHEDATH PRASAD
ATHOLI, THIRUVANGOOR AMSOM VENGALAM DESAM
KOYILANDY TALUK, KOZHIKODE DISTRICT
2. ARJUN, AGED 25 YEARS, S/O. LATE VELUTHEDATH PRASAD
ATHOLI, THIRUVANGOOR AMSOM VENGALAM DESAM
KOYILANDY TALUK, KOZHIKODE DISTRICT

BY ADVS.SRI.P.R.SREEJITH
SMT.MAYA CHANDRAN

RESPONDENT(S)/PETITIONERS (LANDLORDS):

1. R.P.MUHAMMED ASHARAF, AGED 57 YEARS
S/O. ABOOBAKKER HAJI, RAMACHAM PARAMBATH
UNNIKULAM P.O., UNNIKULAM AMSOM KANTHAPURAM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT - 673 574
2. R.P.MUHAMMED ALI, AGED 56 YEARS
S/O. ABOOBAKKER HAJI, RAMACHAM PARAMBATH
UNNIKULAM P.O., UNNIKULAM AMSOM KANTHAPURAM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT - 673 574
3. R.P.MUHAMMED ABDUL NAZER, AGED 54 YEARS
S/O. ABOOBAKKER HAJI, RAMACHAM PARAMBATH
UNNIKULAM P.O., UNNIKULAM AMSOM KANTHAPURAM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT - 673 574
4. V.P.AYISHA, AGED 52 YEARS
W/O. R.P.MUHAMMED SALIH, RAMACHAM PARAMBATH
UNNIKULAM P.O., UNNIKULAM AMSOM KANTHAPURAM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT - 673 574

5. R.P.MUHAMMED SALIH, (AGE NOT KNOWN TO THE PETITIONERS)
S/O. ABOOBAKKER HAJI, RAMACHAM PARAMBATH
UNNIKULAM P.O., UNNIKULAM AMSOM KANTHAPURAM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT - 673 574

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

R.C.R.NO. 165 OF 2015

Dated this the 9th July, 2015.

O R D E R

Surendra Mohan, J.

The tenants are in revision before us challenging the order of eviction of the Rent Control Court, Koyilandy in RCP 7/2010, confirmed by the Rent Control Appellate Authority in RCA 83/2013. The respondents landlords had filed the Rent Control Petition alleging that the tenants were keeping the room closed, without doing any business for a period of more than one year prior to the date of filing of the petition. The present tenants are the legal representatives of the original tenant who was conducting an electronic shop. The allegation was that, after his death the shop room was being kept locked. Therefore they sought an order of eviction under Section 11(4)(v) of the Kerala Buildings (Lease & Rent

Control) Act, 1965(the 'Act' for short).

2. The tenants disputed the allegations of the landlords. According to them, they had continued the business that was being conducted by the original tenant, even after his death but since the business was not found to be profitable they had started a new business in textiles, in the year 2010. They admitted that during a short period of time in between, the room had to be kept closed because of the illness of the first revision petitioner. However, no evidence was adduced in support of the contention that the first revision petitioner had fallen sick. Both parties adduced evidence in respect of their respective contentions. On the side of the landlords P.Ws 1 to 3 were examined as witnesses and Exts.A1 to A4 documents were marked. On the side of the tenants R.W.1 was examined as a witness and Exts.B1 to B8 documents were marked. Exts.C1 and C2 commission reports as well as Ext.X1 series documents were also marked.

3. On an appreciation of the evidence on record, the

Rent Control Court found that the landlords had succeeded in establishing the ground under Section 11(4)(v) of the Act. Therefore eviction was ordered. The tenant challenged the order of eviction in RCA83/2013. On a reappreciation of the evidence on record, the Appellate Authority has found that the order of eviction granted by the Rent Control Court was justified and proper. The tenant is aggrieved by the judgment of the Appellate Authority.

4. According to Adv.P.R.Sreejith who appears for the petitioners there is no evidence available in the case to show that, the room had been kept closed and without being used for the full extent of the statutory period of six months. The evidence in the case is confined to the reports of the Advocate Commissioner. What the Advocate Commissioner has reported is only that there was dust on the rolling shutter and the locks of the shop room. P.Ws 2 and 3 who have been examined as witnesses to prove the closure, are alleged to be relatives of the landlords. Therefore according to the learned

counsel their evidence is not trustworthy. However, the above aspects have not been taken note of by the authorities below. Therefore, according to the learned counsel this is a fit case in which interference in revision is called for.

5. Heard. This revision is posted before us for admission. We have been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority. We find that both the authorities below have considered the contentions of the rival parties in the proper perspective. Ext.C1 report shows that the shop room was remaining locked and was in disuse, at the time of inspection. There was dust on the shutter as well as the locks. There was also a street vendor conducting business from the front portion of the shop room, since the shutter was remaining locked. He had refused to divulge his name to the Advocate Commissioner. The Advocate Commissioner has noted that, the board of the shop room was old. Alleging that the shop room that was inspected was not the one from which the

tenants had been doing business, a second inspection by the Advocate Commissioner was sought for. Under orders of the Rent Control Court, the Advocate Commissioner conducted a second inspection and had submitted Ext.C2 report. At the time of the second inspection the shop room was remaining open, a new board had been put up and textile materials had been placed in the shop room. Both the courts below have concluded that the entire scenario was stage-managed.

6. Apart from the reports of the Advocate Commissioner there is the oral evidence of P.Ws 2 and 3. It is true that a suggestion has been made in cross examination that they are relatives of the landlords. However, there is no evidence to support the above allegation. They have deposed that, the tenanted shop room had been kept locked by the tenants. Both the authorities below have placed reliance on the testimonies of P.Ws2 and 3. We find no reason to adopt a different view. The result is that, the reports submitted by the Advocate Commissioner taken together with the oral

evidence of P.Ws 2 and 3 clearly establish the ground under Section 11(4)(v) of the Act. Therefore we find that both the authorities below were right in ordering eviction.

7. As a last submission the counsel for the petitioners sought for the grant of some time to surrender vacant possession of the premises to the landlords. It is contended that, the business in textiles that was commenced in the year 2010 is doing well and that some time is necessary for identifying a suitable location to shift. Having considered the contentions of the counsel for the petitioners, we are satisfied that it is necessary to grant time to the tenants to vacate the premises up to 31.12.2015.

In the result:

i) The RCR is dismissed.

ii) The tenants are granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlords on condition that the first revision petitioner files an affidavit on behalf of the other revision petitioners also, undertaking to

surrender vacant possession of the premises to the landlords on or before 31.12.2015, before the Munsiff's Court, Koyilandy (Execution Court) in RCP 7/2010, within a period of two weeks of the date of receipt of a copy of this order. It shall be a further condition for getting the benefit of the time granted above that, the tenants pay all arrears of rent, if any, remaining unpaid in respect of the tenanted premises and continues to pay rent in respect thereof without any delay or default until they surrender vacant possession to the landlords.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

jj

/True copy/

